

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 492

INTRODUCER: Senator Hooper

SUBJECT: Sunshine State One-Call of Florida, Inc., Board of Directors

DATE: December 12, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Imhof	RI	Pre-meeting
2.			GO	
3.			RC	

I. Summary:

SB 492 amends s. 556.103, F.S., to specify that at least two voting members of the Sunshine State One-Call of Florida, Inc., or Sunshine 811, board of directors must be underground utility and excavation contractors. The bill also calls for the National Utility Contractors Association of Florida to provide recommendations for these appointments.

The bill takes effect on July 1, 2024.

II. Present Situation:

Florida Underground Facility Damage Prevention and Safety Act

Chapter 556 is Florida’s Underground Facility Damage Prevention and Safety Act (act). The purpose of the act is to:

- Prevent injuries, property damage, and interruption of services that could result from damage to an underground facility¹ caused by excavation or demolition operations;
- Create a not-for-profit corporation comprised of operators of underground facilities in this state to administer the act;

¹ Section 556.102(13), F.S., defines the term “underground facility” as “any public or private personal property which is buried, placed below ground, or submerged on any member operator’s right-of-way, easement, or permitted use which is being used or will be used in connection with the storage or conveyance of water; sewage; electronic, telephonic, or telegraphic communication; electric energy; oil; petroleum products; natural gas; optical signals; or other substances, and includes, but is not limited to, pipelines, pipes, sewers, conduits, cables, valves, and lines.” For purposes of the act, “a liquefied petroleum gas line regulated under chapter 527 is not an underground facility unless such line is subject to the requirements of Title 49 C.F.R. adopted by the Department of Agriculture and Consumer Services, provided there is no encroachment on any member operator’s right-of-way, easement, or permitted use.” Petroleum storage systems regulated under chapter 376 are also not considered underground facilities for the purposes of the act “unless the storage system is located on a member operator’s right-of-way or easement. Storm drainage systems are not considered underground facilities.”

- Fund the cost of the administration of the corporation through contributions from member operators for services provided to member operators and from charges made to others for services requested and provided, such as record searches, education or training, and damage prevention activities;
- Reserve to the state the power to regulate any subject matter specifically addressed in the act;²
- Permit any local law enforcement officer, local government code inspector, or code enforcement officer to enforce the act without the need to incorporate the provisions of the act into any local code or ordinance;
- Foster the awareness of federal laws and regulations that promote safety with respect to underground facilities, including, but not limited to, the Federal Pipeline Safety Act of 1968, as amended, the Pipeline Safety Improvement Act of 2002, OSHA Standard 1926.651, and the National Electric Safety Code, ANSI C-2, by requiring and facilitating the advance notice of activities by those who engage in excavation or demolition operations.³

Sunshine State One-Call of Florida

The not-for-profit corporation created under the act is called Sunshine State One-Call of Florida, Inc. (also known as Sunshine 811). Section 506.103, F.S., establishes Sunshine 811 with the purpose to administer the act. Section 506.103(1), F.S., establishes that each operator of an underground facility in Florida is to be a member of Sunshine 811 (i.e. member operator)⁴ and must use and participate in the free-access notification system established by Sunshine 811 (system).⁵

Sunshine 811 Procedures

Sunshine 811 is required to provide a single toll-free telephone number (811) within Florida which excavators can use to notify member operators of planned excavation or demolition activities.⁶ Excavators intending to conduct excavation or demolition must notify the system not less than two full business days before beginning operations that are not beneath the waters of the state, and not less than 10 full business days if the operation is beneath the waters of the state, with certain exceptions.⁷ The excavator must also provide specified identification, location, and operational information, which remains valid for 30 calendar days.⁸ Each notification is recorded to document compliance with the act.⁹

² Local governments may not adopt or enforce ordinances or rules that conflict with this chapter or that 1) require operators of underground facilities to obtain permits from local governments in order to identify underground facilities, 2) require premarking or marking, 3) specify the types of paint or other marking devices that are used to identify underground facilities, or 4) require removal of marks. Section 556.101(3)(d), F.S.

³ Section 556.101, F.S.

⁴ Section 556.102, F.S., defines “member operator” as “any person who furnishes or transports materials or services by means of an underground facility.”

⁵ See s. 556.102, F.S., which defines “system” for ch. 556, F.S.

⁶ Section 556.104, F.S.

⁷ Section 556.105(1)(a), F.S. Member operators with state-owned underground facilities located within the right-of-way of a state highway need not be notified of excavation or demolition activities and are under no obligation to mark or locate facilities. Section 556.105(5), F.S.

⁸ Section 556.105(1)(a)-(d), F.S.

⁹ Section 556.105(2), F.S.

Upon receipt of this notice, the system provides the notifying excavator with a list of the member operators who will be advised of the notification, along with a notification number to be provided to law enforcement upon request.¹⁰ The system in turn notifies the potentially affected member operators of the planned excavation or demolition activities.¹¹ Within two full business days after the time the notification is received by the system (or 10 days if the proposed excavation is in proximity to facilities beneath state waters), potentially affected member operators must determine the location of their underground facilities in relation to the proposed excavation or demolition. If this cannot be done in this time period, the member operator must contact the person giving notice and negotiate a new schedule and time that is agreeable and does not unreasonably delay the excavator. If a member operator determines that a proposed excavation or demolition is in proximity to or conflicts with an underground facility, the member operator must identify the horizontal route of the facility in a specified manner.¹²

An excavator is required to delay excavations until the first of the following events occurs:

- Each member operator's underground facilities have been marked and located;
- The excavator has been notified that no member operator has underground facilities in the area described in the notice; or
- Expiration of the time allowed for markings.

If a member operator has not located and marked its underground facilities within the time allowed for marking, the excavator may proceed with the excavation, provided that the excavator does so with reasonable care and that detection equipment or other acceptable means to locate underground facilities are used. An excavator may not conduct demolition in an area until all member operators' underground facilities have been marked and located or removed.¹³

Sunshine 811 Board of Directors

Section 556.103, F.S., states that the membership of Sunshine 811 must elect a board of directors (board) to administer the system. The board also has the authority to assess members for funds to operate the system.¹⁴

The required number of board members and board terms are not specified in statute. Sunshine 811 currently has a 21-member board as specified by Sunshine 811's bylaws.¹⁵ Directors are elected to staggered two-year terms. The board meets quarterly and elections to the board are held each May at the annual Sunshine 811 membership meetings.¹⁶

The board currently comprises six officers, four committee chairs, and eleven directors. Board officers serve one-year terms and there are currently six officers. Sunshine 811 committees are

¹⁰ Section 556.105(3) and (4), F.S.

¹¹ Section 556.105(5), F.S.

¹² *Id.*

¹³ Section 556.105(6), F.S.

¹⁴ Section 556.103(3), F.S.

¹⁵ Sunshine 811, *Bylaws of Sunshine State One Call of Florida, Inc.*, September 18, 2020 (on file with the Senate Regulated Industries Committee).

¹⁶ Sunshine 811, *Board of Directors*, <https://www.sunshine811.com/board-of-directors> (last visited Dec. 8, 2023).

dissolved annually with new chairs voted in to lead new committees annually.¹⁷ Each director must serve on at least one committee.¹⁸ The current Sunshine 811 committees are:

- Treasurer & Finance;
- Legislative Ad Hoc;
- Operations; and
- Damage Prevention.¹⁹

The Treasurer & Finance, Operations, and Damage Committees are standing committees as specified in Sunshine 811's bylaws. In addition, Sunshine 811's bylaws call for a standing executive committee, comprised of the Chairperson, Vice-Chairperson, the Secretary, and the Treasurer of the Board of Directors; and the Chairperson of each standing committee.²⁰

National Utility Contractors Association of Florida

The National Utility Contractors Association of Florida was formed in 1980 when four Florida National Contractors Association (NUCA) chapters formed the state association, the Underground Utility Contractors of Florida. The association changed to its current name in 2014.²¹ It is a non-profit trade association including underground utility contractors, material and equipment suppliers, and manufacturers in the State of Florida.²²

The association board of directors is made up of 23 representatives of the six chapters of the National Utility Contractors Association.²³

III. Effect of Proposed Changes:

SB 492 amends s. 556.103, F.S., to specify that at least two voting members of the Sunshine 811 board be utility and excavation contractors, as defined in s. 489.105(3)(n), F.S.²⁴ The bill also

¹⁷ Sunshine 811, *Board of Directors*, <https://www.sunshine811.com/board-of-directors> (last visited Dec. 8, 2023).

¹⁸ Sunshine 811, *Bylaws of Sunshine State One Call of Florida, Inc.*, supra note 15.

¹⁹ Sunshine 811, *Board of Directors*, supra note 16.

²⁰ Sunshine 811, *Bylaws of Sunshine State One Call of Florida, Inc.*, supra note 15.

²¹ NUCA, *About Us*, <https://nucaflorida.org/about/> (last visited December 11, 2023).

²² NUCA, *NUCA Homepage*, <https://nucaflorida.org/> (last visited December 11, 2023).

²³ NUCA, *Board of Directors*, <https://nucaflorida.org/about/nuca-of-florida-board-of-directors/> (last visited December 11, 2023).

²⁴ Section 489.105(3)(n), F.S., defines an underground utility and excavation contractor as:

A contractor whose services are limited to the construction, installation, and repair, on public or private property, whether accomplished through open excavations or through other means, including, but not limited to, directional drilling, auger boring, jacking and boring, trenchless technologies, wet and dry taps, grouting, and slip lining, of main sanitary sewer collection systems, main water distribution systems, storm sewer collection systems, and the continuation of utility lines from the main systems to a point of termination up to and including the meter location for the individual occupancy, sewer collection systems at property line on residential or single-occupancy commercial properties, or on multioccupancy properties at manhole or wye lateral extended to an invert elevation as engineered to accommodate future building sewers, water distribution systems, or storm sewer collection systems at storm sewer structures. However, an underground utility and excavation contractor may install empty underground conduits in rights-of-way, easements, platted rights-of-way in new site development, and sleeves for parking lot crossings no smaller than 2 inches in diameter if each conduit system installed is designed by a licensed professional engineer or an authorized employee of a municipality, county, or public utility and the installation of such conduit does not include

calls for the National Utility Contractors Association of Florida to provide recommendations to the membership of Sunshine 811 for these two appointments.

The bill takes effect on July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

installation of any conductor wiring or connection to an energized electrical system. An underground utility and excavation contractor may not install piping that is an integral part of a fire protection system as defined in s. 633.102 beginning at the point where the piping is used exclusively for such system.

VII. Related Issues:

Currently, ch. 566, F.S. does not specify the makeup of the Sunshine 811 board (s. 556.103, F.S., only specifies that the membership elect such a board). Thus, the number of persons and roles of such persons are not currently defined. The bill adds two members to this board; however, it maintains the current law that the number of board members is not defined and there are no other specified groups or interests required to be represented on the board. This may be somewhat inconsistent; and the intended potential authority of these new specified members could be revised or diluted by Sunshine 811 expanding the size, revising the makeup, or limiting the duties or authority of specified components of its board.

VIII. Statutes Affected:

This bill substantially amends s. 556.103 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.