



ENERGY & UTILITIES POLICY COMMITTEE

Wednesday, March 3, 2010

2:00 PM – 5:00 PM

Morris Hall

MEETING PACKET

Larry Cretul
Speaker

Stephen Precourt
Chair



The Florida House of Representatives

General Government Policy Council

Energy & Utilities Policy Committee

Larry Cretul
Speaker

Stephen L. Precourt
Chair

AGENDA

March 3, 2010

2:00 p.m. – 5:00 p.m.

Morris Hall (17 House Office Building)

Opening Remarks by Chair Precourt

Consideration of the following bill:

HB 691 -- Underground Facility Damage Prevention & Safety, Representative Murzin

Workshop of the following bills:

HJR 293 -- Public Service Commission, Representative Anderson

HB 533 -- Testimony Before the Public Service Commission, Representative Pafford

HB 565 -- Public Service Commission, Representative Legg

Testimony Regarding Strategies and Tools to Achieve Energy Goals

Dr. Steve Smith, Executive Director
Southern Alliance for Clean Energy

Michael Dobson, President/CEO
Florida Renewable Energy Producers Association

Bruce Kershner, Florida Solar Energy Industries Association

Jon Moyle, Jr., Keefe Anchors Gordon Moyle Law Firm, representing the Florida Biomass
Coalition

John S. Ellis, President, IPS Avon Park Corporation

Closing Remarks by Chair Precourt

Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 691

Underground Facility Damage Prevention & Safety

SPONSOR(S): Murzin

TIED BILLS:

IDEN./SIM. BILLS: SB 982

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Energy & Utilities Policy Committee		Keating <i>CK</i>	Collins <i>JC</i>
2) Civil Justice & Courts Policy Committee			
3) Military & Local Affairs Policy Committee			
4) General Government Policy Council			
5)			

SUMMARY ANALYSIS

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

HB 691 amends the “Underground Facility Damage Prevention and Safety Act” by:

- Reinforcing the current expression of the state’s power to regulate matters addressed in the Act by providing that such power is “exclusive” and preempted to the state;
- Rendering local government ordinances or rules that conflict with the Act invalid and unenforceable;
- Establishing low-impact marking practices, and providing that violations of certain low-impact marking practices are noncriminal infractions;
- Establishing a voluntary alternative dispute resolution program available to all member operators, excavators, and other stakeholders to help resolve disputes arising from excavation activities;
- Establishing procedures concerning excavations proposed within 10 feet of a “high-priority subsurface installation” and defining such installations;
- Providing a specific time frame for excavators to notify the SSOCOF system before beginning any excavation or demolition beneath state waters;
- Prohibiting member operators from using information provided to the SSOCOF system by other member operators for marketing purposes or for any other purposes not stated in Chapter 556, F.S.;
- Removing obsolete and redundant provisions;
- Expanding liability for damages caused by excavation with hand tools from excavators only to excavators and member operators;
- Providing that an excavator need not notify the system of an emergency unless the excavator reasonably believes that the intended excavation or demolition is due to an emergency situation or condition as defined in the Act, and providing that falsely notifying the SSOCOF system of an emergency situation or condition is a noncriminal infraction;
- Increasing the civil penalty for noncriminal infractions from \$250 plus court costs to \$500 plus court costs and eliminating the power of an enforcing authority to require appearance before a county court;
- Creating a process for reporting and determining fines for noncriminal infractions that are the proximate cause of certain “incidents” and defining such incidents;
- Requiring annual reporting of noncriminal infractions by the clerks of court; and
- Requiring that all members of SSOCOF be assessed monthly for the system’s operating costs.

The bill does not appear to have a significant fiscal impact on state government revenues or expenditures or local government expenditures. The bill may have an indeterminate positive fiscal impact on local government revenues.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0691.EUP.doc

DATE: 3/1/2010

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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

The not-for-profit corporation is Sunshine State One-Call of Florida, Inc. (SSOCOF), which exercises its powers through a board of directors.⁵ The system is required to provide a single toll-free telephone number within Florida which excavators can use to notify member operators of planned excavation or demolition activities.⁶ The person intending to conduct excavation or demolition must notify the system not less than two full business days before beginning the operations.⁷ The person must also provide

¹ Section 556.102(13), F.S., defines "underground facility" as "any public or private personal property which is buried, placed below ground, or submerged on any member operator's right-of-way, easement, or permitted use which is being used or will be used in connection with the storage or conveyance of water; sewage; electronic, telephonic, or telegraphic communication; electric energy; oil; petroleum products; natural gas; optical signals; or other substances, and includes, but is not limited to, pipelines, pipes, sewers, conduits, cables, valves, and lines. For purposes of this act, a liquefied petroleum gas line regulated under chapter 527 is not an underground facility unless such line is subject to the requirements of Title 49 C.F.R. adopted by the Department of Agriculture and Consumer Services, provided there is no encroachment on any member operator's right-of-way, easement, or permitted use. Petroleum storage systems subject to regulation pursuant to chapter 376 are not considered underground facilities for the purposes of this act unless the storage system is located on a member operator's right-of-way or easement. Storm drainage systems are not considered underground facilities."

² Section 556.101(3), F.S.

³ Section 556.101(2), F.S.

⁴ Section 556.103(1), F.S.

⁵ Section 556.103, F.S.

⁶ Section 556.104, F.S.

⁷ Section 556.105(1)(a), F.S. The law provides an exception to this requirement for excavation beneath state waters, but does not specify a time frame for notifying the system of such an excavation.

specified identification, location, and operational information which remains valid for 30 calendar days.⁸ Upon receipt of this notice, the system provides to the person a list of names of the member operators who will be advised of the notification and a notification number which specifies the date and time of the notification.⁹

The system operator in turn notifies the potentially affected member operators of the planned excavation or demolition activities.¹⁰ Within two full business days after the time the notification is received by the system (or 10 days if the proposed excavation is in proximity to facilities beneath state waters), potentially affected member operators must determine the location of their underground facilities in relation to the proposed excavation or demolition. If this cannot be done in this time period, the member operator must contact the person giving notice and negotiate a new schedule and time that is agreeable and does not unreasonably delay the excavator. If a member operator determines that a proposed excavation or demolition is in proximity to or conflicts with an underground facility, the member operator must identify the horizontal route of the facility in a specified manner.¹¹

An excavator is required to delay excavations until the first of the following events occurs: (1) each member operator's underground facilities have been marked and located; (2) the excavator has been notified that no member operator has underground facilities in the area described in the notice; or (3) expiration of the time allowed for markings. If a member operator has not located and marked its underground facilities within the time allowed for marking, the excavator may proceed with the excavation, provided the excavator does so with reasonable care, and provided, further, that detection equipment or other acceptable means to locate underground facilities are used. An excavator may not demolish until all member operators' underground facilities have been marked and located or removed.¹²

The Act establishes civil liability for violations of certain provisions.¹³ The Act provides that any liability of the state, its agencies, or its subdivisions which arises out Chapter 556, F.S., is subject to the provisions of s. 768.28, F.S.¹⁴ The Act also establishes violations of certain provisions as noncriminal infractions that are enforceable by citations which may be issued by any local or state law enforcement officer, government code inspector, or code enforcement officer. The Act establishes a civil penalty of \$250, plus court costs, for such infractions.¹⁵ The Act provides that it is a misdemeanor in the second degree for any person to knowingly and willfully remove or otherwise destroy valid stakes or other valid physical markings.¹⁶

The Act does not apply to an excavation or demolition made during an emergency provided that the system is notified at the earliest opportunity and all reasonable precautions have been taken to protect any underground facility.¹⁷

⁸ Section 556.105(1), F.S.

⁹ Section 556.105(3), F.S.

¹⁰ Section 556.105(5), F.S. The statute also provides that member operators with state-owned underground facilities located within the right-of-way of a state highway need not be notified of excavation or demolition activities and are under no obligation to mark or locate facilities.

¹¹ Section 556.105(5), F.S.

¹² Section 556.105(6), F.S.

¹³ Section 556.106, F.S.

¹⁴ Section 768.28, F.S., establishes limits on the liability of the state, its agencies, and its subdivisions for damages in tort arising from injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee's office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant, in accordance with the general laws of this state.

¹⁵ Section 556.107(1), F.S.

¹⁶ Section 556.107(2), F.S.

¹⁷ Section 556.109, F.S. An "emergency" is defined in the Act as "any condition constituting a clear and present danger to life or property; a situation caused by the escape of any substance transported by means of an underground facility; any interruption of vital public service or communication caused by any break or defect in a member operator's underground facility; or, in the case of the State Highway System or streets or roads maintained by a political subdivision or underground facilities owned, operated, or maintained by a political subdivision, if the use of such highways, streets, roads, or underground facilities is, in the sole judgment of the Department of Highway Safety and Motor Vehicles, the Department of Transportation, or such political subdivision, impaired by an unforeseen occurrence which necessitates repair beginning immediately after such occurrence."

SSOCOF is funded through monthly assessments made to each member operator for a proportional share of system operating costs. If a member operator receives fewer than 10 notifications in a month, it is not assessed for that month.¹⁸

Effect of Proposed Changes

State Power to Regulate

The bill amends s. 556.101(3)(d), F.S., which reserves to the state the power to regulate matters addressed in Chapter 556, F.S., by strengthening the current expression of the state's power by providing that such power is "exclusive" and preempted to the state. The bill explicitly states that local government entities may not enact ordinances or rules or take other actions to regulate any subject addressed in Chapter 556, F.S., or by SSOCOF pursuant to the authority granted in the chapter. The bill provides that any ordinance or rule in conflict with Chapter 556 will no longer be valid or enforceable after July 1, 2010.

Some municipalities have adopted ordinances related to the type of paint that excavators and member operators may use when marking underground facilities within the municipality.¹⁹ The bill, as discussed in greater detail below, establishes new provisions related to the means used to mark underground facilities. Thus, the bill may render these ordinances invalid and unenforceable. In addition, the Town of Davie's ordinances include provisions that appear to modify the time frames established in Chapter 556, F.S., for marking and excavation.²⁰ While these types of ordinance provisions may already be prohibited by Chapter 556, F.S., the bill more clearly provides the state with the exclusive power to regulate matters addressed in the chapter and makes any existing ordinances that are conflict with the chapter invalid and unenforceable.

Low-Impact Marking Practices

The bill creates s. 556.114, F.S., to establish "low-impact" marking practices. The bill requires that an excavator, when notifying the system, must identify only the area that will be excavated during the 30-day period in which the information provided by the excavator is considered valid under s. 556.105(1)(c), F.S. If excavation is not complete within this time period, the excavator must provide subsequent notice to the system, identifying only the remaining area to be excavated, before continuing the excavation. In addition, the bill requires member operators to use temporary, nonpermanent paint, flags, stakes, or "other acceptable means"²¹ to mark areas described or premarked by excavators. The bill provides that any horizontal route-identification marker must be in a color identified in the Uniform Color Code for Utilities.

These provisions of the bill, taken together, may reduce the amount of markings that member operators are required to provide and the total amount of time that markings are visible. In addition, these provisions should provide a uniform, statewide system of marking. The bill requires SSOCOF to establish an educational program to inform excavators and member operators about these marking practices.

Alternative Dispute Resolution

The bill creates s. 556.115, F.S., which requires SSOCOF to create a voluntary alternative dispute resolution program available to all member operators, excavators, and other stakeholders to help

¹⁸ Section 556.110, F.S.

¹⁹ For example, the City of Sunny Isles Beach, by Ordinance No. 2009-329, requires that any markings made pursuant to Chapter 556, F.S., must be made using chalk-based paint on any surface other than earth or vegetation surfaces. The City of Coral Gables and the City of Orlando (Title II, Section 13.19, Orlando Code of Ordinances) have adopted similar ordinances requiring the use of chalk-based paint. The Town of Davie, through Part II, Section 25-35, of its Code of Ordinances, requires that any marking made by an excavator or member operator pursuant to Section 556, Florida Statutes, must be made using water-based paint.

²⁰ Part II, Sections 25-35 and 25-37, Town of Davie Code of Ordinances.

²¹ It is not clear who may determine what other means may be "acceptable" and how this determination will be made.

resolve disputes arising from excavation activities, exclusive of penalties imposed under other provisions of Chapter 556, F.S. The bill provides that the program must include mediation, arbitration, or "other appropriate processes,"²² including the use of services of the Division of Administrative Hearings (DOAH). The bill provides that voluntary users of the program shall choose the form of alternative dispute resolution to be used and shall be responsible for the costs of using the program.

The bill provides that if the users of the program choose to use arbitration, the users shall decide whether the arbitration will be binding. Unless binding arbitration is chosen, the users or any one of the users of the program may end the process at any time and exercise the right to proceed in court or before DOAH. The bill specifies that this new section does not change the basis for civil liability for damages.

Procedures for Certain Types of Facilities

The bill creates procedures concerning excavations proposed within 10 feet of a "high-priority subsurface installation." The bill defines a "high-priority subsurface installation" as "certain gas transmission, gas distribution, gasoline, petroleum, and other flammable, explosive, or corrosive commodity pipelines that are deemed to be critical by the operators of those pipelines." The bill provides that if an excavation is proposed within 10 feet of such an installation, as identified by the operator, the operator shall notify the excavator of the existence of the installation and shall mark its location before the legal excavation start time. After receiving this notice, the excavator must provide notice to the operator of the planned excavation start date and time. Before excavation begins, the excavator and operator are required to communicate to establish a mutually agreed-upon excavation plan.

Other Procedural Provisions

The bill provides a specific time frame for excavators to notify the SSOCOF system before beginning any excavation or demolition beneath state waters. The bill requires that excavators notify the system at least 10 full business days before beginning such work. This provision is consistent with the existing requirement of s. 556.105(5)(c), F.S., that member operators identify the route of such facilities within 10 business days. In addition, the bill provides that an excavator must stop excavation or demolition activities around an underwater facility if the horizontal route of the facility is "inadequately documented" and must then notify the system to have the route adequately documented.²³

The bill also prohibits member operators from using information provided to the system by other member operators for marketing purposes or for any other purposes not stated in Chapter 556, F.S. This provision may remove a disincentive for member operators who provide services in competitive markets, such as telephone, broadband, or cable services, to provide full information to the system for fear that the information will be used by competitors to target the member operator's customers with marketing efforts.

The bill also deletes an obsolete provision that required the system to conduct a study and report the results to the Legislature by February 1, 2007.

Liability

The bill removes redundant provisions in ss. 556.106(2)(a) and (3), F.S., related to the liability of government entities arising out of Chapter 556, F.S. These provisions provide that any liability of the state, its agencies, and its subdivisions (including governmental member operators) that arises out of Chapter 556, F.S., is subject to the provisions of s. 768.28, F.S. These provisions are redundant of an identical provision in s. 556.106(2)(c), F.S.

²² It is not clear what other processes may be "appropriate" and how this will be determined.

²³ It is not clear what type of documentation the bill is referring to. Section 556.105, F.S., requires that member operators identify the estimated horizontal route of facilities beneath state waters using marking buoys or other suitable devices. Chapter 556 does not indicate what, if any, type of documentation is required for such facilities.

In addition, the bill provides that a member operator who performs excavation with hand tools is liable for any damage to another operator's underground facilities damaged during the excavation. This expands the liability from excavators only to excavators and member operators.

Emergency Excavations

The bill creates s. 556.109(2), F.S., which provides that an excavator need not notify the system of an emergency unless the excavator reasonably believes that the intended excavation or demolition is due to an emergency situation or condition as defined in the Act.²⁴

Violations

The bill provides that violations of two of the provisions added by the bill will be classified as noncriminal infractions. First, the bill provides that a violation of s. 556.109(2), F.S., related to falsely notifying the system of an emergency situation or condition, is a noncriminal infraction. Second, the bill provides that a violation of s. 556.114(1), (2), (3), or (4), relating to failure to follow low-impact marking practices, is a noncriminal infraction.

The bill increases the civil penalty for noncriminal infractions from \$250 plus court costs to \$500 plus court costs. The bill also eliminates the power of an enforcing authority who cites a person for a noncriminal infraction to require the person to appear before a county court. The bill modifies other provisions of Chapter 556, F.S., to conform to this change. The bill retains the ability of a person charged with a noncriminal infraction to elect to appear before the county court.

The bill creates new provisions governing violations of noncriminal infractions that constitute an "incident." The bill defines an "incident" as "an event that involves damage to an underground facility in a high-priority zone which results in death or personal injury that requires inpatient hospitalization or causes property damage, including service-restoration costs in an amount in excess of \$50,000 or interruption of service to more than 2,500 customers."²⁵

The bill provides that a violation of any noncriminal infraction which may constitute an "incident" must be reported to the system by the excavator or member operator within 24 hours after learning that the threshold for an incident has been met. The bill further provides that the system, when it receives information that an incident has occurred, must contract with DOAH to conduct a hearing to determine whether any noncriminal infraction was the proximate cause of the incident.²⁶ The bill provides DOAH with jurisdiction to determine the facts and law surrounding any incident and to impose a fine no greater than \$50,000 against any person who commits a noncriminal infraction which was the proximate cause of the incident. The bill requires that an infraction be proven by a preponderance of the evidence. Any fine imposed by DOAH must be in addition to any amount payable as a result of a citation relating to the incident and must be paid to the system. The system must use the proceeds of the fines exclusively for damage prevention education.

Reports from Clerks of Court

The bill requires each clerk of court, by March 1 of each year, to submit a report to SSOCOF listing each citation written for a noncriminal infraction that was filed in the county during the preceding calendar year. The report must provide the name and address of the excavator or member operator who committed each infraction and indicate whether the civil penalty imposed for the infraction was paid. The bill provides that SSOCOF's annual progress report on the operation of the system, submitted to the Legislature, must include a summary of the reports provided by the clerks of court. The bill also provides that SSOCOF's annual progress report on participation by municipalities and

²⁴ See footnote 17 for the definition of an emergency under the Act.

²⁵ Because the bill does not define a "high-priority zone," it is not clear in what circumstances a noncriminal infraction may be defined as an "incident."

²⁶ "Proximate cause" is defined in Black's Law Dictionary (8th Edition, 2004) as: "1. A cause that is legally sufficient to result in liability; an act or omission that is considered in law to result in a consequence, so that liability can be imposed on the actor. 2. A cause that directly produces an event and without which the event would not have occurred."

counties in the one-call notification system, submitted to the President of the Senate, the Speaker of the House of Representatives, and the Governor, must include a summary of the reports provided by the clerks of court.

Assessment of System Costs

Currently, any member operator that receives fewer than 10 notifications through the SSOCOF system in any month is not assessed that month for a share of the system's operating costs. The bill removes this exemption, thus requiring that all member operators are assessed a proportionate share of system operating costs through monthly assessments.

B. SECTION DIRECTORY:

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

Section 2. Amends s. 556.102, F.S., providing definitions applicable to Chapter 556, F.S.

Section 3. Amending s. 556.103, F.S., relating to annual reports of the board of directors of Sunshine State One-Call of Florida, Inc.

Section 4. Amending s. 556.105, F.S., relating to procedures for notification of intended excavation plans and identification and marking of underground facilities.

Section 5. Amending s. 556.106, F.S., relating to liability of member operators, excavators, and the system.

Section 6. Amending s. 556.107, F.S., relating to violations of certain provisions of Chapter 556, F.S.

Section 7. Amending s. 556.109, F.S., relating to emergency excavations or demolitions.

Section 8. Amending s. 556.110, F.S., relating to assessment of system costs among member operators.

Section 9. Creating s. 556.114, F.S., establishing low-impact marking practices.

Section 10. Creating s. 556.115, F.S., requiring creation of a voluntary alternative dispute resolution program.

Section 11. Providing an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have a significant impact on state government revenues.

The bill provides that SSOCOF, when it receives information that an incident has occurred, must contract with DOAH to conduct a hearing to determine whether any noncriminal infraction was the proximate cause of the incident. DOAH likely will receive revenues as a result of any such contract, but only to the extent necessary to cover its costs of conducting the hearing.

The bill also provides that DOAH's services may be used as part of a voluntary alternative dispute resolution program created by SSOCOF. The bill provides that users of this program will bear the costs of the program. DOAH may receive revenues for services provided under the program either

directly from users or under contract with SSOCOF, but only to the extent necessary to cover its costs.

The bill increases the civil penalty for noncriminal infractions from \$250 plus court costs to \$500 plus court costs. If the citation for the infraction was issued by a state law enforcement officer, the penalty collected by the clerk of the court must be deposited into the fine and forfeiture fund established in s. 142.01, F.S.²⁷ All revenues received in this fund are considered state funds and must be remitted monthly to the Department of Revenue for deposit into the Clerks of the Court Trust Fund within the Justice Administrative Commission. Because revenues deposited into this fund are considered state funds, the increased civil penalty established in the bill may lead to an increase in state revenues. The significance of this increase, however, will depend entirely on compliance with and enforcement of Chapter 556, F.S.

2. Expenditures:

The bill does not appear to have a significant impact on state government expenditures.

The bill provides that SSOCOF, when it receives information that an incident has occurred, must contract with DOAH to conduct a hearing to determine whether any noncriminal infraction was the proximate cause of the incident. DOAH likely will incur costs to conduct such hearings, but these costs should be covered by revenues received through DOAH's contract with SSOCOF.

The bill also provides that DOAH's services may be used as part of a voluntary alternative dispute resolution program created by SSOCOF. The bill provides that users of this program will bear the costs of the program. DOAH may incur costs for services it provides under the program, but these costs should be covered by revenues received either directly from the program's users or under contract with SSOCOF.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill will have an indeterminate positive fiscal impact on local government revenues because it increases monetary penalties for noncriminal infractions from \$250 to \$500. If the citation for a noncriminal infraction is issued by a local law enforcement officer, local government code inspector, or a code enforcement officer, 80 percent of the penalty collected will be distributed to the local governmental entity whose employee issued the citation and the remaining 20 percent will be retained by the clerk of the court to cover administrative costs. The significance of this increase, however, will depend entirely on compliance with and enforcement of Chapter 556, F.S.

2. Expenditures:

The bill does not appear to have a significant impact on local government expenditures. The creation of an alternative dispute resolution program may reduce potential litigation costs for governmental entities that are member operators and excavators.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The creation of uniform, low-impact marking practices may create efficiencies for private member operators. The creation of an alternative dispute resolution program may reduce potential litigation costs for private member operators, excavators, and other private stakeholders. Excavators and private member operators will become subject to higher fines for noncriminal infractions (increased from \$250 to \$500) and potential new fines of up to \$50,000 for noncriminal infractions that are determined by DOAH to be the proximate cause of an incident.

²⁷ Section 566.107(1)(c), F.S.

D. FISCAL COMMENTS:

Currently, any member operator that receives fewer than 10 notifications through the SSOCOF system in any month is not assessed that month for a share of the system's operating costs. The bill removes this exemption, thus requiring that all member operators are assessed a proportionate share of system operating costs through monthly assessments.

According to SSOCOF, it is moving to a billing system under which each member's assessed share of the budget is calculated based on the total number of tickets received through the system in the preceding year. SSOCOF states that the new methodology will allow each member to know how much each monthly assessment will be for an entire year. In addition, according to data provided by SSOCOF, in February 2010, 93 member operators were exempt from monthly assessments and were not billed an aggregate total of \$428.69. Assuming that the data for that month is not extraordinary, the potential fiscal impact on member operators resulting from removal of the assessment exemption appears to be insignificant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As part of the low-impact marking practices created by the bill, the bill requires member operators to use temporary, nonpermanent paint, flags, stakes, or "other acceptable means" to mark areas described or premarked by excavators. The bill could be clarified to identify who may determine what other means are "acceptable" and how this determination may be made.

The bill requires that SSOCOF establish an alternative dispute resolution program that must include mediation, arbitration, or "other appropriate processes." The bill could be clarified as to what other processes may be "appropriate" and how this will be determined.

The bill provides that an excavator must stop excavation or demolition activities around an underwater facility if the horizontal route of the facility is "inadequately documented" and must then notify the system to have the route adequately documented. Chapter 556 does not indicate what, if any, type of documentation is required for such facilities. Thus, it is not clear what type of documentation the bill is referring to.

The bill creates new provisions governing violations of noncriminal infractions that constitute an "incident." The bill defines an "incident" as "an event that involves damage to an underground facility in a "high-priority zone." Because the bill does not define a "high-priority zone," it is not clear in what circumstances a noncriminal infraction may be defined as an "incident."

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Strike All

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Energy & Utilities Policy
2 Committee

3 Representative(s) Murzin offered the following:
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (d) of subsection (3) of section
8 556.101, Florida Statutes, is amended to read:

9 556.101 Short title; legislative intent.—

10 (3) It is the purpose of this chapter to:

11 (d) Reserve to the state the power to regulate any subject
12 matter specifically addressed in this chapter. Municipalities,
13 counties, districts, or other local governments may not adopt or
14 enforce ordinances or rules that conflict with this chapter or
15 that prescribe any of the following:

16 1. Require operators of underground facilities to obtain
17 permits from local governments in order to identify underground
18 facilities.

19 2. Require premarking or marking.

20 3. Specify the types of paint or other marking devices that

Strike All

21 are used to identify underground facilities.

22 4. Require removal of marks.

23 Section 2. Subsections (4) and (5) of section 556.103,
24 Florida Statutes, are amended to read:

25 556.103 Creation of the corporation; establishment of the
26 board of directors; authority of the board; annual report.—

27 ~~(4) Beginning in 1994,~~ The board of directors shall file
28 with the Governor, not later than 60 days before the convening
29 of each regular session of the Legislature, an annual progress
30 report on the operation of the system, which must include a
31 summary of the reports to the system from the clerks of court.

32 ~~(5) Beginning in 1998,~~ The board of directors shall submit
33 to the President of the Senate, the Speaker of the House of
34 Representatives, and the Governor, not later than 60 days before
35 the convening of each regular session of the Legislature, an
36 annual progress report on the participation by municipalities
37 and counties in the one-call notification system created by
38 this ~~(5) Beginning in 1998,~~ The board of directors shall submit
39 to the President of the Senate, the Speaker of the House of
40 Representatives, and the Governor, not later than 60 days before
41 the convening of each regular session of the Legislature, an
42 annual progress report on the participation by municipalities
43 and counties in the one-call notification system created by this
44 chapter. The report must include a summary of the reports to the
45 system from the clerks of court.

46 Section 3. Paragraphs (a) and (d) of subsection (1),
47 subsections (5) and (6), paragraph (a) of subsection (7),
48 paragraph (a) of subsection (9), and subsection (11) of section

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49 556.105, Florida Statutes, are amended to read:

50 556.105 Procedures.—

51 (1) (a) Not less than 2 full business days before beginning
52 any excavation or demolition that is not, except an excavation
53 beneath the waters of the state, and not less than 10 full
54 business days before beginning any excavation or demolition that
55 is beneath the waters of the state, an excavator shall provide
56 the following information through the system:

57 1. The name of the individual who provided notification and
58 the name, address, including the street address, city, state,
59 zip code, and telephone number of her or his employer.

60 2. The name and telephone number of the representative for
61 the excavator, and a valid electronic address to facilitate a
62 positive response by the system should be provided, if
63 available.

64 3. The county, the city or closest city, and the street
65 address or the closest street, road, or intersection to the
66 location where the excavation or demolition is to be performed,
67 and the construction limits of the excavation or demolition.

68 4. The commencement date and anticipated duration of the
69 excavation or demolition.

70 5. Whether machinery will be used for the excavation or
71 demolition.

72 6. The person or entity for whom the work is to be done.

73 7. The type of work to be done.

74 8. The approximate depth of the excavation.

75 (d) Member operators shall use the information provided to
76 the system by other member operators only for the purposes
77 stated in this chapter and not for sales or marketing purposes.

Strike All

78 ~~1. The system shall study the feasibility of the~~
79 ~~establishment or recognition of zones for the purpose of~~
80 ~~allowing excavation within such zones to be undertaken without~~
81 ~~notice to the system as now required by this chapter when such~~
82 ~~zones are:~~

83 ~~a. In areas within which no underground facilities are~~
84 ~~located.~~

85 ~~b. Where permanent markings, permit and mapping systems,~~
86 ~~and structural protection for underwater crossings are required~~
87 ~~or in place.~~

88 ~~c. For previously marked utilities on construction of one-~~
89 ~~or two-family dwellings where the contractor remains in custody~~
90 ~~and control of the building site for the duration of the~~
91 ~~building permit.~~

92 ~~2. The system shall report the results of the study to the~~
93 ~~Legislature on or before February 1, 2007, along with~~
94 ~~recommendations for further legislative action.~~

95 (5) All member operators within the defined area of a
96 proposed excavation or demolition shall be promptly notified
97 through the system, except that member operators with state-
98 owned underground facilities located within the right-of-way of
99 a state highway need not be notified of excavation or demolition
100 activities and are under no obligation to mark or locate the
101 facilities.

102 ~~(a) When an excavation site cannot be described in~~
103 ~~information provided under subparagraph (1)(a)3. with sufficient~~
104 ~~particularity to enable the member operator to ascertain the~~

105 ~~excavation site, and if the excavator and member operator~~
106 ~~have not mutually agreed otherwise, the excavator shall premark~~

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107 ~~the proposed area of the excavation before a member operator is~~
108 ~~required to identify the horizontal route of its underground~~
109 ~~facilities in the proximity of any excavation. However,~~
110 ~~premarking is not required for any excavation that is over 500~~
111 ~~feet in length and is not required where the premarking could~~
112 ~~reasonably interfere with traffic or pedestrian control.~~

113 (a) ~~(b)~~ If a member operator determines that a proposed
114 excavation or demolition is in proximity to or in conflict with
115 an underground facility of the member operator, except a
116 facility beneath the waters of the state, which is governed by
117 paragraph (b) ~~(c)~~, the member operator shall identify the
118 horizontal route by marking to within 24 inches from the outer
119 edge of either side of the underground facility by the use of
120 stakes, paint, flags, or other suitable means within 2 full
121 business days after the time the notification is received under
122 subsection (1). If the member operator is unable to respond
123 within such time, the member operator shall communicate with the
124 person making the request and negotiate a new schedule and time
125 that is agreeable to, and should not unreasonably delay, the
126 excavator.

127 (b) ~~(c)~~ If a member operator determines that a proposed
128 excavation is in proximity to or in conflict with an underground
129 facility of the member operator beneath the waters of the state,
130 the member operator shall identify the estimated horizontal
131 route of the underground facility, within 10 business days,
132 using marking buoys or other suitable devices, unless directed
133 otherwise by an agency having jurisdiction over the waters of
134 the state under which the member operator's underground facility
135 is located.

Strike All

136 (c)~~(d)~~ When excavation is to take place within a tolerance
137 zone, an excavator shall use increased caution to protect
138 underground facilities. The protection requires hand digging,
139 pot holing, soft digging, vacuum excavation methods, or other
140 similar procedures to identify underground facilities. Any use
141 of mechanized equipment within the tolerance zone must be
142 supervised by the excavator.

143 (6) (a) An excavator shall avoid excavation in the area
144 described in the notice given under subsection (1) until each
145 member operator underground facility has been marked and located
146 or until the excavator has been notified that no member operator
147 has underground facilities in the area described in the notice,
148 or for the time allowed for markings set forth in paragraphs
149 (5) (a) and (b) ~~(5) (b) and (c)~~, whichever occurs first. If a
150 member operator has not located and marked its underground
151 facilities within the time allowed for marking set forth in
152 paragraphs (5) (a) and (b) ~~(5) (b) and (c)~~, the excavator may
153 proceed with the excavation, if the excavator does so with
154 reasonable care and if detection equipment or other acceptable
155 means to locate underground facilities are used.

156 (b) An excavator may not demolish in the area described in
157 the notice given under subsection (1) until all member operator
158 underground facilities have been marked and located or removed.

159 (7) (a) A member operator that states that it does not have
160 accurate information concerning the exact location of its
161 underground facilities is exempt from the requirements of
162 paragraphs (5) (a) and (b) ~~(5) (b) and (c)~~, but shall provide the
163 best available information to the excavator in order to comply
164 with the requirements of this section. An excavator is not

Strike All

165 liable for any damage to an underground facility under the
166 exemption in this subsection if the excavation or demolition is
167 performed with reasonable care and detection equipment or other
168 acceptable means to locate underground facilities are used.

169 (9) (a) After receiving notification from the system, a
170 member operator shall provide a positive response to the system
171 within 2 full business days, or 10 such days for an underwater
172 excavation or demolition, indicating the status of operations to
173 protect the facility.

174 (11) Before or during excavation or demolition, if the
175 marking of the horizontal route of any facility is removed or is
176 no longer visible, or, in the case of an underwater facility, is
177 inadequately documented, the excavator shall stop excavation or
178 demolition activities in the vicinity of the facility and shall
179 notify the system to have the route remarked or adequately
180 documented by a member operator or in a manner approved by the
181 member operator.

182 Section 4. Section 556.106, Florida Statutes, is amended to
183 read:

184 556.106 Liability of the member operator, excavator, and
185 system.—

186 (1) There is no liability on the part of, and no cause of
187 action of any nature shall arise against, the board members of
188 the corporation in their capacity as administrators of the
189 system.

190 (2) (a) If a person violates s. 556.105(1) or (6), and
191 subsequently, whether by himself or herself or through the
192 person's employees, contractors, subcontractors, or agents,
193 performs an excavation or demolition that damages an underground

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194 facility of a member operator, it is rebuttably presumed that
195 the person was negligent. The person, if found liable, is liable
196 for the total sum of the losses to all member operators involved
197 as those costs are normally computed. Any damage for loss of
198 revenue and loss of use may not exceed \$500,000 per affected
199 underground facility, except that revenues lost by a
200 governmental member operator whose revenues are used to support
201 payments on principal and interest on bonds may not be limited.
202 ~~Any liability of the state and its agencies and its subdivisions~~
203 ~~which arises out of this chapter is subject to the provisions of~~
204 ~~s. 768.28.~~

205 (b) If any excavator fails to discharge a duty imposed by
206 ~~the provisions of~~ this chapter, the excavator, if found liable,
207 is liable for the total sum of the losses to all parties
208 involved as those costs are normally computed. Any damage for
209 loss of revenue and loss of use may not exceed \$500,000 per
210 affected underground facility, except that revenues lost by a
211 governmental member operator whose revenues are used to support
212 payments on principal and interest on bonds may not be limited.

213 ~~(c) Any liability of the state, its agencies, or its~~
214 ~~subdivisions which arises out of this chapter is subject to the~~
215 ~~provisions of s. 768.28.~~

216 ~~(c)~~-(d) Obtaining information as to the location of an
217 underground facility from the member operator as required by
218 this chapter does not excuse any excavator from performing an
219 excavation or demolition in a careful and prudent manner, based
220 on accepted engineering and construction practices, and it does
221 not excuse the excavator from liability for any damage or injury
222 resulting from any excavation or demolition.

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223 (3) If, after receiving proper notice, a member operator
224 fails to discharge a duty imposed by ~~the provisions of~~ this act
225 and an underground facility of a ~~such~~ member operator is damaged
226 by an excavator who has complied with ~~the provisions of~~ this
227 act, as a proximate result of the member operator's failure to
228 discharge such duty, the ~~such~~ excavator is ~~shall~~ not ~~be~~ liable
229 for such damage and the member operator, if found liable, is
230 ~~shall be~~ liable to such person for the total cost of any loss or
231 injury to any person or damage to equipment resulting from the
232 member operator's failure to comply with this act. Any damage
233 for loss of revenue and loss of use shall not exceed \$500,000
234 per affected underground facility, except that revenues lost by
235 a governmental member operator, which revenues are used to
236 support payments on principal and interest on bonds, shall not
237 be limited. ~~The liability of governmental member operators shall~~
238 ~~be subject to limitations provided in chapter 768.~~

239 (4) If an owner of an underground facility fails to become
240 a member of the corporation in order to use and participate in
241 the system, as required by this act, and that failure is a cause
242 of damage to that underground facility caused by an excavator
243 who has complied with ~~the provisions of~~ this act and has
244 exercised reasonable care in the performance of the excavation
245 that has caused damage to the underground facility, the owner
246 has no right of recovery against the excavator for the damage to
247 that underground facility.

248 (5) If, after receiving proper notification, the system
249 fails to discharge its duties, resulting in damage to an
250 underground facility, the system, if found liable, shall be
251 liable to all parties, as defined in this act. Any damage for

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252 loss of revenue and loss of use shall not exceed \$500,000 per
253 affected underground facility, except that revenues lost by a
254 governmental member operator, which revenues are used to support
255 payments on principal and interest on bonds, shall not be
256 limited.

257 (6) The system does not have a duty to mark or locate
258 underground facilities and may not do so, and a right of
259 recovery does not exist against the system for failing to mark
260 or locate underground facilities. The system is not liable for
261 the failure of a member operator to comply with the requirements
262 of this chapter.

263 (7) An excavator or a member operator who performs any
264 excavation with hand tools under s. 556.108(4)(c) or (5) is
265 liable for any damage to any operator's underground facilities
266 damaged during such excavation.

267 (8) Any liability of the state, a state agency, or a
268 political subdivision which arises out of this chapter is
269 subject to the provisions of s. 768.28.

270 Section 5. Section 556.107, Florida Statutes, is amended to
271 read:

272 556.107 Violations.—

273 (1) NONCRIMINAL INFRACTIONS.—

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

276 1. Section 556.105(1), relating to providing required
277 information.

278 2. Section 556.105(6), relating to the avoidance of
279 excavation.

280 3. Section 556.105(11), relating to the need to stop

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281 excavation or demolition because marks are no longer visible,
282 or, in the case of underwater facilities, are inadequately
283 documented.

284 4. Section 556.105(12), relating to the need to cease
285 excavation or demolition activities because of contact or damage
286 to an underground facility.

287 5. Section 556.105(5)(a) and (b), 556.105(5)(b) and (c)
288 relating to identification of underground facilities, if a
289 member operator does not mark an underground facility, but not
290 if a member operator marks an underground facility incorrectly.

291 6. Section 556.109(2), relating to falsely notifying the
292 system of an emergency situation or condition.

293 7. Section 556.114(1), (2), (3), and (4), relating to a
294 failure to follow low-impact marking practices, as defined
295 therein.

296 (b) Any excavator or member operator who commits a
297 noncriminal infraction under paragraph (a) may be issued a
298 citation by any local or state law enforcement officer,
299 government code inspector, or code enforcement officer, and the
300 issuer of a citation may require an excavator to cease work on
301 any excavation or not start a proposed excavation until there
302 has been compliance with the provisions of this chapter.
303 Citations shall be hand delivered to any employee of the
304 excavator or member operator who is involved in the noncriminal
305 infraction. The citation shall be issued in the name of the
306 excavator or member operator, whichever is applicable.

307 (c) Any excavator or member operator who commits a
308 noncriminal infraction under paragraph (a) may be required to
309 pay a ~~appear before the county court.~~ The civil penalty for each

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310 ~~any such infraction, which is \$500 \$250 plus court costs, except~~
311 ~~as otherwise provided in this section.~~ If a citation is issued
312 by a local law enforcement officer, a local government code
313 inspector, or a code enforcement officer, 80 percent of the
314 civil penalty collected by the clerk of the court shall be
315 distributed to the local governmental entity whose employee
316 issued the citation and 20 percent of the penalty shall be
317 retained by the clerk to cover administrative costs, in addition
318 to other court costs. If a citation is issued by a state law
319 enforcement officer, the civil penalty collected by the clerk
320 shall be retained by the clerk for deposit into the fine and
321 forfeiture fund established pursuant to s. 142.01. Any person
322 who fails to ~~appear or otherwise~~ properly respond to a citation
323 issued pursuant to paragraph (b) ~~(d)~~ shall, in addition to the
324 citation, be charged with the offense of failing to respond to
325 ~~the such~~ citation and, upon conviction, commits a misdemeanor of
326 the second degree, punishable as provided in s. 775.082 or s.
327 775.083. A written warning to this effect must ~~shall~~ be provided
328 at the time any citation is issued pursuant to paragraph (b).

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

331 1. ~~post a bond, which shall be equal in amount to the~~
332 ~~applicable civil penalty plus court costs; or~~

333 2. ~~Sign and accept a citation indicating a promise to~~
334 ~~appear before the county court.~~

335
336 ~~The person issuing the citation may indicate on the~~
337 ~~citation the time and location of the scheduled hearing and~~
338 ~~shall indicate the applicable civil penalty.~~

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

342 1. ~~pay the civil penalty plus court costs, in lieu of~~
343 ~~appearance, either by mail or in person, within 30 days after~~
344 ~~the date of receiving the citation; or~~

345 2. ~~Forfeit bond, if a bond has been posted, by not~~
346 ~~appearing at the designated time and location.~~

347

348 If the person cited pays the civil penalty ~~follows either of the~~
349 ~~above procedures,~~ she or he is deemed to have admitted to
350 committing the infraction and to have waived the right to a
351 hearing on the issue of commission of the infraction. The
352 admission may be used as evidence in any other proceeding under
353 this chapter.

354 (f) Any person may elect ~~electing~~ to appear before the
355 county court and if so electing ~~or who is required to appear~~
356 ~~shall be~~ deemed to have waived the limitations on the civil
357 penalty specified in paragraph (c). The court, after a hearing,
358 shall make a determination as to whether an infraction has been
359 committed. If the commission of an infraction has been proven,
360 the court may impose a civil penalty not to exceed \$5,000 plus
361 court costs. In determining the amount of the civil penalty, the
362 court may consider previous noncriminal infractions committed.

363 (g) At a court hearing under this chapter, the commission
364 of a charged infraction must be proven by a preponderance of the
365 evidence.

366 (h) If a person is found by a judge or ~~the~~ hearing official
367 to have committed an infraction, the person may appeal that

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368 finding to the circuit court.

369 (i) Sunshine State One-Call of Florida, Inc., may, at its
370 own cost, retain an attorney to assist in the presentation of
371 relevant facts and law in the county court proceeding pertaining
372 to the citation issued under this section. The corporation may
373 also appear in any case appealed to the circuit court if a
374 county court judge finds that an infraction of the chapter was
375 committed. An appellant in the circuit court proceeding shall
376 timely notify the corporation of any appeal under this section.

377 (2) REPORT OF INFRACTIONS.—By March 31 of each year, each
378 clerk of court shall submit a report to Sunshine State One-Call
379 of Florida, Inc., listing each violation notice written under
380 paragraph (a) which has been filed in that county during the
381 preceding calendar year. The report must state the name and
382 address of the member or excavator who committed each infraction
383 and indicate whether or not the civil penalty for the infraction
384 was paid.

385 (3) ~~(2)~~ MISDEMEANORS.—Any person who knowingly and willfully
386 removes or otherwise destroys the valid stakes or other valid
387 physical markings described in s. 556.105(5)(a) and (b) ~~s.~~
388 ~~556.105(5)(b) and (c)~~ used to mark the horizontal route of an
389 underground facility commits a misdemeanor of the second degree,
390 punishable as provided in s. 775.082 or s. 775.083. For purposes
391 of this subsection, stakes or other nonpermanent physical
392 markings are considered valid for 30 calendar days after
393 information is provided to the system under s. 556.105(1)(a) ~~s.~~
394 ~~556.105(1)(c).~~

395 Section 6. Section 556.109, Florida Statutes, is amended to
396 read:

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397 556.109 Emergency excavations or demolitions attempted;
398 exception.—

399 (1) The provisions of This act does de not apply to making
400 an excavation or demolition during an emergency if, provided the
401 system or the member operator was notified at the earliest
402 opportunity and all reasonable precautions had been taken to
403 protect any underground facility. For the purposes of this act,
404 "emergency" means any condition constituting a clear and present
405 danger to life or property; a situation caused by the escape of
406 any substance transported by means of an underground facility;
407 any interruption of vital public service or communication caused
408 by any break or defect in a member operator's underground
409 facility; or, in the case of the State Highway System or streets
410 or roads maintained by a political subdivision or underground
411 facilities owned, operated, or maintained by a political
412 subdivision, if the use of such highways, streets, roads, or
413 underground facilities is, in the sole judgment of the
414 Department of Highway Safety and Motor Vehicles, the Department
415 of Transportation, or such political subdivision, impaired by an
416 unforeseen occurrence that which necessitates repair beginning
417 immediately after such occurrence.

418 (2) An excavator shall not notify the system that there is
419 an emergency unless the excavator reasonably believes that the
420 intended excavation or demolition is due to a situation or
421 condition as defined in subsection (1).

422 Section 7. Section 556.110, Florida Statutes, is amended to
423 read:

424 556.110 Costs assessed among member operators.—Member
425 operators shall proportionately share in the cost of operating

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426 the system through monthly assessments made upon each member
427 operator. ~~However, any member that receives fewer than 10~~
428 ~~notifications in any month shall not be assessed for such month.~~

429 Section 8. Section 556.114, Florida Statutes, is created to
430 read:

431 556.114 Low-impact marking practices.-

432 (1) An excavator providing notice under s. 556.105(1)(a)
433 shall identify in its notice only the area that will be
434 excavated during the period that the information in such notice
435 is considered valid under s. 556.105(1)(c).

436 (2) When an excavator has not completed an excavation
437 noticed under s. 556.105(1)(a) within the period that the
438 information in the notice is considered valid under s.
439 556.105(1)(c), the excavator must provide a subsequent notice to
440 the system under s. 556.105(1)(a) to continue with the
441 excavation, and such subsequent notice shall identify only the
442 remaining area to be excavated.

443 (3) When an excavation site cannot be described in
444 information provided under s. 556.105(1)(a) with sufficient
445 particularity to enable the member operator to ascertain the
446 excavation site, and if the excavator and member operator have
447 not mutually agreed otherwise, the excavator shall premark the
448 proposed area of the excavation before a member operator is
449 required to identify the horizontal route of its underground
450 facilities in the proximity of any excavation. However,
451 premarking is not required when the premarking could reasonably
452 interfere with traffic or pedestrian control.

453 (4) A member operator shall identify the horizontal route
454 of its underground facilities as set forth in s. 556.105(1)(a)

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455 and (b), and excavators shall premark an excavation site as set
456 forth in subsection (3) using flags or stakes or temporary, non-
457 permanent paint or other industry accepted low-impact marking
458 practices.

459 (5) Any horizontal route-identification marker must be in a
460 color identified in the Uniform Color Code for Utilities.

461 (6) Sunshine State One-Call of Florida, Inc., shall
462 establish an educational program for the purpose of informing
463 excavators and member operators about low-impact marking
464 practices.

465 Section 9. Section 556.115, Florida Statutes, is created to
466 read:

467 556.115 Alternative dispute resolution.-

468 (1) Sunshine State One-Call of Florida, Inc., shall create
469 a voluntary alternative dispute resolution program. The program
470 shall be available to all member operators, excavators, and
471 other stakeholders, such as locators, utility service users, and
472 governmental or quasi-governmental entities, for purposes of
473 resolving disputes arising from excavation activities,
474 including, but not limited to, loss of services, down time,
475 delays, loss of use of facilities during restoration or
476 replacement, and similar economic disruptions, exclusive of
477 penalties imposed under other provisions of this act.

478 (2) The alternative dispute resolution program created by
479 Sunshine State One-Call of Florida, Inc., shall include
480 mediation, arbitration, or other appropriate processes,
481 including the use of the services of the Division of
482 Administrative Hearings.

483 (3) The costs of using the program shall be borne by the

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484 voluntary users, and the voluntary users shall choose the form
485 of alternative dispute resolution to be used. If arbitration is
486 used, the users shall decide whether the arbitration will be
487 binding.

488 (4) Unless binding arbitration is the chosen method of
489 alternative dispute resolution, the users or any one of such
490 users may end the process at any time and exercise the right to
491 proceed in a court of competent jurisdiction or before the
492 Division of Administrative Hearings.

493 (5) This section does not change the basis for civil
494 liability for damages.

495 Section 10. Section 556.116, Florida Statutes, is created
496 to read:

497 556.116 High-priority subsurface installations; special
498 procedures.-

499 (1) As used in this section, the term:

500 (a) "Division" means the Division of Administrative
501 Hearings.

502 (b) "High-priority subsurface installation" means an
503 underground gas transmission or gas distribution pipeline, an
504 underground pipeline used to transport gasoline, jet fuel, or
505 any other refined petroleum product or hazardous or highly
506 volatile liquid, such as anhydrous ammonia or carbon dioxide, if
507 the pipeline is deemed to be critical by the operator of the
508 pipeline and is identified as a high-priority subsurface
509 installation to an excavator who has provided a notice of intent
510 to excavate pursuant to s. 556.105(1), or would have been
511 identified as a high-priority subsurface installation except for
512 the excavator's failure to give proper notice of intent to

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513 excavate.

514 (c) "Incident" means an event that involves damage to a
515 high-priority subsurface installation that has been identified
516 as such by the operator according to the notification procedures
517 set forth in subsection (2) and that:

518 1. Results in death or serious bodily injury requiring
519 inpatient hospitalization.

520 2. Results in property damage, including service-
521 restoration costs, in an amount in excess of \$50,000 or
522 interruption of service to 2,500 or more customers.

523 (2) When an operator proposes to excavate or demolish
524 within 15 feet of the horizontal route of an underground
525 facility that has been identified as a high-priority subsurface
526 installation by the operator of the facility, the operator
527 shall, in addition to identifying the horizontal route of its
528 facility as set forth in s. 556.105(5)(a) and (b), and within
529 the time period set forth in s. 556.105(9)(a) for a positive
530 response, notify the excavator that the facility is a high-
531 priority subsurface installation. If the member operator
532 provides such timely notice of the existence of a high-priority
533 subsurface installation, an excavator shall notify the operator
534 of the planned excavation start date and time before beginning
535 excavation. If the member operator does not provide timely
536 notice, the excavator may proceed, after waiting the prescribed
537 time period set forth in s. 556.105(9)(a), to excavate without
538 notifying the member operator of the excavation start date and
539 time. The exemptions stated in s. 556.108 apply to the
540 notification requirements in this subsection.

541 (3) (a) An alleged commission of an infraction listed in s.

Strike All

542 556.107(1) which results in an incident must be reported to the
543 system by a member operator or an excavator within 24 hours
544 after learning of the alleged occurrence of an incident.

545 (b) Upon receipt of an allegation that an incident has
546 occurred, the system shall transmit an incident report to the
547 division and contract with the division so that the division may
548 conduct a hearing to determine whether an incident has occurred,
549 and, if so, whether a violation of s. 556.107(1)(a), was a
550 proximate cause of the incident. The contract for services to be
551 performed by the division must include provisions for the system
552 to reimburse the division for any costs incurred by the division
553 for court reporters, transcript preparation, travel, facility
554 rental, and other customary hearing costs, in the manner set
555 forth in s. 120.65(11).

556 (c) The division has jurisdiction in a proceeding under
557 this section to determine the facts and law concerning an
558 alleged incident. The division may impose a fine against a
559 violator in an amount not to exceed \$50,000 if the person
560 violated a provision of s. 556.107(1)(a), and that violation was
561 a proximate cause of the incident. However, if a state agency or
562 political subdivision caused the incident, the state agency or
563 political subdivision may not be fined in an amount in excess of
564 \$10,000.

565 (d) A fine imposed by the division is in addition to any
566 amount payable as a result of a citation relating to the
567 incident under s. 556.107(1)(a).

568 (e) A fine against an excavator or a member operator
569 imposed under this subsection shall be paid to the system, which
570 shall use the collected fines to satisfy the costs incurred by

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571 the system for any proceedings under this section. To the extent
572 there are any funds remaining, the system may use the funds
573 exclusively for damage-prevention education.

574 (f) This section does not change the basis for civil
575 liability. The findings and results of a hearing under this
576 section may not be used as evidence of liability in any civil
577 action.

578 (4) (a) The division shall issue and serve on all original
579 parties an initial order that assigns the case to a specific
580 administrative law judge and requests information regarding
581 scheduling the final hearing within 5 business days after the
582 division receives a petition or request for hearing. The
583 original parties in the proceeding includes all excavators and
584 member operators identified by the system as being involved in
585 the alleged incident. The final hearing must be conducted within
586 60 days after the date the petition or the request for a hearing
587 is filed with the division.

588 (b) Unless the parties otherwise agree, venue for the
589 hearing shall be in the county in which the underground facility
590 is located.

591 (c) An intervenor in the proceeding must file a petition to
592 intervene no later than 15 days before the final hearing. A
593 person who has a substantial interest in the proceeding may
594 intervene.

595 (5) The following procedures apply:

596 (a) Motions shall be limited to the following:

597 1. A motion in opposition to the petition.

598 2. A motion requesting discovery beyond the informal
599 exchange of documents and witness lists described in paragraph

Strike All

600 (c). Upon a showing of necessity, additional discovery may be
601 permitted in the discretion of the administrative law judge, but
602 only if the discovery can be completed no later than 5 days
603 before the final hearing.

604 3. A motion for continuance of the final hearing date.

605 (b) All parties shall attend a prehearing conference for
606 the purpose of identifying the legal and factual issues to be
607 considered at the final hearing, the names and addresses of
608 witnesses who may be called to testify at the final hearing,
609 documentary evidence that will be offered at the final hearing,
610 the range of penalties that may be imposed, and any other matter
611 that would expedite resolution of the proceeding. The prehearing
612 conference may be held by telephone conference call.

613 (c) Not later than 5 days before the final hearing the
614 parties shall furnish to each other copies of documentary
615 evidence and lists of witnesses who may testify at the final
616 hearing.

617 (d) All parties shall have an opportunity to respond, to
618 present evidence and argument on all issues involved, to conduct
619 cross-examination and submit rebuttal evidence, and to be
620 represented by counsel or other qualified representative.

621 (e) The record shall consist only of:

622 1. All notices, pleadings, motions, and intermediate
623 rulings.

624 2. Evidence received during the final hearing.

625 3. A statement of matters officially recognized.

626 4. Proffers of proof and objections and rulings thereon.

627 5. Matters placed on the record after an ex parte
628 communication.

Strike All

629 6. The written final order of the administrative law judge
630 presiding at the final hearing.

631 7. The official transcript of the final hearing.

632 (f) The division shall accurately and completely preserve
633 all testimony in the proceeding and, upon request by any party,
634 shall make a full or partial transcript available at no more
635 than actual cost.

636 (g) The administrative law judge shall issue a final order
637 within 30 days after the final hearing or the filing of the
638 transcript thereof, whichever is later. The final order of the
639 administrative law judge must include:

640 1. Findings of fact based exclusively on the evidence of
641 record and matters officially recognized.

642 2. Conclusions of law. In determining whether a party has
643 committed an infraction of s. 556.107(1)(a), and whether the
644 infraction was a proximate cause of an incident, the commission
645 of an infraction must be proven by a preponderance of the
646 evidence.

647 3. Imposition of a fine, if applicable.

648 4. Any other information required by law or rule to be
649 contained in a final order.

650
651 The final order of the administrative law judge constitutes
652 final agency action subject to judicial review pursuant to s.
653 120.68.

654 Section 11. This act shall take effect October 1, 2010.
655 -----

656

657

T I T L E A M E N D M E N T

Strike All

658 Remove the entire title and insert:

659 A bill to be entitled

660 An act relating to underground facility damage
661 prevention and safety; amending s. 556.101, F.S.;
662 prohibiting municipalities, counties, districts, and
663 other local governments from enacting ordinances or
664 rules that conflict with ch. 556, F.S.; amending s.
665 556.103, F.S.; requiring that the board of directors
666 of Sunshine State One-Call of Florida, Inc., present
667 to the Governor and Legislature an annual report that
668 includes a summary of reports issued by the clerks of
669 court; amending s. 556.105, F.S.; requiring that an
670 excavator provide the Sunshine State One-Call of
671 Florida, Inc., system with certain specified
672 information not less than 10 full business days before
673 beginning an excavation or demolition beneath the
674 waters of the state; prohibiting the use of such
675 information by member operators for sales or marketing
676 purposes; deleting obsolete provisions; removing
677 provisions requiring the premarking of certain
678 proposed excavation sites; requiring a mutually agreed
679 excavation plan for high-priority excavations;
680 amending s. 556.106, F.S.; removing redundant
681 provisions that provide a limited waiver of sovereign
682 immunity for the state and its agencies and
683 subdivisions arising from matters involving
684 underground facilities; amending s. 556.107, F.S.;
685 providing increased penalties for noncriminal
686 infractions of the Sunshine State One-Call of Florida,

Strike All

687 Inc., system; requiring each clerk of court to submit
688 a report to Sunshine State One-Call of Florida, Inc.,
689 by a specified date listing each violation that has
690 been filed in the county during the preceding calendar
691 year; amending s. 556.109, F.S.; specifying
692 circumstances under which an excavator shall not
693 notify the Sunshine State One-Call of Florida, Inc.,
694 system that there is an emergency; amending s.
695 556.110, F.S.; deleting a provision that limits
696 assessments against a member operator who receives
697 fewer than 10 notifications in any month; creating s.
698 556.114, F.S.; providing requirements for low-impact
699 marking practices; providing procedures and methods to
700 mark areas of excavation; requiring Sunshine State
701 One-Call of Florida, Inc., to establish an educational
702 program for the purpose of informing excavators and
703 member operators about low-impact marking practices;
704 creating s. 556.115, F.S.; requiring Sunshine State
705 One-Call of Florida, Inc., to create a voluntary
706 alternative dispute resolution program that is open to
707 all member operators, excavators, and other
708 stakeholders; requiring the voluntary users of the
709 alternative dispute resolution program to choose the
710 form of alternative dispute resolution to be used;
711 requiring that the costs of using the voluntary
712 program be borne by the users; providing that unless
713 binding arbitration is the chosen method of
714 alternative dispute resolution, the users or any one
715 of such users may end the process at any time and

Strike All

716 proceed in a court of competent jurisdiction or before
717 the Division of Administrative Hearings; creating s.
718 556.116, F.S.; defining the terms "high-priority
719 subsurface installations" and "incident"; providing
720 that if an excavation is proposed within 15 feet of a
721 high-priority subsurface installation and is
722 identified as such by the facility operator, the
723 facility operator must notify the excavator of the
724 existence of the high-priority subsurface installation
725 and mark its location before excavation may begin;
726 requiring an excavator to notify the operator of the
727 excavation start time in the vicinity of a high-
728 priority subsurface installation; providing that an
729 alleged infraction that results in an incident must be
730 reported to the system by an operator or an excavator;
731 providing that the system shall transmit incident
732 reports to the Division of Administrative Hearings;
733 providing that the system and the division may
734 contract for the division to conduct proceedings;
735 providing that the division has jurisdiction to
736 determine the facts and law concerning an alleged
737 incident; authorizing the division to impose a fine on
738 a violator if the violation was a proximate cause of
739 the incident; providing procedures, venue, and
740 standard of proof; providing an effective date.
741

1 A bill to be entitled
 2 An act relating to underground facility damage prevention
 3 and safety; amending s. 556.101, F.S.; clarifying
 4 legislative intent that the state has exclusive power to
 5 regulate underground facilities; prohibiting
 6 municipalities, counties, districts, and other local
 7 governments from enacting ordinances or rules that
 8 regulate the subject of underground facilities; amending
 9 s. 556.102, F.S.; defining the terms "high-priority
 10 subsurface installations" and "incident"; amending s.
 11 556.103, F.S.; requiring that the board of directors of
 12 Sunshine State One-Call of Florida, Inc., present to the
 13 Governor and Legislature an annual report that includes a
 14 summary of reports issued by the clerks of court; amending
 15 s. 556.105, F.S.; requiring that an excavator provide the
 16 Sunshine State One-Call of Florida, Inc., system with
 17 certain specified information not less than 10 full
 18 business days before beginning an excavation or demolition
 19 beneath the waters of the state; prohibiting the use of
 20 such information by member operators for sales or
 21 marketing purposes; deleting obsolete provisions; removing
 22 provisions requiring the premarking of certain proposed
 23 excavation sites; providing that if an excavation is
 24 proposed which is within 10 feet of a high-priority
 25 subsurface installation and is identified as a high-
 26 priority subsurface installation by the operator, the
 27 operator must notify the excavator of the existence of the
 28 high-priority subsurface installation and mark its

29 location before the legal excavation start time; requiring
 30 a mutually agreed excavation plan for high-priority
 31 excavations; amending s. 556.106, F.S.; removing
 32 provisions that provide a limited waiver of sovereign
 33 immunity for the state and its agencies and subdivisions
 34 arising from matters involving underground facilities;
 35 amending s. 556.107, F.S.; providing penalties for
 36 noncriminal infractions of the Sunshine State One-Call of
 37 Florida, Inc., system; providing a civil penalty for each
 38 infraction; detailing procedures for citations; requiring
 39 each clerk of court to submit a report to Sunshine State
 40 One-Call of Florida, Inc., by a specified date listing
 41 each violation that has been filed in the county during
 42 the preceding calendar year; amending s. 556.109, F.S.;
 43 specifying circumstances under which an excavator need not
 44 notify the Sunshine State One-Call of Florida, Inc.,
 45 system that there is an emergency; amending s. 556.110,
 46 F.S.; deleting a provision that limits assessments against
 47 a member operator who receives fewer than 10 notifications
 48 in any month; creating s. 556.114, F.S.; providing
 49 requirements for low-impact marking practices; providing
 50 procedures and methods to mark areas of excavation;
 51 requiring Sunshine State One-Call of Florida, Inc., to
 52 establish an educational program for the purpose of
 53 informing excavators and member operators about low-impact
 54 marking practices; creating s. 556.115, F.S.; requiring
 55 Sunshine State One-Call of Florida, Inc., to create a
 56 voluntary alternative dispute resolution program that is

57 open to all member operators, excavators, and other
 58 stakeholders; requiring the voluntary users of the
 59 alternative dispute resolution program to choose the form
 60 of alternative dispute resolution to be used; requiring
 61 that the costs of using the voluntary program be borne by
 62 the users; providing that unless binding arbitration is
 63 the chosen method of alternative dispute resolution, the
 64 users or any one of such users may end the process at any
 65 time and proceed in a court of competent jurisdiction or
 66 before the Division of Administrative Hearings; providing
 67 an effective date.

68
 69 Be It Enacted by the Legislature of the State of Florida:

70
 71 Section 1. Paragraph (d) of subsection (3) of section
 72 556.101, Florida Statutes, is amended to read:

73 556.101 Short title; legislative intent.—

74 (3) It is the purpose of this chapter to:

75 (d) Reserve and preempt to the state the exclusive power
 76 to regulate any subject matter specifically addressed in this
 77 chapter. Municipalities, counties, districts, or other local
 78 governments may not enact ordinances or rules or take other
 79 actions that regulate any subject addressed in this chapter or
 80 by Sunshine State One-Call of Florida, Inc., under this chapter,
 81 including delegations of authority to Sunshine State One-Call of
 82 Florida, Inc. Any ordinance or rule in existence on June 30,
 83 2010, which is in conflict with this chapter is no longer valid
 84 or enforceable on or after July 1, 2010.

HB 691

2010

85 Section 2. Present subsections (8) through (14) of section
 86 556.102, Florida Statutes, are renumbered as subsections (10)
 87 through (16), respectively, and new subsections (8) and (9) are
 88 added to that section, to read:

89 556.102 Definitions.—As used in this act:

90 (8) "High-priority subsurface installations" means certain
 91 gas transmission, gas distribution, gasoline, petroleum, and
 92 other flammable, explosive, or corrosive commodity pipelines
 93 that are deemed to be critical by the operators of those
 94 pipelines.

95 (9) "Incident" means an event that involves damage to an
 96 underground facility in a high-priority zone which results in
 97 death or personal injury that requires inpatient hospitalization
 98 or causes property damage, including service-restoration costs
 99 in an amount in excess of \$50,000 or interruption of service to
 100 more than 2,500 customers.

101 Section 3. Subsections (4) and (5) of section 556.103,
 102 Florida Statutes, are amended to read:

103 556.103 Creation of the corporation; establishment of the
 104 board of directors; authority of the board; annual report.—

105 (4) ~~Beginning in 1994,~~ The board of directors shall file
 106 with the Governor, not later than 60 days before the convening
 107 of each regular session of the Legislature, an annual progress
 108 report on the operation of the system, which must include a
 109 summary of the reports to the system from the clerks of court.

110 (5) ~~Beginning in 1998,~~ The board of directors shall submit
 111 to the President of the Senate, the Speaker of the House of
 112 Representatives, and the Governor, not later than 60 days before

113 the convening of each regular session of the Legislature, an
 114 annual progress report on the participation by municipalities
 115 and counties in the one-call notification system created by this
 116 chapter. The report must include a summary of the reports to the
 117 system from the clerks of court.

118 Section 4. Paragraphs (a) and (d) of subsection (1),
 119 subsections (5) and (6), paragraph (a) of subsection (7),
 120 paragraph (a) of subsection (9), and subsection (11) of section
 121 556.105, Florida Statutes, are amended to read:

122 556.105 Procedures.—

123 (1)(a) Not less than 2 full business days before beginning
 124 any excavation or demolition that is not, except an excavation
 125 beneath the waters of the state, and not less than 10 full
 126 business days before beginning any excavation or demolition that
 127 is beneath the waters of the state, an excavator shall provide
 128 the following information through the system:

129 1. The name of the individual who provided notification
 130 and the name, address, including the street address, city,
 131 state, zip code, and telephone number of her or his employer.

132 2. The name and telephone number of the representative for
 133 the excavator, and a valid electronic address to facilitate a
 134 positive response by the system should be provided, if
 135 available.

136 3. The county, the city or closest city, and the street
 137 address or the closest street, road, or intersection to the
 138 location where the excavation or demolition is to be performed,
 139 and the construction limits of the excavation or demolition.

140 4. The commencement date and anticipated duration of the

141 excavation or demolition.

142 5. Whether machinery will be used for the excavation or
143 demolition.

144 6. The person or entity for whom the work is to be done.

145 7. The type of work to be done.

146 8. The approximate depth of the excavation.

147 (d) Member operators shall use the information provided to
148 the system by other member operators only for the purposes
149 stated in this chapter and not for sales or marketing purposes.

150 ~~1. The system shall study the feasibility of the~~
151 ~~establishment or recognition of zones for the purpose of~~
152 ~~allowing excavation within such zones to be undertaken without~~
153 ~~notice to the system as now required by this chapter when such~~
154 ~~zones are:~~

155 ~~a. In areas within which no underground facilities are~~
156 ~~located.~~

157 ~~b. Where permanent markings, permit and mapping systems,~~
158 ~~and structural protection for underwater crossings are required~~
159 ~~or in place.~~

160 ~~c. For previously marked utilities on construction of one-~~
161 ~~or two-family dwellings where the contractor remains in custody~~
162 ~~and control of the building site for the duration of the~~
163 ~~building permit.~~

164 ~~2. The system shall report the results of the study to the~~
165 ~~Legislature on or before February 1, 2007, along with~~
166 ~~recommendations for further legislative action.~~

167 (5) All member operators within the defined area of a
168 proposed excavation or demolition shall be promptly notified

169 through the system, except that member operators with state-
 170 owned underground facilities located within the right-of-way of
 171 a state highway need not be notified of excavation or demolition
 172 activities and are under no obligation to mark or locate the
 173 facilities.

174 ~~(a) When an excavation site cannot be described in~~
 175 ~~information provided under subparagraph (1)(a)3. with sufficient~~
 176 ~~particularity to enable the member operator to ascertain the~~
 177 ~~excavation site, and if the excavator and member operator have~~
 178 ~~not mutually agreed otherwise, the excavator shall premark the~~
 179 ~~proposed area of the excavation before a member operator is~~
 180 ~~required to identify the horizontal route of its underground~~
 181 ~~facilities in the proximity of any excavation. However,~~
 182 ~~premarking is not required for any excavation that is over 500~~
 183 ~~feet in length and is not required where the premarking could~~
 184 ~~reasonably interfere with traffic or pedestrian control.~~

185 (a) ~~(b)~~ If a member operator determines that a proposed
 186 excavation or demolition is in proximity to or in conflict with
 187 an underground facility of the member operator, except a
 188 facility beneath the waters of the state, which is governed by
 189 paragraph (b) ~~(e)~~, the member operator shall identify the
 190 horizontal route by marking to within 24 inches from the outer
 191 edge of either side of the underground facility by the use of
 192 stakes, paint, flags, or other suitable means within 2 full
 193 business days after the time the notification is received under
 194 subsection (1). If the member operator is unable to respond
 195 within such time, the member operator shall communicate with the
 196 person making the request and negotiate a new schedule and time

HB 691

2010

197 that is agreeable to, and should not unreasonably delay, the
198 excavator.

199 (b)~~(c)~~ If a member operator determines that a proposed
200 excavation is in proximity to or in conflict with an underground
201 facility of the member operator beneath the waters of the state,
202 the member operator shall identify the estimated horizontal
203 route of the underground facility, within 10 business days,
204 using marking buoys or other suitable devices, unless directed
205 otherwise by an agency having jurisdiction over the waters of
206 the state under which the member operator's underground facility
207 is located.

208 (c)~~(d)~~ When excavation is to take place within a tolerance
209 zone, an excavator shall use increased caution to protect
210 underground facilities. The protection requires hand digging,
211 pot holing, soft digging, vacuum excavation methods, or other
212 similar procedures to identify underground facilities. Any use
213 of mechanized equipment within the tolerance zone must be
214 supervised by the excavator.

215 (d) If an excavation is proposed which is within 10 feet
216 of a high-priority subsurface installation and is identified as
217 a high-priority subsurface installation by the operator, the
218 operator shall notify the excavator of the existence of the
219 high-priority subsurface installation and shall mark its
220 location before the legal excavation start time, as set forth in
221 paragraphs (a) and (b). After receiving notice of the existence
222 of a high-priority subsurface installation, an excavator shall
223 provide notice to the operator of the planned excavation start
224 date and time. Before excavation begins, the excavator and

225 | operator shall communicate in order to establish a mutually
 226 | agreed-upon excavation plan.

227 | (6) (a) An excavator shall avoid excavation in the area
 228 | described in the notice given under subsection (1) until each
 229 | member operator underground facility has been marked and located
 230 | or until the excavator has been notified that no member operator
 231 | has underground facilities in the area described in the notice,
 232 | or for the time allowed for markings set forth in paragraphs
 233 | (5) (a) and (b) ~~(5) (b) and (c)~~, whichever occurs first. If a
 234 | member operator has not located and marked its underground
 235 | facilities within the time allowed for marking set forth in
 236 | paragraphs (5) (a) and (b) ~~(5) (b) and (c)~~, the excavator may
 237 | proceed with the excavation, if the excavator does so with
 238 | reasonable care and if detection equipment or other acceptable
 239 | means to locate underground facilities are used.

240 | (b) An excavator may not demolish in the area described in
 241 | the notice given under subsection (1) until all member operator
 242 | underground facilities have been marked and located or removed.

243 | (7) (a) A member operator that states that it does not have
 244 | accurate information concerning the exact location of its
 245 | underground facilities is exempt from the requirements of
 246 | paragraphs (5) (a) and (b) ~~(5) (b) and (c)~~, but shall provide the
 247 | best available information to the excavator in order to comply
 248 | with the requirements of this section. An excavator is not
 249 | liable for any damage to an underground facility under the
 250 | exemption in this subsection if the excavation or demolition is
 251 | performed with reasonable care and detection equipment or other
 252 | acceptable means to locate underground facilities are used.

253 (9) (a) After receiving notification from the system, a
 254 member operator shall provide a positive response to the system
 255 within 2 full business days, or 10 such days for an underwater
 256 excavation or demolition, indicating the status of operations to
 257 protect the facility.

258 (11) Before or during excavation or demolition, if the
 259 marking of the horizontal route of any facility is removed or is
 260 no longer visible, or, in the case of an underwater facility, is
 261 inadequately documented, the excavator shall stop excavation or
 262 demolition activities in the vicinity of the facility and shall
 263 notify the system to have the route remarked or adequately
 264 documented.

265 Section 5. Paragraph (a) of subsection (2) and subsections
 266 (3) and (7) of section 556.106, Florida Statutes, are amended to
 267 read:

268 556.106 Liability of the member operator, excavator, and
 269 system.—

270 (2) (a) If a person violates s. 556.105(1) or (6), and
 271 subsequently, whether by himself or herself or through the
 272 person's employees, contractors, subcontractors, or agents,
 273 performs an excavation or demolition that damages an underground
 274 facility of a member operator, it is rebuttably presumed that
 275 the person was negligent. The person, if found liable, is liable
 276 for the total sum of the losses to all member operators involved
 277 as those costs are normally computed. Any damage for loss of
 278 revenue and loss of use may not exceed \$500,000 per affected
 279 underground facility, except that revenues lost by a
 280 governmental member operator whose revenues are used to support

281 | payments on principal and interest on bonds may not be limited.
 282 | ~~Any liability of the state and its agencies and its subdivisions~~
 283 | ~~which arises out of this chapter is subject to the provisions of~~
 284 | ~~s. 768.28.~~

285 | (3) If, after receiving proper notice, a member operator
 286 | fails to discharge a duty imposed by ~~the provisions of~~ this act
 287 | and an underground facility of a ~~such~~ member operator is damaged
 288 | by an excavator who has complied with ~~the provisions of~~ this
 289 | act, as a proximate result of the member operator's failure to
 290 | discharge such duty, the ~~such~~ excavator is ~~shall~~ not be liable
 291 | for such damage and the member operator, if found liable, is
 292 | ~~shall be~~ liable to such person for the total cost of any loss or
 293 | injury to any person or damage to equipment resulting from the
 294 | member operator's failure to comply with this act. Any damage
 295 | for loss of revenue and loss of use shall not exceed \$500,000
 296 | per affected underground facility, except that revenues lost by
 297 | a governmental member operator, which revenues are used to
 298 | support payments on principal and interest on bonds, shall not
 299 | be limited. ~~The liability of governmental member operators shall~~
 300 | ~~be subject to limitations provided in chapter 768.~~

301 | (7) An excavator or a member operator who performs any
 302 | excavation with hand tools under s. 556.108(4)(c) or (5) is
 303 | liable for any damage to any operator's underground facilities
 304 | damaged during such excavation.

305 | Section 6. Section 556.107, Florida Statutes, is amended
 306 | to read:

307 | 556.107 Violations.—

308 | (1) NONCRIMINAL INFRACTIONS.—

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

311 1. Section 556.105(1), relating to providing required
 312 information.

313 2. Section 556.105(6), relating to the avoidance of
 314 excavation.

315 3. Section 556.105(11), relating to the need to stop
 316 excavation or demolition because marks are no longer visible,
 317 or, in the case of underwater facilities, are inadequately
 318 documented.

319 4. Section 556.105(12), relating to the need to cease
 320 excavation or demolition activities because of contact or damage
 321 to an underground facility.

322 5. Section 556.105(5)(a) and (b), ~~556.105(5)(b) and (c)~~
 323 relating to identification of underground facilities, if a
 324 member operator does not mark an underground facility, but not
 325 if a member operator marks an underground facility incorrectly.

326 6. Section 556.109(2), relating to falsely notifying the
 327 system of an emergency situation or condition.

328 7. Section 556.114(1), (2), (3), and (4), relating to a
 329 failure to follow low-impact marking practices, as defined
 330 therein.

331 (b) Any excavator or member operator who commits a
 332 noncriminal infraction under paragraph (a) may be issued a
 333 citation by any local or state law enforcement officer,
 334 government code inspector, or code enforcement officer, and the
 335 issuer of a citation may require an excavator to cease work on
 336 any excavation or not start a proposed excavation until there

337 has been compliance with the provisions of this chapter.
 338 Citations shall be hand delivered to any employee of the
 339 excavator or member operator who is involved in the noncriminal
 340 infraction. The citation shall be issued in the name of the
 341 excavator or member operator, whichever is applicable.

342 (c) Any excavator or member operator who commits a
 343 noncriminal infraction under paragraph (a) may be required to
 344 pay a ~~appear before the county court.~~ The civil penalty for each
 345 any such infraction, which is \$500 ~~\$250~~ plus court costs, ~~except~~
 346 ~~as otherwise provided in this section.~~ If a citation is issued
 347 by a local law enforcement officer, a local government code
 348 inspector, or a code enforcement officer, 80 percent of the
 349 civil penalty collected by the clerk of the court shall be
 350 distributed to the local governmental entity whose employee
 351 issued the citation and 20 percent of the penalty shall be
 352 retained by the clerk to cover administrative costs, in addition
 353 to other court costs. If a citation is issued by a state law
 354 enforcement officer, the civil penalty collected by the clerk
 355 shall be retained by the clerk for deposit into the fine and
 356 forfeiture fund established pursuant to s. 142.01. Any person
 357 who fails to ~~appear or otherwise~~ properly respond to a citation
 358 issued pursuant to paragraph (b) ~~(d)~~ shall, in addition to the
 359 citation, be charged with the offense of failing to respond to
 360 the ~~such~~ citation and, upon conviction, commits a misdemeanor of
 361 the second degree, punishable as provided in s. 775.082 or s.
 362 775.083. A written warning to this effect must ~~shall~~ be provided
 363 at the time any citation is issued pursuant to paragraph (b).

364 (d) Any person cited for an infraction under paragraph

365 (a), ~~unless required to appear before the county court,~~ may:
 366 1. post a bond, which shall be equal in amount to the
 367 applicable civil penalty plus court costs; ~~or~~
 368 2. ~~Sign and accept a citation indicating a promise to~~
 369 ~~appear before the county court.~~

370
 371 ~~The person issuing the citation may indicate on the citation the~~
 372 ~~time and location of the scheduled hearing and shall indicate~~
 373 ~~the applicable civil penalty.~~

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

377 1. pay the civil penalty plus court costs, ~~in lieu of~~
 378 ~~appearance, either~~ by mail or in person, within 30 days after
 379 the date of receiving the citation; ~~or~~

380 2. ~~Forfeit bond, if a bond has been posted, by not~~
 381 ~~appearing at the designated time and location.~~

382
 383 If the person cited pays the civil penalty ~~follows either of the~~
 384 ~~above procedures,~~ she or he is deemed to have admitted to
 385 committing the infraction and to have waived the right to a
 386 hearing on the issue of commission of the infraction. The
 387 admission may be used as evidence in any other proceeding under
 388 this chapter.

389 (f) Any person may elect ~~electing~~ to appear before the
 390 county court and if so electing ~~or who is required to appear~~
 391 ~~shall be~~ deemed to have waived the limitations on the civil
 392 penalty specified in paragraph (c). The court, after a hearing,

393 shall make a determination as to whether an infraction has been
 394 committed. If the commission of an infraction has been proven,
 395 the court may impose a civil penalty not to exceed \$5,000 plus
 396 court costs. In determining the amount of the civil penalty, the
 397 court may consider previous noncriminal infractions committed.

398 (g) At a court hearing or a hearing before the Division of
 399 Administrative Hearings under this chapter, the commission of a
 400 charged infraction must be proven by a preponderance of the
 401 evidence.

402 (h) If a person is found by a judge or ~~the~~ hearing
 403 official to have committed an infraction, the person may appeal
 404 that finding to the circuit court.

405 (i) Sunshine State One-Call of Florida, Inc., may, at its
 406 own cost, retain an attorney to assist in the presentation of
 407 relevant facts and law in the county court or administrative
 408 proceeding pertaining to the citation issued under this section
 409 or to any alleged violation that may have contributed to an
 410 alleged incident. The corporation may also appear in any case
 411 appealed to the circuit court if a county court judge or
 412 administrative hearing officer finds that an infraction of the
 413 chapter was committed. An appellant in the circuit court
 414 proceeding shall timely notify the corporation of any appeal
 415 under this section.

416 (j)1. Violation of any of the infractions listed in
 417 paragraph (a) which may constitute an incident must be reported
 418 to the system by an excavator or a member operator within 24
 419 hours after learning that the threshold for an incident has been
 420 met.

421 2. Upon receipt of information that an incident has
 422 occurred, the system shall contract with the Division of
 423 Administrative Hearings to conduct a hearing to determine
 424 whether there have been any violations of paragraph (a) which
 425 were a proximate cause of the incident.

426 3. The division has jurisdiction in a proceeding under
 427 this paragraph to determine the facts and law surrounding any
 428 incident and to impose a fine against any violator in an amount
 429 that may not exceed \$50,000 for any violation of paragraph (a)
 430 which was a proximate cause of the incident.

431 4. Any fine imposed by the division must be in addition to
 432 any amount payable as a result of a citation relating to the
 433 incident.

434 5. A fine against an excavator or a member operator levied
 435 under this paragraph must be paid to the system, which shall use
 436 the proceeds of the fines exclusively for damage-prevention
 437 education.

438 (2) REPORT OF INFRACTIONS.—By March 31 of each year, each
 439 clerk of court shall submit a report to Sunshine State One-Call
 440 of Florida, Inc., listing each violation notice written under
 441 paragraph (1)(a) which has been filed in that county during the
 442 preceding calendar year. The report must state the name and
 443 address of the member or excavator who committed each infraction
 444 and indicate whether or not the civil penalty for the infraction
 445 was paid.

446 (3)~~(2)~~ MISDEMEANORS.—Any person who knowingly and
 447 willfully removes or otherwise destroys the valid stakes or
 448 other valid physical markings described in s. 556.105(5)(a) and

449 (b) ~~s. 556.105(5)(b) and (c)~~ used to mark the horizontal route
 450 of an underground facility commits a misdemeanor of the second
 451 degree, punishable as provided in s. 775.082 or s. 775.083. For
 452 purposes of this subsection, stakes or other nonpermanent
 453 physical markings are considered valid for 30 calendar days
 454 after information is provided to the system under s.
 455 556.105(1)(a) ~~s. 556.105(1)(c)~~.

456 Section 7. Section 556.109, Florida Statutes, is amended
 457 to read:

458 556.109 Emergency excavations or demolitions attempted;
 459 exception.—

460 (1) ~~The provisions of This act~~ does ~~de~~ not apply to making
 461 an excavation or demolition during an emergency if, ~~provided~~ the
 462 system or the member operator was notified at the earliest
 463 opportunity and all reasonable precautions had been taken to
 464 protect any underground facility. For the purposes of this act,
 465 "emergency" means any condition constituting a clear and present
 466 danger to life or property; a situation caused by the escape of
 467 any substance transported by means of an underground facility;
 468 any interruption of vital public service or communication caused
 469 by any break or defect in a member operator's underground
 470 facility; or, in the case of the State Highway System or streets
 471 or roads maintained by a political subdivision or underground
 472 facilities owned, operated, or maintained by a political
 473 subdivision, if the use of such highways, streets, roads, or
 474 underground facilities is, in the sole judgment of the
 475 Department of Highway Safety and Motor Vehicles, the Department
 476 of Transportation, or such political subdivision, impaired by an

477 unforeseen occurrence that ~~which~~ necessitates repair beginning
 478 immediately after such occurrence.

479 (2) An excavator need not notify the system that there is
 480 an emergency unless the excavator reasonably believes that the
 481 intended excavation or demolition is due to a situation or
 482 condition as defined in subsection (1).

483 Section 8. Section 556.110, Florida Statutes, is amended
 484 to read:

485 556.110 Costs assessed among member operators.—Member
 486 operators shall proportionately share in the cost of operating
 487 the system through monthly assessments made upon each member
 488 operator. ~~However, any member that receives fewer than 10~~
 489 ~~notifications in any month shall not be assessed for such month.~~

490 Section 9. Section 556.114, Florida Statutes, is created
 491 to read:

492 556.114 Low-impact marking practices.—

493 (1) An excavator providing notice under s. 556.105(1)(a)
 494 shall identify in its notice only the area that will be
 495 excavated during the period that the information in such notice
 496 is considered valid under s. 556.105(1)(c).

497 (2) When an excavator has not completed an excavation
 498 noticed under s. 556.105(1)(a) within the period that the
 499 information in the notice is considered valid under s.
 500 556.105(1)(c), the excavator must provide a subsequent notice to
 501 the system under s. 556.105(1)(a) to continue with the
 502 excavation, and such subsequent notice shall identify only the
 503 remaining area to be excavated.

504 (3) When an excavation site cannot be described in

505 information provided under s. 556.105(1)(a) with sufficient
 506 particularity to enable the member operator to ascertain the
 507 excavation site, and if the excavator and member operator have
 508 not mutually agreed otherwise, the excavator shall premark the
 509 proposed area of the excavation before a member operator is
 510 required to identify the horizontal route of its underground
 511 facilities in the proximity of any excavation. However,
 512 premarking is not required when the premarking could reasonably
 513 interfere with traffic or pedestrian control.

514 (4) Member operators shall mark the area described or
 515 premarked by the excavator using temporary, nonpermanent paint,
 516 flags, stakes, and other acceptable means.

517 (5) Any horizontal route-identification marker must be in
 518 a color identified in the Uniform Color Code for Utilities.

519 (6) Sunshine State One-Call of Florida, Inc., shall
 520 establish an educational program for the purpose of informing
 521 excavators and member operators about low-impact marking
 522 practices.

523 Section 10. Section 556.115, Florida Statutes, is created
 524 to read:

525 556.115 Alternative dispute resolution.—

526 (1) Sunshine State One-Call of Florida, Inc., shall create
 527 a voluntary alternative dispute resolution program. The program
 528 shall be available to all member operators, excavators, and
 529 other stakeholders, such as locators, utility service users, and
 530 governmental or quasi-governmental entities, for purposes of
 531 resolving disputes arising from excavation activities,
 532 including, but not limited to, loss of services, down time,

533 | delays, loss of use of facilities during restoration or
 534 | replacement, and similar economic disruptions, exclusive of
 535 | penalties imposed under other provisions of this act.

536 | (2) The alternative dispute resolution program created by
 537 | Sunshine State One-Call of Florida, Inc., shall include
 538 | mediation, arbitration, or other appropriate processes,
 539 | including the use of the services of the Division of
 540 | Administrative Hearings.

541 | (3) The costs of using the program shall be borne by the
 542 | voluntary users, and the voluntary users shall choose the form
 543 | of alternative dispute resolution to be used. If arbitration is
 544 | used, the users shall decide whether the arbitration will be
 545 | binding.

546 | (4) Unless binding arbitration is the chosen method of
 547 | alternative dispute resolution, the users or any one of such
 548 | users may end the process at any time and exercise the right to
 549 | proceed in a court of competent jurisdiction or before the
 550 | Division of Administrative Hearings.

551 | (5) This section does not change the basis for civil
 552 | liability for damages.

553 | Section 11. This act shall take effect July 1, 2010.

HJR 293 – PUBLIC SERVICE COMMISSION (PSC)

Representative Anderson

Summary

This Joint Resolution proposes an amendment to the State Constitution that would:

- Require Public Service Commissioners to be elected;
- Transfer the PSC from the legislative branch to the executive branch and
- Prohibit candidates for election to the PSC from accepting contributions from persons associated with certain entities, including regulated companies; their parents, affiliates, and subsidiaries; businesses or trade associations funded by such entities; and other entities that participate in PSC proceedings.

The proposed amendment provides that the qualifications, compensation, and residency requirements for commissioners and the powers and duties of the commission will be provided by general law.

The proposed amendment would take effect beginning with the qualification and election of commissioners in 2012 for terms to begin in January 2013.

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House Joint Resolution

A joint resolution proposing the creation of Section 14 of Article IV and Section 31 of Article XII of the State Constitution, providing for an elected, five-member Public Service Commission within the executive branch and prohibiting candidates for election to the commission from accepting contributions from employees, lobbyists, officers, directors, or agents of: any utility or entity regulated by the commission, affiliates of regulated utilities or entities, business entities, law firms, and trade associations under certain circumstances.

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

That the following creation of Section 14 of Article IV and Section 31 of Article XII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE IV

EXECUTIVE

SECTION 14. Public service commission.--

(a) There shall be an elected public service commission consisting of five members. The qualifications, compensation, and residency requirements for members of the commission and the powers and duties of the commission shall be provided by general law.

HJR 293

2010

57 | holding of primary elections in 2012.

58 | BE IT FURTHER RESOLVED that the following statement be
59 | placed on the ballot:

60 | CONSTITUTIONAL AMENDMENTS

61 | ARTICLE IV, SECTION 14

62 | ARTICLE XII, SECTION 31

63 | ELECTION OF MEMBERS OF THE PUBLIC SERVICE

64 | COMMISSION.--Proposing amendments to the State Constitution to
65 | provide for an elected, five-member Public Service Commission
66 | within the executive branch. Under the proposed amendments, the
67 | Public Service Commission would consist of five members who are
68 | elected by the people rather than appointed by the Governor, and
69 | the commission would be a part of the executive branch of state
70 | government rather than the legislative branch. A candidate for
71 | election to a seat on the commission would be prohibited from
72 | accepting contributions from employees, lobbyists, officers,
73 | directors, or agents of: any utility or entity regulated by the
74 | commission, affiliates of regulated utilities or entities,
75 | business entities, law firms, and trade associations under
76 | certain circumstances. Each of the five seats on the commission
77 | would be subject to a vote of the electors in 2012.

HB 533 – TESTIMONY BEFORE THE PUBLIC SERVICE COMMISSION (PSC)

Representative Pafford

Summary

This bill requires each person who testifies at a meeting, workshop, hearing, or other scheduled event of the PSC to disclose any financial or fiduciary relationship with an investor-owned electric or natural gas utility. This disclosure must include:

- Charitable contributions made by a public utility to an organization represented by the person;
- Any governance position held by a public utility employee within the organization represented by the person; and
- Any gifts received from a regulated public utility or its affiliate or subsidiary.

The bill requires that the disclosure be provided at the time testimony is given and that it be provided in writing to the PSC and the Office of Public Counsel.

The bill provides that a person who knowingly violates these requirements, as determined by the PSC, is prohibited from offering testimony to, or appearing before, the PSC for 2 years. The person may challenge the PSC's determination by requesting a hearing with the Division of Administrative Hearings within 30 days of the PSC's order.

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A bill to be entitled
 An act relating to testimony before the Public Service
 Commission; creating s. 350.122, F.S.; requiring each
 person offering testimony at a meeting, workshop, hearing,
 or other scheduled event of the Public Service Commission
 to disclose any financial or fiduciary relationship with
 any public utility; requiring such disclosures to be filed
 in writing with the office of the commission and with the
 office of the Public Counsel before testimony is provided
 to the commission; providing a penalty for failure to make
 such disclosure; providing procedures for a petition for a
 hearing to review the penalty; providing an effective
 date.

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

Section 1. Section 350.122, Florida Statutes, is created
 to read:

350.122 Testimony; public disclosure of affiliation.-

(1) Each person offering testimony at a meeting, workshop,
 hearing, or other scheduled event of the Public Service
 Commission shall disclose any financial or fiduciary
 relationship with any public utility, as defined in s. 366.02,
 at the time the testimony is provided to the commission and as
 required by subsection (2). Such disclosure shall include:

(a) Any charitable contribution made by any public utility
 to any organization represented by the person testifying.

28 (b) Positions of governance that are held by an employee
 29 of any public utility within the organization represented by the
 30 person testifying.

31 (c) Any gifts as defined in chapter 112 received from any
 32 public utility, or from any business entity which, directly or
 33 indirectly, is an affiliate or subsidiary of any public utility
 34 regulated by the commission.

35 (2) Disclosures required under subsection (1) shall also
 36 be filed in writing with the office of the clerk of the
 37 commission and with the office of the Public Counsel before the
 38 testimony is provided to the commission.

39 (3) Any person who knowingly violates this section, as
 40 determined by and issued in a final order of the commission, may
 41 not offer testimony to or appear before the commission or
 42 otherwise represent anyone before the commission for a period of
 43 2 years.

44 (4) The determination by the commission that a person has
 45 knowingly violated this section shall be agency action under
 46 chapter 120. Any petition for a hearing under chapter 120 must
 47 be filed by the person with the Division of Administrative
 48 Hearings within 30 days after the order under subsection (3) is
 49 filed with the clerk of the commission. In such case, the person
 50 shall, within the 30-day period, notify the clerk of the
 51 commission of his or her intention to request a hearing.

52 Section 2. This act shall take effect July 1, 2010.

HB 565 – PUBLIC SERVICE COMMISSION (PSC)

Representative Legg

Summary

The bill amends provisions governing ex parte communications with commissioners. Specifically, the bill:

- Expands the ex parte rules to apply to all commission staff;
- Expands the ex parte rules to apply to communications beyond the merits or substance of a proceeding (would include procedural matters and any other matters);
- Requires notice to the public of any oral or written communication between a commissioner or commission staff and a regulated utility representative;
- Requires the commission to notify Public Counsel of *all* communications it receives, with the exception of certain communications related to audits, and sets procedures for providing this notice; and
- Expands the exemption of individual residential ratepayers from the ex parte rules to exempt *all* individual ratepayers representing themselves without compensation.

The bill also adds provisions prohibiting certain types of employment activities for former commissioners and employees. The bill:

- Prohibits commissioners appointed after July 1, 2010, from lobbying the legislative or executive branch of state government for 2 years after termination of service on the commission;
- Prohibits commission employees who terminate employment after July 1, 2010, from appearing before the commission on behalf of any client or industry regulated by the PSC for 2 years following termination of service with the commission;
- Prohibits commission employees who terminate employment after July 1, 2010, from lobbying the legislative or executive branch of state government for 2 years following termination of service with the commission; and
- Prohibits commission employees who terminate employment on or after July 1, 2010, from accepting employment with or compensation from regulated entities and their parents, affiliates, and subsidiaries; business competitors of regulated companies that are themselves exempt from regulation by the PSC; or from entities that have been a party to a PSC proceeding in the 2 years before the employee's termination of employment.

The bill provides the Public Counsel the same access to company records that the PSC is currently authorized to access. The bill also authorizes the Public Counsel to make findings that company records it receives contain confidential information that should be exempt from disclosure under the public records law.

1 A bill to be entitled
 2 An act relating to the Public Service Commission; amending
 3 s. 350.042, F.S.; revising provisions relating to ex parte
 4 communications; eliminating an exemption from certain
 5 prohibitions provided for commission staff; requiring that
 6 communications between a commissioner or commission staff
 7 and a representative of a utility be made available to the
 8 public and advance notice be provided to the Public
 9 Counsel; providing penalties for commission staff who fail
 10 to report certain communications; amending s. 350.0605,
 11 F.S.; prohibiting former commissioners and employees of
 12 the Public Service Commission from lobbying the
 13 legislative or executive branch of state government for 2
 14 years after termination of service or employment with the
 15 commission; prohibiting any former employee of the
 16 commission from appearing before the commission
 17 representing any client or industry regulated by the
 18 commission for 2 years after termination of employment
 19 with the commission; providing that such prohibitions
 20 apply to commissioners and employees who are appointed or
 21 reappointed or terminate their employment with the
 22 commission on or after a specified date; prohibiting a
 23 former commissioner or commission staff member from
 24 accepting employment by or compensation from certain
 25 entities regulated by the commission for a period of 2
 26 years after termination of employment with the commission;
 27 providing that the prohibition apply to former
 28 commissioners and commission staff members who terminate

29 their employment with the commission on or after a
 30 specified date; amending ss. 364.183, 366.093, 367.156,
 31 and 368.108, F.S., relating to provisions governing access
 32 to telecommunications company and public utility records
 33 by the commission; providing for the Public Counsel to
 34 have access to such records; providing an effective date.

35
 36 Be It Enacted by the Legislature of the State of Florida:

37
 38 Section 1. Section 350.042, Florida Statutes, is amended
 39 to read:

40 350.042 Ex parte communications.—

41 (1) A commissioner and commission staff shall afford
 42 ~~should accord~~ to every person who is legally interested in a
 43 proceeding, or the person's lawyer, the full right to be heard
 44 according to law, and, except as authorized in this section ~~by~~
 45 ~~law~~, shall neither initiate, engage in, nor consider ex parte
 46 communications ~~concerning the merits, threat, or offer of reward~~
 47 in any proceeding other than a proceeding under s. 120.54 or s.
 48 120.565, workshops, or internal affairs meetings. An ~~No~~
 49 individual shall not discuss ex parte with a commissioner or
 50 commission staff the merits of any issue that he or she knows
 51 will be filed with the commission within 90 days after the date
 52 of the discussion. ~~The provisions of this subsection shall not~~
 53 ~~apply to commission staff.~~

54 (2) (a) Any oral or written communication between a
 55 commissioner or commission staff and a representative of a
 56 utility regulated by the commission must be made available to

57 the public. Such oral or written communication requires advanced
 58 notification to the Public Counsel.

59 (b) The commission shall send a copy of any written
 60 communication to the Public Counsel on the same day that the
 61 communication is received by the commission.

62 (c) The commission shall prepare a written summary of any
 63 communication related to a documented emergency or a
 64 communication related to a brief, unscheduled follow-up to a
 65 previously scheduled meeting or previously scheduled telephone
 66 conference call. The commission shall provide such summary to
 67 the Public Counsel no later than 10 working days after the
 68 communication occurred.

69 (d) A commissioner or commission staff shall notify the
 70 Public Counsel in writing at least 5 working days before any
 71 meeting, telephone conference call, or written communication
 72 between the commissioner or commission staff and a
 73 representative of a regulated utility. The Public Counsel may
 74 participate in the meeting, telephone conference call, or
 75 written communication for the purpose of questioning or directly
 76 responding to the communication.

77 (e) This subsection does not apply to commission staff or
 78 representatives of a regulated utility who are required to
 79 initiate or receive brief, unscheduled communications for the
 80 purpose of obtaining additional information that may be needed
 81 after the completion of an audit.

82 (3)(2) ~~The provisions of~~ This section shall not prohibit
 83 an individual ~~residential~~ ratepayer from communicating with a
 84 commissioner or commission staff if, ~~provided that~~ the ratepayer

85 is representing only himself or herself, without compensation.

86 (4)~~(3)~~ This section shall not apply to oral communications
 87 or discussions in scheduled and noticed open public meetings of
 88 educational programs or of a conference or other meeting of an
 89 association of regulatory agencies.

90 (5)~~(4)~~ If a commissioner or commission staff member
 91 knowingly receives an ex parte communication relative to a
 92 proceeding other than as set forth in subsection (1), to which
 93 he or she is assigned, he or she must place on the record of the
 94 proceeding copies of all written communications received, all
 95 written responses to the communications, and a memorandum
 96 stating the substance of all oral communications received and
 97 all oral responses made. The commissioner or commission staff
 98 member,~~and~~ shall give written notice to all parties to the
 99 communication that such matters have been placed on the record.
 100 Any party who desires to respond to an ex parte communication
 101 may do so. The response must be received by the commission
 102 within 10 days after receiving notice that the ex parte
 103 communication has been placed on the record. The commissioner
 104 may, if he or she deems it necessary to eliminate the effect of
 105 an ex parte communication received by him or her, withdraw from
 106 the proceeding, in which case the chair shall substitute another
 107 commissioner for the proceeding.

108 (6)~~(5)~~ Any individual who makes an ex parte communication
 109 shall submit to the commission a written statement describing
 110 the nature of the ~~such~~ communication, to include the name of the
 111 person making the communication, the name of each ~~the~~
 112 commissioner or commission staff member ~~commissioners~~ receiving

113 the communication, copies of all written communications made,
 114 all written responses to such communications, and a memorandum
 115 stating the substance of all oral communications received and
 116 all oral responses made. The commission shall place on the
 117 record of a proceeding all such communications.

118 (7)-(6) Any commissioner or commission staff member who
 119 knowingly fails to place on the record any such communications,
 120 in violation of the section, within 15 days after ~~of~~ the date of
 121 the such communication is subject to removal or dismissal and
 122 may be assessed a civil penalty not to exceed \$5,000.

123 (8)-(7)(a) It is ~~shall be~~ the duty of the Commission on
 124 Ethics to receive and investigate sworn complaints of violations
 125 of this section pursuant to the procedures contained in ss.
 126 112.322-112.3241.

127 (b) If the Commission on Ethics finds that there has been
 128 a violation of this section by a public service commissioner or
 129 commission staff, it shall provide the Governor and the Florida
 130 Public Service Commission Nominating Council with a report of
 131 its findings and recommendations. The Governor may ~~is authorized~~
 132 ~~to~~ enforce the findings and recommendations of the Commission on
 133 Ethics, pursuant to part III of chapter 112.

134 (c) If a commissioner or commission staff fails or refuses
 135 to pay the Commission on Ethics any civil penalties assessed
 136 pursuant to the provisions of this section, the Commission on
 137 Ethics may bring an action in any circuit court to enforce such
 138 penalty.

139 (d) If, during the course of an investigation by the
 140 Commission on Ethics into an alleged violation of this section,

141 | allegations are made as to the identity of the person who
 142 | participated in the ex parte communication, that person must be
 143 | given notice and an opportunity to participate in the
 144 | investigation and relevant proceedings to present a defense. If
 145 | the Commission on Ethics determines that the person participated
 146 | in the ex parte communication, the person may not appear before
 147 | the commission or otherwise represent anyone before the
 148 | commission for a period of 2 years.

149 | Section 2. Section 350.0605, Florida Statutes, is amended
 150 | to read:

151 | 350.0605 Former commissioners and employees;
 152 | representation of clients or industry before commission;
 153 | lobbying the legislative or executive branch.—

154 | (1) (a) Any former commissioner of the Public Service
 155 | Commission is prohibited from appearing before the commission
 156 | representing any client or any industry regulated by the Public
 157 | Service Commission for a period of 2 years following his or her
 158 | termination of service on the commission.

159 | (b) Any former commissioner of the Public Service
 160 | Commission is prohibited from lobbying the legislative or
 161 | executive branch of state government for a period of 2 years
 162 | following his or her termination of service on the commission.
 163 | This subsection applies only to commissioners who are appointed
 164 | or reappointed on or after July 1, 2010.

165 | (2) Any former employee of the Public Service Commission
 166 | is prohibited from appearing before the commission representing
 167 | any client or industry regulated by the Public Service
 168 | Commission, or from lobbying the legislative or executive branch

169 of state government, for a period of 2 years following his or
 170 her termination of employment with the commission. This
 171 subsection applies only to employees of the commission who
 172 terminate their employment with the commission on or after July
 173 1, 2010. Any former employee of the commission is prohibited
 174 from appearing before the commission representing any client
 175 regulated by the Public Service Commission on any matter which
 176 was pending at the time of termination and in which such former
 177 employee had participated.

178 (3) For a period of 2 years following termination of
 179 employment with the commission, a former commissioner or
 180 commission staff member may not accept employment by or
 181 compensation from a business entity that, directly or
 182 indirectly, owns or controls a public utility regulated by the
 183 commission, from a public utility regulated by the commission,
 184 from a business entity that, directly or indirectly, is an
 185 affiliate or subsidiary of a public utility regulated by the
 186 commission or is an actual business competitor of a local
 187 exchange company or public utility regulated by the commission
 188 and is otherwise exempt from regulation by the commission under
 189 ss. 364.02(14) and 366.02(1), or from a business entity or trade
 190 association that has been a party to a commission proceeding
 191 within the 2 years preceding the former commissioner or
 192 commission staff member's termination of employment with the
 193 commission. This subsection applies only to former commissioners
 194 or commission staff members who terminate their employment with
 195 the commission on or after July 1, 2010.

196 ~~(3) For a period of 2 years following termination of~~

197 ~~service on the commission, a former member may not accept~~
 198 ~~employment by or compensation from a business entity which,~~
 199 ~~directly or indirectly, owns or controls a public utility~~
 200 ~~regulated by the commission, from a public utility regulated by~~
 201 ~~the commission, from a business entity which, directly or~~
 202 ~~indirectly, is an affiliate or subsidiary of a public utility~~
 203 ~~regulated by the commission or is an actual business competitor~~
 204 ~~of a local exchange company or public utility regulated by the~~
 205 ~~commission and is otherwise exempt from regulation by the~~
 206 ~~commission under ss. 364.02(14) and 366.02(1), or from a~~
 207 ~~business entity or trade association that has been a party to a~~
 208 ~~commission proceeding within the 2 years preceding the member's~~
 209 ~~termination of service on the commission. This subsection~~
 210 ~~applies only to members of the Florida Public Service Commission~~
 211 ~~who are appointed or reappointed after May 10, 1993.~~

212 Section 3. Subsection (1) of section 364.183, Florida
 213 Statutes, is amended to read:

214 364.183 Access to company records.—

215 (1) The commission and Public Counsel shall have access to
 216 all records of a telecommunications company which ~~that~~ are
 217 reasonably necessary for the disposition of matters within the
 218 commission's jurisdiction. The commission and Public Counsel
 219 shall also have access to those records of a local exchange
 220 telecommunications company's affiliated companies, including its
 221 parent company, which ~~that~~ are reasonably necessary for the
 222 disposition of any matter concerning an affiliated transaction
 223 or a claim of anticompetitive behavior, including claims of
 224 cross-subsidization and predatory pricing. The commission or

HB 565

2010

225 | Public Counsel may require a telecommunications company to file
 226 | records, reports, or other data directly related to matters
 227 | within the commission's jurisdiction in the form specified by
 228 | the commission or Public Counsel and may require such company to
 229 | retain such information for a designated period of time. Upon
 230 | request of the company or other person, any records received by
 231 | the commission or Public Counsel which are claimed by the
 232 | company or other person to be proprietary confidential business
 233 | information shall be kept confidential and shall be exempt from
 234 | s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

235 | Section 4. Subsection (1) of section 366.093, Florida
 236 | Statutes, is amended to read:

237 | 366.093 Public utility records; confidentiality.—

238 | (1) The commission and Public Counsel shall continue to
 239 | have reasonable access to all public utility records and records
 240 | of the utility's affiliated companies, including its parent
 241 | company, regarding transactions or cost allocations among the
 242 | utility and such affiliated companies, and such records
 243 | necessary to ensure that a utility's ratepayers do not subsidize
 244 | nonutility activities. Upon request of the public utility or
 245 | other person, any records received by the commission or Public
 246 | Counsel which are shown and found by the commission or Public
 247 | Counsel to be proprietary confidential business information
 248 | shall be kept confidential and shall be exempt from s.
 249 | 119.07(1).

250 | Section 5. Subsection (1) of section 367.156, Florida
 251 | Statutes, is amended to read:

252 | 367.156 Public utility records; confidentiality.—

HB 565

2010

253 (1) The commission and Public Counsel shall continue to
 254 have reasonable access to all utility records and records of
 255 affiliated companies, including its parent company, regarding
 256 transactions or cost allocations among the utility and such
 257 affiliated companies, and such records necessary to ensure that
 258 a utility's ratepayers do not subsidize nonutility activities.
 259 Upon request of the utility or any other person, any records
 260 received by the commission or Public Counsel which are shown and
 261 found by the commission or Public Counsel to be proprietary
 262 confidential business information shall be kept confidential and
 263 shall be exempt from s. 119.07(1).

264 Section 6. Subsection (1) of section 368.108, Florida
 265 Statutes, is amended to read:

266 368.108 Confidentiality; discovery.-

267 (1) The commission and Public Counsel shall continue to
 268 have reasonable access to all natural gas transmission company
 269 records and records of the natural gas transmission company's
 270 affiliated companies, including its parent company, regarding
 271 transactions or cost allocations among the natural gas
 272 transmission company and such affiliated companies, and such
 273 records necessary to ensure that a natural gas transmission
 274 company's ratepayers do not subsidize unregulated activities.
 275 Upon request of the natural gas transmission company or other
 276 person, any records received by the commission or Public Counsel
 277 which are shown and found by the commission or Public Counsel to
 278 be proprietary confidential business information shall be
 279 confidential and exempt from s. 119.07(1).

280 Section 7. This act shall take effect July 1, 2010.

