

1827823

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC19-1305  
UNITED STATES ELEVENTH CIRCUIT COURT  
OF APPEAL CASE NO. 18-13291

---

PEOPLES GAS SYSTEM, a Division of Tampa Electric Company, a Florida  
Corporation,

Appellant,

v.

POSEN CONSTRUCTION, INC.,

Appellee.

---

**APPENDIX TO APPELLEE, POSEN CONSTRUCTION, INC.'S**  
**ANSWER BRIEF**

Respectfully submitted by,

**Hinda Klein, Esquire**

Florida Bar No. 510815

CONROY SIMBERG

*Counsel for Appellee*

3440 Hollywood Boulevard, Second Floor

Hollywood, FL 33021

hklein@conroysimberg.com

eservicehwdappl@conroysimberg.com

Phone: (954) 961-1400

Fax: (954) 518-8606

RECEIVED, 12/20/2019 05:02:30 PM, Clerk, Supreme Court

**APPENDIX TO POSEN CONSTRUCTION, INC.’S, ANSWER BRIEF**

<b>DOCUMENT TITLE</b>	<b>DOC. NO.</b>
Legislative History dated April 16, 1993.....	A.001-035
Legislative History dated July 2, 1997.....	A.036-094

**CERTIFICATE OF SERVICE**

I certify that a copy hereof has been furnished to: **Michael E. Reed, Esq.**, Wicker Smith O’Harra McCoy & Ford, PA, 100 N. Tampa Street, Suite 1800, Tampa, FL 33602, Attorney for Defendant, Posen Construction, Inc., tpacrtpleadings@wickersmith.com; **Pedro F. Bajo, Jr., Esq.**, Bajo Cuva Cohen Turkel, P.A., 100 N. Tampa Street, Suite 1900, Tampa, FL 33602-5853, Attorney for Plaintiff, pedro.bajo@bajocuva.com; **Victor Stephen Cohen, Esq.**, Bajo Cuva Cohen Turkel, P.A., 100 North Tampa Street, Suite 1900, Tampa, FL 33602-5853, Attorney for Appellant, scohen@bajocuva.com; **James C. Mooney, Esq.**, Bajo Cuva Cohen & Turkel, P.A., 100 North Tampa Street, Suite 100, Tampa, FL 33602, Attorney for People Gas System, a division of Tampa Electric Company; **Jason B. Gonzalez, Esq.**, Shutts & Bowen, LLP, 215 S. Monroe Street, Suite 804, Tallahassee, FL 32301, Attorney for Appellant, Peoples Gas System, jasongonzalez@shutts.com; Amber S. Nunnally, Esquire, Shutts & Bowen, LLP, 215 S. Monroe Street, Suite 804, Tallahassee, FL 32301, Attorney for Appellant, Peoples Gas System, annally@shutts.com; **Daniel E. Nordby, Esq.**, Shutts & Bowen, LLP, 215 S. Monroe Street, Suite 804, Tallahassee, FL 32301, Attorney for

Appellant, Peoples Gas System, dnordby@shutts.com; **Julissa Rodriguez, Esq.**, Shutts & Bowen, LLP, 215 S. Monroe Street, Suite 804, Tallahassee, FL 32301, Attorney for Appellant, Peoples Gas System, jrodriguez@shutts.com; **Frank A. Shepherd, Esq.**, Attorney for FL Justice Reform Institute, Gray Robinson, P.A. 333 SE Second Avenue, Suite 3200, Miami, FL 33131, frank.shepherd@gray-robinson.com; by electronic mail on December 20, 2019.

CONROY SIMBERG  
*Counsel for Appellee*  
3440 Hollywood Boulevard, Second Floor  
Hollywood, FL 33021  
Phone: (954) 961-1400  
Fax: (954) 518-8606  
Primary Email: hklein@conroysimberg.com;  
Secondary Email:  
eservicehwdappl@conroysimberg.com

By: /s/Hinda Klein  
Hinda Klein, Esq.  
Florida Bar No.: 510815

STORAGE NAME: h0795s1z.bpr  
DATE: April 16, 1993

\*\*AS PASSED BY THE LEGISLATURE\*\*  
CHAPTER #: 93-240, Laws of Florida

HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
BUSINESS & PROFESSIONAL REGULATION  
FINAL BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

COPY

reproduced by  
FLORIDA STATE ARCHIVES  
DEPARTMENT OF STATE  
R. A. GRAY BUILDING  
Tallahassee, FL 32399-0250  
Series 19 Carton 2465

BILL #: CS/1st ENG/HB 795  
RELATING TO: Underground Facilities  
SPONSOR(S): Committee on Business and Professional  
Representatives Bloom, Villalobos and others

STATUTE(S) AFFECTED: None

COMPANION BILL(S): SB 1276(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS & PROFESSIONAL REGULATION YEA 20 NAY 0
- (2) APPROPRIATIONS (W/D)

\*\*\*\*\*

I. SUMMARY:

This committee substitute creates the "Underground Facility Damage Prevention and Safety Act" intended to establish a statewide one-call notification system. Under this system, a single toll-free telephone number will be provided for use by persons throughout Florida to give notice of their intent to excavate. Notice of these calls will be transmitted to the owners of underground facilities, thereby affording them an opportunity to identify their facilities before excavation commences. The bill's purpose is to prevent death, injury, damage and service interruption, by marking the location of buried facilities so that excavation operations can avoid contacting them.

The bill creates a not-for-profit corporation, the "Sunshine State One-Call of Florida, Inc.," to be formed by June 1, 1993. Any underground facility operator may elect to participate as a member of the system by becoming a member of the corporation. Members will choose a board of directors who is authorized to assess members for money to fund the system's operations. No liability for negligence is created on the part of any such operator who elects not to participate as a member of the system. The corporation must set up the system by June 1, 1994.

Within 48 hours of excavating, an excavator must inform the system of the proposed work. All members located within the affected area will be notified, and members whose facilities are at risk must mark the route of these facilities within 48 hours. A rebuttal presumption of negligence is provided for persons who fail to notify the center or to abide by the waiting period and who cause damages. If an excavator knows that such facilities are present, the operator must be contacted prior to commencing work. The bill imposes a civil penalty for violations by excavators and provides that removal or destruction of markings is a second degree misdemeanor.

The bill has no fiscal impact on state agencies or local governments, and the fiscal effects on the private sector are indeterminate.

CS/1st ENG/HB 795 became law without the Governor's signature on May 15, 1993, chapter 93-240, Laws of Florida and takes effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 553.851, Florida Statutes, requires that excavators obtain information about the location of gas pipelines in an area of proposed excavation prior to commencing any work in certain places. This statute provides that the excavator may call a utility notification center operating in the area to request such information. Upon being notified of this contact, the owner of the gas pipeline is obligated to mark its location or notify the excavator that no gas pipeline exists in the concerned area.

Current law makes no provision for a statewide organization dedicated to reducing injury, death and monetary loss caused by excavation and demolition operations that contact or damage all facilities installed underground. Underground facilities in addition to petroleum and gas pipes and pipelines include power lines, telecommunications cables and fiber optics, and water and wastewater pipes. The risk of death or injury from contacting an energized power line can be quite high. Huge monetary losses are caused by cutting a fiber optic facility that routinely carries massive volumes of telecommunications messages.

Most operators of underground facilities, such as utility companies, have set up notification procedures within their service territories for receiving such calls from excavators and responding to protect these facilities. Additionally, private entities have organized systems, such as "Call Candy" and "Call Uncle," to act as agents for such operators for these purposes. These entities have contracted with various underground facility operators to receive calls and to furnish their clients notice of excavators' intentions.

B. EFFECT OF PROPOSED CHANGES:

This bill creates the "Underground Facility Damage Prevention and Safety Act." The act establishes a one-call notification system which provides a single toll-free telephone number for use by persons throughout Florida to give notice of their intent to excavate or demolish. These calls will be received at a center where notices of these calls will be transmitted to underground facility operators. This will afford operators the opportunity to mark their facilities before excavation commences.

A not-for-profit corporation, the "Sunshine State One-Call of Florida, Inc.," is created to administer the system. Any underground facility operator may elect to become a member of the corporation, and the members will elect directors who are authorized to assess members to fund system operations. No liability for negligence is created on the part of any operator who elects not to participate as a member of the system. The corporation must establish the system by June 1, 1993.

Between 2 and 5 days prior to excavating, an excavator must furnish the system detailed information about the proposed work. Incoming and outgoing calls will be recorded, and such recordings will be

kept for 5 years. Each caller will receive the names of the members who will be contacted and a notification number specifying the date and time. All members located within the area of the proposed excavation will be notified by the center. If the proposed work will affect a member's facilities, the member must mark their horizontal route within 48 hours. The excavator may not work until the marking is completed, the excavator has been notified that no facilities are in the proposed area, or 48 hours have passed, whichever occurs first. If the member fails to mark within 48 hours of receiving notification, the excavator may proceed with reasonable care if detection equipment is used.

The member is responsible for notifying the excavator within 48 hours if the proposed work is not near the member's facilities. If the facility is not marked and the excavator knows that a member has facilities in the area, the excavator must contact the member. Members must follow certain recommended guidelines for marking. The excavator must seek re-marking if the original marking is removed or is no longer visible. The excavator must notify the member if facilities are contacted or damaged. In such a case, the member must dispatch repair personnel, and the excavator's work must cease until repairs are made.

A rebuttal presumption of negligence is created for persons who fail to notify the center or to abide by the waiting period and whose work later causes damages. Damages shall be for losses to all members as those costs are normally computed; however, for loss of revenue or use, damages are capped at \$500,000 per facility. The receipt of information does not excuse excavators from working carefully or from liability for damages. If a member receives proper notice and fails to act as directed by the bill, the excavator is not liable for damages. In this case, the member, if found liable, is responsible for losses, injury or damages subject to the above cap. If the system receives proper notice and fails to discharge its duties, resulting in damage to a facility, and it is found liable, it is responsible for damages; however, for loss of revenue or use, damages are subject to the above cap.

The bill imposes a civil penalty on excavators of up to \$1,000 per first violation and up to \$5,000 for subsequent violations during a 12-month period. Removal or destruction of markings is made a second degree misdemeanor. It authorizes legal action to enforce the penalty by the various agencies and local governments. The bill exempts owners of single-family residential property from the notification requirement when excavation or demolition occurs on their property. It also provides that the act does not create, enlarge, waive, or preempt any real property rights or interests or regulation of rights-of-way.

C. SECTION-BY-SECTION ANALYSIS:

Section 1. Provides that the bill shall be entitled "Underground Facility Damage Prevention and Safety Act." It expresses legislative intent that a single toll-free telephone number be used by excavators and others to give notice of their intent to excavate so the owners of underground facilities may mark their facilities.

Its purposes are to prevent injury, damage and service interruption. No liability for negligence is created on the part of any underground facility operator who elects not to participate in the system being established.

Section 2. Defines "business days," "business hours," "damage," "demolish or demolition," "excavate or excavation," "excavator," "member operator," "person," "underground facility," and "system."

Section 3. Creates a not-for-profit corporation named the "Sunshine State One-Call of Florida, Inc.," which shall be formed by June 1, 1993, for purposes of administering the provisions of this bill. It provides for any underground facility operator in Florida to become a member of the corporation and to participate in the system. Members shall elect a board of directors which is authorized to assess members to fund system operations. It provides for the board to file annual progress reports, commencing in 1994, with the Governor.

Section 4. Requires the corporation to establish the system by June 1, 1994. Any person who furnishes or transports materials or services through underground facilities may elect to become a member. Members receive notifications of planned excavation or demolition activities. A single toll-free telephone number will be used by excavators to notify the system of their planned activities, and the system notifies members of such plans.

Section 5. Provides that, between 2 and 5 days prior to excavating, an excavator must furnish the system information identifying the excavator, the geographical location of the intended excavation, commencement and termination dates, machinery to be employed, and various details about the work, including type and depth. Information is to be provided by calling the statewide toll-free number during business hours; any call received at a time other than during business hours is considered to be received at the beginning of the next business day.

Incoming and outgoing calls will be recorded, kept for 5 years, and made available upon request. Callers receive the names of members who will be contacted and a notification number specifying the date and time. All members located within the area of the proposed excavation will be promptly notified by the center.

Any member who determines that the proposed excavation may affect the member's facilities must mark the horizontal route within 48 hours or seek more time. The excavator must avoid excavation until the marking is completed, the excavator has been notified that no member has facilities in the area, or 48 hours have passed, whichever occurs first. If the member fails to mark within 48 hours of receiving notification, the excavator may proceed with reasonable care if detection equipment is used. An excavator cannot demolish until all members have marked or removed their facilities.

It exempts members from the marking requirement if they lack accurate information about a facility's location, but the excavator must be furnished the best available information. An excavator is

not liable for damages under this exemption if excavation is performed with reasonable care if detection equipment is used.

Under extraordinary circumstances, a member may notify the system of the member's inability to comply, and the system will notify those prospective excavators who request such notification after the inability was reported. The member is then relieved of liability during the period of the extraordinary circumstance but must notify the system when these circumstances cease. During the extraordinary circumstances, the system must remain available to furnish information.

The member is responsible for notifying the excavator with 48 hours if the member determines that the proposed excavation or demolition is not near the member's facilities. If the excavator has knowledge of a member's facility in the area, the excavator is responsible for contacting the member if the facility is not marked. Members must follow certain recommended guidelines for marking. The excavator is responsible for stopping excavation or demolition and seeking re-marking if the original marking is removed or is no longer visible. The excavator must immediately notify the member if facilities are contacted or damaged. Upon receiving such notification, the member must dispatch repair personnel. The excavator must cease excavation or demolition until repairs are made.

Section 6. Relieves the directors of the corporation from any liability for their administrative actions. It provides that persons who fail to notify the center or to abide by the waiting period are rebuttably presumed to have been negligent if their excavation or demolition damages a member's facilities. It provides that violators are liable for losses as damages are normally computed. Damages for loss of revenue or use are capped at \$500,000 per facility. Liability for violations by the state, its agencies, or its subdivisions, are subject to the provisions of section 768.28, Florida Statutes.

Receiving information as to facility location does not excuse excavators for working carefully nor from liability for damage or injury. When an excavator knows or should know of the presence of underground facilities, the excavator must contact the operator prior to commencing work, regardless of whether the operator is a member. If a member receives proper notice and fails to discharge a duty under the bill, the excavator is not liable for damages. In this case, the member, if found liable, is responsible for any losses, injury or damages, that result, subject to the above cap. If the notification center receives proper notice and fails to discharge its duties, resulting in damage to a facility, and it is found liable, the system shall be responsible, with damages for loss of revenue or use subject to the above cap. Limited exceptions to the damage cap for lost revenues are applicable for governmental members.

Section 7. Imposes a civil penalty on excavators of up to \$1,000 per first violation and up to \$5,000 for subsequent violations during a 12-month period. It provides that knowing and willful

removal or destruction of markings is a second degree misdemeanor. It authorizes legal action to enforce the penalty by the Attorney General, the state attorney, or any local or state agency issuing a permit to excavate. It disburses the penalty to the general fund of such agency or to the general funds of multiple agencies as apportioned by the court based on their relative costs.

Section 8. Exempts owners of single-family residential property from the notification requirement when excavation or demolition occurs on their property unless a member's right-of-way, easement or permitted use is involved.

Section 9. Provides an exception for excavation or demolition during emergencies if the system or member is timely notified and reasonable precautions are taken. It defines "emergency" as a condition threatening danger to life or property, an interruption of vital public service or communications, or an unforeseen circumstance requiring immediate repair of streets or highways.

Section 10. Provides that members shall proportionately share the cost of operating the system.

Section 11. Provides for the act's applicability to existing law by establishing that it does not create, enlarge, waive, or preempt any real property rights or interests or regulation of rights-of-way.

Section 12. Provides that the act's provisions are severable and that if any provision is held to be invalid, the balance of the act shall be given effect.

Section 13. Provides that the bill takes effect upon becoming law.

### III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

#### A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Minimal. Costs will be borne by governmental entities that elect to become members of the not-for-profit corporation.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Minimal. Costs will be borne by private sector entities that elect to become members of the not-for-profit corporation.

2. Direct Private Sector Benefits:

Indeterminate. To the extent that the system lessens the risk of damage to underground facilities that is inherent in excavation and demolition, the private sector and all users of services provided through these facilities should experience improved service and lower costs.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminate.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Not applicable.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

C. ~~REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:~~

Not applicable.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute was amended on the floor to exclude from the definition of "underground facility" any petroleum storage system that is subject to regulation pursuant to chapter 376, Florida Statutes, unless it is located in a member operator's right-of-way or easement. Following third reading and passage of the amended committee substitute, the House of Representatives reconsidered its vote and adopted an amendment correcting an error in wording the committee substitute. On reconsideration, the amended committee substitute was passed by the required two-thirds vote.

VII. SIGNATURES:

COMMITTEE ON BUSINESS & PROFESSIONAL REGULATION:

Prepared by:

Staff Director:

Donald L. Crosby

Lucretia Shaw Collins

FINAL ANALYSIS PREPARED BY COMMITTEE ON BUSINESS & PROFESSIONAL REGULATION:

Prepared by:

Staff Director:

Donald L. Crosby  
Donald L. Crosby

Lucretia Shaw Collins  
Lucretia Shaw Collins

STORAGE NAME: h0795s1.bpr  
DATE: March 2, 1993

HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
BUSINESS & PROFESSIONAL REGULATION  
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 795  
RELATING TO: Underground Facilities  
SPONSOR(S): Committee on Business and Professional Regulation and  
Representatives Bloom and Villalobos

STATUTE(S) AFFECTED:

COMPANION BILL(S): SB 1276(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS & PROFESSIONAL REGULATION YEAS 20 NAYS 0
- (2) APPROPRIATIONS
- (3)
- (4)
- (5)

\*\*\*\*\*

I. SUMMARY:

This committee substitute creates the "Underground Facility Damage Prevention and Safety Act" intended to establish a statewide one-call notification system. Under this system, a single toll-free telephone number will be provided for use by persons throughout Florida to give notice of their intent to excavate. Notice of these calls will be transmitted to the owners of underground facilities, thereby affording them an opportunity to identify their facilities before excavation commences. The bill's purpose is to prevent death, injury, damage and service interruption, by marking the location of buried facilities so that excavation operations can avoid contacting them.

The bill creates a not-for-profit corporation, the "Sunshine State One-Call of Florida, Inc.," to be formed by June 1, 1993. Any underground facility operator may elect to participate as a member of the system by becoming a member of the corporation. Members will choose a board of directors who is authorized to assess members for money to fund the system's operations. No liability for negligence is created on the part of any such operator who elects not to participate as a member of the system. The corporation must set up the system by June 1, 1994.

Within 48 hours of excavating, an excavator must inform the system of the proposed work. All members located within the affected area will be notified, and members whose facilities are at risk must mark the route of these facilities within 48 hours. A rebuttal presumption of negligence is provided for persons who fail to notify the center or to abide by the waiting period and who cause damages. If an excavator knows that such facilities are present, the operator must be contacted prior to commencing work. The bill imposes a civil penalty for violations by excavators and provides that removal or destruction of markings is a second degree misdemeanor.

The bill has no fiscal impact on state agencies or local governments, and the fiscal effects on the private sector are indeterminate.

## II. SUBSTANTIVE ANALYSIS:

### A. PRESENT SITUATION:

Section 553.851, Florida Statutes, requires that excavators obtain information about the location of gas pipelines in an area of proposed excavation prior to commencing any work in certain places. This statute provides that the excavator may call a utility notification center operating in the area to request such information. Upon being notified of this contact, the owner of the gas pipeline is obligated to mark its location or notify the excavator that no gas pipeline exists in the concerned area.

Current law makes no provision for a statewide organization dedicated to reducing injury, death and monetary loss caused by excavation and demolition operations that contact or damage all facilities installed underground. Underground facilities in addition to petroleum and gas pipes and pipelines include power lines, telecommunications cables and fiber optics, and water and wastewater pipes. The risk of death or injury from contacting an energized power line can be quite high. Huge monetary losses are caused by cutting a fiber optic facility that routinely carries massive volumes of telecommunications messages.

Most operators of underground facilities, such as utility companies, have set up notification procedures within their service territories for receiving such calls from excavators and responding to protect these facilities. Additionally, private entities have organized systems, such as "Call Candy" and "Call Uncle," to act as agents for such operators for these purposes. These entities have contracted with various underground facility operators to receive calls and to furnish their clients notice of excavators' intentions.

### B. EFFECT OF PROPOSED CHANGES:

This bill creates the "Underground Facility Damage Prevention and Safety Act." The act establishes a one-call notification system which provides a single toll-free telephone number for use by persons throughout Florida to give notice of their intent to excavate or demolish. These calls will be received at a center where notices of these calls will be transmitted to underground facility operators. This will afford operators the opportunity to mark their facilities before excavation commences.

A not-for-profit corporation, the "Sunshine State One-Call of Florida, Inc.," is created to administer the system. Any underground facility operator may elect to become a member of the corporation, and the members will elect directors who are authorized to assess members to fund system operations. No liability for negligence is created on the part of any operator who elects not to participate as a member of the system. The corporation must establish the system by June 1, 1993.

Between 2 and 5 days prior to excavating, an excavator must furnish the system detailed information about the proposed work. Incoming and outgoing calls will be recorded, and such recordings will be

kept for 5 years. Each caller will receive the names of the members who will be contacted and a notification number specifying the date and time. All members located within the area of the proposed excavation will be notified by the center. If the proposed work will affect a member's facilities, the member must mark their horizontal route within 48 hours. The excavator may not work until the marking is completed, the excavator has been notified that no facilities are in the proposed area, or 48 hours have passed, whichever occurs first. If the member fails to mark within 48 hours of receiving notification, the excavator may proceed with reasonable care if detection equipment is used.

The member is responsible for notifying the excavator within 48 hours if the proposed work is not near the member's facilities. If the facility is not marked and the excavator knows that a member has facilities in the area, the excavator must contact the member. Members must follow certain recommended guidelines for marking. The excavator must seek re-marking if the original marking is removed or is no longer visible. The excavator must notify the member if facilities are contacted or damaged. In such a case, the member must dispatch repair personnel, and the excavator's work must cease until repairs are made.

A rebuttal presumption of negligence is created for persons who fail to notify the center or to abide by the waiting period and whose work later causes damages. Damages shall be for losses to all members as those costs are normally computed; however, for loss of revenue or use, damages are capped at \$500,000 per facility. The receipt of information does not excuse excavators from working carefully or from liability for damages. If a member receives proper notice and fails to act as directed by the bill, the excavator is not liable for damages. In this case, the member, if found liable, is responsible for losses, injury or damages subject to the above cap. If the system receives proper notice and fails to discharge its duties, resulting in damage to a facility, and it is found liable, it is responsible for damages; however, for loss of revenue or use, damages are subject to the above cap.

The bill imposes a civil penalty on excavators of up to \$1,000 per first violation and up to \$5,000 for subsequent violations during a 12-month period. Removal or destruction of markings is made a second degree misdemeanor. It authorizes legal action to enforce the penalty by the various agencies and local governments. The bill exempts owners of single-family residential property from the notification requirement when excavation or demolition occurs on their property. It also provides that the act does not create, enlarge, waive, or preempt any real property rights or interests or regulation of rights-of-way.

C. SECTION-BY-SECTION ANALYSIS:

Section 1. Provides that the bill shall be entitled "Underground Facility Damage Prevention and Safety Act." It expresses legislative intent that a single toll-free telephone number be used by excavators and others to give notice of their intent to excavate so the owners of underground facilities may mark their facilities.

Its purposes are to prevent injury, damage and service interruption. No liability for negligence is created on the part of any underground facility operator who elects not to participate in the system being established.

Section 2. Defines "business days," "business hours," "damage," "demolish or demolition," "excavate or excavation," "excavator," "member operator," "person," "underground facility," and "system."

Section 3. Creates a not-for-profit corporation named the "Sunshine State One-Call of Florida, Inc.," which shall be formed by June 1, 1993, for purposes of administering the provisions of this bill. It provides for any underground facility operator in Florida to become a member of the corporation and to participate in the system. Members shall elect a board of directors which is authorized to assess members to fund system operations. It provides for the board to file annual progress reports, commencing in 1994, with the Governor.

Section 4. Requires the corporation to establish the system by June 1, 1994. Any person who furnishes or transports materials or services through underground facilities may elect to become a member. Members receive notifications of planned excavation or demolition activities. A single toll-free telephone number will be used by excavators to notify the system of their planned activities, and the system notifies members of such plans.

Section 5. Provides that, between 2 and 5 days prior to excavating, an excavator must furnish the system information identifying the excavator, the geographical location of the intended excavation, commencement and termination dates, machinery to be employed, and various details about the work, including type and depth. Information is to be provided by calling the statewide toll-free number during business hours; any call received at a time other than during business hours is considered to be received at the beginning of the next business day.

Incoming and outgoing calls will be recorded, kept for 5 years, and made available upon request. Callers receive the names of members who will be contacted and a notification number specifying the date and time. All members located within the area of the proposed excavation will be promptly notified by the center.

Any member who determines that the proposed excavation may affect the member's facilities must mark the horizontal route within 48 hours or seek more time. The excavator must avoid excavation until the marking is completed, the excavator has been notified that no member has facilities in the area, or 48 hours have passed, whichever occurs first. If the member fails to mark within 48 hours of receiving notification, the excavator may proceed with reasonable care if detection equipment is used. An excavator cannot demolish until all members have marked or removed their facilities.

It exempts members from the marking requirement if they lack accurate information about a facility's location, but the excavator must be furnished the best available information. An excavator is

not liable for damages under this exemption if excavation is performed with reasonable care if detection equipment is used.

Under extraordinary circumstances, a member may notify the system of the member's inability to comply, and the system will notify those prospective excavators who request such notification after the inability was reported. The member is then relieved of liability during the period of the extraordinary circumstance but must notify the system when these circumstances cease. During the extraordinary circumstances, the system must remain available to furnish information.

The member is responsible for notifying the excavator with 48 hours if the member determines that the proposed excavation or demolition is not near the member's facilities. If the excavator has knowledge of a member's facility in the area, the excavator is responsible for contacting the member if the facility is not marked. Members must follow certain recommended guidelines for marking. The excavator is responsible for stopping excavation or demolition and seeking re-marking if the original marking is removed or is no longer visible. The excavator must immediately notify the member if facilities are contacted or damaged. Upon receiving such notification, the member must dispatch repair personnel. The excavator must cease excavation or demolition until repairs are made.

Section 6. Relieves the directors of the corporation from any liability for their administrative actions. It provides that persons who fail to notify the center or to abide by the waiting period are rebuttably presumed to have been negligent if their excavation or demolition damages a member's facilities. It provides that violators are liable for losses as damages are normally computed. Damages for loss of revenue or use are capped at \$500,000 per facility. Liability for violations by the state, its agencies, or its subdivisions, are subject to the provisions of section 768.28, Florida Statutes.

Receiving information as to facility location does not excuse excavators for working carefully nor from liability for damage or injury. When an excavator knows or should know of the presence of underground facilities, the excavator must contact the operator prior to commencing work, regardless of whether the operator is a member. If a member receives proper notice and fails to discharge a duty under the bill, the excavator is not liable for damages. In this case, the member, if found liable, is responsible for any losses, injury or damages, that result, subject to the above cap. If the notification center receives proper notice and fails to discharge its duties, resulting in damage to a facility, and it is found liable, the system shall be responsible, with damages for loss of revenue or use subject to the above cap. Limited exceptions to the damage cap for lost revenues are applicable for governmental members.

Section 7. Imposes a civil penalty on excavators of up to \$1,000 per first violation and up to \$5,000 for subsequent violations during a 12-month period. It provides that knowing and willful

removal or destruction of markings is a second degree misdemeanor. It authorizes legal action to enforce the penalty by the Attorney General, the state attorney, or any local or state agency issuing a permit to excavate. It disburses the penalty to the general fund of such agency or to the general funds of multiple agencies as apportioned by the court based on their relative costs.

Section 8. Exempts owners of single-family residential property from the notification requirement when excavation or demolition occurs on their property unless a member's right-of-way, easement or permitted use is involved.

Section 9. Provides an exception for excavation or demolition during emergencies if the system or member is timely notified and reasonable precautions are taken. It defines "emergency" as a condition threatening danger to life or property, an interruption of vital public service or communications, or an unforeseen circumstance requiring immediate repair of streets or highways.

Section 10. Provides that members shall proportionately share the cost of operating the system.

Section 11. Provides for the act's applicability to existing law by establishing that it does not create, enlarge, waive, or preempt any real property rights or interests or regulation of rights-of-way.

Section 12. Provides that the act's provisions are severable and that if any provision is held to be invalid, the balance of the act shall be given effect.

Section 13. Provides that the bill takes effect upon becoming law.

### III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

#### A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Minimal. Costs will be borne by governmental entities that elect to become members of the not-for-profit corporation.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Minimal. Costs will be borne by private sector entities that elect to become members of the not-for-profit corporation.

2. Direct Private Sector Benefits:

Indeterminate. To the extent that the system lessens the risk of damage to underground facilities that is inherent in excavation and demolition, the private sector and all users of services provided through these facilities should experience improved service and lower costs.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminate.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Not applicable.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

Not applicable.

STORAGE NAME: h0795s1.bpr

DATE: March 2, 1993

PAGE 8

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

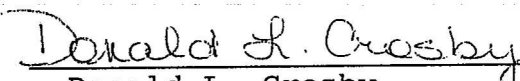
None.

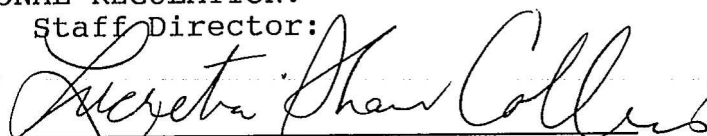
VII. SIGNATURES:

COMMITTEE ON BUSINESS & PROFESSIONAL REGULATION:

Prepared by:

Staff Director:

  
\_\_\_\_\_  
Donald L. Crosby

  
\_\_\_\_\_  
Lucretia Shaw Collins

STORAGE NAME: h0795.bpr  
DATE: February 17, 1993

HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
BUSINESS & PROFESSIONAL REGULATION  
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 795  
RELATING TO: Underground Facilities  
SPONSOR(S): Representatives Bloom and Villalobos  
STATUTE(S) AFFECTED:  
COMPANION BILL(S): SB 1276(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS & PROFESSIONAL REGULATION
- (2) APPROPRIATIONS
- (3)
- (4)
- (5)

\*\*\*\*\*

I. SUMMARY:

This bill creates the "Underground Facility Damage Prevention and Safety Act" intended to establish a statewide one-call notification system. Under this system, a single toll-free telephone number will be provided for use by persons throughout Florida to give notice of their intent to excavate. Notice of these calls will be transmitted to the owners of underground facilities, thereby affording them an opportunity to identify their facilities before excavation commences. The bill's purpose is to prevent death, injury, damage and service interruption, by marking the location of buried facilities so that excavation operations can avoid contacting and damaging them.

The bill creates a not-for-profit corporation, the "Sunshine State One-Call of Florida, Inc." Any underground facility operator may elect to participate as a member of the system by becoming a member of the corporation. Members will choose a board of directors who is authorized to assess members for money to fund the system's operations. No liability for negligence is created on the part of any such operator who elects not to participate as a member of the system. The corporation must set up the system by March 1, 1994.

Within 48 hours of excavating, an excavator must inform the system of the proposed work. All members located within the affected area will be notified, and members whose facilities are at risk must mark the route of these facilities within 48 hours. Strict liability is provided for persons who fail to notify the center or to abide by the waiting period and who cause damages. If an excavator knows that such facilities are present, the operator must be contacted prior to commencing work. The bill imposes a civil penalty for violations by excavators and provides that removal or destruction of markings is a second degree misdemeanor.

The bill has no fiscal impact on state agencies or local governments, and the fiscal effects on the private sector are indeterminate.

## II. SUBSTANTIVE ANALYSIS:

### A. PRESENT SITUATION:

Section 553.851, Florida Statutes, requires that excavators obtain information about the location of gas pipelines in an area of proposed excavation prior to commencing any work in certain places. This statute provides that the excavator may call a utility notification center operating in the area to request such information. Upon being notified of this contact, the owner of the gas pipeline is obligated to mark its location or notify the excavator that no gas pipeline exists in the concerned area.

Current law makes no provision for a statewide organization dedicated to reducing injury, death and monetary loss caused by excavation and demolition operations that contact or damage all facilities installed underground. Underground facilities in addition to petroleum and gas pipes and pipelines include power lines, telecommunications cables and fiber optics, and water and wastewater pipes. The risk of death or injury from contacting an energized power line can be quite high. Huge monetary losses are caused by cutting a fiber optic facility that routinely carries massive volumes of telecommunications messages.

Most operators of underground facilities, such as utility companies, have set up notification procedures within their service territories for receiving such calls from excavators and responding to protect these facilities. Additionally, private entities have organized systems, such as "Call Candy" and "Call Uncle," to act as agents for such operators for these purposes. These entities have contracted with various underground facility operators to receive calls and to furnish their clients notice of excavators' intentions.

### B. EFFECT OF PROPOSED CHANGES:

This bill creates the "Underground Facility Damage Prevention and Safety Act." The act establishes a one-call notification system which provides a single toll-free telephone number for use by persons throughout Florida to give notice of their intent to excavate or demolish. These calls will be received at a center where notices of these calls will be transmitted to underground facility operators. This will afford operators the opportunity to mark their facilities before excavation commences.

A not-for-profit corporation, the "Sunshine State One-Call of Florida, Inc.," is created to administer the system. Any underground facility operator may elect to become a member of the corporation, and the members will elect directors who are authorized to assess members to fund system operations. No liability for negligence is created on the part of any operator who elects not to participate as a member of the system. The corporation must establish the system by March 1, 1994.

Between 2 and 5 days prior to excavating, an excavator must furnish the system detailed information about the proposed work. Incoming and outgoing calls will be recorded, and such recordings will be

kept for 5 years. Each caller will receive the names of the members who will be contacted and a notification number specifying the date and time. All members located within the area of the proposed excavation will be notified by the center. If the proposed work will affect a member's facilities, the member must mark their horizontal route within 48 hours. The excavator may not work until the marking is completed or 48 hours have passed, whichever occurs first. If the member fails to mark within 48 hours of receiving notification, the excavator may proceed with reasonable care if detection equipment is used.

The member is responsible for notifying the excavator within 48 hours if the proposed work is not near the member's facilities. If the facility is not marked, the excavator must contact the member. Members must follow certain recommended guidelines for marking. The excavator must seek re-marking if the original marking is removed or is no longer visible. The excavator must notify the member if facilities are contacted or damaged. In such a case, the member must dispatch repair personnel, and the excavator's work must cease until repairs are made.

Strict liability for damages is imposed on persons who fail to notify the center or to abide by the waiting period. Damages include repair or replacement costs, property damage, personal injury and death, and loss of revenue or use capped at \$500,000 per facility. The receipt of information does not excuse excavators from working carefully or from liability for damages. If a member receives proper notice and fails to act as directed by the bill, the excavator is not liable for damages. In this case, the member is liable for losses, injury or damages subject to the above cap. If the system receives proper notice and fails to discharge its duties, resulting in damage to a facility, it is liable for loss of revenue or use subject to the above cap.

The bill imposes a civil penalty on excavators of up to \$1,000 and \$5,000 for first and subsequent violations. Removal or destruction of markings is made a second degree misdemeanor. It authorizes legal action to enforce the penalty by the various agencies and local governments. The bill exempts owners of single-family residential property from the notification requirement when excavation or demolition occurs on their property. It also provides that the act does not create, enlarge, waive, or preempt any real property rights or interests or regulation of rights-of-way.

C. SECTION-BY-SECTION ANALYSIS:

Section 1. Provides that the bill shall be entitled "Underground Facility Damage Prevention and Safety Act." It expresses legislative intent that a single toll-free telephone number be used by excavators and others to give notice of their intent to excavate so the owners of underground facilities may mark their facilities. Its purposes are to prevent injury, damage and service interruption. No liability for negligence is created on the part of any underground facility operator who elects not to participate in the system being established.

Section 2. Defines "business days," "business hours," "damage," "demolish or demolition," "excavate or excavation," "excavator," "member operator," "person," "underground facility," and "system."

Section 3. Creates a not-for-profit corporation named the "Sunshine State One-Call of Florida, Inc.," for administering the provisions of this bill. It provides for any underground facility operator in Florida to become a member of the corporation and to participate in the system. Members shall elect a board of directors which is authorized to assess members to fund system operations. It provides for the board to file annual progress reports, commencing in 1994, with the Governor.

Section 4. Requires the corporation to establish the system by March 1, 1994. Any person who furnishes or transports materials or services through underground facilities may elect to become a member. Members receive notifications of planned excavation activities. A single toll-free telephone number will be used by excavators to notify members of such activities.

Section 5. Provides that, between 2 and 5 days prior to excavating, an excavator must furnish the system information identifying the excavator, the geographical location of the intended excavation, commencement and termination dates, machinery to be employed, and various details about the work, including type and depth. Information is to be provided by calling the statewide toll-free number during business hours; any call during other hours is considered to be made the following day.

Incoming and outgoing calls will be recorded, kept for 5 years, and made available upon request. Callers receive the names of members who will be contacted and a notification number specifying the date and time. All members located within the area of the proposed excavation will be notified by the center.

Any member who determines that the proposed excavation may affect the member's facilities must mark the horizontal route within 48 hours or seek more time. The excavator must avoid excavation until the marking is completed or 48 hours have passed, whichever occurs first. If the member fails to mark within 48 hours of receiving notification, the excavator may proceed with reasonable care if detection equipment is used. An excavator cannot excavate or demolish until all members have marked or removed their facilities.

It exempts members from the marking requirement if they lack accurate information about a facility's location, but the excavator must be furnished the best available information. An excavator is not liable for damages under this exemption if excavation is performed with reasonable care if detection equipment is used.

Under extraordinary circumstances, a member may notify the system of the member's inability to comply, and the system will notify those prospective excavators who request such notification after the inability was reported. The member is then relieved of liability during the period of the extraordinary circumstance but must notify the system when these circumstances cease. During the

extraordinary circumstances, the system must remain available to furnish information.

The member is responsible for notifying the excavator with 48 hours if the member determines that the proposed excavation or demolition is not near the member's facilities. If the facility is not marked, the excavator is responsible for contacting the member. Members must follow certain recommended guidelines for marking. The excavator is responsible for stopping excavation or demolition and seeking re-marking if the original marking is removed or is no longer visible. The excavator must immediately notify the member if facilities are contacted or damaged. Upon receiving such notification, the member must dispatch repair personnel. The excavator must cease excavation or demolition until repairs are made.

Section 6. Relieves the directors of the corporation from any liability for their administrative actions. It provides for strict liability of persons who fail to notify the center or to abide by the waiting period if excavation or demolition damages a member's facilities. It makes such persons liable for repair or replacement costs, for property damage, personal injury and death, and for loss of revenue or use capped at \$500,000 per facility. It also provides for indemnity of the member by the excavator. For other violations of the act, an excavator will be liable for the losses to all parties subject to the above cap.

Receiving information as to facility location does not excuse excavators for working carefully nor from liability for damage or injury. When an excavator knows or should know of the presence of underground facilities, the excavator must contact the operator prior to commencing work, regardless of whether the operator is a member. If a member receives proper notice and fails to discharge a duty under the bill, the excavator is not liable for damages. In this case, the member is liable for any losses, injury or damages, that result, subject to the above cap. If the notification center receives proper notice and fails to discharge its duties, resulting in damage to a facility, the system shall be liable, with damages for loss of revenue or use subject to the above cap. Limited exceptions to the damage cap for lost revenues are applicable for governmental members.

Section 7. Imposes a civil penalty of up to \$1,000 per first violation and \$5,000 for subsequent violation within 12 months on knowing and willful violations by excavators. It provides that knowing and willful removal or destruction of markings is a second degree misdemeanor. It authorizes legal action to enforce the penalty by the Attorney General, the state attorney, or any local or state agency issuing a permit to excavate. It disbursed the penalty to the general fund of such agency or to the general funds of multiple agencies as apportioned by the court based on their relative costs.

Section 8. Exempts owners of single-family residential property from the notification requirement when excavation or demolition occurs on their property unless a member's right-of-way, easement or permitted use is involved.

Section 9. Provides an exception for excavation or demolition during emergencies if the system or member is timely notified and reasonable precautions are taken. It defines "emergency" as a condition threatening danger to life or property, an interruption of vital public service or communications, or an unforeseen circumstance requiring immediate repair of streets or highways.

Section 10. Provides that members shall proportionately share the cost of operating the system.

Section 11. Provides for the act's applicability to existing law by establishing that it does not create, enlarge, waive, or preempt any real property rights or interests or regulation of rights-of-way.

Section 12. Provides that the act's provisions are severable and that if any provision is held to be invalid, the balance of the act shall be given effect.

Section 13. Provides that the bill takes effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Minimal. Costs will be borne by governmental entities that elect to become members of the not-for-profit corporation.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Minimal. Costs will be borne by private sector entities that elect to become members of the not-for-profit corporation.

2. Direct Private Sector Benefits:

Indeterminate. To the extent that the system lessens the risk of damage to underground facilities that is inherent in excavation and demolition, the private sector and all users of services provided through these facilities should experience improved service and lower costs.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminate.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Not applicable.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

Not applicable.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:


None.

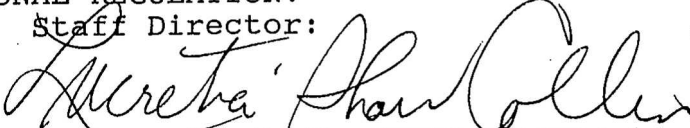
VII. SIGNATURES:

COMMITTEE ON BUSINESS & PROFESSIONAL REGULATION:

Prepared by:

Staff Director:

  
\_\_\_\_\_  
Donald L. Crosby

  
\_\_\_\_\_  
Lucretia Shaw Collins



House of Representatives

SUBCOMMITTEE REPORT/INFORMATION RECORD

File with Parent Committee

TO: Chairman, Committee on BUSINESS & PROFESSIONAL REGULATION

Subcommittee on PUBLIC & PRIVATE UTILITIES

Date of Meeting February 19, 1993

Time 3:30 P.M.

Place 16 House Office Building

BILL NO. HB 795

FINAL ACTION:

- Favorable
- Favorable with \_\_\_\_\_ Amendments
- Favorable with Proposed Substitute
- Unfavorable

VOTE:

YEA	MEMBER	NAY
X	Benson	
X	Burke	
X	Dawson	
	Hafner	
	Jamerson	
X	McClure	
	Safley	
X	Warner	
X	Wise	
X	Rayson, Chr.	

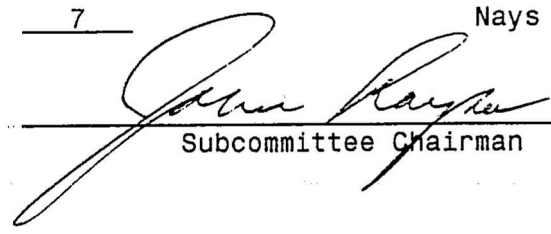
YEA	MEMBER	NAY

Total Yeas 7

Total Nays 0

IF PRESENT, MEMBER WOULD HAVE VOTED:

X	Jamerson	

  
 Subcommittee Chairman

APPEARANCE RECORD

The following persons (other than legislators) appeared before the committee during the consideration of this bill:

Name	Representing	Address

Note: Please indicate by an "X" any State employee appearing at the request of the Chairman.

Received by Parent Committee:

Date: \_\_\_\_\_

Received by: \_\_\_\_\_

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Caldwell <i>JC</i>	Fort <i>MB</i>	1. CM	_____
2. _____	_____	2. GO	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Underground Facilities

BILL NO. AND SPONSOR:

SB 1276 by  
Senator Silver and others

I. SUMMARY:

A. Present Situation:

Section 553.851, Florida Statutes, requires that excavators obtain information about the location of gas pipelines in an area of proposed excavation prior to commencing any work in certain places. This statute provides that the excavator may call a utility notification center operating in the area to request such information. Upon being notified of this contact, the owner of the gas pipeline is obligated to mark its location or notify the excavator that no gas pipeline exists in the concerned area.

**COPY**

reproduced by  
 FLORIDA STATE ARCHIVES  
 DEPARTMENT OF STATE  
 R. A. GRAY BUILDING  
 Tallahassee, FL 32399-0250  
 Series 18 Carton 2075

Current law makes no provision for a statewide organization dedicated to reducing injury, death and monetary loss caused by excavation and demolition operations that contact or damage all facilities installed underground. Underground facilities in addition to petroleum and gas pipes and pipelines include power lines, telecommunications cables and fiber optics, and water and wastewater pipes. The risk of death or injury from contacting an energized power line can be quite high. Huge monetary losses are caused by cutting a fiber optic facility that routinely carries massive volumes of telecommunications messages.

Most operators of underground facilities, such as utility companies, have set up notification procedures within their service territories for receiving such calls from excavators and responding to protect these facilities. Additionally, private entities have organized systems, such as "Call Candy" and "Call Uncle," to act as agents for such operators for these purposes. These entities have contracted with various underground facility operators to receive calls and to furnish their clients notice of excavators' intentions.

B. Effect of Proposed Changes:

This bill creates the "Underground Facility Damage Prevention and Safety Act." The act establishes a one-call notification system which provides a single toll-free telephone number for use by persons throughout Florida to give notice of their intent to excavate or demolish.

A section-by-section analysis provides:

Section 1. Provides that the bill shall be entitled "Underground Facility Damage Prevention and Safety Act."

Section 2. Provides for legislative intent which expresses that a single toll-free telephone number be used so the owners of underground facilities may mark their facilities. Its purposes are to prevent injury, damage and service interruption.

No liability for negligence is created on the part of any underground facility operator who elects not to participate in the system being established.

Section 3. Defines "business days," "business hours," "damage," "demolish or demolition," "excavate or excavation," "excavator," "member operator," "person," "underground facility," and "system."

Section 4. Creates a not-for-profit corporation named the "Sunshine State One-Call of Florida, Inc.," which shall be formed by June 1, 1993, for purposes of administering the provisions of this bill. It provides for any underground facility operator in Florida to become a member of the corporation and to participate in the system. Members shall elect a board of directors which is authorized to assess members to fund system operations. It provides for the board to file annual progress reports, commencing in 1994, with the Governor.

Section 5. Requires the corporation to establish the system by March 1, 1994. Any person who furnishes or transports materials or services through underground facilities may elect to become a member. Members receive notifications of planned excavation or demolition activities. A single toll-free telephone number will be used by excavators to notify the system of their planned activities, and the system notifies members of such plans.

Section 6. Provides that, between 2 and 5 days prior to excavating, an excavator must furnish the system information identifying the excavator, the geographical location of the intended excavation, commencement and termination dates, machinery to be employed, and various details about the work, including type and depth. Information is to be provided by calling the statewide toll-free number during business hours; any call received at a time other than during business hours is considered to be received at the beginning of the next business day.

Incoming and outgoing calls will be recorded, kept for 5 years, and made available upon request. Callers receive the names of members who will be contacted and a notification number specifying the date and time. All members located within the area of the proposed excavation will be promptly notified by the center.

Any member who determines that the proposed excavation may affect the member's facilities must mark the horizontal route within 48 hours or seek more time. The excavator must avoid excavation until the marking is completed, the excavator has been notified that no member has facilities in the area, or 48 hours have passed, whichever occurs first. If the member fails to mark within 48 hours of receiving notification, the excavator may proceed with reasonable care if detection equipment is used. An excavator cannot demolish until all members have marked or removed their facilities.

It exempts members from the marking requirement if they lack accurate information about a facility's location, but the excavator must be furnished the best available information. An excavator is not liable for damages under this exemption if excavation is performed with reasonable care if detection equipment is used.

Under extraordinary circumstances, a member may notify the system of the member's inability to comply, and the system will notify those prospective excavators who request such notification after the inability was reported. The member is then relieved of liability during the period of the extraordinary circumstance but must notify the system when

these circumstances cease. During the extraordinary circumstances, the system must remain available to furnish information.

The member is responsible for notifying the excavator within 48 hours if the member determines that the proposed excavation or demolition is not near the member's facilities. If the excavator has knowledge of a member's facility in this area, the excavator is responsible for contacting the member if the facility is not marked. Members must follow certain recommended guidelines for marking. The excavator is responsible for stopping excavation or demolition and seeking re-marking if the original marking is removed or is no longer visible. The excavator must immediately notify the member if facilities are contacted or damaged. Upon receiving such notification, the member must dispatch repair personnel. The excavator must cease excavation or demolition until repairs are made.

Section 7. Relieves the directors of the corporations from any liability for their administrative actions. It provides that persons who fail to notify the center or to abide by the waiting period are rebuttably presumed to have been negligent if their excavation or demolition damages a member's facilities. It provides that violators are liable for losses as damages are normally computed. Damages for loss of revenue or use are capped at \$500,000 per facility. Liability for violations by the state, its agencies, or its subdivisions, are subject to the provisions of section 768.28, F.S..

Receiving information as to facility location does not excuse excavators for working carefully nor from liability for damage or injury. When an excavator knows or should know of the presence of underground facilities, the excavator must contact the operator prior to commencing work, regardless of whether the operator is a member. If a member receives proper notice and fails to discharge a duty under the bill, the excavator is not liable for damages. In this case, the member is liable for any losses, injury or damages, that result, subject to the above cap. If the notification center receives proper notice and fails to discharge its duties, resulting in damage to a facility, the system shall be liable, with damages for loss of revenue or use subject to the above cap. Limited exceptions to the damage cap for lost revenues are applicable for governmental members.

Section 8. Imposes a civil penalty of up to \$1,000 per first violation and \$5,000 for subsequent violation within 12 months on knowing and willful violations by excavators. It provides that knowing and willful removal or destruction of markings is a second degree misdemeanor. It authorizes legal action to enforce the penalty by the Attorney General, the state attorney, or any local or state agency issuing a permit to excavate. It disbursed the penalty to the general fund of such agency or to the general funds of multiple agencies as apportioned by the court based on their relative costs.

Section 9. Exempts owners of single-family residential property from the notification requirement when excavation or demolition occurs on their property unless a member's right-of-way, easement or permitted use is involved.

Section 10. Provides an exception for excavation or demolition during emergencies if the system or member is timely notified and reasonable precautions are taken. It defines "emergency" as a condition threatening danger to life or property, an interruption of vital public service or communications, or an unforeseen circumstance requiring immediate repair of streets or highways.

Section 11. Provides that members shall proportionately share the cost of operating the system.

Section 12. Provides for the act's applicability to existing law by establishing that it does not create, enlarge, waive, or preempt any real property rights or interests or regulation of rights-of-way.

Section 13. Provides that the act's provisions are severable and that if any provision is held to be invalid, the remainder of the act shall be given effect.

Section 14. Provides that the bill takes effect upon becoming law.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The economic and fiscal impact is indeterminable. To the extent that the system lessens the risk of damage to underground facilities that is inherent in excavation and demolition, the private sector and all users of services provided through these facilities should experience improved service and lower costs.

B. Government:

None.

III. MUNICIPALITY/COUNTY MANDATES RESTRICTIONS:

None.

IV. COMMENTS:

None.

V. AMENDMENTS:

None.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. Caldwell	Fort	1. CM	Fav/1 amend.
2. _____	_____	2. GO	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Underground Facilities

BILL NO. AND SPONSOR:

SB 1276 by  
Senator Silver and others

I. SUMMARY:

A. Present Situation:

Section 553.851, Florida Statutes, requires that excavators obtain information about the location of gas pipelines in an area of proposed excavation prior to commencing any work in certain places. This statute provides that the excavator may call a utility notification center operating in the area to request such information. Upon being notified of this contact, the owner of the gas pipeline is obligated to mark its location or notify the excavator that no gas pipeline exists in the concerned area.

Current law makes no provision for a statewide organization dedicated to reducing injury, death and monetary loss caused by excavation and demolition operations that contact or damage all facilities installed underground. Underground facilities in addition to petroleum and gas pipes and pipelines include power lines, telecommunications cables and fiber optics, and water and wastewater pipes. The risk of death or injury from contacting an energized power line can be quite high. Huge monetary losses are caused by cutting a fiber optic facility that routinely carries massive volumes of telecommunications messages.

Most operators of underground facilities, such as utility companies, have set up notification procedures within their service territories for receiving such calls from excavators and responding to protect these facilities. Additionally, private entities have organized systems, such as "Call Candy" and "Call Uncle," to act as agents for such operators for these purposes. These entities have contracted with various underground facility operators to receive calls and to furnish their clients notice of excavators' intentions.

B. Effect of Proposed Changes:

This bill creates the "Underground Facility Damage Prevention and Safety Act." The act establishes a one-call notification system which provides a single toll-free telephone number for use by persons throughout Florida to give notice of their intent to excavate or demolish.

A section-by-section analysis provides:

Section 1. Provides that the bill shall be entitled "Underground Facility Damage Prevention and Safety Act."

Section 2. Provides for legislative intent which expresses that a single toll-free telephone number be used so the owners of underground facilities may mark their facilities. Its purposes are to prevent injury, damage and service interruption.

No liability for negligence is created on the part of any underground facility operator who elects not to participate in the system being established.

Section 3. Defines "business days," "business hours," "damage," "demolish or demolition," "excavate or excavation," "excavator," "member operator," "person," "underground facility," and "system."

Section 4. Creates a not-for-profit corporation named the "Sunshine State One-Call of Florida, Inc.," which shall be formed by June 1, 1993, for purposes of administering the provisions of this bill. It provides for any underground facility operator in Florida to become a member of the corporation and to participate in the system. Members shall elect a board of directors which is authorized to assess members to fund system operations. It provides for the board to file annual progress reports, commencing in 1994, with the Governor.

Section 5. Requires the corporation to establish the system by March 1, 1994. Any person who furnishes or transports materials or services through underground facilities may elect to become a member. Members receive notifications of planned excavation or demolition activities. A single toll-free telephone number will be used by excavators to notify the system of their planned activities, and the system notifies members of such plans.

Section 6. Provides that, between 2 and 5 days prior to excavating, an excavator must furnish the system information identifying the excavator, the geographical location of the intended excavation, commencement and termination dates, machinery to be employed, and various details about the work, including type and depth. Information is to be provided by calling the statewide toll-free number during business hours; any call received at a time other than during business hours is considered to be received at the beginning of the next business day.

Incoming and outgoing calls will be recorded, kept for 5 years, and made available upon request. Callers receive the names of members who will be contacted and a notification number specifying the date and time. All members located within the area of the proposed excavation will be promptly notified by the center.

Any member who determines that the proposed excavation may affect the member's facilities must mark the horizontal route within 48 hours or seek more time. The excavator must avoid excavation until the marking is completed, the excavator has been notified that no member has facilities in the area, or 48 hours have passed, whichever occurs first. If the member fails to mark within 48 hours of receiving notification, the excavator may proceed with reasonable care if detection equipment is used. An excavator cannot demolish until all members have marked or removed their facilities.

It exempts members from the marking requirement if they lack accurate information about a facility's location, but the excavator must be furnished the best available information. An excavator is not liable for damages under this exemption if excavation is performed with reasonable care if detection equipment is used.

Under extraordinary circumstances, a member may notify the system of the member's inability to comply, and the system will notify those prospective excavators who request such notification after the inability was reported. The member is then relieved of liability during the period of the extraordinary circumstance but must notify the system when

these circumstances cease. During the extraordinary circumstances, the system must remain available to furnish information.

The member is responsible for notifying the excavator within 48 hours if the member determines that the proposed excavation or demolition is not near the member's facilities. If the excavator has knowledge of a member's facility in this area, the excavator is responsible for contacting the member if the facility is not marked. Members must follow certain recommended guidelines for marking. The excavator is responsible for stopping excavation or demolition and seeking re-marking if the original marking is removed or is no longer visible. The excavator must immediately notify the member if facilities are contacted or damaged. Upon receiving such notification, the member must dispatch repair personnel. The excavator must cease excavation or demolition until repairs are made.

Section 7. Relieves the directors of the corporations from any liability for their administrative actions. It provides that persons who fail to notify the center or to abide by the waiting period are rebuttably presumed to have been negligent if their excavation or demolition damages a member's facilities. It provides that violators are liable for losses as damages are normally computed. Damages for loss of revenue or use are capped at \$500,000 per facility. Liability for violations by the state, its agencies, or its subdivisions, are subject to the provisions of section 768.28, F.S..

Receiving information as to facility location does not excuse excavators for working carefully nor from liability for damage or injury. When an excavator knows or should know of the presence of underground facilities, the excavator must contact the operator prior to commencing work, regardless of whether the operator is a member. If a member receives proper notice and fails to discharge a duty under the bill, the excavator is not liable for damages. In this case, the member is liable for any losses, injury or damages, that result, subject to the above cap. If the notification center receives proper notice and fails to discharge its duties, resulting in damage to a facility, the system shall be liable, with damages for loss of revenue or use subject to the above cap. Limited exceptions to the damage cap for lost revenues are applicable for governmental members.

Section 8. Imposes a civil penalty of up to \$1,000 per first violation and \$5,000 for subsequent violation within 12 months on knowing and willful violations by excavators. It provides that knowing and willful removal or destruction of markings is a second degree misdemeanor. It authorizes legal action to enforce the penalty by the Attorney General, the state attorney, or any local or state agency issuing a permit to excavate. It disbursed the penalty to the general fund of such agency or to the general funds of multiple agencies as apportioned by the court based on their relative costs.

Section 9. Exempts owners of single-family residential property from the notification requirement when excavation or demolition occurs on their property unless a member's right-of-way, easement or permitted use is involved.

Section 10. Provides an exception for excavation or demolition during emergencies if the system or member is timely notified and reasonable precautions are taken. It defines "emergency" as a condition threatening danger to life or property, an interruption of vital public service or communications, or an unforeseen circumstance requiring immediate repair of streets or highways.

BILL VOTE SHEET

(VS-90: File with Secretary of Senate)

BILL NO. SB 1276

COMMITTEE ON: Commerce

DATE: March 1, 1993

ACTION:

TIME: 02:00 PM -- 06:00 PM

Favorably with 1 amendments

PLACE: Room "EL"

Favorably with Committee Substitute

OTHER COMMITTEE REFERENCES:  
(in order shown)

Unfavorably

Governmental Operations

Submitted as a Committee Bill

Temporarily Passed

Reconsidered

Not Considered

NO QUORUM

THE VOTE WAS:

03/01/93

FINAL BILL VOTE		SENATORS	Amend. #1 Silver									
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
		Burt										
X		Casas										
		Dudley										
X		Forman										
X		Holzendorf										
		Jenne										
		Jennings										
X		McKay										
		Scott										
X		Silver										
X		Wexler										
X		Williams										
X		VICE CHAIRMAN Childers										
X		CHAIRMAN Grant										
9	0	TOTAL	FWO	-								
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay

Please Complete: The key sponsor appeared ( )  
 A Senator appeared ( )  
 Sponsor's aide appeared ( )  
 Other appearance ( )

03/02/93  
3:56 PM

Section 11. Provides that members shall proportionately share the cost of operating the system.

Section 12. Provides for the act's applicability to existing law by establishing that it does not create, enlarge, waive, or preempt any real property rights or interests or regulation of rights-of-way.

Section 13. Provides that the act's provisions are severable and that if any provision is held to be invalid, the remainder of the act shall be given effect.

Section 14. Provides that the bill takes effect upon becoming law.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The economic and fiscal impact is indeterminable. To the extent that the system lessens the risk of damage to underground facilities that is inherent in excavation and demolition, the private sector and all users of services provided through these facilities should experience improved service and lower costs.

B. Government:

None.

III. MUNICIPALITY/COUNTY MANDATES RESTRICTIONS:

None.

IV. COMMENTS:

None.

V. AMENDMENTS:

#1 by Commerce - The amendment deletes the strict liability provisions for any person who fails to call to check for underground facilities within the required time, or begins excavation before the area is marked, as required by the bill, or before the expiration of 48 hours. Instead, the amendment provides that the person who fails to call to check for underground facilities, or begins excavation before the area is marked, as required by the bill, or before the expiration of 48 hours is presumed negligent. However, that presumption is rebuttable.

The amendment provides that persons found liable, shall be liable for the total sum of losses to all member operators. A cap of \$500,000 per affected underground is placed on the loss which can be recovered. Losses sustained by government members are treated differently.

Excavators, if found liable, may also be liable for the total sum of the losses to all parties involved. The same cap on the amount of damages applies, as does the same exception for governmental members.

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
UTILITIES AND COMMUNICATIONS  
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/SB 1646  
**RELATING TO:** Underground Facility Damage Prevention and Safety Act  
**SPONSOR(S):** Committee on Regulated Industries and Senator Lee  
**STATUTE(S) AFFECTED:** ss. 556.101, 556.102, 556.103, 556.104, 556.105, 556.106, 556.110, F.S.  
**COMPANION BILL(S):** HB 535

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) COMMERCE AND ECONOMIC OPPORTUNITIES (W/D)
- (2) REGULATED INDUSTRIES COMMITTEE
- (3)
- (4)
- (5)

**COPY**  
reproduced by  
FLORIDA STATE ARCHIVES  
DEPARTMENT OF STATE  
R.A. GRAY BUILDING  
Tallahassee, Florida 32309-0250  
Series 19 Carton 2945  
File Folder HB 535

**I. SUMMARY:**

The Sunshine State One-Call of Florida, Inc., a not-for-profit organization, was created by Chapter 93-240, Laws of Florida, codified at Chapter 556, Florida Statutes. This organization has the authority to oversee a one-call system which notifies member operators of underground facilities of intended excavation or demolition in their area. The system operates from proportionately accessed monthly member fees.

The bill would provide a deferred membership option to small municipal and county operators of underground facilities. The procedures are included for acquiring a deferral.

The bill would incorporate the small municipal and county operators's membership option into the definition of "member operator."

The bill would add language that the election of deferred membership by any small municipality or county operator does not create liability for negligence.

The bill would exclude storm drainage systems from the definition of underground facilities.

The bill would require the board of directors to submit to the Governor and the Legislature an annual progress report on the participation of municipalities and counties in the system.

The bill would amend language to provide an exemption to the notification requirements for member operators with state-owned underground facilities located within the right-of-way of a state highway.

The bill would require excavators to make reasonable efforts to contact any nonmember small cities of their intent to perform excavation or demolition.

CS/SB 1646 would take effect October 1, 1997.

## II. SUBSTANTIVE RESEARCH:

### A. PRESENT SITUATION:

The "Underground Facility Damage Prevention and Safety Act" was created by Chapter 93-240, Laws of Florida, which is codified at Chapter 556, Florida Statutes. The intent of this chapter, pursuant to section 556.01(2), Florida Statutes, is to provide a single toll-free telephone number for excavating contractors and the general public to call for notification of their intent to engage in excavation or demolition.

Section 556.103, Florida Statutes, created the Sunshine State One-Call of Florida, Inc. as a not-for-profit corporation whose purpose is to administer the provisions of this act. The corporation exercises its powers through a board of directors. The board of directors has the authority to assess the member operators a proportionate fee to fund the system, and the board is responsible for filing with the Governor an annual progress report on the operation of the system.

Section 556.102(7), Florida Statutes, defines member operator as:

...any person who furnishes or transports materials or services by means of an underground facility and who elects to participate as a member of the one-call notification center for any portion of the territory served by the person.

Member operators, as defined for section 556.102(7), Florida Statutes, currently include 215 primary members. This membership is made-up of cable, gas, petroleum, co-op electric, telephone, and private utility companies, as well as municipal and governmental entities, a school and a church.

Section 556.105, Florida Statutes, provides the procedures for the system. Any person who intends to excavate in a right-of-way can call the toll-free number to notify the system of the location, date, and other pertinent information concerning the excavation. The telephone number is advertised in telephone books, Sunshine State One-Call of Florida, Inc. literature, and identified on members' right-of-way markers. The system notifies the member operator of the planned excavation, and the act requires that the member operator identify the affected underground facilities.

Subsection (6) of section 556.105, Florida Statutes, prohibits an excavator from excavating in the area until the underground facilities have been exactly located and identified, or in the alternative, as outlined in subsection (7) of section 556.105, Florida Statutes, if the operator is unable to precisely locate its utility, the operator shall provide the best available information to the excavator in order to comply with the requirements of this section.

If the underground facilities have not been located and identified within 48 hours, the excavator may proceed with reasonable care and must use detection equipment or other acceptable means to locate the underground facilities. The excavator is not liable, under this section, for any damage to the underground facilities if the excavation or demolition is performed with reasonable care and acceptable means of locating the underground facilities are used. Pursuant to 556.105(6)(b), Florida Statutes, an excavator is prohibited from demolition in the area until all member operator underground facilities have been located and identified or removed.

B. EFFECT OF PROPOSED CHANGES:

The bill would require all operators of underground facilities to become members of the one-call system with a deferred membership option, in section 556.103, Florida Statutes, for small cities, as defined in section 120.52, Florida Statutes. Small municipality and county operators who elect to defer their membership until January 1, 2003 must submit written notification by January 1, 1998 identifying the reasons for postponing membership.

The bill would add language in section 556.101, Florida Statutes, that the election of deferred membership by any municipality or county operator does not create liability for negligence.

The bill would revise the definition in section 556.102, Florida Statutes, for "member operator" to incorporate the small cities's membership option.

The bill would exclude storm drainage systems from the definition of underground facilities.

The bill would require the board of directors to submit to the Governor and the Legislature not later than 60 days before the convening of each regular legislative session an annual progress report on the participation of municipalities and counties in the one-call system.

CS/SB 1646 would amend section 556.105, Florida Statutes, relating to the procedures excavators must follow prior to beginning any work, to include a notification exemption of proposed excavation or demolition for member operators with state-owned underground facilities located within the right-of-way of a state highway.

The bill would require excavators to make reasonable efforts to contact any nonmember small city of intended excavation or demolition.

Monthly assessment of members for the corporation's operating cost would be continued. However, the bill would add a provision whereby the fee may be waived for any particular month if during that month the member receives ten or fewer notifications.

The bill would take effect October 1, 1997.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The bill would require older cities to locate and identify their underground utilities.

- (3) any entitlement to a government service or benefit?

N/A.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A.

- (2) what is the cost of such responsibility at the new level/agency?

N/A.

- (3) how is the new agency accountable to the people governed?

N/A.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A.

- b. Does the bill require or authorize an increase in any fees?

N/A.

- c. Does the bill reduce total taxes, both rates and revenues?

N/A.

- d. Does the bill reduce total fees, both rates and revenues?

N/A.

- e. Does the bill authorize any fee or tax increase by any local government?

N/A.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A.

- (2) Who makes the decisions?

N/A.

- (3) Are private alternatives permitted?

N/A.

- (4) Are families required to participate in a program?

N/A.

(5) Are families penalized for not participating in a program?

N/A.

b. Does the bill directly affect the legal rights and obligations between family members?

N/A.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

N/A.

(1) parents and guardians?

N/A.

(2) service providers?

N/A.

(3) government employees/agencies?

N/A.

D. SECTION-BY-SECTION RESEARCH:

Please see "Effect of Proposed Changes" section.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A.

2. Recurring Effects:

N/A.

3. Long Run Effects Other Than Normal Growth:

N/A.

4. Total Revenues and Expenditures:

N/A.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

N/A.

3. Long Run Effects Other Than Normal Growth:

N/A.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate. Operators who currently are not members will incur the monthly assessment, unless they have ten or few notification, in which case there will be no costs.

2. Direct Private Sector Benefits:

Operators, excavators, and the general public would benefit from a reduction in the number of incidents where underground facilities are damaged, which should occur less frequently as a result of more facility operators being members of the one-call system.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does require counties and municipalities, depending upon the number of notifications received monthly, to spend varying amounts for their share of the operational costs of Sunshine State One-Call of Florida, Inc.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A.

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

Prepared by:

Legislative Research Director:

Wendy G. Holt

Patrick L. "Booter" Imhof

FINAL RESEARCH PREPARED BY COMMITTEE ON UTILITIES AND COMMUNICATIONS:

Prepared by:

Legislative Research Director:

Wendy G. Holt  
Wendy G. Holt

Patrick L. "Booter" Imhof  
Patrick L. "Booter" Imhof

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

COPY

reproduced by  
FLORIDA STATE ARCHIVES  
DEPARTMENT OF STATE  
R.A. GRAY BUILDING  
Tallahassee, Florida 32399-0250  
Series 18 Carton 2232  
File Folder 5016-1A Action

Date: April 15, 1997

Revised: \_\_\_\_\_

Subject: Underground Facility Damage

Analyst

Staff Director

Reference

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Masterton <i>SSM</i>	Guthrie <i>JG</i>	RI	Favorable/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill requires all operators of underground facilities, except municipalities and counties that elect not to participate, to become members of and participate in the one-call system administered by Sunshine State One-Call of Florida, pursuant to ch. 556, F.S.

This bill substantially amends the following sections of the Florida Statutes: 556.101, 556.102, 556.103, 556.104, 556.105, 556.106, and 556.110:

II. Present Situation:

Chapter 556, F.S., contains the "Underground Facility Damage Prevention and Safety Act," created in 1993. Section 556.101, F.S., states the intent of the chapter to provide a single toll-free telephone number for excavating contractors and the general public to call to notify operators of their intent to engage in excavation or demolition in an area that might contain underground facilities. The purpose of the act is to reduce damages suffered by utilities and their customers from improper excavation or demolition. While membership in the one-call system by underground facility operators is voluntary, excavators must call the system and comply with the procedures in ch. 556, F.S., prior to excavation or demolition.

Section 556.103, F.S., creates the Sunshine State One-Call of Florida, Inc., a not-for-profit corporation charged with administering the act. The corporation consists of the member operators, who elect a board of directors to administer the system. The corporation has contracted with One Number Information Systems, Inc., to operate the system under the supervision of the board of directors. The board may impose an assessment on members to fund the system (currently that assessment is 85 cents per notification). The board must submit an annual progress report on the operation of the system to the Governor.

There are currently 215 member operators. A member operator is defined in s. 556.102(7), F.S., as any person who furnishes or transports materials or services through an underground facility and elects to become a member of the one-call system. An underground facility is defined as public or private personal property that is buried or submerged on any member operator's right-of-way, easement, or permitted use, and that is used in connection with: water; sewage; electronic, telephonic, or telegraphic communication; electric energy; oil; petroleum products; natural gas, optical signals; or other substances. The current membership includes cable companies, gas companies, petroleum companies, electric utilities, telecommunications companies, municipalities and other governmental entities, and others that operate underground facilities. All of the major local and long distance telecommunications companies and investor-owned electric utility companies are members, as well as 44 cable companies, 50 municipalities, and 14 other governmental entities (i.e., counties and utility authorities).

Section 556.105, F.S., sets forth operating procedures for the system. A person who intends to engage in excavation or demolition must call the toll-free number to notify the system of the location, date, and other pertinent information about the excavation. The system notifies the affected member operator of the planned excavation and the member operators must identify and mark their affected underground facilities.

An excavator may not excavate in an area until the underground facilities have been exactly located and identified or, if this cannot be accomplished, until the operator has provided the best available information to the excavator as to the location of the underground facilities. If underground facilities have not been located and identified within 48 hours, the excavator may proceed with the excavation with reasonable care and using detection equipment or other acceptable means to locate underground facilities. An excavator is prohibited from demolition in an area until all member operator underground facilities have been located and identified or removed.

Section 556.106, F.S., sets forth the liability of excavators, member operators, and the system for damages that occurs through violation of or lack of compliance with the procedures set forth in the chapter. (Section 556.101, F.S., specifically provides that it is not the purpose of the act to create liability for negligence for an operator who elects not to participate in the system.)

Section 556.106, F.S., also requires an excavator to attempt to identify and contact any nonmember operators who may have facilities where the excavator intends to dig. The excavator must use reasonable care in identifying underground facilities and in performing excavations. (In an action for damages to the facilities of a nonmember operator, common law principles of negligence apply.)

Section 556.107, F.S., provides penalties for violating the statute. Most violations of the law, including failing to provide the required notice and information, failing to delay excavations until facilities have been marked, and failing to stop excavations when required by the law, are deemed noncriminal infractions punishable by a fine. It is a misdemeanor to remove or destroy stakes or other markings used to identify underground facilities.

### III. Effect of Proposed Changes:

The bill requires all operators of underground facilities, except municipality or county operators who elect not to participate, to become members of and participate in the one-call system. Municipality and county operators must opt out of the system by January 1, 1998, and identify their reasons for not participating. Beginning in 1998, the board of directors must report annually to the Governor and Legislature concerning the status of municipality and county participation in the one-call system.

The corporation's authority to assess members to fund the operating costs of the system remains. The bill specifies that assessments of each member are to be made monthly. The assessment is waived for any month in which a member receives 10 or fewer notifications.

The bill restricts language in s. 556.101, F.S., relating to liability for negligence for nonmember operators, to apply to nonmember municipality and county operators only (since all other operators would be members). It also revises language in s. 556.102, F.S., relating to requirements to notify nonmember operators, to apply to nonmember municipalities or counties only.

In addition, the bill revises the definition of an underground facility to exclude storm drainage systems. The bill also amends s. 556.105, F.S., relating to procedures excavators must follow before beginning an excavation or demolition, to exempt member operators with state-owned facilities in highway rights-of-way from notification of an excavation or demolition and from the requirement to mark their facilities. (These changes are intended to limit the effect of the bill on the Department of Transportation.)

The bill is effective October 1, 1997.

### IV. Constitutional Issues:

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

None.

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

None.

#### C. Trust Funds Restrictions:

None.

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

Operators that currently are not members of the one-call system, but who are required to join by the bill, will incur the monthly assessments to fund the operation of the system. No firm estimate of the number of nonmember operators that would be affected is available. This increase in membership would not generate a commensurate increase in expenditures, since excavators are already required to call the system before digging, regardless of the number of member operators. Therefore, the increase in membership would likely result in a decrease in the current assessment of 85 cents per notification.

### B. Private Sector Impact:

Operators, excavators, and the general public would benefit from a reduction in the number of incidents where underground facilities are damaged, which should occur less frequently as a result of more facility operators being members of the one-call system. Operators who currently are not members will incur the monthly assessment, although the bill exempts from the assessment those members who receive 10 or fewer notifications in any given month.

The one-call system would receive additional revenues from the additional members the bill would generate.

### C. Government Sector Impact:

Municipal and county government operators will benefit from not having to become members of the one-call system and pay the monthly assessment fees.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

According to the one-call system corporation, 35 states have some form of mandatory participation requirement for underground facility operators, although the exemptions from the requirements vary from state to state.

## VIII. Amendments:

None.

---

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

---

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 1646

Allows municipality and county operators of underground facilities to elect not to participate in the one-call notification system. Municipality and county operators must provide notice of their intent not to participate by January 1, 1998, and must identify their reasons for declining membership.

Requires the board of directors to submit an annual report on municipality and county participation in the one-call system beginning in 1998.

Exempts storm drainage systems from the definition of underground facility.

Exempts member operators with state-owned underground facilities on state highway rights-of-way from the notification and location requirements.

Changes the effective date to October 1, 1997.

Committee on Regulated Industries

Staff Director



(FILE TWO COPIES WITH THE SECRETARY OF THE SENATE)

A bill to be entitled

An act relating to the Underground Facility  
 Damage Prevention and Safety Act; amending s.  
 556.101, F.S.; revising legislative intent;  
 amending s. 556.102, F.S.; revising  
 definitions; amending s. 556.103, F.S.;  
 requiring membership in a specified  
 corporation; requiring a report; amending s.  
 556.104, F.S.; requiring participation in a  
 specified system; providing exceptions;  
 amending s. 556.105, F.S.; providing an  
 exception to the notification requirement;  
 amending s. 556.106, F.S.; revising liability  
 of an excavator to nonmember operators;  
 amending s. 556.110, F.S.; providing for  
 monthly assessments for operating costs;  
 exempting member operators from certain  
 assessments under certain circumstances;  
 providing an effective date.

reproduced by  
 FLORIDA STATE ARCHIVES  
 DEPARTMENT OF STATE  
 F.A. GRAY BUILDING  
 Tallahassee, Florida 32399-0250  
 Series 18 Carton 2252  
 File Folder SB 1646

COPY

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 556.101, Florida Statutes, is amended to read:

556.101 Short title; legislative intent.--

(3) It is the purpose of this act 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.

1 (b) Create a not-for-profit corporation comprised of  
2 operators of underground facilities in this state to  
3 administer the provisions of this act.

4 (c) Fund the cost of administration entirely and  
5 exclusively by assessed contributions from the member  
6 operators.

7  
8 It is not the purpose of this act to create liability for  
9 negligence on the part of any municipality or county operator  
10 of an underground facility which who elects to not participate  
11 in the one-call notification system created by this act.

12 Section 2. Subsections (7) and (9) of section 556.102,  
13 Florida Statutes, are amended to read:

14 556.102 Definitions.--As used in this act:

15 (7) "Member operator" means any person who furnishes  
16 or transports materials or services by means of an underground  
17 facility except a municipality or county that has elected not  
18 to participate in the one-call notification system in the  
19 manner set forth in s. 556.103(1) and who elects to  
20 participate as a member of the one-call notification center  
21 for any portion of the territory served by the person.

22 (9) "Underground facility" means any public or private  
23 personal property which is buried, placed below ground, or  
24 submerged on any member operator's right-of-way, easement, or  
25 permitted use which is being used or will be used in  
26 connection with the storage or conveyance of water; sewage;  
27 electronic, telephonic, or telegraphic communication; electric  
28 energy; oil; petroleum products; natural gas; optical signals;  
29 or other substances, and includes, but is not limited to,  
30 pipelines, pipes, sewers, conduits, cables, valves, and lines.  
31 For purposes of this act, a liquefied petroleum gas line

1 regulated under chapter 527 is not an underground facility  
2 unless such line is subject to the requirements of Title 49,  
3 Code of Federal Regulations, adopted by the Department of  
4 Agriculture and Consumer Services, provided there is no  
5 encroachment on any member operator's right-of-way, easement,  
6 or permitted use. Petroleum storage systems subject to  
7 regulation pursuant to chapter 376 are not considered  
8 underground facilities for the purposes of this act unless the  
9 storage system is located on a member operator's right-of-way  
10 or easement. Storm drainage systems are not considered  
11 underground facilities.

12 Section 3. Subsection (1) of section 556.103, Florida  
13 Statutes, is amended and subsection (5) is added to that  
14 section to read:

15 556.103 Creation of the corporation; establishment of  
16 the board of directors; authority of the board; annual  
17 report.--

18 (1) The "Sunshine State One-Call of Florida, Inc." is  
19 hereby created as a not-for-profit corporation. Each Any  
20 operator of an underground facility in this state shall may be  
21 a member of the corporation and shall may use and participate  
22 in the system, except that a municipality or a county may  
23 elect not to participate in the system by January 1, 1998,  
24 through a written notification identifying any reasons for  
25 declining membership. The corporation shall be formed by June  
26 1, 1993. The corporation shall administer the provisions of  
27 this act. The corporation shall exercise its powers through a  
28 board of directors established pursuant to this section.

29 (5) Beginning in 1998, the board of directors shall  
30 submit to the President of the Senate, the Speaker of the  
31 House of Representatives, and the Governor, not later than 60

1 days before the convening of each regular session of the  
2 Legislature, an annual progress report on the participation by  
3 municipalities and counties in the one-call notification  
4 system created by this chapter.

5 Section 4. Section 556.104, Florida Statutes, is  
6 amended to read:

7 556.104 One-call notification system.--The corporation  
8 shall establish a one-call toll-free telephone notification  
9 system which shall be operational by June 1, 1994. Any person  
10 who furnishes or transports materials or services by means of  
11 an underground facility in this state ~~shall~~ may elect to  
12 participate as a member operator of the system except that a  
13 municipality or county may elect not to participate in the  
14 system in the manner set forth in s. 556.103(1). The purpose  
15 of the system is to receive notification of planned excavation  
16 or demolition activities and to notify member operators of  
17 such planned excavation or demolition activities. The system  
18 shall provide a single toll-free telephone number within this  
19 state which excavators can use to notify member operators of  
20 planned excavation or demolition activities.

21 Section 5. Subsection (4) of section 556.105, Florida  
22 Statutes, 1996 Supplement, is amended to read:

23 556.105 Procedures.--

24 (4) All member operators within the defined area of a  
25 proposed excavation or demolition shall be promptly notified  
26 through the system, except that member operators with  
27 state-owned underground facilities located within the  
28 right-of-way of a state highway need not be notified of  
29 excavation or demolition activities and are under no  
30 obligation to mark or locate such facilities.

1 Section 6. Paragraph (e) of subsection (2) of section  
2 556.106, Florida Statutes, is amended to read:

3 556.106 Liability of the member operator, excavator,  
4 and system.--

5 (2)

6 (e) When an excavator knows or should know of the  
7 presence of an underground facility of a nonmember  
8 municipality or county, he or she shall make reasonable  
9 efforts to contact the municipality or county that person-who  
10 owns or operates that facility prior to commencing an  
11 excavation or demolition, ~~regardless of whether that person is~~  
12 ~~a member operator.~~

13 Section 7. Section 556.110, Florida Statutes, is  
14 amended to read:

15 556.110 Costs assessed among member operators.--Member  
16 operators shall proportionately share in the cost of operating  
17 the system through monthly assessments made upon each member  
18 operator. However, any member that receives fewer than 10  
19 notifications in any month shall not be assessed for such  
20 month.

21 Section 8. This act shall take effect October 1, 1997.  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

STORAGE NAME: h0535z.uco  
DATE: July 1, 1997

**\*\*FAILED TO PASS THE LEGISLATURE\*\***  
**\*\*SEE FINAL ACTION SECTION\*\***

HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
UTILITIES AND COMMUNICATIONS  
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 535  
RELATING TO: Underground Facility Damage Prevention and Safety Act  
SPONSOR(S): Committee on Utilities and Communications, Representatives Bloom and Kelly  
STATUTE(S) AFFECTED: ss. 556.101, 556.102, 556.103, 556.104, 556.106, and 556.110, F.S.  
COMPANION BILL(S): CS/SB 1646

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL OPERATIONS (W/D)
- (2) UTILITIES AND COMMUNICATIONS YEAS 7 NAYS 4
- (3) FINANCE AND TAXATION (W/D)
- (4) GENERAL GOVERNMENT APPROPRIATIONS (W/D)
- (5)

COPY  
reproduced by  
FLORIDA STATE ARCHIVES  
DEPARTMENT OF STATE  
R.A. GRAY BUILDING  
Tallahassee, Florida 32399-0250  
Series 19 Carton 2945  
File Folder 535

I. SUMMARY:

The Sunshine State One-Call of Florida, Inc., a not-for-profit organization, was created by Chapter 93-240, Laws of Florida, codified at Chapter 556, Florida Statutes. This organization has the authority to oversee a one-call system which notifies member operators of underground facilities of intended excavation in their area, with a notification and marking exception for member operators with state-owned underground facilities located within the right-of-way of a state highway. This system operates from proportionately accessed monthly member fees, and membership is discretionary.

This bill would require all operators of underground facilities to become members of the one-call system.

This bill would require counties, municipalities, municipal or cooperative electric utilities, or departments or agencies thereof to become members October 1, 1998.

The bill would define any operator of underground facilities as a member operator. Member operators would be assessed a proportionate monthly fee for the corporation's operational expenses with a monthly fee exemption for those members who receive ten or fewer notifications.

The bill would delete language that states that it is not the purpose of the act to create liability for any non-member operator of underground facilities.

The bill would also repeal language which states that when an excavator knows or should have known about the presence of underground facilities, the excavator must make reasonable efforts to contact the person who owns the facility.

The bill would exclude storm drainage systems from the category of underground facilities.

This bill would have an indeterminate fiscal impact.

HB535 would take effect on October 1, 1997.

STANDARD FORM (REVISED 1/97)

## II. SUBSTANTIVE ANALYSIS:

### A. PRESENT SITUATION:

The "Underground Facility Damage Prevention and Safety Act" was created by Chapter 93-240, Laws of Florida, which is codified at Chapter 556, Florida Statutes. The intent of this chapter, pursuant to section 556.01(2), Florida Statutes, is to provide a single toll-free telephone number for excavating contractors and the general public to call for notification of their intent to engage in excavation or demolition.

Section 556.103, Florida Statutes, created the Sunshine State One-Call of Florida, Inc. as a not-for-profit corporation whose purpose is to administer the provisions of this act. The corporation exercises its powers through a board of directors. The board of directors has the authority to assess the member operators a proportionate fee to fund the system, and the board is responsible for filing with the Governor an annual progress report on the operation of the system.

Section 556.102(7), Florida Statutes, defines member operator as:

...any person who furnishes or transports materials or services by means of an underground facility and who elects to participate as a member of the one-call notification center for any portion of the territory served by the person.

Member operators, as defined for section 556.102(7), Florida Statutes, currently include 215 primary members. This membership is made-up of cable, gas, petroleum, co-op electric, telephone, and private utility companies, as well as municipal and governmental entities, a school and a church.

Section 556.105, Florida Statutes, provides the procedures for the system. Any person who intends to excavate in a right-of-way can call the toll-free number to notify the system of the location, date, and other pertinent information concerning the excavation. The telephone number is advertised in telephone books, Sunshine State One-Call of Florida, Inc. literature, and identified on members' right-of-way markers. The system notifies the member operator of the planned excavation, and the act requires that the member operator identify the affected underground facilities.

Subsection (6) of section 556.105, Florida Statutes, prohibits an excavator from excavating in the area until the underground facilities have been exactly located and identified, or in the alternative, as outlined in subsection (7) of section 556.105, Florida Statutes, if the operator is unable to precisely locate its utility, the operator shall provide the best available information to the excavator in order to comply with the requirements of this section.

If the underground facilities have not been located and identified within 48 hours, the excavator may proceed with reasonable care and must use detection equipment or other acceptable means to locate the underground facilities. The excavator is not liable, under this section, for any damage to the underground facilities if the excavation or demolition is performed with reasonable care and acceptable means of locating the underground facilities are used. Pursuant to 556.105(6)(b), Florida Statutes, an excavator is prohibited from demolition in the area until all member operator underground facilities have been located and identified or removed.

B. EFFECT OF PROPOSED CHANGES:

This bill would require all operators of underground utilities to become members of and participate in the one-call system rather than making it discretionary. The monthly assessment imposed upon members for the operating cost of the corporation would be continued, and as a result of the mandatory membership provision of the bill, all operators of underground facilities will be required to pay. However, the bill would add a provision whereby this fee may be waived for any particular month, provided, if during that month, the member receives 10 or fewer notifications.

This bill would require counties, municipalities, municipal or cooperative electric utilities, or departments or agencies thereof to become members October 1, 1998.

HB 535 would delete the caveat that no liability for negligence is created by chapter 556, Florida Statutes, for operators that are not participating in the one-call notification system. This provision would be unnecessary since participation in the system would be mandatory under the provisions of the bill.

The bill would allow an intended excavation notification exception for member operators with state-owned underground facilities located within the right-of-way of a state highway, and these operators shall be under no obligation to mark or locate such facilities.

The bill would repeal paragraph (e) of section 556.106(2), Florida Statutes, that requires an excavator, who knows or should know of the existence of an underground facility, to make a reasonable effort to contact the person who owns or operates the facility prior to commencing any excavation or demolition. The information would be obtainable through the one-call notification system if all operators are required to become members.

The bill would exclude storm drainage systems from the category of underground facilities.

HB 535 would take effect October 1, 1997.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

This bill may require older cities locate and identify their underground utilities.

- (3) any entitlement to a government service or benefit?

N/A.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A.

- (2) what is the cost of such responsibility at the new level/agency?

N/A.

- (3) how is the new agency accountable to the people governed?

N/A.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A.

- b. Does the bill require or authorize an increase in any fees?

N/A.

- c. Does the bill reduce total taxes, both rates and revenues?

N/A.

- d. Does the bill reduce total fees, both rates and revenues?

N/A.

- e. Does the bill authorize any fee or tax increase by any local government?

N/A.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A.

- (2) Who makes the decisions?

N/A.

- (3) Are private alternatives permitted?

N/A.

- (4) Are families required to participate in a program?

N/A.

(5) Are families penalized for not participating in a program?

N/A.

b. Does the bill directly affect the legal rights and obligations between family members?

N/A.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

N/A.

(1) parents and guardians?

N/A.

(2) service providers?

N/A.

(3) government employees/agencies?

N/A.

D. SECTION-BY-SECTION ANALYSIS:

Please see "Effect of Proposed Changes" section.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A.

2. Recurring Effects:

N/A.

3. Long Run Effects Other Than Normal Growth:

N/A.

4. Total Revenues and Expenditures:

N/A.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

N/A.

3. Long Run Effects Other Than Normal Growth:

N/A.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A.

2. Direct Private Sector Benefits:

N/A.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A.

D. FISCAL COMMENTS:

N/A.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does require counties and municipalities, depending upon the number of notifications received monthly, to spend varying amounts for their share of the operational costs of Sunshine State One-Call of Florida, Inc. This appears to be a mandate under Article VII, section 18, Florida Constitution.

As a result, it is unclear whether the bill comes under the exemption as having an insignificant fiscal impact since the fiscal impact is indeterminate at this time.

If the Legislature determines that the bill fulfills an important state interest, it appears that the bill would meet the exception that the expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Advocates for Sunshine State One-Call of Florida, Inc. report the elimination of guesswork concerning the location of underground facilities has produced an increasing reduction in utility interruptions since the inception of the one-call system largely due to their increasing rise in membership.

According to the Florida League of Cities, it too has a consensus about the importance of protecting their underground facilities. However, there is a concern about some cities being able to manually locate all of their underground facilities, particularly in older cities where the underground system has been in place for several decades and was laid during a time when utility mapping was not a precise practice. A majority of these types of cities can designate what underground facilities are in a right-of-way but cannot tell within the right-of-way specifically where a utility is located without excavation.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Utilities and Communications committee substitute excludes storm drainage systems from being considered as underground facilities. Counties, municipalities, municipal or cooperative electric utilities or departments or agencies thereof will be given until October 1, 1998 to become member operators in the one-call system. An exception to the requirements of excavation intent notification, and to the locating and marking of underground facilities will be given to member operators with state-owned underground facilities located within the right-of-way of a state highway. This act would take effect on October 1, 1997.

VII. FINAL ACTION:

Pursuant to House Rule 96, on May 2, 1997, the bill was carried over to the 1998 Session and would be pending ranking by the Government Responsibility Council. On May 20, 1997, the bill was withdrawn from the Government Responsibility Council and laid on the table. HB535 companion CS/SB 1646 was passed by the Legislature and became law. See Chapter 97-306, Laws of Florida.

VIII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

Prepared by:

Legislative Research Director:

Wendy G. Holt

Patrick L. "Booter" Imhof

FINAL RESEARCH PREPARED BY COMMITTEE ON UTILITIES AND COMMUNICATIONS:

Prepared by:

Legislative Research Director:

Wendy G. Holt  
Wendy G. Holt

Patrick L. "Booter" Imhof  
Patrick L. "Booter" Imhof

STORAGE NAME: h0535s1.ft  
DATE: April 12, 1997

HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
FINANCE AND TAXATION  
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

COPY  
reproduced by  
FLORIDA STATE ARCHIVES  
DEPARTMENT OF STATE  
R.A. GRAY BUILDING  
Tallahassee, Florida 32399-0250  
Series 19 Carton 2776  
File Folder 4/15/97

BILL #: CS/HB 535  
RELATING TO: Underground Facility Damage Prevention and Safety Act  
SPONSOR(S): Committee on Utilities and Communications, Representatives Bloom and Kelly  
STATUTE(S) AFFECTED: ss. 556.101, 556.102, 556.103, 556.104, 556.106, and 556.110, F.S.  
COMPANION BILL(S): SB 1646

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL OPERATIONS (W/D)
- (2) UTILITIES AND COMMUNICATIONS YEAS 7 NAYS 4
- (3) FINANCE AND TAXATION
- (4) GENERAL GOVERNMENT APPROPRIATIONS
- (5)

I. SUMMARY:

The Sunshine State One-Call of Florida, Inc., a not-for-profit organization, was created by Chapter 93-240, Laws of Florida, codified at Chapter 556, Florida Statutes. This organization has the authority to oversee a one-call system which notifies member operators of underground facilities of intended excavation in their area, with a notification and marking exception for member operators with state-owned underground facilities located within the right-of-way of a state highway. This system operates from proportionately accessed monthly member fees, and membership is discretionary.

This bill would require all operators of underground facilities to become members of the one-call system.

This bill would require counties, municipalities, municipal or cooperative electric utilities, or departments or agencies thereof to become members October 1, 1998.

The bill would define any operator of underground facilities as a member operator. Member operators would be assessed a proportionate monthly fee for the corporation's operational expenses with a monthly fee exemption for those members who receive ten or fewer notifications.

The bill would delete language that states that it is not the purpose of the act to create liability for any non-member operator of underground facilities.

The bill would also repeal language which states that when an excavator knows or should have known about the presence of underground facilities, the excavator must make reasonable efforts to contact the person who owns the facility.

The bill would exclude storm drainage systems from the category of underground facilities.

This bill would have an indeterminate/insignificant fiscal impact.

CSHB535 would effect October 1, 1997.

STANDARD FORM (REVISED 1/97)

## II. SUBSTANTIVE ANALYSIS:

### A. PRESENT SITUATION:

The "Underground Facility Damage Prevention and Safety Act" was created by Chapter 93-240, Laws of Florida, which is codified at Chapter 556, Florida Statutes. The intent of this chapter, pursuant to section 556.01(2), Florida Statutes, is to provide a single toll-free telephone number for excavating contractors and the general public to call for notification of their intent to engage in excavation or demolition.

Section 556.103, Florida Statutes, created the Sunshine State One-Call of Florida, Inc. as a not-for-profit corporation whose purpose is to administer the provisions of this act. The corporation exercises its powers through a board of directors. The board of directors has the authority to assess the member operators a proportionate fee to fund the system, and the board is responsible for filing with the Governor an annual progress report on the operation of the system.

Section 556.102(7), Florida Statutes, defines member operator as:

...any person who furnishes or transports materials or services by means of an underground facility and who elects to participate as a member of the one-call notification center for any portion of the territory served by the person.

Member operators, as defined for section 556.102(7), Florida Statutes, currently include 215 primary members. This membership is made-up of cable, gas, petroleum, co-op electric, telephone, and private utility companies, as well as municipal and governmental entities, a school and a church.

Section 556.105, Florida Statutes, provides the procedures for the system. Any person who intends to excavate in a right-of-way can call the toll-free number to notify the system of the location, date, and other pertinent information concerning the excavation. The telephone number is advertised in telephone books, Sunshine State One-Call of Florida, Inc. literature, and identified on members' right-of-way markers. The system notifies the member operator of the planned excavation, and the act requires that the member operator identify the affected underground facilities.

Subsection (6) of section 556.105, Florida Statutes, prohibits an excavator from excavating in the area until the underground facilities have been exactly located and identified, or in the alternative, as outlined in subsection (7) of section 556.105, Florida Statutes, if the operator is unable to precisely locate its utility, the operator shall provide the best available information to the excavator in order to comply with the requirements of this section.

If the underground facilities have not been located and identified within 48 hours, the excavator may proceed with reasonable care and must use detection equipment or other acceptable means to located the underground facilities. The excavator is not liable, under this section for any damage to the underground facilities if the excavation or demolition is performed with reasonable care and acceptable means of locating the underground facilities are used. Pursuant to 556.105(6)(b), an excavator is prohibited from demolition in the area until all member operator underground facilities have been located and identified or removed.

B. EFFECT OF PROPOSED CHANGES:

This bill would require all operators of underground utilities to become members of and participate in the one-call system rather than making it discretionary. The monthly assessment imposed upon members for the operating cost of the corporation would be continued, and as a result of the mandatory membership provision of the bill, all operators of underground facilities will be required to pay. However, the bill would add a provision whereby this fee may be waived for any particular month, provided, if during that month, the member receives 10 or fewer notifications.

This bill would require counties, municipalities, municipal or cooperative electric utilities, or departments or agencies thereof to become members October 1, 1998.

CSHB535 would delete the caveat that no liability for negligence is created by chapter 556, Florida Statutes, for operators that are not participating in the one-call notification system. This provision would be unnecessary since participation in the system would be mandatory under the provisions of the bill.

The bill would allow an intended excavation notification exception for member operators with state-owned underground facilities located within the right-of-way of a state highway, and these operators shall be under no obligation to mark or locate such facilities.

The bill would repeal paragraph (e) of section 556.106(2), Florida Statutes, that requires an excavator, who knows or should know of the existence of an underground facility, to make a reasonable effort to contact the person who owns or operates the facility prior to commencing any excavation or demolition. The information would be obtainable through the one-call notification system if all operators are required to become members.

The bill would exclude storm drainage systems from the category of underground facilities.

CSHB535 would take effect October 1, 1997.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

N/A.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

This bill may require older cities locate and identify their underground utilities.

- (3) any entitlement to a government service or benefit?

N/A.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A.

- (2) what is the cost of such responsibility at the new level/agency?

N/A.

- (3) how is the new agency accountable to the people governed?

N/A.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A.

- b. Does the bill require or authorize an increase in any fees?

N/A.

- c. Does the bill reduce total taxes, both rates and revenues?

N/A.

d. Does the bill reduce total fees, both rates and revenues?

N/A.

e. Does the bill authorize any fee or tax increase by any local government?

N/A.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A.

(2) Who makes the decisions?

N/A.

(3) Are private alternatives permitted?

N/A.

(4) Are families required to participate in a program?

N/A.

(5) Are families penalized for not participating in a program?

N/A.

b. Does the bill directly affect the legal rights and obligations between family members?

N/A.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

N/A.

(1) parents and guardians?

N/A.

(2) service providers?

N/A.

(3) government employees/agencies?

N/A.

D. SECTION-BY-SECTION ANALYSIS:

**Section 1.** removes caveat that no liability or negligence is created for not participating in the one call notification system.

**Section 2.** removes language regarding the definition of "member operator" to conform to the act. Also provides that storm drainage systems are not considered underground facilities.

**Section 3.** requires each operator of an underground facility to participate in the "Sunshine State One-Call of Florida, Inc."

**Section 4.** provides for required participation for counties, municipalities, and municipal or cooperative electric utilities, departments, or agencies as "member operators" of the one call notification system by October 1, 1998.

**Section 5.** provides a notification exception for member operators who have underground facilities within the right of way of a state highway. Removes obligation to locate a mark such facilities.

**Section 6.** provides the cost of operating the one call notification system shall be funded through monthly assessments on each member operator. An exception from a monthly payment is given for member operators that receive fewer than ten notifications for that month.

**Section 7.** repeals s 556.106, Florida Statutes.

**Section 8.** provides an effective date of October 1, 1997.

### III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

#### A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None .

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

There is no fiscal impact on local governments for FY1997-98 because the bill would not require their membership in the system until October 1, 1998.

	<u>FY 1998-99</u>
Local Governments	(**/*)

3. Long Run Effects Other Than Normal Growth:

N/A.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

(Indeterminate/Insignificant)

2. Direct Private Sector Benefits:

The one call notification system takes major steps in preventing the interruption of utilities and services provided through underground facilities. This program can reduce the emergency repair costs associated with excavation and repairs to underground facilities located in close proximity to each other.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A.

D. FISCAL COMMENTS:

The Sunshine State One Call of Florida, Inc. has 215 members, 70 of which are county and municipality utilities, and other local government cooperatives. Sunshine State One Call of Florida, Inc. charges \$.85 for each call. Based on statistics from the Sunshine State One Call of Florida, Inc., a large county or municipal utility will receive, on average, 2700 calls per month. A medium size county or municipal utility will receive, on average, 350 calls per month. A small size county or municipal utility will receive, on average, 30 calls per month.

There are 67 counties and 398 cities in Florida, according to Florida Association of Counties and the Florida League of cities.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does require counties and municipalities, depending upon the number of notifications received monthly, to spend varying amounts for their share of the operational costs of Sunshine State One-Call of Florida, Inc. This appears to be a mandate under Article VII, section 18(a), Florida Constitution.

However, the bill states that this is an "important state interest." The bill also applies to all persons similarly situated, including state and local governments. Taking these conditions into account, Article VII, section 18(a), Florida Constitution does not apply.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Advocates for Sunshine State One-Call of Florida, Inc. report the elimination of guesswork concerning the location of underground facilities has produced an increasing reduction in utility interruptions since the inception of the one-call system largely due to their increasing rise in membership.

According to the Florida League of Cities, it too has a consensus about the importance of protecting their underground facilities. However, there is a concern about some cities being able to manually locate all of their underground facilities, particularly in older cities where the underground system has been in place for several decades and was laid during a time when utility mapping was not a precise practice. A majority of these types of cities can designate what underground facilities are in a right-of-way but cannot tell within the right-of-way specifically where a utility is located without excavation.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Utilities and Communications committee substitute excludes storm drainage systems from being considered as underground facilities. Counties, municipalities, municipal or cooperative electric utilities or departments or agencies thereof will be given until October 1, 1998 to become member operators in the one-call system. An exception to the requirements of excavation intent notification, and to the locating and marking of underground facilities will be given to member operators with state-owned underground facilities located within the right-of-way of a state highway. This act would take effect on October 1, 1997.

STORAGE NAME: h0535s1.ft

DATE: April 12, 1997.

PAGE 10

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

Prepared by:

Legislative Research Director:

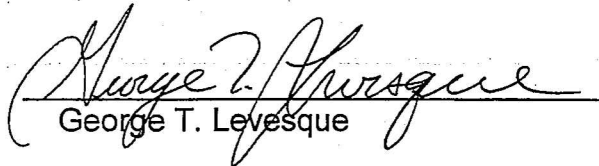
Wendy G. Holt

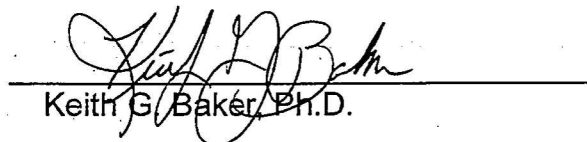
Patrick L. "Booter" Imhof

AS REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

Prepared by:

Legislative Research Director:

  
George T. Levesque

  
Keith G. Baker, Ph.D.



1 in the one-call notification system created by this act.

2 Section 2. Subsections (7) and (9) of section 556.102,  
3 Florida Statutes, are amended to read:

4 556.102 Definitions.--As used in this act:

5 (7) "Member operator" means any person who furnishes  
6 or transports materials or services by means of an underground  
7 facility, except a municipality or a county which has elected  
8 not to participate in the one-call notification system in the  
9 manner set forth in s. 556.103(1) and who elects to

10 participate as a member of the one-call notification center  
11 for any portion of the territory served by the person.

12 (9) "Underground facility" means any public or private  
13 personal property which is buried, placed below ground, or  
14 submerged on any member operator's right-of-way, easement, or  
15 permitted use which is being used or will be used in  
16 connection with the storage or conveyance of water; sewage;  
17 electronic, telephonic, or telegraphic communication; electric  
18 energy; oil; petroleum products; natural gas; optical signals;  
19 or other substances, and includes, but is not limited to,  
20 pipelines, pipes, sewers, conduits, cables, valves, and lines.  
21 For purposes of this act, a liquefied petroleum gas line  
22 regulated under chapter 527 is not an underground facility  
23 unless such line is subject to the requirements of Title 49,  
24 Code of Federal Regulations, adopted by the Department of  
25 Agriculture and Consumer Services, provided there is no  
26 encroachment on any member operator's right-of-way, easement,  
27 or permitted use. Petroleum storage systems subject to  
28 regulation pursuant to chapter 376 are not considered  
29 underground facilities for the purposes of this act unless the  
30 storage system is located on a member operator's right-of-way  
31 or easement. Storm drainage systems are not considered

Amendment No. \_\_\_\_ (for drafter's use only)

1 underground facilities.

2 Section 3. Subsection (1) of section 556.103, Florida  
3 Statutes, is amended, and subsection (5) is added to said  
4 section, to read:

5 556.103 Creation of the corporation; establishment of  
6 the board of directors; authority of the board; annual  
7 report.--

8 (1) The "Sunshine State One-Call of Florida, Inc." is  
9 hereby created as a not-for-profit corporation. Each Any  
10 operator of an underground facility in this state shall may be  
11 a member of the corporation and shall may use and participate  
12 in the system, except that a municipality or a county may  
13 elect by January 1, 1998, by written notification, not to  
14 participate in the system and shall identify in such  
15 notification any reasons for declining membership. The  
16 corporation shall be formed by June 1, 1993. The corporation  
17 shall administer the provisions of this act. The corporation  
18 shall exercise its powers through a board of directors  
19 established pursuant to this section.

20 (5) Beginning in 1998, the board of directors shall  
21 submit to the President of the Senate, the Speaker of the  
22 House of Representatives, and the Governor, not later than 60  
23 days before the convening of each Regular Session of the  
24 Legislature, an annual progress report on the participation by  
25 municipalities and counties in the one-call notification  
26 system.

27 Section 4. Section 556.104, Florida Statutes, is  
28 amended to read:

29 556.104 One-call notification system.--The corporation  
30 shall establish a one-call toll-free telephone notification  
31 system which shall be operational by June 1, 1994. Any person

hbd-08

Bill No. CS/HB 535Amendment No.      (for drafter's use only)

1 who furnishes or transports materials or services by means of  
2 an underground facility in this state shall may-elect-to  
3 participate as a member operator of the system, except that a  
4 municipality or a county may elect not to participate in the  
5 system in the manner set forth in s. 556.103(1). The purpose  
6 of the system is to receive notification of planned excavation  
7 or demolition activities and to notify member operators of  
8 such planned excavation or demolition activities. The system  
9 shall provide a single toll-free telephone number within this  
10 state which excavators can use to notify member operators of  
11 planned excavation or demolition activities.

12 Section 5. Subsection (4) of section 556.105, Florida  
13 Statutes, 1996 Supplement, is amended to read:

14 556.105 Procedures.--

15 (4) All member operators within the defined area of a  
16 proposed excavation or demolition shall be promptly notified  
17 through the system, except member operators with state-owned  
18 underground facilities located within the right-of-way of a  
19 state highway need not be notified of excavation or demolition  
20 activities and shall be under no obligation to mark or locate  
21 such facilities.

22 Section 6. Paragraph (e) of subsection (2) of section  
23 556.106, Florida Statutes, is amended to read:

24 556.106 Liability of the member operator, excavator,  
25 and system.--

26 (2)

27 (e) When an excavator knows or should know of the  
28 presence of an underground facility of a nonmember  
29 municipality or county, he shall make reasonable efforts to  
30 contact the municipality or county which person-who owns or  
31 operates that facility prior to commencing an excavation or

Amendment No. \_\_\_\_ (for drafter's use only)

1 demolition, ~~regardless of whether that person is a member~~  
2 operator.

3 Section 7. Section 556.110, Florida Statutes, is  
4 amended to read:

5 556.110 Costs assessed among member operators.--Member  
6 operators shall proportionately share in the cost of operating  
7 the system through monthly assessments made upon each member  
8 operator. However, any member which receives fewer than 10  
9 notifications in any month shall not be assessed for such  
10 month.

11 Section 8. This act shall take effect October 1, 1997.

12  
13  
14 ===== T I T L E A M E N D M E N T =====

15 And the title is amended as follows:

16 On page ....., line(s) .....,  
17 remove from the title of the bill: the entire title

18  
19 and insert in lieu thereof:

20 A bill to be entitled  
21 An act relating to the Underground Facility  
22 Damage Prevention and Safety Act; amending s.  
23 556.101, F.S.; revising legislative intent;  
24 amending s. 556.102, F.S.; revising  
25 definitions; amending s. 556.103, F.S.;  
26 requiring membership in a specified  
27 corporation; exempting certain municipalities  
28 and counties; requiring an annual report;  
29 amending s. 556.104, F.S.; requiring  
30 participation in a specified system; providing  
31 that a municipality or county may elect not to

1 participate; amending s. 556.105, F.S.;  
2 exempting certain member operators from  
3 notification and mark and location requirements  
4 under certain circumstances; amending s.  
5 556.106, F.S.; providing for certain notice by  
6 an excavator to a nonmember municipality or  
7 county owner or operator; amending s. 556.110,  
8 F.S.; providing for monthly assessments for  
9 operating costs; exempting member operators  
10 from certain assessments under certain  
11 circumstances; providing an effective date.

STORAGE NAME: h0535s1.uco  
DATE: April 2, 1997

HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
UTILITIES AND COMMUNICATIONS  
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 535  
RELATING TO: Underground Facility Damage Prevention and Safety Act <sup>As Reported to the Clerk</sup>  
SPONSOR(S): Committee on Utilities and Communications, Representatives Bloom and Kelly  
STATUTE(S) AFFECTED: ss. 556.101, 556.102, 556.103, 556.104, 556.106, and 556.110, F.S.  
COMPANION BILL(S): SB 1646

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL OPERATIONS (W/D)
- (2) UTILITIES AND COMMUNICATIONS YEAS 7 NAYS 4
- (3) FINANCE AND TAXATION
- (4) GENERAL GOVERNMENT APPROPRIATIONS
- (5)

COPY

reproduced by  
FLORIDA STATE ARCHIVES  
DEPARTMENT OF STATE  
R.A. GRAY BUILDING  
Tallahassee, Florida 32399-0350  
Series 19 Carton 2995  
File Folder HB 535

I. SUMMARY:

The Sunshine State One-Call of Florida, Inc., a not-for-profit organization, was created by Chapter 93-240, Laws of Florida, codified at Chapter 556, Florida Statutes. This organization has the authority to oversee a one-call system which notifies member operators of underground facilities of intended excavation in their area, with a notification and marking exception for member operators with state-owned underground facilities located within the right-of-way of a state highway. This system operates from proportionately accessed monthly member fees, and membership is discretionary.

This bill would require all operators of underground facilities to become members of the one-call system.

This bill would require counties, municipalities, municipal or cooperative electric utilities, or departments or agencies thereof to become members October 1, 1998.

The bill would define any operator of underground facilities as a member operator. Member operators would be assessed a proportionate monthly fee for the corporation's operational expenses with a monthly fee exemption for those members who receive ten or fewer notifications.

The bill would delete language that states that it is not the purpose of the act to create liability for any non-member operator of underground facilities.

The bill would also repeal language which states that when an excavator knows or should have known about the presence of underground facilities, the excavator must make reasonable efforts to contact the person who owns the facility.

The bill would exclude storm drainage systems from the category of underground facilities.

This bill would have an indeterminate fiscal impact.

HB535 would effect October 1, 1997.

## II. SUBSTANTIVE ANALYSIS:

### A. PRESENT SITUATION:

The "Underground Facility Damage Prevention and Safety Act" was created by Chapter 93-240, Laws of Florida, which is codified at Chapter 556, Florida Statutes. The intent of this chapter, pursuant to section 556.01(2), Florida Statutes, is to provide a single toll-free telephone number for excavating contractors and the general public to call for notification of their intent to engage in excavation or demolition.

Section 556.103, Florida Statutes, created the Sunshine State One-Call of Florida, Inc. as a not-for-profit corporation whose purpose is to administer the provisions of this act. The corporation exercises its powers through a board of directors. The board of directors has the authority to assess the member operators a proportionate fee to fund the system, and the board is responsible for filing with the Governor an annual progress report on the operation of the system.

Section 556.102(7), Florida Statutes, defines member operator as:

...any person who furnishes or transports materials or services by means of an underground facility and who elects to participate as a member of the one-call notification center for any portion of the territory served by the person.

Member operators, as defined for section 556.102(7), Florida Statutes, currently include 215 primary members. This membership is made-up of cable, gas, petroleum, co-op electric, telephone, and private utility companies, as well as municipal and governmental entities, a school and a church.

Section 556.105, Florida Statutes, provides the procedures for the system. Any person who intends to excavate in a right-of-way can call the toll-free number to notify the system of the location, date, and other pertinent information concerning the excavation. The telephone number is advertised in telephone books, Sunshine State One-Call of Florida, Inc. literature, and identified on members' right-of-way markers. The system notifies the member operator of the planned excavation, and the act requires that the member operator identify the affected underground facilities.

Subsection (6) of section 556.105, Florida Statutes, prohibits an excavator from excavating in the area until the underground facilities have been exactly located and identified, or in the alternative, as outlined in subsection (7) of section 556.105, Florida Statutes, if the operator is unable to precisely locate its utility, the operator shall provide the best available information to the excavator in order to comply with the requirements of this section.

If the underground facilities have not been located and identified within 48 hours, the excavator may proceed with reasonable care and must use detection equipment or other acceptable means to located the underground facilities. The excavator is not liable, under this section for any damage to the underground facilities if the excavation or demolition is performed with reasonable care and acceptable means of locating the underground facilities are used. Pursuant to 556.105(6)(b), an excavator is prohibited from demolition in the area until all member operator underground facilities have been located and identified or removed.

B. EFFECT OF PROPOSED CHANGES:

This bill would require all operators of underground utilities to become members of and participate in the one-call system rather than making it discretionary. The monthly assessment imposed upon members for the operating cost of the corporation would be continued, and as a result of the mandatory membership provision of the bill, all operators of underground facilities will be required to pay. However, the bill would add a provision whereby this fee may be waived for any particular month, provided, if during that month, the member receives 10 or fewer notifications.

This bill would require counties, municipalities, municipal or cooperative electric utilities, or departments or agencies thereof to become members October 1, 1998.

HB 535 would delete the caveat that no liability for negligence is created by chapter 556, Florida Statutes, for operators that are not participating in the one-call notification system. This provision would be unnecessary since participation in the system would be mandatory under the provisions of the bill.

The bill would allow an intended excavation notification exception for member operators with state-owned underground facilities located within the right-of-way of a state highway, and these operators shall be under no obligation to mark or locate such facilities.

The bill would repeal paragraph (e) of section 556.106(2), Florida Statutes, that requires an excavator, who knows or should know of the existence of an underground facility, to make a reasonable effort to contact the person who owns or operates the facility prior to commencing any excavation or demolition. The information would be obtainable through the one-call notification system if all operators are required to become members.

The bill would exclude storm drainage systems from the category of underground facilities.

HB535 would take effect October 1, 1997.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

This bill may require older cities locate and identify their underground utilities.

- (3) any entitlement to a government service or benefit?

N/A.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A.

- (2) what is the cost of such responsibility at the new level/agency?

N/A.

- (3) how is the new agency accountable to the people governed?

N/A.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A.

- b. Does the bill require or authorize an increase in any fees?

N/A.

- c. Does the bill reduce total taxes, both rates and revenues?

N/A.

- d. Does the bill reduce total fees, both rates and revenues?

N/A.

- e. Does the bill authorize any fee or tax increase by any local government?

N/A.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A.

- (2) Who makes the decisions?

N/A.

- (3) Are private alternatives permitted?

N/A.

- (4) Are families required to participate in a program?

N/A.

(5) Are families penalized for not participating in a program?

N/A.

b. Does the bill directly affect the legal rights and obligations between family members?

N/A.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

N/A.

(1) parents and guardians?

N/A.

(2) service providers?

N/A.

(3) government employees/agencies?

N/A.

D. SECTION-BY-SECTION ANALYSIS:

Please see "Effect of Proposed Changes" section.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A.

2. Recurring Effects:

N/A.

3. Long Run Effects Other Than Normal Growth:

N/A.

4. Total Revenues and Expenditures:

N/A.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

N/A.

3. Long Run Effects Other Than Normal Growth:

N/A.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A.

2. Direct Private Sector Benefits:

N/A.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A.

D. FISCAL COMMENTS:

N/A.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does require counties and municipalities, depending upon the number of notifications received monthly, to spend varying amounts for their share of the operational costs of Sunshine State One-Call of Florida, Inc. This appears to be a mandate under Article VII, section 18, Florida Constitution.

As a result, it is unclear whether the bill comes under the exemption as having an insignificant fiscal impact since the fiscal impact is indeterminate at this time.

If the Legislature determines that the bill fulfills an important state interest, it appears that the bill would meet the exception that the expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Advocates for Sunshine State One-Call of Florida, Inc. report the elimination of guesswork concerning the location of underground facilities has produced an increasing reduction in utility interruptions since the inception of the one-call system largely due to their increasing rise in membership.

According to the Florida League of Cities, it too has a consensus about the importance of protecting their underground facilities. However, there is a concern about some cities being able to manually locate all of their underground facilities, particularly in older cities where the underground system has been in place for several decades and was laid during a time when utility mapping was not a precise practice. A majority of these types of cities can designate what underground facilities are in a right-of-way but cannot tell within the right-of-way specifically where a utility is located without excavation.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

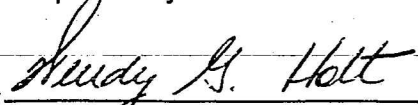
The Committee on Utilities and Communications committee substitute excludes storm drainage systems from being considered as underground facilities. Counties, municipalities, municipal or cooperative electric utilities or departments or agencies thereof will be given until October 1, 1998 to become member operators in the one-call system. An exception to the requirements of excavation intent notification, and to the locating and marking of underground facilities will be given to member operators with state-owned underground facilities located within the right-of-way of a state highway. This act would take effect on October 1, 1997.

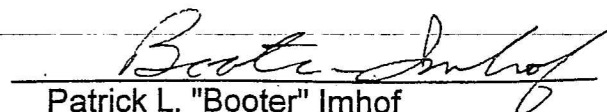
VII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

Prepared by:

Legislative Research Director:

  
Wendy G. Holt

  
Patrick L. "Booter" Imhof

STORAGE NAME: h0535.uco  
DATE: March 24, 1997

HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
UTILITIES AND COMMUNICATIONS  
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 535  
RELATING TO: Underground Facility Damage Prevention and Safety Act  
SPONSOR(S): Representatives Bloom and Kelly  
STATUTE(S) AFFECTED: ss. 556.101, 556.102, 556.103, 556.104, 556.106, and 556.110, F.S.  
COMPANION BILL(S): SB 1646

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL OPERATIONS (W/D)
- (2) UTILITIES AND COMMUNICATIONS
- (3) FINANCE AND TAXATION
- (4) GENERAL GOVERNMENT APPROPRIATIONS
- (5)

COPY

reproduced by  
FLORIDA STATE ARCHIVES  
DEPARTMENT OF STATE  
R.A. GRAY BUILDING  
Tallahassee, Florida 32399-0250  
Series 19 Carton 2945  
File Folder #8535

I. SUMMARY:

The Sunshine State One-Call of Florida, Inc., a not-for-profit organization, was created by Chapter 93-240, Laws of Florida, codified at Chapter 556, Florida Statutes. This organization has the authority to oversee a one-call system which notifies member operators of underground facilities of intended excavation in their area. This system operates from proportionately accessed monthly member fees, and membership in the corporation is discretionary to any operator of underground facilities. The corporation currently has a primary membership of 215, and this membership is made up of cable, gas, petroleum, co-op electric, telephone, and private utility companies, as well as municipal and governmental entities, a school and a church. The non-membership of any underground facility operator does not relinquish any of its legal rights in the event of damage caused by willful negligence.

This bill would require all operators of underground facilities to become members of and participate in the one-call system which is administered by Sunshine State One-Call of Florida, Inc. and governed by Chapter 556, Florida Statutes.

The bill would define any operator of underground facilities as a member operator. Member operators would be assessed a monthly fee as their proportionate share of the corporation's operational costs with a monthly fee exemption for those members who receive ten or fewer notifications.

The bill would delete language that states that it is not the purpose of the act to create liability for any non-member operator of underground facilities.

The bill would also repeal language which states that when an excavator knows or should have known about the presence of underground facilities, the excavator must make reasonable efforts to contact the person who owns the facility.

This bill would have an indeterminate fiscal impact.

HB535 takes effect upon becoming law.

STANDARD FORM (REVISED 1/97)

## II. SUBSTANTIVE ANALYSIS:

### A. PRESENT SITUATION:

The "Underground Facility Damage Prevention and Safety Act" was created by Chapter 93-240, Laws of Florida, which is codified at Chapter 556, Florida Statutes. The intent of this chapter, pursuant to section 556.01(2), Florida Statutes, is to provide a single toll-free telephone number for excavating contractors and the general public to call for notification of their intent to engage in excavation or demolition.

Section 556.103, Florida Statutes, created the Sunshine State One-Call of Florida, Inc. as a not-for-profit corporation whose purpose is to administer the provisions of this act. The corporation exercises its powers through a board of directors. The board of directors has the authority to assess the member operators a proportionate fee to fund the system, and the board is responsible for filing with the Governor an annual progress report on the operation of the system.

Section 556.102(7), Florida Statutes, defines member operator as:

...any person who furnishes or transports materials or services by means of an underground facility and who elects to participate as a member of the one-call notification center for any portion of the territory served by the person.

Member operators, as defined for section 556.102(7), Florida Statutes, currently include 215 primary members. This membership is made-up of cable, gas, petroleum, co-op electric, telephone, and private utility companies, as well as municipal and governmental entities, a school and a church.

Section 556.105, Florida Statutes, provides the procedures for the system. Any person who intends to excavate in a right-of-way can call the toll-free number to notify the system of the location, date, and other pertinent information concerning the excavation. The telephone number is advertised in telephone books, Sunshine State One-Call of Florida, Inc. literature, and identified on members' right-of-way markers. The system notifies the member operator of the planned excavation, and the act requires that the member operator identify the affected underground facilities.

Subsection (6) of section 556.105, Florida Statutes, prohibits an excavator from excavating in the area until the underground facilities have been exactly located and identified, or in the alternative, as outlined in subsection (7) of section 556.105, Florida Statutes, if the operator is unable to precisely locate its utility, the operator shall provide the best available information to the excavator in order to comply with the requirements of this section.

If the underground facilities have not been located and identified within 48 hours, the excavator may proceed with reasonable care and must use detection equipment or other acceptable means to located the underground facilities. The excavator is not liable, under this section for any damage to the underground facilities if the excavation or demolition is performed with reasonable care and acceptable means of locating the underground facilities are used. Pursuant to 556.105(6)(b), an excavator is prohibited from demolition in the area until all member operator underground facilities have been located and identified or removed.

B. EFFECT OF PROPOSED CHANGES:

This bill would require all operators of underground utilities to become members of and participate in the one-call system rather than making it discretionary. The monthly assessment imposed upon members for the operating cost of the corporation would be continued, and as a result of the mandatory membership provision of the bill, all operators of underground facilities will be required to pay. However, the bill would add a provision whereby this fee may be waived for any particular month, provided, if during that month, the member receives 10 or fewer notifications.

HB 535 would delete the caveat that no liability for negligence is created by chapter 556, Florida Statutes, for operators that are not participating in the one-call notification system. This provision would be unnecessary since participation in the system would be mandatory under the provisions of the bill.

The bill would repeal paragraph (e) of section 556.106(2), Florida Statutes, that requires an excavator, who knows or should know of the existence of an underground facility, to make a reasonable effort to contact the person who owns or operates the facility prior to commencing any excavation or demolition. The information would be obtainable through the one-call notification system if all operators are required to become members.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

This bill may require older cities locate and identify their underground utilities.

(3) any entitlement to a government service or benefit?

N/A.

b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A.

- (2) what is the cost of such responsibility at the new level/agency?

N/A.

- (3) how is the new agency accountable to the people governed?

N/A.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A.

- b. Does the bill require or authorize an increase in any fees?

N/A.

- c. Does the bill reduce total taxes, both rates and revenues?

N/A.

- d. Does the bill reduce total fees, both rates and revenues?

N/A.

- e. Does the bill authorize any fee or tax increase by any local government?

N/A.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A.

- (2) Who makes the decisions?

N/A.

- (3) Are private alternatives permitted?

N/A.

- (4) Are families required to participate in a program?

N/A.

- (5) Are families penalized for not participating in a program?

N/A.

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

N/A.

(1) parents and guardians?

N/A.

(2) service providers?

N/A.

(3) government employees/agencies?

N/A.

D. SECTION-BY-SECTION ANALYSIS:

Please see "Effect of Proposed Changes" section.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A.

2. Recurring Effects:

N/A.

3. Long Run Effects Other Than Normal Growth:

N/A.

4. Total Revenues and Expenditures:

N/A.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

N/A.

3. Long Run Effects Other Than Normal Growth:

N/A.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A.

2. Direct Private Sector Benefits:

N/A.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A.

D. FISCAL COMMENTS:

N/A.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does require counties and municipalities, depending upon the number of notifications received monthly, to spend varying amounts for their share of the operational costs of Sunshine State One-Call of Florida, Inc. This appears to be a mandate under Article VII, section 18, Florida Constitution.

As a result, it is unclear whether the bill comes under the exemption as having an insignificant fiscal impact since the fiscal impact is indeterminate at this time.

If the Legislature determines that the bill fulfills an important state interest, it appears that the bill would meet the exception that the expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Advocates for Sunshine State One-Call of Florida, Inc. report the elimination of guesswork concerning the location of underground facilities has produced an increasing reduction in utility interruptions since the inception of the one-call system largely due to their increasing rise in membership.

According to the Florida League of Cities, it too has a consensus about the importance of protecting their underground facilities. However, there is a concern about some cities being able to manually locate all of their underground facilities, particularly in older cities where the underground system has been in place for several decades and was laid during a time when utility mapping was not a precise practice. A majority of these types of cities can designate what underground facilities are in a right-of-way but cannot tell within the right-of-way specifically where a utility is located without excavation.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

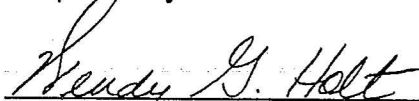
None.

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

Prepared by:

Legislative Research Director:

  
\_\_\_\_\_  
Wendy G. Holt

  
\_\_\_\_\_  
Patrick L. "Booter" Imhof