

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

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

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Prepared By: Communications and Public Utilities Committee

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BILL: SB 1510

INTRODUCER: Senator Aronberg

SUBJECT: Public Records/Sunshine State One-Call

DATE: March 19, 2007

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stuart	Caldwell	CU	<b>Favorable</b>
2.			GO	
3.			RC	
4.				
5.				
6.				

**I. Summary:**

This bill creates an exemption from public records for proprietary confidential business information held by the Sunshine State One-Call of Florida, Inc. The exemption is narrowed to protect trade secrets that apply to “maps, plans, facility location diagrams, internal damage investigation reports or analyses, dispatch methodologies, or trade secrets as defined in s. 688.002, F.S., or which describes the exact location of an underground facility or protection, repair, or restoration of a facility by a member operator.”

The bill creates s. 556.110 of the Florida Statutes.

**II. Present Situation:**

**Sunshine State One-Call**

Chapter 556, F.S., creates the Sunshine State One-Call Of Florida Inc., as a non-profit corporation which requires each operator of an underground facility to be a member. When notice of intent to engage in excavation or demolition is filed, the systems managed by One-Call provide notice to the member operators of proposed excavation and give the opportunity for member operators to locate and identify 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, but those member operators who are provided notice of an excavation must locate and mark underground facilities within 2 business days of notice.

To initiate an excavation or demolition, an excavator must contact One-Call by phone or electronically to file a “ticket” which provides specific information about the proposed

excavation such as the name of the company or person, intended depth of the excavation, and the location of the intended excavation.

Recently, One-Call invested in a member ticket management software system which allows all excavators the opportunity to file tickets electronically and eliminates the cost of purchasing these systems for individual companies. Prior to this investment, electronic ticket filing was only accessible to member operators who bought ticket management systems.

### **Public Records Statute Review Criteria**

Section 24(a), Article I of the state constitution and s. 119.05, F.S., provide that an exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the purposes discussed below and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An identifiable public purpose is served if the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which would be significantly impaired without the exemption;
2. Protects information of a sensitive, personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

### **III. Effect of Proposed Changes:**

According to a One-Call representative, One-Call has made a significant investment to make the ticket processing function more efficient by purchasing a ticket management system for all of its users. Currently, the member ticket management system is not being used by member operators to file tickets because potential excavators do not want the confidential information on ticket applications being stored on One-Call's system which is subject to public disclosure. The representative stated that without the exemption the system will continue to not be used.

Further, the One-Call representative stated that members are not filing damage reports, also subject to open record requirements to One-Call, because they don't want the public to be aware of problems during excavations. Damage reports can raise negative public opinion and can harm the reputation of an excavator. The One-Call representative commented that the nondisclosure of damages has negative repercussions on the effective operation of One-Call such as the inability of One-Call to determine the effectiveness of their service because of a lack of damage information, and the inability of One-Call to tailor their education efforts to parties most likely to

experience problems resulting in damages. The One-Call representative stated that if a public records exemption existed, excavators would be comfortable with reporting damages and One-Call could better serve their legislative mandate.

This bill will create an exemption for protection of proprietary and confidential business information disclosed during the filing of a ticket and for information submitted to One-Call describing the extent of damages during an excavation of underground facilities.

Confidential business information is defined as “maps, plans, facility location diagrams, internal damage investigation reports or analyses, dispatch methodologies, or trade secrets as defined in s. 688.002, F.S., or which describes the exact location of an underground facility or protection, repair, or restoration of a facility by a member operator.”

Exemptions are subject to Open Government Sunset Review Act in accordance with s.119.15, F.S., and shall stand repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature. This bill takes effect July 1, 2007.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

This bill states an identifiable public purpose to create the public record exemptions because the protection will allow One-Call to implement systems which will allow the state to more effectively and efficiently administer a government program which would be impaired without the exemption. Further, the exemptions protect information of a confidential nature concerning “disclosures of which would likely be used by a competitor to harm business interests of the member operator or could be used for the purpose of inflicting damage in underground facilities; information that is not 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.” These identifiable public purposes satisfy the first and third provisions of s. 119.05, F.S.

The scope of proprietary and confidential information is narrowed specifically to “maps, plans, facility location diagrams, internal damage investigation reports or analyses, dispatch methodologies, or trade secrets as defined in s. 688.002, F.S., or which describes the exact location of an underground facility or protection, repair, or restoration of a facility by a member operator.”

##### **C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

If this bill is enacted One-Call members will enjoy improvements in efficiency and decreased costs. Members will be able to more efficiently file tickets because every member will have access to the ticket management system. Members will incur less expenses because One-Call has purchased the system for member use which will eliminate the cost of buying the system for companies which do not already own a system, and will save licensing and maintenance costs for those members who already own systems.

If the bill is enacted member excavators will be able to disclose damages to One-Call which will allow One-Call to better analyze who is having problems with excavations. This information will be used to better educate member operators and should result in less damage to underground facilities which leads to better and more reliable service to customers.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**viii. Summary of Amendments:**

None.

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

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