

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 789 CS                      Damage Prevention and Safety of Underground Facilities  
**SPONSOR(S):** Murzin  
**TIED BILLS:** None                      **IDEN./SIM. BILLS:** CS/SB 1394

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee	13 Y, 0 N, w/CS	Holt	Holt
2) Civil Justice Committee		Blalock	Bond
3) Finance & Tax Committee			
4) Commerce Council			
5) _____			

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### SUMMARY ANALYSIS

The Underground Facility Damage Prevention and Safety Act provides access for excavating contractors and the public to provide notification to the free-access notification system established by the creation of the Sunshine State One-Call of Florida, Inc., (SSOCOF) of their intent to engage in excavation or demolition.

HB 798 amends the Underground Facility Damage Prevention and Safety Act as follows:

- Provides that SSOCOF does not have a duty and is not permitted to locate or mark underground facilities, and exempts SSOCOF from liability for the failure of member operators to comply with the act.
- Reduces the number of days that an excavator must provide certain information before beginning any excavation or demolition, from "not less than 2 or more than 5" business days to "not less than 2" business days. This bill also provides an exception to this timing requirement for excavation beneath the waters of the state. This bill increases the number of days the information provided by the excavator is valid from 20 to 30 calendar days.
- Provides specific procedures for when a member operator receives notification from the system that excavation or demolition is planned in an area in conflict with their underground facility.
- Revises the non-criminal infraction section to:
  - Provide that fees and court cost be added to the civil penalty;
  - Provide that when a citation is issued by a local government entity, 80% of the penalty is to be directed to that local government entity; and
  - Provide that SSOCOF may retain legal representation regarding citations issued under this Act.
- Provides additional exemptions for certain pest control services and specific water control district activities.

This bill appears to have a negative recurring fiscal impact on state government revenues, and a corresponding positive recurring fiscal impact on local government revenues.

This act shall take effect October 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill increases the regulation of procedures that member operators and excavators must follow when providing information to and receiving notification from the free-access notification system.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

Chapter 93-240, L.O.F., created the "Underground Facility Damage Prevention and Safety Act" (Act), and is codified at ch. 556, F.S. The purpose of the act is to:

- 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;
- Create a not-for-profit corporation comprised of operators of underground facilities in Florida to administer the provisions of the act;
- 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;
- Reserve to the state the power to regulate any subject matter specifically addressed in the act; and
- Permit any local law enforcement officer or permitting agency inspector to enforce the act without the need to incorporate the provisions of the act into any local code or ordinance.

The Act establishes a statewide, one-call notification system. A single toll-free number is provided for persons to give notification of and intent to engage in excavation or demolition. Section 556.101, F.S., states that the purpose of the Act is to prevent injury "to persons and property and the interruption of services resulting from damage to an underground facility caused by excavation or demolition operations."

Creation of a not-for-profit corporation was established pursuant to section 556.101(3)(c), F.S., comprised of Florida underground facilities operators (member operators) to administer the chapter provisions. As a result, Sunshine State One-Call of Florida, Inc., (SSOCOF), has been incorporated since February 1, 1993. The cost of the system is funded "entirely and exclusively" by assessed contributions from the member operators.

##### **Effect of Bill**

The bill amends several sections of the Act.

##### Section 1

The bill amends s. 556.101(2), F.S., pertaining to the legislative intent, to clarify that the SSOCOF is only the system administrator, and that SSOCOF is not required or permitted to locate or mark any underground facilities. Also, the term "permitting agency inspector" is deleted in paragraph (e) of 556.102(3), F.S., and the bill clarifies that at the local level any law enforcement officer, local government code inspector, or code enforcement officer is permitted to enforce the provisions of the Act without the need to incorporate these changes into any local code or ordinance.

## Section 2

Obsolete language is removed from s. 556.102(8), F.S. of the bill related to small municipalities deferred participation in the one-call notification system. Membership for such municipalities became mandatory on January 1, 2003, and these entities are now included in the definition of "member operators."

## Section 3

Additional obsolete language is removed from this section related to small municipalities deferred participation in the one-call notification system. Moreover, language is removed that refers to the formation of a not-for-profit corporation to administer the provisions of chapter 556, F.S. Sunshine State One-Call of Florida, Inc. has been incorporated since February 1, 1993 to fulfill this provision.

## Section 4

Obsolete language is removed from s. 556.104, F.S., related to small municipalities deferred participation in the one-call notification system.

## Section 5

Procedures for the SSOCOF notification system are outlined in s. 556.105, F.S. The bill amends several subsections as follows:

A. Section 556.105(1)(a), F.S., narrows the system notification window that is required prior to beginning any excavation or demolition from not less than "2 nor more than 5" full business days to not less than "2" full business days, except for an underwater excavation. Also, if available, a valid electronic address should also be provided to the system to facilitate positive responses. The duration for the validity of the information provided to the system by an excavator about a proposed excavation or demolition site is increased from 20 calendar days to 30 days, excluding the date information is provided to the system, Saturday, Sunday, or legal holidays.

B. Section 556.105(2), F.S., provides that the records of each notification "may not" in lieu of "shall not," be transferred from the system except under subpoena.

C. Section 556.105(3), F.S., makes clear that the system shall provide the person making notification with the names of the member operators in the affected area along with a notification number (ticket) specifying the date and time of the project notification.

D. Section 556.105(4), F.S., is created to inform excavators that upon request the notification number will be provided to any law enforcement officer, government code inspector, or code enforcement officer.

E. Also, presently numbered ss. 556.105(4), F.S. through 556.105(11), F.S., are renumbered and cross-references corrected.

F. Paragraph (b) of s. 556.105(6), F.S., provides that an excavator "may not" in lieu of "shall not," demolish in a noticed area until all member operator underground facilities have been marked, located, or removed. This provision gives excavator discretion to demolish or not demolish in areas not marked at the noticed site.

G. Presently designated s. 556.105(8)(a), F.S. is deleted. This change removes the provision related to specific circumstances for direct communication between a member operator and excavator. Also, obsolete language is deleted in 556.105(8)(b), F.S., related to a positive response system being implemented by January 1, 2004.

H. Section 556.105(9), F.S., is created to outline member operator responsibilities after receiving notification from the system. A member operator of underground facilities has 2 full business days to provide the system a positive response, indicating the status of operations to protect the facility, or 10 days for an underwater excavation. Further the bill establishes the one-call system as a central communication hub between excavators and member operators. However, the system is exempt from any requirement to initiate a positive response to an excavator when an excavator has not provided the system with a valid electronic address. The bill places the excavator responsible for verifying the system's positive response before beginning excavation. Moreover, the excavator becomes responsible for contacting a member operator, if it knows a member operator has an existing underground facility in the area, yet the facility is unmarked, and no positive response has been received by the system.

I. Section 556.105(10), F.S., is amended to read that when an operator marks the horizontal route of any underground facility it shall be according to the Uniform Color Code for Utilities of the American Public Works Association.

## Section 6

Liability of the member operator, excavator, and system is outlined in s. 556.106, F.S. The bill amends paragraph (a) of s. 556.106(2), F.S. to correct a cross reference. Further, current language in paragraphs a-b of s. 556.106(2), F.S. reads as follows:

(2)(a) In the event any person violates s. 556.105(1) or (5), and subsequently, whether by himself or herself or through the person's employees, contractors, subcontractors, or agents, performs an excavation or demolition which damages an underground facility of a member operator, it shall be rebuttably presumed that such person was negligent. Such person, if found liable, shall be 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 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. Any liability of the state and its agencies and its subdivisions which arises out of this chapter shall be subject to the provisions of s. 768.28.

(b) If any excavator fails to discharge a duty imposed by the provisions of this act, such excavator, if found liable, shall be 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 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.

The bill deletes the term "shall" throughout both paragraphs and replaces it with "may." The bill also deletes paragraph (e) of s. 556.106(2), F.S., to remove obsolete language related to nonmember small cities. The bill adds subsection (6) to provide that the system (SSOCOF) has no duty to mark or locate underground facilities and nor does a right of recovery exist against the system for failing to do so. Clarification is added that the system (SSOCOF) is not liable for the failure of a member operator to comply with the requirements of this act.

## Section 7

Section 556.107, F.S. pertains to violations of the Act. The bill amends this section to correct cross references. It further deletes the term “permitting agency inspector” and replaces it with “government code inspector” and “code enforcement officer.” These two new terms, along with the current language “local or state law enforcement officer”, specify the enforcement for this chapter.

Section 556.107(1), F.S. reads in part:

### (1) NONCRIMINAL INFRACTIONS.—

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

1. Section 556.105(1), relating to providing required information.
2. Section 556.105(5), relating to the avoidance of excavation.
3. Section 556.105(10), relating to the need to stop excavation or demolition.
4. Section 556.105(11), relating to the need to cease excavation or demolition activities.
5. Section 556.105(4)(b) and (c) 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.

Paragraph (c) of s. 556.107(1), F.S. reads in part:

Any excavator or member operator who commits a noncriminal infraction under paragraph (a) may be required to appear before the county court. The civil penalty for any such infraction is \$250, except as otherwise provided in this section.

The bill amends paragraph (c) to add fees and court costs to the civil penalty. It is unclear what fees this bill is referring to, whether they are attorney fees or administrative fees, etc. This bill also provides that if a local law enforcement officer, local government code inspector, or code enforcement officer issues the citation, an 80/20 split of the collected penalty occurs. Eighty percent goes to the local government that employs the local citing officer and 20% is retained by the clerk of court for administrative costs in addition to other fees or court costs. This bill takes 80% of the \$250 fine that would go into the fine and forfeiture fund, and authorizes the clerk to distribute it to the local government entity whose employee issued the citation. The clerk will distribute the other 20% into the fine and forfeiture fund as required by s. 142.01, F.S.<sup>1</sup> If a state law enforcement officer issues the citation, the amount collected by the clerk shall be retained by the clerk for deposit into the fine and forfeiture fund established by s. 142.01, F.S.

Paragraph (d) of s. 556.107(1), F.S. reads in part:

(d) Any person cited for an infraction under paragraph (a), unless required to appear before the county court, may:

1. Post a bond, which shall be equal in amount to the applicable civil penalty;  
The bill amends paragraph (d) to add fees and court cost to the bond amount.

Paragraph (e) of s. 556.107(1) reads in part:

e) Any person charged with a noncriminal infraction under paragraph (a), unless required to appear before the county court, may:

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<sup>1</sup> 142.01 Fine and forfeiture fund; clerk of the circuit court.—There shall be established by the clerk of the circuit court in each county of this state a separate fund to be known as the fine and forfeiture fund for use by the clerk of the circuit court in performing court-related functions.

1. Pay the civil penalty, in lieu of appearance, either by mail or in person, within 10 days after the date of receiving the citation;

The bill amends paragraph (e) to add fees and court cost to the civil penalty and payment is due within 30 days in lieu of 10 days.

Paragraph (f) of s. 556.107(1), F.S. reads:

(f) Any person electing to appear before the county court or who is required to appear shall be deemed to have waived the limitations on the civil penalty 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 civil penalty not to exceed \$5,000. In determining the amount of the civil penalty, the court may consider previous noncriminal infractions committed.

The bill amends paragraph (f) to add court costs to the civil penalty.

The bill creates paragraph (i) in s. 556.107(1) to provide that the SSOCOF may, at its own expense retain legal representation as assistance in county court proceedings pertaining to citations issued under this section. SSOCOF may appear in infraction cases appealed to the circuit court, and the appellant in such appeals shall timely notify SSOCOF of appeals under this section.

Section 556.107(2), F.S. reads in part:

(2) MISDEMEANORS.—Any person who knowingly and willfully removes or otherwise destroys the valid stakes or other valid physical markings described in s. 556.105(4)(b) and (c) used to mark the horizontal route of an underground facility commits a misdemeanor. . . For purposes of this subsection, stakes or other nonpermanent physical markings are considered valid for 20 calendar days. . .

The bill amends this section to extend information validity from 20 days to 30 days.

## Section 8

Exemptions to the notification requirements are in s. 556.108, F.S. The section reads in part:

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

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

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

The bill amends paragraph (a) to include services performed by a pest control licensee under chapter 482, F.S., (Pest Control)

The bill creates paragraph (c) also in the exemption section for locating, repairing, connecting, adjusting, or routine maintenance of a private or public utility facility by an excavator, if mechanized equipment is not used.

Subsection (6) is created to provide an exemption for any excavation or related maintenance activity by a water control district created pursuant to Chapter 298, F.S., or special act provided:

(a) The activity is performed by a district employee; (b) The activity is performed within a district right-of-way or on district owned lands; (c) The district has required permits for all underground or underwater facilities and maintains maps and locations of permitted underground or underwater facilities; and (d) all member operators' facilities within district rights-of-way or on district-owned lands are required to be permanently marked.

### Section 9

This act shall take effect October 1, 2006.

#### C. SECTION DIRECTORY:

Section 1 amends s. 556.101, F.S., relating to legislative intent.

Section 2 amends s. 556.102(8), F.S., relating to obsolete language for small municipalities and amends the definition of "member operator."

Section 3 amends s. 556.103(1), F.S., relating to obsolete language and the creation of a not-for-profit corporation.

Section 4 amends s. 556.104, F.S., relating to obsolete language.

Section 5 amends s. 115.105, F.S., relating to procedures.

Section 6 amends s. 556.106, F.S., relating to the liability of the member operator, excavator, and system.

Section 7 amends s. 556.107, F.S., relating to violations.

Section 8 amends s. 556.108(4), F.S., relating to exemptions.

Section 9 provides an effective date of October 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

This bill will have a negative fiscal impact on state revenues due to the provision in the bill allowing money that would normally go into the fine and forfeiture fund to be directed to local government bodies under certain circumstances. An exact amount of increased revenue is unable to be determined due to the unknown number of citations that will be issued by state officials.

##### 2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

This bill will have an undetermined positive fiscal impact on local government revenues due to the provision in the bill allowing fines that normally go into the fine and forfeiture fund to be directed to

the local government entity that issued the citation. An exact amount is unable to be determined due to the unknown number of citations that will be issued by local government entities.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 21, 2006, the Committee on Utilities and Telecommunications adopted two amendments. The amendments made the following revisions to the bill:

- Provides that the civil penalty collected from citations issued by a state law enforcement officer shall be retained by the clerk of court and deposited into the fine and forfeiture fund established pursuant to s. 142.01.
- For any person charged with a noncriminal infraction under paragraph (a) of s. 556.107(1), unless required to appear before the county court, the amendment increase the timeframe for payment from 10 days to 30 days.
- Creates a notification exemption for services performed by a pest control licensee under chapter 482 for excavation of 18 inches or less if mechanized equipment is not used.
- Creates a notification exemption for any excavation or related maintenance activity by a water control district created pursuant to Chapter 298, F.S., or special act, provided specific criteria are met.