

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 Governmental Oversight and Accountability

BILL: SB 708

INTRODUCER: Senator Burton

SUBJECT: Underground Facilities

DATE: January 26, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schrader</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 708 revises Florida’s Underground Facility Damage Prevention and Safety Act (ch. 556, F.S.), and underground excavation procedures under Sunshine State One-Call of Florida, Inc. (also known as Sunshine 811). The bill:

- Increases from two to three full business days the time period granted to excavators to notify the Sunshine 811 system before beginning any excavation or demolition;
- Increases from two to three full business days the time period within which persons who furnish or transport materials or services by means of an underground facility must respond to Sunshine 811 system notifications; and
- Subjects an excavator’s failure to notify of an excavation start date for a high-priority subsurface installation to enhanced civil penalties under s. 556.107(1)(a)2., F.S.

The bill also reenacts certain portions of ch. 566, F.S., to incorporate by reference the changes made in the bill, reorders certain sections, and makes technical changes.

The bill is not expected to impact state and local government revenues and expenditures.

The bill takes effect October 1, 2024.

II. Present Situation:

Florida Underground Facility Damage Prevention and Safety Act

Chapter 556, F.S., 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;
- 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; and
- 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

Pipeline and Hazardous Materials Safety Administration

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is part of the United States Department of Transportation. PHMSA's purpose is to protect the public and the environment by advancing safe transportation of energy and other essential potentially hazardous materials. PHMSA "establishes national policy, sets and enforces standards, educates, and conducts research to prevent incidents." The agency is also involved in preparation of the public and first responders to deal with hazardous materials incidents.⁴

PHMSA's Office of Pipeline Safety "is responsible for carrying out a national program to ensure the safe, reliable, and environmentally-sound operation of the nation's natural gas and hazardous

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 ch. 376, F.S., 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."

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 Pipeline and Hazardous Materials Safety Administration, *About PHMSA*, <https://www.phmsa.dot.gov/about-phmsa/phmsas-mission> (last visited Jan. 23, 2024).

liquid pipeline transportation system.” As part of this responsibility, the Office of Pipeline Safety:

- Develops, proposes, and implements policy initiatives and regulations regarding operation of pipelines;
- Directs education and outreach efforts to promote adoption and the increased use of pipeline safety programs by state and local governments, pipeline operators, and the public; and
- Administers a national pipeline safety program to support compliance with Federal pipeline safety regulations.⁵

Sunshine State One-Call of Florida

The not-for-profit corporation created under ch. 556, F.S., 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., requires that each operator of an underground facility in Florida must be a member of Sunshine 811 (i.e. member operator)⁶ and must use and participate in the free-access notification system established by Sunshine 811 (Sunshine 811 system).⁷

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.⁸ Excavators intending to conduct excavation or demolition must notify the Sunshine 811 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.⁹ The excavator must also provide specified identification, location, and operational information, which remains valid for 30 calendar days.¹⁰ Each notification is recorded to document compliance with the act.¹¹

Upon receipt of this notice, the Sunshine 811 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.¹² The Sunshine 811 system in turn notifies the potentially affected member operators of the planned excavation or demolition activities.¹³ Within two full business days after the time the notification is received by the Sunshine 811 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

⁵ Pipeline and Hazardous Materials Safety Administration, *Office of Pipeline Safety*, <https://www.phmsa.dot.gov/about-phmsa/offices/office-pipeline-safety> (last visited Jan. 23, 2024).

⁶ Section 556.102, F.S., defines “member operator” as “any person who furnishes or transports materials or services by means of an underground facility.”

⁷ See s. 556.102, F.S., which defines “system” for ch. 556, F.S.

⁸ Section 556.104, F.S.

⁹ 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.

¹⁰ Section 556.105(1)(a)-(d), F.S.

¹¹ Section 556.105(2), F.S.

¹² Section 556.105(3) and (4), F.S.

¹³ Section 556.105(5), F.S.

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.¹⁴

An excavator is required to delay excavations until one 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.¹⁵

Violations of Sunshine 811 Requirements

Section 556.107, F.S., provides that certain violations of the act are noncriminal infractions enforceable by citations issued by the State Fire Marshal or his or her agents as provided in ss. 633.114 and 633.116, F.S.; the fire chief of a special district, municipality, or county; or any local or state law enforcement officer, government code inspector, or code enforcement officer. The issuer of a citation may also require an excavator to cease work on any excavation or not start a proposed excavation until such excavator comes into compliance with the act.¹⁶

Section 556.107(1)(a), F.S., provides two tiers of noncriminal infraction penalties. Excavators and member operators who violate any of the following provisions of the act may be required to pay a civil penalty of \$500 plus court costs for each infraction:¹⁷

- Section 556.105(1), F.S., relating to excavators providing required information through the Sunshine 811 system.
- Section 556.105(5)(c), F.S., relating to increased cautionary practices required to be taken during excavation in tolerance zones.¹⁸
- Section 556.105(6), F.S., relating to the avoidance of excavation during time allotted to member operators for the marking or location of underground facilities.
- Section 556.105(11), F.S., 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.

¹⁴ *Id.*

¹⁵ Section 556.105(6), F.S.

¹⁶ Section 556.107(1)(b), F.S.

¹⁷ Section 556.107(1)(c)1., F.S.

¹⁸ Section 556.102(15), F.S., defines “tolerance zone” as being 24 inches from the outer edge of either side of the exterior surface of a marked underground facility.

- Section 556.105(12), F.S., relating to the need to cease excavation or demolition activities because of contact or damage to an underground facility.
- Section 556.105(5)(a) and (b), F.S., relating to the requirement to identify underground facilities, if a member operator does not mark an underground facility. The penalty does not apply, however, if a member operator marks an underground facility incorrectly.
- Section 556.109(2), F.S., relating to falsely notifying the Sunshine 811 system of an emergency situation or condition.
- Section 556.114(1), (2), (3), and (4), F.S., relating to a failure to follow low-impact marking practices, as defined in those subsections.¹⁹

Section 556.107(1)(a)2., F.S., provides enhanced penalties if an excavator or member operator violates the provisions of ss. 556.105(1), 556.105(5)(c), 556.105(6), 556.105(11), and 556.105(12), F.S., as identified above, involving an underground facility transporting hazardous materials that are regulated by the PHMSA. Such violators may be required to pay an enhanced civil penalty of \$2,500 plus court costs for each infraction.²⁰

Eighty percent of these civil penalties are distributed to the government entity whose employee issued the citation, with 20 percent of the penalty retained by the clerk of the court to cover administrative costs.²¹

Section 556.107, F.S., also provides for criminal penalties for certain violations, specifying that all of the following are misdemeanors of the second degree:²²

- Failure to properly respond to the noncriminal infractions specified in s. 556.107(1)(a), F.S., issued pursuant to s. 556.107(1)(b), F.S.;²³
- Knowingly and willfully removing or otherwise destroying the valid stakes or other valid physical markings used to mark the horizontal route of an underground facility;²⁴ and
- Knowingly and willfully removing or damaging a permanent marker placed to identify the approximate location of an underground facility.²⁵

High-Priority Subsurface Installations

Section 556.102, F.S., defines a “high-priority subsurface installation” as “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), F.S., 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.”

¹⁹ Section 556.107(1)(a)1., F.S.

²⁰ Section 556.107(1)(c)2., F.S.

²¹ Section 556.107(1)(c), F.S.

²² Section 775.082(4)(b), F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083(1)(e), F.S., provides that a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

²³ Section 556.107(1)(c)3., F.S.

²⁴ Section 556.107(3), F.S.

²⁵ *Id.*

Regarding high-priority subsurface installations, s. 556.116(1), F.S., requires that:

- 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 member operator of such a facility, the operator must, in addition to the identification requirements in s. 556.105(5)(a) and (b), F.S., notify the excavator that the facility is a high-priority subsurface installation. This must be done within the time period required in s. 556.105(9)(a), F.S;
- Upon the provision of such notice by the member operator, an excavator must notify the member operator of the planned excavation start date and time before beginning excavation; and
- If the member operator fails to timely provide such notice, the excavator may proceed to excavate without notifying the member operator of the excavation start date and time.

According to Sunshine 811, owners of high-priority subsurface installations have notified Sunshine 811 that “there is a significant problem with excavators failing to provide the date and start time of excavation.”²⁶ Currently, violations of this provision of s. 556.116(1), F.S., are not violations for which a civil penalty may be issued under s. 556.107, F.S.

Increase in Sunshine 811 Locate Requests

With the continuing substantial growth Florida has had over the past 10 years, the Sunshine 811 system has seen an increase from 1.4 million locate request tickets in the 2014-2015 fiscal year to 2.2 million locate request tickets in the 2022-2023 fiscal year (a 57 percent increase).²⁷ According to Sunshine 811, this growth “has made it difficult for the utilities to fulfill all of the locate requests within 2 days. Sunshine 811’s data shows that approximately 16 [percent] of locate requests are not fulfilled within 2 days, putting underground facilities, public safety and the environment at risk.”²⁸

III. Effect of Proposed Changes:

Section 1 amends s. 556.105, F.S., to increase the time period from two full business days to three full business day that an excavator must provide information to the Sunshine 811 system before the excavator begins any excavation or demolition that is not beneath the waters of the state. The notice period remains at 10 full business days for any excavation or demolition that is beneath the waters of the state.

Section 1 also increases the time period from two full business days to three full business days that member operators are granted to respond to notifications from the Sunshine 811 system for excavations or demolitions that are not beneath the waters of the state. The response period remains 10 full business days for any excavation or demolition that is beneath the waters of the state.

²⁶ Email from Chris Lyon, Attorney, Lewis, Longman & Walker, P.A. representing Sunshine 811, to Senate Regulated Industries Staff regarding SB 708 (Dec. 18, 2023)(on file with the Senate Regulated Industries Committee).

²⁷ Compare Sunshine 881, *2014-15 Annual Report*, 3, available at: <https://www.sunshine811.com/annual-reports> (1.4 million tickets), with Sunshine 881, *2022-23 Annual Report*, 3, available at: <https://www.sunshine811.com/annual-reports> (2.2 million tickets) (last visited Jan. 23, 2024).

²⁸ Lyon, *supra* note 26.

Section 2 amends s. 556.107, F.S., to add to the violations subject to enhanced penalties²⁹ an excavator's failure to notify of a planned excavation start date and time before beginning excavation, if the member operator provides timely notice of the existence of a high-priority subsurface installation. Section 2 also reenacts s. 556.107(3), F.S., relating to misdemeanor violations, to incorporate by reference changes made in Section 1 of this bill.

Sections 3, 4, and 5 reenact ss. 556.102, 556.108, and 556.114, relating to the definition of "high-priority subsurface installation," exemptions from notification requirements, low-impact marking practices, respectively, to incorporate by reference changes made in Section 1 of this bill.

Section 6 reenacts s. 556.116, F.S., relating to special procedures for high-priority marking practices, to incorporate by reference changes made in sections 1 and 2 of this bill.

Section 7 provides an effective date of October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁹ If such violation involves an underground facility transporting hazardous materials that are regulated by PHMSA.

B. Private Sector Impact:

Member operators and excavators that violate the requirements for high-priority subsurface installations under s. 556.116(1), F.S., may have a negative financial impact from the new penalty provisions provided in the bill.

C. Government Sector Impact:

The bill may have an indeterminate, positive impact on state and local government revenues for the new penalty provisions provided for violations of s. 556.116(1), F.S. As provided under s. 556.107(1)(c), F.S., civil penalties collected pursuant to s. 556.107, F.S., are distributed 80 percent to the government entity whose employee issued the citation, with 20 percent of the penalty retained by the clerk of the court to cover administrative costs. Citations may be issued by the State Fire Marshal or his or her agents as provided in ss. 633.114 and 633.116, F.S.; the fire chief of a special district, municipality, or county; or any local or state law enforcement officer, government code inspector, or code enforcement officer.³⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 556.105 and 556.107 of the Florida Statutes.

This bill reenacts sections 556.102, 556.107, 556.108, 556.114, and 556.116 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³⁰ Section 556.107,(1)(b), F.S.