

**By** the Committees on Rules; Banking and Insurance; and Infrastructure and Security; and Senator Flores

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1                   A bill to be entitled  
2                   An act relating to underground facility damage  
3                   prevention and safety; amending s. 556.102, F.S.;  
4                   providing definitions; amending s. 556.107, F.S.;  
5                   revising and providing noncriminal violations relating  
6                   to the transportation of certain hazardous materials;  
7                   authorizing the State Fire Marshal or his or her  
8                   agents or the fire chief of the special district,  
9                   municipality, or county to issue certain citations;  
10                  providing enhanced civil penalties; providing  
11                  disposition of the civil penalties; requiring a report  
12                  to be submitted to an additional entity; providing  
13                  requirements for the report; providing civil and  
14                  criminal penalties; amending s. 556.116, F.S.;  
15                  deleting definitions; requiring certain persons to  
16                  transmit an incident report to the State Fire Marshal;  
17                  providing that certain incident reports must be  
18                  investigated by the State Fire Marshal or his or her  
19                  agents; authorizing the State Fire Marshal or his or  
20                  her agents to issue citations and impose civil  
21                  penalties; providing for disposition of the civil  
22                  penalty; requiring written warnings for certain  
23                  noncriminal infractions; providing for an enhanced  
24                  penalty upon conviction for a failure to respond;  
25                  deleting provisions relating to hearings by the  
26                  Division of Administrative Hearings of certain  
27                  incidents; creating s. 556.117, F.S.; requiring  
28                  Sunshine State One-Call of Florida, Inc., to review  
29                  certain reports and complaints; requiring the

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30 corporation to identify areas in the state in need of  
31 additional education and to recommend solutions;  
32 requiring the corporation to submit an annual report  
33 to the Governor and the Legislature by a specified  
34 date; providing an effective date.

35  
36 Be It Enacted by the Legislature of the State of Florida:

37  
38       Section 1. Present subsections (8) and (9) through (14) of  
39 section 556.102, Florida Statutes, are redesignated as  
40 subsections (10) and (12) through (17), respectively, and new  
41 subsections (8), (9), and (11) are added to that section, to  
42 read:

43       556.102 Definitions.—As used in this act:

44       (8) "High-priority subsurface installation" means an  
45 underground gas transmission or gas distribution pipeline, or an  
46 underground pipeline used to transport gasoline, jet fuel, or  
47 any other refined petroleum product or hazardous or highly  
48 volatile liquid, such as anhydrous ammonia or carbon dioxide, if  
49 the pipeline is deemed to be critical by the operator of the  
50 pipeline and is identified as a high-priority subsurface  
51 installation to an excavator who has provided a notice of intent  
52 to excavate under s. 556.105(1), or would have been identified  
53 as a high-priority subsurface installation except for the  
54 excavator's failure to give proper notice of intent to excavate.

55       (9) "Incident" means an event that involves damage to a  
56 high-priority subsurface installation that has been identified  
57 as such by the operator according to the notification procedures  
58 set forth in s. 556.116(1) and that:

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59       (a) Results in death or serious bodily injury requiring  
60 inpatient hospitalization.

61       (b) Results in property damage, including service-  
62 restoration costs, in an amount in excess of \$50,000 or an  
63 interruption of service to 2,500 or more customers.

64       (11) "Permanent marker" means a clearly visible indication  
65 of the approximate location of an underground facility which is  
66 made of material that is durable in nature and which is  
67 reasonably expected to remain in position for the life of the  
68 underground facility.

69       Section 2. Section 556.107, Florida Statutes, is amended to  
70 read:

71       556.107 Violations.—

72       (1) NONCRIMINAL INFRACTIONS.—

73       (a) 1. Violations of the following provisions are  
74 noncriminal infractions:

75       a.1. Section 556.105(1), relating to providing required  
76 information.

77       b. Section 556.105(5)(c), relating to excavation practices  
78 in tolerance zones.

79       c.2. Section 556.105(6), relating to the avoidance of  
80 excavation.

81       d.3. Section 556.105(11), relating to the need to stop  
82 excavation or demolition because marks are no longer visible,  
83 or, in the case of underwater facilities, are inadequately  
84 documented.

85       e.4. Section 556.105(12), relating to the need to cease  
86 excavation or demolition activities because of contact or damage  
87 to an underground facility.

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88       f.5. Section 556.105(5) (a) and (b), relating to  
89 identification of underground facilities, if a member operator  
90 does not mark an underground facility, but not if a member  
91 operator marks an underground facility incorrectly.

92       g.6. Section 556.109(2), relating to falsely notifying the  
93 system of an emergency situation or condition.

94       h.7. Section 556.114(1), (2), (3), and (4), relating to a  
95 failure to follow low-impact marking practices, as defined  
96 therein.

97       2. Violations of the following provisions involving an  
98 underground facility transporting hazardous materials that are  
99 regulated by the Pipeline and Hazardous Materials Safety  
100 Administration of the United States Department of Transportation  
101 are noncriminal infractions, subject to enhanced civil penalties  
102 under paragraph (c):

103       a. Section 556.105(1), relating to providing required  
104 information.

105       b. Section 556.105(5)(c), relating to excavation practices  
106 in tolerance zones.

107       c. Section 556.105(6), relating to the avoidance of certain  
108 excavation.

109       d. Section 556.105(11), relating to the need to stop  
110 excavation or demolition because certain marks are removed, no  
111 longer visible, or inadequately documented.

112       e. Section 556.105(12), relating to the need to cease  
113 excavation or demolition activities because of contact or damage  
114 to an underground facility.

115       (b) Any excavator or member operator who commits a  
116 noncriminal infraction under paragraph (a) may be issued a

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117 citation by the State Fire Marshal or his or her agents as  
118 provided in ss. 633.114 and 633.116; the fire chief of the  
119 special district, municipality, or county; or any local or state  
120 law enforcement officer, government code inspector, or code  
121 enforcement officer, and the issuer of a citation may require an  
122 excavator to cease work on any excavation or not start a  
123 proposed excavation until there has been compliance with the  
124 provisions of this chapter. Citations shall be hand delivered to  
125 any employee of the excavator or member operator who is involved  
126 in the noncriminal infraction. The citation shall be issued in  
127 the name of the excavator or member operator, whichever is  
128 applicable.

129 (c)1. Any excavator or member operator who commits a  
130 noncriminal infraction under subparagraph (a)1. paragraph (a)  
131 may be required to pay a civil penalty of \$500 plus court costs  
132 for each infraction, which is \$500 plus court costs. If a  
133 citation is issued by a state law enforcement officer, a local  
134 law enforcement officer, a local government code inspector, or a  
135 code enforcement officer, 80 percent of the civil penalty  
136 collected by the clerk of the court must shall be distributed to  
137 the governmental entity whose employee issued the citation and  
138 20 percent of the penalty must shall be retained by the clerk to  
139 cover administrative costs, in addition to any other court  
140 costs. Any person who fails to properly respond to a citation  
141 issued pursuant to paragraph (b) shall, in addition to the  
142 citation, be charged with the offense of failing to respond to  
143 the citation and, upon conviction, commits a misdemeanor of the  
144 second degree, punishable as provided in s. 775.082 or s.  
145 775.083. A written warning to this effect must be provided at

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146 the time any citation is issued pursuant to paragraph (b).

147 2. Any excavator or member operator who commits a  
148 noncriminal infraction under subparagraph (a)2. may be required  
149 to pay an enhanced civil penalty of \$2,500 plus court costs for  
150 each infraction. If a citation is issued, 80 percent of the  
151 civil penalty collected by the clerk of the court must be  
152 distributed to the governmental entity whose employee issued the  
153 citation and 20 percent must be retained by the clerk in  
154 addition to any court costs.

155 3. Any person who willfully fails to properly respond to a  
156 citation issued under paragraph (b) shall, in addition to the  
157 citation, be charged with the offense of failing to respond to  
158 the citation and, upon conviction, commits a misdemeanor of the  
159 second degree, punishable as provided in s. 775.082 or s.  
160 775.083. A written warning to this effect must be provided at  
161 the time a citation is issued under paragraph (b).

162 (d) Any person cited for an infraction under paragraph (a)  
163 or s. 556.116(2)(c) may post a bond, which must shall be equal  
164 in amount to the applicable civil penalty plus any additional  
165 court costs.

166 (e) A person charged with a noncriminal infraction under  
167 paragraph (a) or s. 556.116(2)(c) may pay the applicable civil  
168 penalty plus the additional court costs, by mail or in person,  
169 within 30 days after the date of receiving the citation. If the  
170 person cited pays the civil penalty, she or he is deemed to have  
171 admitted to committing the infraction and to have waived the  
172 right to a hearing on the issue of commission of the infraction.  
173 The admission may be used as evidence in any other proceeding  
174 under this chapter.

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175       (f) Any person may elect to have a hearing on the  
176 commission of the infraction appear before the county court. A  
177 person who elects to have a hearing waives and if so electing is  
178 deemed to have waived the limitations on the civil penalties  
179 penalty specified in paragraph (c). The court, after a hearing,  
180 shall make a determination as to whether an infraction has been  
181 committed. If the commission of an infraction has been proven,  
182 the court may impose a civil penalty not to exceed the  
183 applicable civil penalty \$5,000 plus court costs for each  
184 infraction. In determining the amount of the civil penalty, the  
185 court may consider previous noncriminal infractions committed.

186       (g) At a court hearing under this chapter, the commission  
187 of a charged infraction must be proven by a preponderance of the  
188 evidence.

189       (h) If the court finds that a person is found by a judge or  
190 hearing official to have committed an infraction, the person may  
191 appeal that finding or the amount of the civil penalties imposed  
192 to the circuit court.

193       (i) Sunshine State One-Call of Florida, Inc., may, at its  
194 own cost, retain an attorney to assist in the presentation of  
195 relevant facts and law in the county court proceeding pertaining  
196 to the citation issued under this section. The corporation may  
197 also appear in any case appealed to the circuit court if a  
198 county court judge finds that an infraction of the chapter was  
199 committed. An appellant in the circuit court proceeding shall  
200 timely notify the corporation of any appeal under this section.

201       (2) REPORT OF INFRACTIONS.—By March 31 of each year, each  
202 clerk of court shall submit a report to the State Fire Marshal  
203 and Sunshine State One-Call of Florida, Inc., listing each

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204        citation issued for a violation notice written under paragraph  
205        (1) (a) and s. 556.116(2)(c) which has been filed in that county  
206        during the preceding calendar year. The report must state the  
207        name and address of the member or excavator who committed each  
208        infraction, the enforcement authority, the specific statutory  
209        infraction, and the type of underground facility related to the  
210        infraction and must indicate whether or not the civil penalty  
211        for the infraction was paid.

212        (3) MISDEMEANORS.—

213        (a) Any person who knowingly and willfully removes or  
214        otherwise destroys the valid stakes or other valid physical  
215        markings described in s. 556.105(5) (a) and (b) used to mark the  
216        horizontal route of an underground facility commits a  
217        misdemeanor of the second degree, punishable as provided in s.  
218        775.082 or s. 775.083. For purposes of this subsection, stakes  
219        or other nonpermanent physical markings are considered valid for  
220        30 calendar days after information is provided to the system  
221        under s. 556.105(1) (a).

222        (b) Any person who knowingly and willfully removes or  
223        damages a permanent marker placed to identify the approximate  
224        location of an underground facility commits a misdemeanor of the  
225        second degree, punishable as provided in s. 775.082 or s.  
226        775.083.

227        Section 3. Section 556.116, Florida Statutes, is amended to  
228        read:

229        556.116 High-priority subsurface installations; special  
230        procedures.—

231        (1) As used in this section, the term:

232        (a) "Division" means the Division of Administrative

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233 Hearings.

234       (b) "High priority subsurface installation" means an  
235 underground gas transmission or gas distribution pipeline, an  
236 underground pipeline used to transport gasoline, jet fuel, or  
237 any other refined petroleum product or hazardous or highly  
238 volatile liquid, such as anhydrous ammonia or carbon dioxide, if  
239 the pipeline is deemed to be critical by the operator of the  
240 pipeline and is identified as a high priority subsurface  
241 installation to an excavator who has provided a notice of intent  
242 to excavate pursuant to s. 556.105(1), or would have been  
243 identified as a high priority subsurface installation except for  
244 the excavator's failure to give proper notice of intent to  
245 excavate.

246       (e) "Incident" means an event that involves damage to a  
247 high priority subsurface installation that has been identified  
248 as such by the operator according to the notification procedures  
249 set forth in subsection (2) and that:

250       1. Results in death or serious bodily injury requiring  
251 inpatient hospitalization.

252       2. Results in property damage, including service-  
253 restoration costs, in an amount in excess of \$50,000 or  
254 interruption of service to 2,500 or more customers.

255       (1)-(2) When an excavator proposes to excavate or demolish  
256 within 15 feet of the horizontal route of an underground  
257 facility that has been identified as a high-priority subsurface  
258 installation by the operator of the facility, the operator  
259 shall, in addition to identifying the horizontal route of its  
260 facility as set forth in s. 556.105(5)(a) and (b), and within  
261 the time period set forth in s. 556.105(9)(a) for a positive

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262 response, notify the excavator that the facility is a high-  
263 priority subsurface installation. If the member operator  
264 provides such timely notice of the existence of a high-priority  
265 subsurface installation, an excavator shall notify the operator  
266 of the planned excavation start date and time before beginning  
267 excavation. If the member operator does not provide timely  
268 notice, the excavator may proceed, after waiting the prescribed  
269 time period set forth in s. 556.105(9)(a), to excavate without  
270 notifying the member operator of the excavation start date and  
271 time. The exemptions stated in s. 556.108 apply to the  
272 notification requirements in this subsection.

273 (2) (a) ~~(3)~~ An alleged commission of an infraction listed  
274 in s. 556.107(1) which results in an incident must be reported  
275 to the system and the State Fire Marshal by a member operator or  
276 an excavator within 24 hours after learning of the alleged  
277 occurrence of an incident.

278 (b) Upon receipt of an allegation that an incident has  
279 occurred, the member operator or excavator system shall transmit  
280 an incident report to the State Fire Marshal, who shall ~~division~~  
~~and contract with the division so that the division may conduct~~  
281 ~~an investigation a hearing to determine whether an incident has~~  
282 ~~occurred, and, if so, whether a violation of s. 556.107(1)(a)~~  
283 ~~was a proximate cause of the incident. The State Fire Marshal~~  
284 ~~may authorize his or her agents as provided in ss. 633.114,~~  
285 ~~633.116, and 633.118 to conduct investigations of incidents The~~  
286 ~~contract for services to be performed by the division must~~  
287 ~~include provisions for the system to reimburse the division for~~  
288 ~~any costs incurred by the division for court reporters,~~  
289 ~~transcript preparation, travel, facility rental, and other~~

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291 ~~customary hearing costs, in the manner set forth in s.~~  
292 ~~120.65(9).~~

293 (c) The State Fire Marshal or his or her agents as provided  
294 in ss. 633.114, 633.116, and 633.118 ~~division has jurisdiction~~  
295 ~~in a proceeding under this section to determine the facts and~~  
296 ~~law concerning an alleged incident. The division may issue a~~  
297 ~~citation and impose a civil penalty fine~~ against a violator in  
298 an amount not to exceed \$50,000 if the person violated a  
299 provision of s. 556.107(1)(a) and that violation was a proximate  
300 cause of the incident. However, if a state agency or political  
301 subdivision caused the incident, the state agency or political  
302 subdivision may not be fined in an amount in excess of \$10,000.

303 (d) The civil penalty A fine imposed under this subsection  
304 ~~by the division~~ is in addition to any amount payable as a result  
305 of a citation relating to the incident under s. 556.107(1)(a).

306 (e) If an additional civil penalty is imposed by the State  
307 Fire Marshal or his or her agents, 5 percent of the civil  
308 penalty must be retained by the clerk to cover administrative  
309 costs, and the remainder of the civil penalty must be  
310 distributed equally between the system and the State Fire  
311 Marshal. The portion of the civil penalty distributed to the  
312 system must be used exclusively to fund damage-prevention  
313 education. The portion of the civil penalty distributed to the  
314 State Fire Marshal must be used exclusively to fund programs  
315 created within the State Fire Marshal's office that provide  
316 need-based financial assistance to help fire departments,  
317 including volunteer fire departments, procure equipment,  
318 supplies, and educational training designed to mitigate  
319 firefighter exposure to hazardous, cancer-causing chemicals A

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320 fine against an excavator or a member operator imposed under  
321 this subsection shall be paid to the system, which shall use the  
322 collected fines to satisfy the costs incurred by the system for  
323 any proceedings under this section. To the extent there are any  
324 funds remaining, the system may use the funds exclusively for  
325 damage prevention education.

326 (f) Any excavator or member operator who commits a  
327 noncriminal infraction under s. 556.116(2)(c) must be provided a  
328 written warning at the time a citation is issued stating that  
329 any person who willfully fails to properly respond to a citation  
330 will be charged, in addition to the citation, with the offense  
331 of failing to respond to the citation and, if convicted, commits  
332 a misdemeanor of the second degree, punishable as provided in s.  
333 775.082 or s. 775.083.

334 (g) This section does not change the basis for civil  
335 liability. The findings and results of an investigation a  
336 hearing under this section may not be used as evidence of  
337 liability in any civil action.

338 (4)(a) The division shall issue and serve on all original  
339 parties an initial order that assigns the case to a specific  
340 administrative law judge and requests information regarding  
341 scheduling the final hearing within 5 business days after the  
342 division receives a petition or request for hearing. The  
343 original parties in the proceeding include all excavators and  
344 member operators identified by the system as being involved in  
345 the alleged incident. The final hearing must be conducted within  
346 60 days after the date the petition or the request for a hearing  
347 is filed with the division.

348 (b) Unless the parties otherwise agree, venue for the

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349 hearing shall be in the county in which the underground facility  
350 is located.

351 (e) An intervenor in the proceeding must file a petition to  
352 intervene no later than 15 days before the final hearing. A  
353 person who has a substantial interest in the proceeding may  
354 intervene.

355 (5) The following procedures apply:

356 (a) Motions shall be limited to the following:

357 1. A motion in opposition to the petition.

358 2. A motion requesting discovery beyond the informal  
359 exchange of documents and witness lists described in paragraph  
360 (e). Upon a showing of necessity, additional discovery may be  
361 permitted in the discretion of the administrative law judge, but  
362 only if the discovery can be completed no later than 5 days  
363 before the final hearing.

364 3. A motion for continuance of the final hearing date.

365 (b) All parties shall attend a prehearing conference for  
366 the purpose of identifying the legal and factual issues to be  
367 considered at the final hearing, the names and addresses of  
368 witnesses who may be called to testify at the final hearing,  
369 documentary evidence that will be offered at the final hearing,  
370 the range of penalties that may be imposed, and any other matter  
371 that would expedite resolution of the proceeding. The prehearing  
372 conference may be held by telephone conference call.

373 (c) Not later than 5 days before the final hearing, the  
374 parties shall furnish to each other copies of documentary  
375 evidence and lists of witnesses who may testify at the final  
376 hearing.

377 (d) All parties shall have an opportunity to respond, to

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378 present evidence and argument on all issues involved, to conduct  
379 cross-examination and submit rebuttal evidence, and to be  
380 represented by counsel or other qualified representative.

381 (e) The record shall consist only of:

382 1. All notices, pleadings, motions, and intermediate  
383 rulings.

384 2. Evidence received during the final hearing.

385 3. A statement of matters officially recognized.

386 4. Proffers of proof and objections and rulings thereon.

387 5. Matters placed on the record after an ex parte  
388 communication.

389 6. The written final order of the administrative law judge  
390 presiding at the final hearing.

391 7. The official transcript of the final hearing.

392 (f) The division shall accurately and completely preserve  
393 all testimony in the proceeding and, upon request by any party,  
394 shall make a full or partial transcript available at no more  
395 than actual cost.

396 (g) The administrative law judge shall issue a final order  
397 within 30 days after the final hearing or the filing of the  
398 transcript thereof, whichever is later. The final order of the  
399 administrative law judge must include:

400 1. Findings of fact based exclusively on the evidence of  
401 record and matters officially recognized.

402 2. Conclusions of law. In determining whether a party has  
403 committed an infraction of s. 556.107(1)(a), and whether the  
404 infraction was a proximate cause of an incident, the commission  
405 of an infraction must be proven by a preponderance of the  
406 evidence.

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407       3. ~~Imposition of a fine, if applicable.~~

408       4. ~~Any other information required by law or rule to be~~  
409 ~~contained in a final order.~~

410

411 ~~The final order of the administrative law judge constitutes~~  
412 ~~final agency action subject to judicial review pursuant to s.~~  
413 ~~120.68.~~

414       Section 4. Section 556.117, Florida Statutes, is created to  
415 read:

416       556.117 Underground facility damage prevention review.—  
417 Sunshine State One-Call of Florida, Inc., shall review the  
418 reports submitted by the clerks of court to the State Fire  
419 Marshal and any complaints of an alleged violation under this  
420 chapter to identify issues or potential issues with damage  
421 prevention and enforcement. The corporation shall identify areas  
422 in the state where additional education related to damage  
423 prevention and enforcement is needed and shall recommend  
424 solutions to remedy issues related to damage prevention and  
425 enforcement. The corporation shall, by October 1 of each year,  
426 submit to the Governor, the President of the Senate, and the  
427 Speaker of the House of Representatives an analysis of its  
428 reviews and any recommendations for improving underground  
429 facility damage prevention and enforcement.

430       Section 5. This act shall take effect July 1, 2020.