



"A City for All Ages"

CITY OF PORT ST. LUCIE
UTILITY SYSTEMS DEPARTMENT
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Stefanie Beskovoyne, Deputy Director

TO: JESUS MEREJO, CHIEF ASSISTANT CITY MANAGER
VIA: BRAD MACEK, UTILITY SYSTEMS DIRECTOR
FROM: STEFANIE BESKOVOYNE, DEPUTY DIRECTOR, UTILITY LEGAL AFFAIRS
SUBJECT: UNDERGROUND FACILITY AND SAFETY ACT - CITATIONS
DATE: OCTOBER 20, 2021

The City continues to experience damage to Utility Systems Department ("USD") facilities due to various contractor's negligent acts during excavation and related activity. The attached memo serves to summarize the Underground Facility Damage Prevention and Safety Act, found in Chapter 556, Florida Statutes (the "Act"), which allows the City to issue citations to an excavating contractor for certain violations. The violator may be required to pay a civil penalty plus court costs for each infraction.

The Act protects underground water and wastewater facilities and does not include storm drainage systems. Therefore, the USD recommends dedicating a USD employee to inspect, oversee, and enforce violations of the Act to protect USD facilities. This employee, upon inspection of the damaged site, would issue a citation, which would be scheduled and heard before a County court Judge once per month on the "Ordinance court" docket. If a citation is issued, 80% of the civil penalty collected by the Clerk of the Court must be distributed to the City. The USD recommends the funds received by the City be distributed to the USD to cover the costs incurred for enforcement of the Act.

If the City implements the citation system for enforcement, the City is not required to incorporate any provisions of the Act into the code of ordinances. Please advise if you wish to discuss in detail or have any questions regarding this proposal.

Enclosure
SB

Copy (email): Kevin Matyjaszek, Assistant Director, Utility Systems Department
Daniel Segui, Assistant Director, Utility Systems Department
Stefanie Beskovoyne, Deputy Director, Utility Systems Department
Elizabeth Hertz, Deputy City Attorney

INTEROFFICE MEMORANDUM

TO: BRAD MACEK, DIRECTOR, UTILITY SYSTEMS DEPARTMENT

FROM: STEFANIE BESKOVOYNE, DEPUTY DIRECTOR, UTILITY LEGAL AFFAIRS 

SUBJECT: UNDERGROUND FACILITY DAMAGE PREVENTION AND SAFETY ACT

DATE: OCTOBER 19, 2021

This Memo serves to summarize the Underground Facility Damage Prevention and Safety Act, found in Chapter 556, Florida Statutes (the "Act"). The Act was created to aid the public by preventing injury to persons or property and the interruption of services resulting from damage to an underground facility (not including the stormwater facilities) caused by excavation or demolition.ⁱ The Act permits local or state law enforcement, code inspectors or code enforcement to enforce the Act without the need to incorporate the provisions into any local code or ordinance.ⁱⁱ

Pursuant to the Act, normal locate requests must be made at least 2 business days before beginning any excavation or demolition (underwater locates require 10 full business days before digging). An excavator shall provide the following information through Sunshine 811 or Exactix:

1. The name of the individual who provided notification and the name, address, including the street address, city, state, zip code, and telephone number of her or his employer.
2. The name and telephone number of the representative for the excavator, and a valid electronic address to facilitate a positive response by the system should be provided, if available.
3. The street address or the closest street, road, or intersection to the location where the excavation or demolition is to be performed.
4. The commencement date and anticipated duration of the excavation or demolition.
5. Whether machinery will be used for the excavation or demolition.
6. The person or entity for whom the work is to be done.
7. The type of work to be done.
8. The approximate depth of the excavation.ⁱⁱⁱ

If underground facility markings are no longer visible, an excavator must stop the excavation and notify the system to have the area re-marked.^{iv} Even after complying with the notice requirements, an excavator must "perform an excavation or demolition in a careful and prudent manner, based on accepted engineering and construction practices."^v If the City determines that a proposed excavation or demolition is in proximity to or in conflict with an underground facility, the City shall identify the horizontal route by marking to within 24" from the underground facility within 2 full business days of the time the notification is received. If the City is unable to respond within such time, the City shall communicate with the applicant and negotiate a new schedule and time that is agreeable to, and should not

unreasonably delay, the excavator.^{vi} An excavator shall avoid excavation in the area described in the notice until each underground facility has been marked and located or until the excavator has been notified that there are no underground facilities in the area described.^{vii}

If any pipe, cable or its protective covering, or other underground facility is damaged, the City receiving the notice shall file a report with DIRT.^{viii} Each report must describe, if known, the cause, nature, and location of the damage.^{ix}

If found liable, the violator is liable for the total sum of the losses to all owners involved as those costs are normally computed. An excavator who commits a noncriminal infraction may be required to pay a civil penalty of \$500- \$2,500 plus court costs for each infraction. 80% of the civil penalty collected by the clerk of the court must be distributed to the City. The City employee tasked with enforcement may require an excavator to cease work on any excavation or not start a proposed excavation until there has been compliance with the Act.^x Any person who willfully fails to properly respond to a citation issued shall be charged with the offense of failing to respond to the citation and, upon conviction, commits a second-degree misdemeanor.

Broward County uses its Police Department to issue citations, however, the City of Mary Esther, Manatee, Lake and Collier Counties use code enforcement officers to enforce the provisions of this statute. Any City employee may be designated as a code enforcement officer, including USD employees. If a City employee witnesses a violation of the Act, he or she may issue a citation for the violation. The violator may pay the citation or challenge it in County court. The Clerk of Court is responsible to send out subpoenas (to both City staff and the violator) and then sets the case for hearing in front of a County Court Judge (currently heard once a month on the Ordinance Court docket in Fort Pierce).

If the City chooses to move forward with a citation system, the City should designate certain employees familiar with the Act and its provisions and consult with the Clerk of the Court to train and otherwise ensure cases are properly set for hearing.

ⁱ See § 556.101, Florida Statutes

ⁱⁱ See § 556.101(3)(e), Florida Statutes

ⁱⁱⁱ See § 556.105(1)(a), Florida Statutes

^{iv} See § 556.105(11), Florida Statutes

^v See § 556.106(2)(c), Fla. Stat. Peoples Gas Sys. v. Posen Constr., Inc., 322 So. 3d 604, 607 (Fla. 2021)

^{vi} See § 556.105(5)(a), Florida Statutes

^{vii} See § 556.105(6)(a), Florida Statutes

^{viii} DIRT stands for Damage Information Reporting Tool. DIRT is a secure web application for reporting excavation-related damages and near-miss events involving underground utilities. The objective of DIRT is to collect data to understand where, how and why these events are occurring.

^{ix} See § 556.105(12)(b), Florida Statutes

^x See § 556.107(1)(b), Florida Statutes

Select Year: 2021

The 2021 Florida Statutes

[Title XXXIII](#)
REGULATION OF TRADE, COMMERCE,
INVESTMENTS, AND SOLICITATIONS

[Chapter 556](#)
UNDERGROUND FACILITY DAMAGE
PREVENTION AND SAFETY

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CHAPTER 556 UNDERGROUND FACILITY DAMAGE PREVENTION AND SAFETY

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556.101 Short title; legislative intent.—

- (1) This chapter may be cited as the “Underground Facility Damage Prevention and Safety Act.”
- (2) It is the intent of the Legislature to provide access for excavating contractors and the public to provide notification to the system of their intent to engage in excavation or demolition. This notification system shall provide the member operators an opportunity to identify and locate their underground facilities. Under this notification system, Sunshine State One-Call of Florida, Inc., is not required or permitted to locate or mark underground facilities.
- (3) It is the purpose of this chapter to:
 - (a) Aid the public by preventing injury to persons or property and the interruption of services resulting from damage to an underground facility caused by excavation or demolition operations.
 - (b) Create a not-for-profit corporation comprised of operators of underground facilities in this state to administer this chapter.
 - (c) Fund the cost of administration through contributions from the member operators for services provided to the member operators and from charges made to others for services requested and provided, such as record searches, education or training, and damage prevention activities.

(d) Reserve to the state the power to regulate any subject matter specifically addressed in this chapter.

Municipalities, counties, districts, or other local governments may not adopt or enforce ordinances or rules that conflict with this chapter or that prescribe any of the following: *Pre-Exemption*

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.
4. Require removal of marks.

(e) Permit any local law enforcement officer, local government code inspector, or code enforcement officer to enforce this chapter without the need to incorporate the provisions of this chapter into any local code or ordinance.

(f) 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.

(4) It is not the purpose of this chapter to amend or void any permit issued by a state agency for placement or maintenance of facilities in its right-of-way.

History.—s. 1, ch. 93-240; s. 1, ch. 97-306; s. 1, ch. 2002-234; s. 1, ch. 2006-138; s. 1, ch. 2010-100.

556.102 Definitions.—As used in this act:

(1) “Business days” means Monday through Friday, excluding the following holidays: New Year’s Day, Birthday of Dr. Martin Luther King, Jr., Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the following Friday, Christmas Eve, and Christmas Day. Any such holiday that falls on a Saturday shall be observed on the preceding Friday. Any such holiday that falls on a Sunday shall be observed on the following Monday.

(2) “Business hours” means the hours of a day during which the system is open for business.

(3) “Damage” means any impact upon or contact with, including, without limitation, penetrating, striking, scraping, displacing, or denting, however slight, the protective coating, housing, or other protective devices of any underground facility, or the removal or weakening of any lateral or vertical support from any underground facility, or the severance, partial or complete, of any underground facility.

(4) “Demolish” or “demolition” means any operation by which a structure or mass of material is wrecked, razed, rended, moved, or removed by means of any tool, equipment, or discharge of explosives, or any disturbance of the earth in any manner on public or private lands which could damage any underground facility.

(5) “Design services” means services that may be provided by a member operator to a design engineer, architect, surveyor, or planner, if the presence of underground facilities is known to a member operator, upon payment of a fee to the member operator, which services may be based on:

- (a) Information obtained solely from a review of utility records.
- (b) Information to augment utility records, such as topographic surveying of above-ground utility features.
- (c) Information obtained through the use of designating technologies to obtain horizontal underground facility locations.

(d) Information obtained from physically exposing underground facilities.

(6) “Excavate” or “excavation” means any manmade cut, cavity, trench, or depression in the earth’s surface, formed by removal of earth, intended to change the grade or level of land, or intended to penetrate or disturb the surface of the earth, including land beneath the waters of the state, as defined in s. 373.019(22), and the term includes pipe bursting and directional drilling or boring from one point to another point beneath the surface of the earth, or other trenchless technologies.

(7) “Excavator” or “excavating contractor” means any person performing excavation or demolition operations.

(8) “High-priority subsurface installation” means an underground gas transmission or gas distribution pipeline, or an underground pipeline used to transport gasoline, jet fuel, or any other refined petroleum product or hazardous or highly volatile liquid, such as anhydrous ammonia or carbon dioxide, if the pipeline is deemed to be

critical by the operator of the pipeline and is identified as a high-priority subsurface installation to an excavator who has provided a notice of intent to excavate under s. 556.105(1), or would have been identified as a high-priority subsurface installation except for the excavator's failure to give proper notice of intent to excavate.

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

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

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

(10) "Member operator" means any person who furnishes or transports materials or services by means of an underground facility.

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

(12) "Person" means any individual, firm, joint venture, partnership, corporation, association, municipality, or other political subdivision, governmental unit, department, or agency, and includes any trustee, receiver, assignee, or personal representative of a person.

(13) "Positive response" means the communications among member operators, excavators, and the system concerning the status of locating an underground facility.

(14) "Premark" means to delineate the general scope of the excavation on the surface of the ground using white paint, white stakes, or other similar white markings.

(15) "Tolerance zone" means 24 inches from the outer edge of either side of the exterior surface of a marked underground facility.

(16) "Underground facility" means 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 this 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 subject to regulation pursuant to chapter 376 are not considered underground facilities for the purposes of this 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.

(17) "System" means a free-access notification system established by the corporation as provided in this act.

History.—s. 2, ch. 93-240; s. 2, ch. 94-132; s. 5, ch. 95-317; s. 2, ch. 97-306; s. 2, ch. 2002-234; s. 67, ch. 2006-1; s. 2, ch. 2006-138; s. 7, ch. 2012-150; s. 2, ch. 2020-137; s. 42, ch. 2021-51.

556.103 Creation of the corporation; establishment of the board of directors; authority of the board; annual report.—

(1) The "Sunshine State One-Call of Florida, Inc.," is created as a not-for-profit corporation. Each operator of an underground facility in this state shall be a member of the corporation and shall use and participate in the system. The corporation shall administer the provisions of this chapter. The corporation shall exercise its powers through a board of directors established pursuant to this section.

(2) The membership of the corporation shall elect a board of directors to administer the system.

(3) The corporation, through the board of directors, shall have the authority to assess the member operators to fund the system.

(4) The board of directors shall file with the Governor, not later than 60 days before the convening of each regular session of the Legislature, an annual progress report on the operation of the system, which must include a summary of the reports to the system from the clerks of court.

(5) The board of directors shall submit to the President of the Senate, the Speaker of the House of Representatives, and the Governor, not later than 60 days before the convening of each regular session of the Legislature, an annual progress report on the participation by municipalities and counties in the one-call notification system created by this chapter. The report must include a summary of the reports to the system from the clerks of court, a summary of the damage reporting data received by the system under s. 556.105(12) for the preceding year, and any analysis of the data by the board of directors.

History.—s. 3, ch. 93-240; s. 3, ch. 97-306; s. 3, ch. 2006-138; s. 2, ch. 2010-100; s. 1, ch. 2017-102.

556.104 Free-access notification system.—The corporation shall maintain a free-access notification system. Any person who furnishes or transports materials or services by means of an underground facility in this state shall participate as a member operator of the system. The purpose of the system is to receive notification of planned excavation or demolition activities and to notify member operators of the planned excavation or demolition activities. The system shall provide a single toll-free telephone number within this state which excavators can use to notify member operators of planned excavation or demolition activities, and the system may also provide additional modes of access at no cost to the user.

History.—s. 4, ch. 93-240; s. 4, ch. 97-306; s. 3, ch. 2002-234; s. 4, ch. 2006-138.

556.105 Procedures.—

(1)(a) Not less than 2 full business days before beginning any excavation or demolition that is not beneath the waters of the state, and not less than 10 full business days before beginning any excavation or demolition that is beneath the waters of the state, an excavator shall provide the following information through the system:

1. The name of the individual who provided notification and the name, address, including the street address, city, state, zip code, and telephone number of her or his employer.
2. The name and telephone number of the representative for the excavator, and a valid electronic address to facilitate a positive response by the system should be provided, if available.
3. The county, the city or closest city, and the street address or the closest street, road, or intersection to the location where the excavation or demolition is to be performed, and the construction limits of the excavation or demolition.
4. The commencement date and anticipated duration of the excavation or demolition.
5. Whether machinery will be used for the excavation or demolition.
6. The person or entity for whom the work is to be done.
7. The type of work to be done.
8. The approximate depth of the excavation.

(b) The excavator shall provide the information by notifying the system through its free-access notification system during business hours, as determined by the corporation, or by such other method as authorized by the corporation. Any notification received by the system at any time other than during business hours shall be considered to be received at the beginning of the next business day.

(c) Information provided by an excavator is valid for 30 calendar days after the date such information is provided to the system. In computing the period for which information furnished is valid, the date the notice is provided is not counted, but the last day of the period shall be counted unless it is a Saturday, Sunday, or a legal holiday, in which event, the period runs until the end of the next day that is not a Saturday, Sunday, or a legal holiday.

(d) Member operators shall use the information provided to the system by other member operators only for the purposes stated in this chapter and not for sales or marketing purposes.

(2) Each notification by means of the system shall be recorded to document compliance with this chapter. Such record may be made by means of electronic, mechanical, or any other method of all incoming and outgoing wire and oral communications concerning location requests in compliance with chapter 934. The records shall be kept for 5 years and, upon written request, shall be available to the excavator making the request, the member operator intended to receive the request, and their agents. However, custody of the records may not be transferred from the system except under subpoena.

system of an intent to excavate. The member operator is relieved of responsibility for compliance under the law during the period that the extraordinary circumstances exist and shall promptly notify the system when the extraordinary circumstances cease to exist.

(b) During the period when extraordinary circumstances exist, the system shall remain available during business hours to provide information to governmental agencies, member operators affected by the extraordinary circumstances, and member operators who can provide relief to the affected parties, unless the system itself has been adversely affected by extraordinary circumstances.

(9)(a) After receiving notification from the system, a member operator shall provide a positive response to the system within 2 full business days, or 10 such days for an underwater excavation or demolition, indicating the status of operations to protect the facility.

(b) The system shall establish and maintain a process to facilitate a positive-response communication between member operators and excavators. The system is exempt from any requirement to initiate a positive response to an excavator when an excavator does not provide a valid electronic address to facilitate a positive response by the system.

(c) An excavator shall verify the system's positive responses before beginning excavation. If an excavator knows that an existing underground facility of a member operator is in the area, the excavator must contact the member operator if the facility is not marked and a positive response has not been received by the system.

(10) A member operator shall use the "Uniform Color Code for Utilities" of the American Public Works Association when marking the horizontal route of any underground facility of the operator.

(11) Before or during excavation or demolition, if the marking of the horizontal route of any facility is removed or is no longer visible, or, in the case of an underwater facility, is inadequately documented, the excavator shall stop excavation or demolition activities in the vicinity of the facility and shall notify the system to have the route remarked or adequately documented by a member operator or in a manner approved by the member operator.

(12)(a) If any contact with or damage to any pipe, cable or its protective covering, or any other underground facility occurs, the excavator causing the contact or damage shall immediately notify the member operator. If contact with or damage to an underground pipe or any other underground facility results in the escape of any natural gas or other hazardous substance or material regulated by the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation, the excavator must immediately report the contact or damage by calling the 911 emergency telephone number. Upon receiving notice, the member operator shall send personnel to the location as soon as possible to effect temporary or permanent repair of the contact or damage. Until such time as the contact or damage has been repaired, the excavator shall cease excavation or demolition activities that may cause further damage to such underground facility.

(b) If an event damages any pipe, cable or its protective covering, or other underground facility, the member operator receiving the notice shall file a report with the system. Reports must be submitted annually to the system, no later than March 31 for the prior calendar year, or more frequently at the option and sole discretion of the member operator. Each report must describe, if known, the cause, nature, and location of the damage. The system shall establish and maintain a process to facilitate submission of reports by member operators.

(13) Any costs or expenses associated with compliance by an excavator with the requirements in this section applicable to excavators shall not be charged to any member operator. Any costs or expenses associated with compliance by a member operator with the requirements in this section applicable to member operators shall not be charged to any excavator. No person shall charge the costs or expenses prohibited by this subsection after the effective date of this act. This subsection shall not excuse a member operator or excavator from liability for any damage or injury for which it would be responsible under applicable law.

History.—s. 5, ch. 93-240; s. 1, ch. 96-172; s. 1176, ch. 97-103; s. 5, ch. 97-306; s. 4, ch. 2002-234; s. 5, ch. 2006-138; s. 1, ch. 2008-230; s. 115, ch. 2010-5; s. 3, ch. 2010-100; s. 2, ch. 2017-102.

556.106 Liability of the member operator, excavator, and system.—

(1) There is no liability on the part of, and no cause of action of any nature shall arise against, the board members of the corporation in their capacity as administrators of the system.

(3) The system shall provide the person who provided notification with the names of the member operators who shall be advised of the notification and a notification number that specifies the date and time of the notification.

(4) The notification number provided to the excavator under this section shall be provided to any law enforcement officer, government code inspector, or code enforcement officer upon request.

(5) All member operators within the defined area of a proposed excavation or demolition shall be promptly notified through the system, except that 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 the facilities.

(a) If a member operator determines that a proposed excavation or demolition is in proximity to or in conflict with an underground facility of the member operator, except a facility beneath the waters of the state, which is governed by paragraph (b), the member operator shall identify the horizontal route by marking to within 24 inches from the outer edge of either side of the underground facility by the use of stakes, paint, flags, or other suitable means within 2 full business days after the time the notification is received under subsection (1). If the member operator is unable to respond within such time, the member operator shall communicate with the person making the request and negotiate a new schedule and time that is agreeable to, and should not unreasonably delay, the excavator.

(b) If a member operator determines that a proposed excavation is in proximity to or in conflict with an underground facility of the member operator beneath the waters of the state, the member operator shall identify the estimated horizontal route of the underground facility, within 10 business days, using marking buoys or other suitable devices, unless directed otherwise by an agency having jurisdiction over the waters of the state under which the member operator's underground facility is located.

(c) When excavation is to take place within a tolerance zone, an excavator shall use increased caution to protect underground facilities. The protection requires hand digging, pot holing, soft digging, vacuum excavation methods, or other similar procedures to identify underground facilities. Any use of mechanized equipment within the tolerance zone must be supervised by the excavator.

(6)(a) An excavator shall avoid excavation in the area described in the notice given under subsection (1) until each member operator underground facility has been marked and located or until the excavator has been notified that no member operator has underground facilities in the area described in the notice, or for the time allowed for markings set forth in paragraphs (5)(a) and (b), whichever occurs first. If a member operator has not located and marked its underground facilities within the time allowed for marking set forth in paragraphs (5)(a) and (b), the excavator may proceed with the excavation, if the excavator does so with reasonable care and if detection equipment or other acceptable means to locate underground facilities are used.

(b) An excavator may not demolish in the area described in the notice given under subsection (1) until all member operator underground facilities have been marked and located or removed.

(7)(a) A member operator that states that it does not have accurate information concerning the exact location of its underground facilities is exempt from the requirements of paragraphs (5)(a) and (b), but shall provide the best available information to the excavator in order to comply with the requirements of this section. An excavator is not liable for any damage to an underground facility under the exemption in this subsection if the excavation or demolition is performed with reasonable care and detection equipment or other acceptable means to locate underground facilities are used.

(b) A member operator may not exercise the exemption provided by this subsection if the member operator has underground facilities that have not been taken out of service and that are locatable using available designating technologies to locate underground facilities.

(8)(a) If extraordinary circumstances exist, a member operator shall notify the system of the member operator's inability to comply with this section. For the purposes of this section, the term "extraordinary circumstances" means circumstances other than normal operating conditions that exist and make it impractical for a member operator to comply with this chapter. After the system has received notification of a member operator's inability to comply, the system shall make that information known to excavators who subsequently notify the

(2)(a) If a person violates s. 556.105(1) or (6), and subsequently, whether by himself or herself or through the person's employees, contractors, subcontractors, or agents, performs an excavation or demolition that damages an underground facility of a member operator, it is rebuttably presumed that the person was negligent. The person, if found liable, is liable for the total sum of the losses to all member operators involved as those costs are normally computed. Any damage for loss of revenue and loss of use may not exceed \$500,000 per affected underground facility, except that revenues lost by a governmental member operator whose revenues are used to support payments on principal and interest on bonds may not be limited.

(b) If any excavator fails to discharge a duty imposed by this chapter, the excavator, if found liable, is liable for the total sum of the losses to all parties involved as those costs are normally computed. Any damage for loss of revenue and loss of use may not exceed \$500,000 per affected underground facility, except that revenues lost by a governmental member operator whose revenues are used to support payments on principal and interest on bonds may not be limited.

(c) Obtaining information as to the location of an underground facility from the member operator as required by this chapter does not excuse any excavator from performing an excavation or demolition in a careful and prudent manner, based on accepted engineering and construction practices, and it does not excuse the excavator from liability for any damage or injury resulting from any excavation or demolition.

(3) If, after receiving proper notice, a member operator fails to discharge a duty imposed by this act and an underground facility of a member operator is damaged by an excavator who has complied with this act, as a proximate result of the member operator's failure to discharge such duty, the excavator is not liable for such damage and the member operator, if found liable, is liable to such person for the total cost of any loss or injury to any person or damage to equipment resulting from the member operator's failure to comply with this act. Any damage for loss of revenue and loss of use shall not exceed \$500,000 per affected underground facility, except that revenues lost by a governmental member operator, which revenues are used to support payments on principal and interest on bonds, shall not be limited.

(4) If an owner of an underground facility fails to become a member of the corporation in order to use and participate in the system, as required by this act, and that failure is a cause of damage to that underground facility caused by an excavator who has complied with this act and has exercised reasonable care in the performance of the excavation that has caused damage to the underground facility, the owner has no right of recovery against the excavator for the damage to that underground facility.

(5) If, after receiving proper notification, the system fails to discharge its duties, resulting in damage to an underground facility, the system, if found liable, shall be liable to all parties, as defined in this act. Any damage for loss of revenue and loss of use shall not exceed \$500,000 per affected underground facility, except that revenues lost by a governmental member operator, which revenues are used to support payments on principal and interest on bonds, shall not be limited.

(6) The system does not have a duty to mark or locate underground facilities and may not do so, and a right of recovery does not exist against the system for failing to mark or locate underground facilities. The system is not liable for the failure of a member operator to comply with the requirements of this chapter.

(7) An excavator or a member operator who performs any excavation with hand tools under s. 556.108(4)(c) or (5) is liable for any damage to any operator's underground facilities damaged during such excavation.

(8) Any liability of the state, its agencies, or its subdivisions which arises out of this chapter is subject to the provisions of s. 768.28.

History.—s. 6, ch. 93-240; s. 810, ch. 97-103; s. 1, ch. 97-231; s. 6, ch. 97-306; s. 5, ch. 2002-234; s. 6, ch. 2006-138; s. 4, ch. 2010-100.

556.107 Violations.—

(1) NONCRIMINAL INFRACTIONS.—

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

- a. Section 556.105(1), relating to providing required information.
- b. Section 556.105(5)(c), relating to excavation practices in tolerance zones.

- c. Section 556.105(6), relating to the avoidance of excavation.
- d. Section 556.105(11), relating to the need to stop excavation or demolition because marks are no longer visible, or, in the case of underwater facilities, are inadequately documented.
- e. Section 556.105(12), relating to the need to cease excavation or demolition activities because of contact or damage to an underground facility.
- f. Section 556.105(5)(a) and (b), relating to identification of underground facilities, if a member operator does not mark an underground facility, but not if a member operator marks an underground facility incorrectly.
- g. Section 556.109(2), relating to falsely notifying the system of an emergency situation or condition.
- h. Section 556.114(1), (2), (3), and (4), relating to a failure to follow low-impact marking practices, as defined therein.

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

- a. Section 556.105(1), relating to providing required information.
- b. Section 556.105(5)(c), relating to excavation practices in tolerance zones.
- c. Section 556.105(6), relating to the avoidance of certain excavation.
- d. Section 556.105(11), relating to the need to stop excavation or demolition because certain marks are removed, no longer visible, or inadequately documented.
- e. Section 556.105(12), relating to the need to cease excavation or demolition activities because of contact or damage to an underground facility.

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

(c)1. Any excavator or member operator who commits a noncriminal infraction under subparagraph (a)1. may be required to pay a civil penalty of \$500 plus court costs for each infraction. If a citation is issued, 80 percent of the civil penalty collected by the clerk of the court must be distributed to the governmental entity whose employee issued the citation and 20 percent of the penalty must be retained by the clerk, in addition to any court costs.

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

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

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

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

(f) Any person may elect to have a hearing on the commission of the infraction before the county court. A person who elects to have a hearing waives the limitations on the civil penalties specified in paragraph (c). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven, the court may impose a penalty not to exceed the applicable civil penalty plus court costs for each infraction. In determining the amount of the civil penalty, the court may consider previous noncriminal infractions committed.

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

(h) If the court finds that a person committed an infraction, the person may appeal that finding or the amount of the civil penalties imposed to the circuit court.

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

* (2) **REPORT OF INFRACTIONS.**—By March 31 of each year, each clerk of court shall submit a report to the State Fire Marshal and Sunshine State One-Call of Florida, Inc., listing each citation issued for a violation under paragraph (1)(a) and s. 556.116(2)(c) which has been filed in that county during the preceding calendar year. The report must state the name and address of the member or excavator who committed each infraction, the enforcement authority, the specific statutory infraction, and the type of underground facility related to the infraction and must indicate whether or not the civil penalty for the infraction was paid.

(3) **MISDEMEANORS.**—

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

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

History.—s. 7, ch. 93-240; s. 2, ch. 96-172; s. 1177, ch. 97-103; s. 6, ch. 2002-234; s. 7, ch. 2006-138; s. 5, ch. 2010-100; s. 3, ch. 2017-102; s. 3, ch. 2020-137.

556.108 Exemptions.—The notification requirements provided in s. 556.105(1) do not apply to:

(1) Any excavation or demolition performed by the owner of a single-family residential property, not including property that is subdivided or is to be subdivided into more than one single-family residential property; or for such owner by a member operator or an agent of a member operator when such excavation or demolition is made entirely on such land, and only up to a depth of 10 inches; provided due care is used and there is no encroachment on any member operator's right-of-way, easement, or permitted use.

(2) Any excavation or demolition associated with normal agricultural or railroad activities, provided such activities are not performed on any operator's marked right-of-way, easement, or permitted use.

(3) Any excavation or demolition that occurs as the result of normal industrial activities, provided such activities are confined to the immediate secured property of the facility and the activities are not performed on any operator's marked right-of-way, easement, or permitted use. For the purposes of this act, the industrial activities are limited to the following list of Standard Industrial Classifications: Industry Group Numbers 141, 206, 242, 243, and 491, and Major Group Numbers 13, 26, 28, and 29, as published by the United States Office of Management and Budget in 1987.

(4) Any excavation of 18 inches or less for:

(a) Surveying public or private property by surveyors or mappers as defined in chapter 472 and services performed by a pest control licensee under chapter 482, excluding marked rights-of-way, marked easements, or permitted uses where marked, if mechanized equipment is not used in the process of such surveying or pest control services and the surveying or pest control services are performed in accordance with the practice rules established under s. 472.027 or s. 482.051, respectively;

(b) Maintenance activities performed by a state agency and its employees when such activities are within the right-of-way of a public road; however, if a member operator has permanently marked facilities on such right-of-way, mechanized equipment may not be used without first providing notification; or

(c) Locating, repairing, connecting, adjusting, or routine maintenance of a private or public underground utility facility by an excavator, if the excavator is performing such work for the current owner or future owner of the underground facility and if mechanized equipment is not used.

(5)(a) Any excavation with hand tools by a member operator or an agent of a member operator for:

1. Locating, repairing, connecting, or protecting, or routine maintenance of, the member operator's underground facilities; or

2. The extension of a member operator's underground facilities onto the property of a person to be served by such facilities.

(b) The exemption provided in this subsection is limited to excavations to a depth of 30 inches if the right-of-way has permanently marked facilities of a company other than the member operator or its agents performing the excavation.

History.—s. 8, ch. 93-240; s. 3, ch. 94-132; s. 3, ch. 96-172; s. 2, ch. 97-231; s. 39, ch. 2000-164; s. 8, ch. 2006-138.

556.109 Emergency excavations or demolitions attempted; exception.—

(1) This act does not apply to making an excavation or demolition during an emergency if the system or the member operator was notified at the earliest opportunity and all reasonable precautions had been taken to protect any underground facility. For the purposes of this act, “emergency” means any condition constituting a clear and present danger to life or property; a situation caused by the escape of any substance transported by means of an underground facility; any interruption of vital public service or communication caused by any break or defect in a member operator's underground facility; or, in the case of the State Highway System or streets or roads maintained by a political subdivision or underground facilities owned, operated, or maintained by a political subdivision, if the use of such highways, streets, roads, or underground facilities is, in the sole judgment of the Department of Highway Safety and Motor Vehicles, the Department of Transportation, or such political subdivision, impaired by an unforeseen occurrence that necessitates repair beginning immediately after such occurrence.

(2) An excavator shall not notify the system that there is an emergency unless the excavator reasonably believes that the intended excavation or demolition is due to a situation or condition as defined in subsection (1).

History.—s. 9, ch. 93-240; s. 4, ch. 96-172; s. 6, ch. 2010-100.

556.110 Costs assessed among member operators.—Member operators shall proportionately share in the cost of operating the system through monthly assessments made upon each member operator.

History.—s. 10, ch. 93-240; s. 7, ch. 97-306; s. 7, ch. 2010-100.

556.111 Applicability to existing law.—Nothing in this act shall be construed to:

(1) Constitute the establishment or enlargement of any rights to the use of real property or create an interest therein for the placement, construction, repair, maintenance, relocation, or excavation or demolition of any underground facility;

(2) Waive any right of a party having an interest in real property to charge any fee for the use regarding such property; or

(3) Preempt a governmental member operator from reasonable regulation of its right-of-way. This subsection does not exempt a municipality, county, district, or other local governmental member operator from the provisions of this chapter that apply to the member operator.

History.—s. 11, ch. 93-240; s. 9, ch. 2006-138.

556.112 Design services.—

(1) Each member operator shall provide to the system annually, and shall thereafter keep current, the contact names and telephone numbers of individuals who may be contacted by design engineers, architects, surveyors, and planners for the purpose of responding to requests for design services.

(2) Each member operator shall provide to the system annually, and shall thereafter keep current, a list of fees applicable to each type of design service that each member operator chooses to offer to design engineers, architects, surveyors, and planners.

(3) Each member operator, within 20 business days after receipt of the fee provided for in subsection (2), shall either respond to a request for design services, if the member operator chooses to provide the services requested, or shall notify the party requesting services that the services will not be provided.

(4) This section shall not apply to any state agency, municipality, or county, or contractors, consultants, agents, or persons or firms acting under their authority, in the planning, preparing, or performance of work in their right-of-way. This section shall not limit or expand any existing law governing the process a state agency, municipality, or county uses to request design services from member operators or the responsibility for providing or paying for such services.

History.—s. 7, ch. 2002-234; s. 108, ch. 2005-2.

556.113 Sunshine State One-Call of Florida, Inc.; public records exemption.—

(1) As used in this section, the term “proprietary confidential business information” means information provided by:

(a) A member operator which is a map, plan, facility location diagram, internal damage investigation report or analysis, dispatch methodology, or trade secret as defined in s. 688.002, or which describes the exact location of a utility underground facility or the protection, repair, or restoration thereof, and:

1. Is intended to be and is treated by the member operator as confidential;

2. The disclosure of which would likely be used by a competitor to harm the business interests of the member operator or could be used for the purpose of inflicting damage on underground facilities; and

3. Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided to Sunshine State One-Call of Florida, Inc.

(b) An excavator in an internal damage investigation report or analysis relating to damage to underground utility facilities, and:

1. Is intended to be and is treated by the excavator as confidential;

2. The disclosure of which would be reasonably likely to be used by a competitor to harm the business interests of the excavator or could be used for the purpose of inflicting damage on underground facilities; and

3. Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided to Sunshine State One-Call of Florida, Inc.

(2) Proprietary confidential business information held by Sunshine State One-Call of Florida, Inc., for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

History.—s. 1, ch. 2007-101; s. 1, ch. 2012-221.

556.114 Low-impact marking practices.—

(1) An excavator providing notice under s. 556.105(1)(a) shall identify in its notice only the area that will be excavated during the period that the information in such notice is considered valid under s. 556.105(1)(c).

(2) When an excavator has not completed an excavation noticed under s. 556.105(1)(a) within the period that the information in the notice is considered valid under s. 556.105(1)(c), the excavator must provide a subsequent notice to the system under s. 556.105(1)(a) to continue with the excavation, and such subsequent notice shall identify only the remaining area to be excavated.

(3) When an excavation site cannot be described in information provided under s. 556.105(1)(a) with sufficient particularity to enable the member operator to ascertain the excavation site, and if the excavator and member operator have not mutually agreed otherwise, the excavator shall premark the proposed area of the excavation

before a member operator is required to identify the horizontal route of its underground facilities in the proximity of any excavation. However, premarking is not required when the premarking could reasonably interfere with traffic or pedestrian control.

(4) A member operator shall identify the horizontal route of its underground facilities as set forth in s. 556.105(5)(a) and (b), and excavators shall premark an excavation site as set forth in subsection (3) using flags or stakes or temporary, nonpermanent paint or other industry-accepted low-impact marking practices.

(5) Any horizontal route-identification marker must be in a color identified in the Uniform Color Code for Utilities.

(6) Sunshine State One-Call of Florida, Inc., shall establish an educational program for the purpose of informing excavators and member operators about low-impact marking practices.

History.—s. 8, ch. 2010-100.

556.115 Alternative dispute resolution.—

(1) Sunshine State One-Call of Florida, Inc., shall create a voluntary alternative dispute resolution program. The program shall be available to all member operators, excavators, and other stakeholders, such as locators, utility service users, and governmental or quasi-governmental entities, for purposes of resolving disputes arising from excavation activities, including, but not limited to, loss of services, down time, delays, loss of use of facilities during restoration or replacement, and similar economic disruptions, exclusive of penalties imposed under other provisions of this act.

(2) The alternative dispute resolution program created by Sunshine State One-Call of Florida, Inc., shall include mediation, arbitration, or other appropriate processes, including the use of the services of the Division of Administrative Hearings.

(3) The costs of using the program shall be borne by the voluntary users, and the voluntary users shall choose the form of alternative dispute resolution to be used. If arbitration is used, the users shall decide whether the arbitration will be binding.

(4) Unless binding arbitration is the chosen method of alternative dispute resolution, the users or any one of such users may end the process at any time and exercise the right to proceed in a court of competent jurisdiction or before the Division of Administrative Hearings.

(5) This section does not change the basis for civil liability for damages.

History.—s. 9, ch. 2010-100.

556.116 High-priority subsurface installations; special procedures.—

(1) When an excavator proposes to excavate or demolish within 15 feet of the horizontal route of an underground facility that has been identified as a high-priority subsurface installation by the operator of the facility, the operator shall, in addition to identifying the horizontal route of its facility as set forth in s. 556.105(5)(a) and (b), and within the time period set forth in s. 556.105(9)(a) for a positive response, notify the excavator that the facility is a high-priority subsurface installation. If the member operator provides such timely notice of the existence of a high-priority subsurface installation, an excavator shall notify the operator of the planned excavation start date and time before beginning excavation. If the member operator does not provide timely notice, the excavator may proceed, after waiting the prescribed time period set forth in s. 556.105(9)(a), to excavate without notifying the member operator of the excavation start date and time. The exemptions stated in s. 556.108 apply to the notification requirements in this subsection.

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

(b) Upon receipt of an allegation that an incident has occurred, the member operator or excavator shall transmit an incident report to the State Fire Marshal, who shall conduct an investigation to determine whether an incident has occurred, and, if so, whether a violation of s. 556.107(1)(a) was a proximate cause of the incident. The State Fire Marshal may authorize his or her agents, as provided in ss. 633.114, 633.116, and 633.118, to conduct investigations of incidents.

(c) The State Fire Marshal or his or her agents as provided in ss. 633.114, 633.116, and 633.118 may issue a citation and impose a civil penalty against a violator in an amount not to exceed \$50,000 if the person violated a provision of s. 556.107(1)(a) and that violation was a proximate cause of the incident. However, if a state agency or political subdivision caused the incident, the state agency or political subdivision may not be fined in an amount in excess of \$10,000.

(d) The civil penalty imposed under this subsection is in addition to any amount payable as a result of a citation relating to the incident under s. 556.107(1)(a).

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

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

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

History.—s. 10, ch. 2010-100; s. 126, ch. 2013-18; s. 4, ch. 2020-137.

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

History.—s. 5, ch. 2020-137.