

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 825 Underground Facilities
SPONSOR(S): Koster
TIED BILLS: IDEN./SIM. BILLS: SB 708

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee	14 Y, 0 N	Phelps	Keating
2) Commerce Committee	20 Y, 0 N	Phelps	Hamon

SUMMARY ANALYSIS

Chapter 556, F.S., is the “Underground Facility Damage Prevention and Safety Act” (Act). The stated purpose of the Act is to identify and locate underground facilities prior to an excavation or demolition to prevent injury to persons or property or interruption of services resulting from damage to those facilities. To accomplish this, the Act creates a not-for-profit corporation, Sunshine State One-Call of Florida, Inc. (SSOCOF), to administer a free-access notification system.

This bill amends the “Underground Facility Damage Prevention and Safety Act” by:

- Extending the time for excavators to notify SSOCOF before excavating to three full business days;
- Extending the time for potentially affected member operators to mark the location of their underground facilities in relation to the proposed excavation or demolition to three full business days; and
- Implementing an enhanced civil penalty for an excavator’s failure to notify a high-priority subsurface installation (HPSI) operator of the start time and date of a planned excavation if the HPSI operator provides timely notice of the existence of a HPSI.

The bill may have an insignificant, positive fiscal impact on state and local government revenues. The bill does not appear to impact state or local government expenditures.

The bill provides an effective date of October 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Underground Facility Damage Prevention and Safety Act

Chapter 556, F.S., is the “Underground Facility Damage Prevention and Safety Act” (Act). The goal of the Act is to identify and locate underground facilities¹ prior to an excavation or demolition to prevent injury to persons or property or interruption of services resulting from damage to those facilities.² To accomplish this, the Act creates a not-for-profit corporation to administer a free-access notification system whereby a person intending to conduct excavation or demolition activities can give prior notice to the system of the person’s intended activities, allowing operators of underground facilities the opportunity to identify and locate their nearby facilities.³ All operators of underground facilities in the state are required to be members of the corporation (“member operators”) and are required to use and participate in the system.⁴

The not-for-profit corporation created under the Act is Sunshine State One-Call of Florida, Inc. (SSOCOF), which exercises its powers through a board of directors.⁵ SSOCOF is required to provide a single toll-free telephone number within Florida which excavators can use to notify member operators of planned excavation or demolition activities through the system.⁶ The person intending to conduct excavation or demolition must notify the system not less than two full business days before beginning the operations, and not less than 10 full business days before beginning any excavation or demolition that is beneath state waters.⁷ The person must also provide specified identification, location, and operational information which remain valid for 30 calendar days.⁸ Upon receipt of this notice, the system provides to the person a list of names of the member operators who will be advised of the notification.⁹

The system operator in turn notifies the potentially affected member operators of the planned excavation or demolition activities.¹⁰ 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.¹¹ 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

¹ S. 556.102(16), F.S., defines “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 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.”

² S. 556.101(3), F.S.

³ S. 556.101(2), F.S.

⁴ S. 556.103(1), F.S.

⁵ S. 556.103, F.S.

⁶ S. 556.104, F.S.

⁷ S. 556.105(1)(a), F.S.

⁸ S. 556.105(1)(c), F.S.

⁹ S. 556.105(3), F.S.

¹⁰ S. 556.105(5), F.S.

¹¹ S. 556.105(5) and (9), F.S.

is agreeable and does not unreasonably delay the excavator.¹² 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.¹³

An excavator is required to delay excavations until the first of the following events occurs: (1) each member operator's underground facilities have been marked and located; (2) the excavator has been notified that no member operator has underground facilities in the area described in the notice; or (3) expiration of the time allowed for markings.¹⁴ 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 the excavator does so with reasonable care and uses detection equipment or other acceptable means to locate underground facilities.¹⁵ An excavator may not conduct demolition in an area until all member operators' underground facilities have been marked and located or removed.¹⁶

The Act also establishes violations of certain provisions as noncriminal infractions that are enforceable by citations which may be issued by any local or state law enforcement officer, government code inspector, or code enforcement officer.¹⁷ The Act establishes a civil penalty of \$500, plus court costs, for such infractions.¹⁸ Violations of certain provisions involving an underground facility transporting hazardous materials regulated by the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation (PHMSA) are noncriminal infractions subject to enhanced civil penalties of \$2,500, plus court costs.¹⁹

High-priority Subsurface Installations

A high-priority subsurface installation (HPSI) is 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."²⁰ Currently, if an excavation is proposed within 15 feet of such an installation, as identified by the operator, the HPSI member operator shall notify the excavator of the existence of the installation and shall mark its location in the time frame provided by s. 556.105, F.S.²¹ After receiving this notice, the excavator must provide notice to the HPSI member operator of the planned excavation start date and time.²² If the HPSI member operator does not provide timely notice, the excavator may proceed to excavate without notifying the HPSI member operator of the excavation start date and time.²³

Increased Locate/Ticket Requests

Due to increased development in Florida over the last decade, the number of locate requests to the SSOCOF system has increased over 50% from fiscal year (FY) 2014-2015 to FY 2022-2023.²⁴ The growth in requests has made it difficult for SSOCOF to fulfill all of them within the two day timeframe required by law; approximately 16% of locate requests were not fulfilled within two days over SSOCOF's last fiscal year.²⁵ This allows excavators to proceed with reasonable care in conducting the excavation without member operators marking their facilities.

¹² S. 556.105(5)(a), F.S.

¹³ S. 556.105(5)(a) and (b), F.S.

¹⁴ S. 556.105(6), F.S.

¹⁵ *Id.*

¹⁶ S. 556.105(6)(b), F.S.

¹⁷ S. 556.107, F.S.

¹⁸ S. 556.107(1)(c), F.S.

¹⁹ S. 556.107(1)(c)2., F.S.

²⁰ S. 556.102(8), F.S.

²¹ S. 556.116(1), F.S.

²² *Id.* A failure to provide the date and start of an excavation is not listed among the five violations for which an excavator can be issued a citation under s. 556.107(1)(a)2.

²³ *Id.*

²⁴ Compare Sunshine 881, 2014-15 Annual Report, p. 3, available at <https://www.sunshine811.com/annual-reports> (1.4 million tickets), with Sunshine 881, 2022-23 Annual Report, p. 3, available at <https://www.sunshine811.com/annual-reports> (2.2 million tickets).

²⁵ Email from Chris Lyon, Attorney, Lewis, Longman & Walker, P.A. representing Sunshine 811, HB 825, (Jan. 4, 2024).

Effect of Bill

Extension of Time

The bill extends the time for excavators to notify SSOCOF before excavating from at least two full business days to at least three full business days.

The bill also extends the time for potentially affected member operators to determine the location of their underground facilities in relation to a proposed excavation or demolition from two full business days to three full business days.

Penalties for HPSI Infractions

The bill makes an excavator's failure to notify the HPSI member operator of the start time and date of a planned excavation (if the HPSI member operator has provided a timely notice of the existence of a HPSI) a violation under s. 556.107(1)(a)(2), F.S. This subjects the excavator to an enhanced civil penalty of \$2,500 plus court costs for each infraction.²⁶

The act will take effect October 1, 2024.

B. SECTION DIRECTORY:

Section 1. Amends s. 556.105, F.S., relating to procedures.

Section 2. Amends s. 556.107, relating to violations.

Section 3. Reenacts s. 556.102(8), F.S., relating to definitions.

Section 4. Reenacts s. 556.108, F.S., relating to exemptions.

Section 5. Reenacts s. 556.114(1)-(4), F.S., relating to low-impact marking practices.

Section 6. Reenacts s. 556.116(1)-(2)(a)-(d), F.S., relating to high-priority subsurface installations.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate, positive impact on state government revenues.

The bill adds that certain violations of s. 556.116(1), F.S., are subject to an enhanced civil penalty of \$2,500 plus court costs. If a citation is issued by the State Fire Marshal for such a violation, 80 percent of the civil penalty collected by the clerk of the court must be distributed to the State Fire Marshal and 20 percent must be retained by the clerk in addition to any court costs.²⁷ The significance of any increase in revenue as a result of this penalty depends entirely on compliance with and enforcement of s. 556.116(1), F.S.

2. Expenditures:

None.

²⁶ S. 556.107(1)(c)(2), F.S.

²⁷ *Id.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have an indeterminate, positive impact on local government revenues.

The bill adds that certain violations of s. 556.116(1), F.S., are subject to an enhanced civil penalty of \$2,500 plus court costs. If the citation for a noncriminal infraction is issued by a local law enforcement officer, local government code inspector, or a code enforcement officer, 80 percent of the penalty collected will be distributed to the local governmental entity whose employee is sued the citation and the remaining 20 percent will be retained by the clerk of the court to cover administrative costs. The significance of this increase, however, will depend entirely on compliance with and enforcement of Chapter 556, F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Excavators will become subject to a fine of \$2,500 for failing to notify HPSI member operators of a planned excavation start time and date. This may encourage greater compliance with this provision of the Act.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.