



Energy, Communications & Cybersecurity Subcommittee

**Wednesday, January 10, 2024
8:30 AM - 10:00 AM
Reed Hall (102 HOB)**

Meeting Packet



The Florida House of Representatives

Commerce Committee

Energy, Communications & Cybersecurity Subcommittee

Paul Renner
Speaker

Mike Giallombardo
Chair

Meeting Agenda

Wednesday, January 10, 2024

8:30 am – 10:00 am

Reed Hall (102 HOB)

- I. Call to Order
- II. Roll Call
- III. Welcome and Opening Remarks
- IV. Consideration of the following bill(s):
 - HB 47 Municipal Water and Sewer Utility Rates by Robinson, F.
 - HB 777 Municipal Water or Sewer Utility Rates, Fees, and Charges by Brackett
 - HB 825 Underground Facilities by Koster
- V. Closing Remarks
- VI. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 47 Municipal Water and Sewer Utility Rates

SPONSOR(S): Robinson, F.

TIED BILLS: **IDEN./SIM. BILLS:** SB 104

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee		Bauldree	Keating
2) Local Administration, Federal Affairs & Special Districts Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Municipalities are authorized by general law to provide water and sewer utility services and to set the rates, fees, and charges for such services. These utility systems are exempt from the rate-setting jurisdiction of the Florida Public Service Commission. A municipality that provides water or sewer utility service outside of its municipal boundaries may impose, subject to limits specified in Florida law, higher rates, fees, and charges on customers receiving service outside of its boundaries as compared to the rates, fees, and charges imposed on customers within its boundaries. Most municipal utility systems are governed by the municipality’s governing body (i.e., the city commission).

The bill states that a municipality which operates a water or sewer utility must charge customers outside its municipal boundaries the same rates, fees, and charges as it charges customers within its boundaries if:

- The customers are located in another municipality, and
- The charging municipality uses a facility or water or sewer plant located in the recipient municipality to serve those customers.

The bill does not appear to impact state government revenues or state or local government expenditures. The bill may have a negative fiscal impact on certain local revenues. See Fiscal Analysis & Economic Impact Statement.

The bill provides an effective date of July 1, 2024.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Pursuant to s. 2(b), Art. VIII of the State Constitution, municipalities have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services. Municipalities may exercise any power for municipal purposes, except when expressly prohibited by law.¹ The legislative body of each municipality has the power to enact legislation on any subject upon which the state Legislature may act with certain exceptions.² Under their home rule power and as otherwise provided or limited by law or agreement, municipalities may provide utilities to citizens and entities within the municipality's corporate boundaries, in unincorporated areas, and even in other municipalities.

Municipalities are authorized by general law to provide water and sewer utility services.³ With respect to public works projects, including water and sewer utility services,⁴ municipalities may extend and execute their corporate powers outside of their corporate limits as "desirable or necessary for the promotion of the public health, safety and welfare."⁵ A municipality may not extend or apply these corporate powers within the corporate limits of another municipality.⁶ However, it may permit any other municipality and the owners of lands outside its corporate limits or within the limits of another municipality to connect with its water and sewer utility facilities and use its services upon agreed terms and conditions.⁷ An informal study conducted in 2014 indicated that approximately 250 municipalities provide water service and approximately 220 municipalities provide wastewater service. Of these municipalities, the study found that approximately 140 provide water and/or waste water services to customers outside of their municipal boundaries, which may include customers in unincorporated areas of counties or in other municipalities.⁸ These utility systems are exempt from the jurisdiction of the Florida Public Service Commission.

A municipality that operates a water or sewer utility outside of its municipal boundaries may impose higher rates, fees, and charges on customers receiving service outside of its corporate boundaries as compared to the rates, fees, and charges imposed on customers within its boundaries. The municipality can accomplish this in two ways:

- First, for customers outside of its boundaries, it may add a surcharge of up to 25 percent of the rates, fees, and charges imposed on customers within its boundaries. This mechanism does not require a public hearing.⁹

¹ Section 166.021(2), F.S., provides that any activity or power which may be exercised by the state or its political subdivisions is considered a municipal purpose.

² Pursuant to s. 166.021(3), F.S., a municipality may not enact legislation on the following: the subjects of annexation, merger, and exercise of extraterritorial power, which require general law or special law; any subject expressly prohibited by the constitution; any subject expressly preempted to state or county government by the constitution or by general law; and any subject preempted to a county pursuant to a county charter adopted under the authority of the State constitution.

³ Pursuant to s. 180.06, F.S., a municipality may "provide water and alternative water supplies;" "provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes;" and "construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works" to accomplish these purposes.

⁴ Other public works projects authorized under s. 180.06, F.S., include alternative water supplies, maintenance of water flow and bodies of water for sanitary purposes, garbage collection and disposal, airports, hospitals, jails, golf courses, gas plants and distribution systems, and related facilities.

⁵ S. 180.02(2), F.S.

⁶ *Id.*

⁷ S. 180.19, F.S.

⁸ Analysis of House Bill 813 (2014), Florida House of Representatives.

⁹ S. 180.191(1)(a), F.S.

- Second, it may set separate rates, fees, and charges for customers outside its boundaries based on the same factors used to set rates for customers within its boundaries. It may add a surcharge of up to 25 percent of these charges, provided that the total of all such rates, fees, and charges for service to customers outside its boundaries may not exceed the total charges to customers within its boundaries by more than 50 percent for corresponding service. Rates set in this manner require a public hearing at which all users served or to be served by the water or sewer utilities and all other interested persons will have an opportunity to be heard concerning the proposed rates.¹⁰

For example, the City of North Miami Beach owns the Norwood Water Treatment Plant, which is located in Miami Gardens, and charges customers outside of North Miami Beach municipal boundaries a 25% surcharge, including customers in Miami Gardens.¹¹ However, there is no central repository for information concerning municipal water or sewer service rates that identifies municipalities that impose higher rates on customers outside of the municipal boundaries, the specific mechanism used by such municipalities to establish such rates, or the level of any additional charge or surcharge imposed.

Effect of the Bill

The bill states that a municipality which operates a water or sewer utility must charge customers outside its municipal boundaries the same rates, fees, and charges as it charges customers within its boundaries if:

- The customers are located in another municipality, and
- The charging municipality uses a facility or water or sewer plant located in the recipient municipality to serve those customers.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 180.191, F.S., relating to limitation on rates charged consumer outside city limits.

Section 2: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have a negative fiscal impact on municipalities which own and operate water or sewer utilities and serve customers located in another municipality with facilities located in the recipient municipality, as it reduces the amount that those municipal water and sewer utilities that use such facilities can charge such customers.

¹⁰ S. 180.191(1)(b), F.S.

¹¹ Kevin Ozebek & Leisa Williams, *New study reveals how much more some Miami Gardens residents are paying for water*, WSVN (January 19, 2023), <https://wsvn.com/news/investigations/new-study-reveals-how-much-more-some-miami-gardens-residents-are-paying-for-water/> (last visited January 5, 2024).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in cost savings to certain municipal water and sewer utility customers located outside of municipal boundaries.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18(b), of the Florida Constitution may apply because this bill reduces the amount that certain municipal water and sewer utilities can charge customers outside of the municipal boundaries. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill applies to municipal water and sewer utilities that serve customers in another municipality using a "facility or water sewer plant" located in that other municipality. This provision could be broadly applied to all municipal water and sewer utilities that serve customers in another municipality if the term "facility" is construed to include the pipes used to serve those customers.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to municipal water and sewer utility
 3 rates; amending s. 180.191, F.S.; requiring a
 4 municipality to charge customers receiving its utility
 5 services in another municipality the same rates, fees,
 6 and charges as it charges consumers within its own
 7 municipal boundaries under certain circumstances;
 8 providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Subsections (2), (3), and (4) of section
 13 180.191, Florida Statutes, are renumbered as subsections (3),
 14 (4), and (5), respectively, subsection (1) is amended, and a new
 15 subsection (2) is added to that section, to read:

16 180.191 Limitation on rates charged consumer outside city
 17 limits.—

18 (1) Any municipality within this ~~the~~ state that operates
 19 ~~operating~~ a water or sewer utility outside of the boundaries of
 20 the ~~such~~ municipality shall charge consumers outside the
 21 boundaries rates, fees, and charges determined in one of the
 22 following manners:

23 (a) It may charge the same rates, fees, and charges as
 24 consumers inside the municipal boundaries. However, in addition
 25 ~~thereto~~, the municipality may add a surcharge of not more than

26 | 25 percent of such rates, fees, and charges to consumers outside
 27 | the boundaries, except as provided in subsection (2). Fixing of
 28 | the such rates, fees, and charges in this manner does ~~shall~~ not
 29 | require a public hearing except as may be provided for service
 30 | to consumers inside the municipality.

31 | (b) It may charge rates, fees, and charges that are just
 32 | and equitable and that ~~which~~ are based on the same factors used
 33 | in fixing the rates, fees, and charges for consumers inside the
 34 | municipal boundaries, except as provided in subsection (2). In
 35 | addition ~~thereto~~, the municipality may add a surcharge not to
 36 | exceed 25 percent of the such rates, fees, and charges for ~~said~~
 37 | services to consumers outside the boundaries. However, the total
 38 | of all the such rates, fees, and charges for the services to
 39 | consumers outside the boundaries may ~~shall~~ not be more than 50
 40 | percent in excess of the total amount the municipality charges
 41 | consumers served within the municipality for corresponding
 42 | service. The No-Such rates, fees, and charges may not ~~shall~~ be
 43 | fixed until after a public hearing at which all of the users of
 44 | the water or sewer systems; owners, tenants, or occupants of
 45 | property served or to be served ~~thereby~~; and all others
 46 | interested have had ~~shall have~~ an opportunity to be heard
 47 | concerning the proposed rates, fees, and charges. Any change or
 48 | revision of the such rates, fees, or charges may be made in the
 49 | same manner as the such rates, fees, or charges were originally
 50 | established, but if a such change or revision is to be made

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51 substantially pro rata as to all classes of service, both inside
52 and outside the municipality, a ~~no~~ hearing or notice is not
53 ~~shall be~~ required.

54 (2) Any municipality within this state that operates a
55 water or sewer utility providing service to customers in another
56 recipient municipality using a facility or water or sewer plant
57 located in the recipient municipality shall charge consumers in
58 the recipient municipality the same rates, fees, and charges as
59 it charges the consumers within its own municipal boundaries.

60 Section 2. This act shall take effect July 1, 2024.

**Energy, Communications & Cybersecurity Subcommittee
HB 47 by Rep. Robinson, F.
Municipal Water and Sewer Utility Rates**

**AMENDMENT SUMMARY
January 10, 2024**

Amendment 1 by Robinson, F. (lines 55-58):

- Clarifies that the bill applies to municipal water or sewer utilities serving consumers within the boundaries of a separate municipality using a “water treatment plant or sewer treatment plant” within the boundaries of that separate municipality.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Energy, Communications &
2 Cybersecurity Subcommittee

3 Representative Robinson, F. offered the following:

4

5 **Amendment**

6 Remove lines 55-58 and insert:

7 water or sewer utility providing service to consumers within the
8 boundaries of a separate municipality using a water treatment
9 plant or sewer treatment plant located within the boundaries of
10 that separate municipality shall charge consumers in the
11 separate municipality the same rates, fees, and charges as

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 777 Municipal Water or Sewer Utility Rates, Fees, and Charges

SPONSOR(S): Brackett

TIED BILLS: **IDEN./SIM. BILLS:** SB 1088

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee		Baldree	Keating
2) Local Administration, Federal Affairs & Special Districts Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Municipalities are authorized by general law to provide water and sewer utility services and to set the rates, fees, and charges for such services. These utility systems are exempt from the rate-setting jurisdiction of the Florida Public Service Commission. A municipality that provides water or sewer utility service outside of its municipal boundaries may impose, subject to limits specified in Florida law, higher rates, fees, and charges on customers receiving service outside of its boundaries as compared to the rates, fees, and charges imposed on customers within its boundaries. Most municipal utility systems are governed by the municipality’s governing body (i.e., the city commission).

The bill requires a municipality providing water or sewer service to customers outside of the municipality’s boundaries to charge those customers rates that are equitable and are based on the same factors used in fixing the rates, fees, and charges for customers inside of the municipal boundaries. The bill requires a public hearing prior to the municipality fixing any rates, fees, or charges for customers outside of the municipal boundaries.

The bill does not appear to impact state government revenues or state or local government expenditures. The bill may have an indeterminate impact on local government revenues. See Fiscal Analysis & Economic Impact Statement.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Pursuant to s. 2(b), Art. VIII of the State Constitution, municipalities have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services. Municipalities may exercise any power for municipal purposes, except when expressly prohibited by law.¹ The legislative body of each municipality has the power to enact legislation on any subject upon which the state Legislature may act with certain exceptions.² Under their home rule power and as otherwise provided or limited by law or agreement, municipalities may provide utilities to citizens and entities within the municipality's corporate boundaries, in unincorporated areas, and even in other municipalities.

Municipalities are authorized by general law to provide water and sewer utility services.³ With respect to public works projects, including water and sewer utility services,⁴ municipalities may extend and execute their corporate powers outside of their corporate limits as "desirable or necessary for the promotion of the public health, safety and welfare."⁵ A municipality may not extend or apply these corporate powers within the corporate limits of another municipality.⁶ However, it may permit any other municipality and the owners of lands outside its corporate limits or within the limits of another municipality to connect with its water and sewer utility facilities and use its services upon agreed terms and conditions.⁷ An informal study conducted in 2014 indicated that approximately 250 municipalities provide water service and approximately 220 municipalities provide wastewater service. Of these municipalities, the study found that approximately 140 provide water and/or waste water services to customers outside of their municipal boundaries, which may include customers in unincorporated areas of counties or in other municipalities.⁸ These utility systems are exempt from the jurisdiction of the Florida Public Service Commission.

A municipality that operates a water or sewer utility outside of its municipal boundaries may impose higher rates, fees, and charges on customers receiving service outside of its boundaries as compared to the rates, fees, and charges imposed on customers within its boundaries. The municipality can accomplish this in two ways:

- First, for customers outside of its boundaries, it may add a surcharge of up to 25 percent of the rates, fees, and charges imposed on customers within its boundaries. This mechanism does not require a public hearing.⁹

¹ Section 166.021(2), F.S., provides that any activity or power which may be exercised by the state or its political subdivisions is considered a municipal purpose.

² Pursuant to s. 166.021(3), F.S., a municipality may not enact legislation on the following: the subjects of annexation, merger, and exercise of extraterritorial power, which require general law or special law; any subject expressly prohibited by the constitution; any subject expressly preempted to state or county government by the constitution or by general law; and any subject preempted to a county pursuant to a county charter adopted under the authority of the State constitution.

³ Pursuant to s. 180.06, F.S., a municipality may "provide water and alternative water supplies;" "provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes;" and "construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works" to accomplish these purposes.

⁴ Other public works projects authorized under s. 180.06, F.S., include alternative water supplies, maintenance of water flow and bodies of water for sanitary purposes, garbage collection and disposal, airports, hospitals, jails, golf courses, gas plants and distribution systems, and related facilities.

⁵ S. 180.02(2), F.S.

⁶ *Id.*

⁷ S. 180.19, F.S.

⁸ Analysis of House Bill 813 (2014), Florida House of Representatives.

⁹ S. 180.191(1)(a), F.S.

- Second, it may set separate rates, fees, and charges for customers outside its boundaries based on the same factors used to set rates for customers within its boundaries. It may add a surcharge of up to 25 percent of these charges, provided that the total of all such rates, fees, and charges for service to customers outside its boundaries may not exceed the total charges to customers within its boundaries by more than 50 percent for corresponding service. Rates set in this manner require a public hearing at which all users served or to be served by the water or sewer utilities and all other interested persons will have an opportunity to be heard concerning the proposed rates.¹⁰

There is no central repository for information concerning municipal water or sewer service rates that identifies municipalities that impose higher rates on customers outside of the municipal boundaries, the specific mechanism used by such municipalities to establish such rates, or the level of any additional charge or surcharge imposed.

Effect of the Bill

The bill requires a municipality providing water or sewer service to customers outside of the municipality's boundaries to charge those customers rates that are equitable and are based on the same factors used in fixing the rates, fees, and charges for customers inside of the municipal boundaries. The bill requires a public hearing prior to the municipality fixing any rates, fees, or charges for customers outside of the municipal boundaries.

The bill eliminates the ability of a municipality providing water or sewer service outside of its boundaries to charge up to a 25% surcharge for such service without a specific basis for the surcharge or to charge any surcharge without a public hearing.

Under the bill, each municipality that provides water or sewer service outside of its boundaries must conduct a rate study by January 1, 2027, and every 7 years thereafter.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 180.191, F.S., relating to limitation on rates charged consumer outside city limits.

Section 2: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. For municipalities which own and operate water or sewer utilities and serve customers outside of municipal boundaries the bill eliminates the ability of such municipal utilities to impose up to a 25% surcharge on such consumers without a specific basis for the surcharge.

¹⁰ S. 180.191(1)(b), F.S.
STORAGE NAME: h0777.ECC
DATE: 1/8/2024

However, to the extent that higher rates, fees, and charges for such customers are set in a public hearing based on the same factors used in setting rates, fees, and charges for customers located within the municipal boundaries, revenue impacts may be mitigated.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in cost savings to municipal water and sewer utility customers located outside of municipal boundaries, those such savings are not guaranteed.

D. FISCAL COMMENTS:

None.

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 action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires certain municipal water or sewer utilities to periodically conduct a uses the term "rate study." This provision should be clarified to describe more specifically what a rate study should address.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to municipal water or sewer utility
 3 rates, fees, and charges; amending s. 180.191, F.S.;
 4 removing a provision authorizing certain
 5 municipalities serving consumers outside their
 6 boundaries to add specific surcharges to the rates,
 7 fees, and charges; removing a provision which does not
 8 require a public hearing for adding specific
 9 surcharges; requiring certain municipalities to
 10 conduct rate studies by specified dates; providing an
 11 effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Subsection (1) of section 180.191, Florida
 16 Statutes, is amended, and a new subsection (5) is added to that
 17 section, to read:

18 180.191 Limitation on rates charged consumer outside city
 19 limits.—

20 (1) Any municipality within the state operating a water or
 21 sewer utility outside of the boundaries of such municipality
 22 shall charge consumers outside the boundaries rates, fees, and
 23 charges ~~determined in one of the following manners:~~

24 ~~(a) It may charge the same rates, fees, and charges as~~
 25 ~~consumers inside the municipal boundaries. However, in addition~~

26 ~~thereto, the municipality may add a surcharge of not more than~~
27 ~~25 percent of such rates, fees, and charges to consumers outside~~
28 ~~the boundaries. Fixing of such rates, fees, and charges in this~~
29 ~~manner shall not require a public hearing except as may be~~
30 ~~provided for service to consumers inside the municipality.~~

31 ~~(b) It may charge rates, fees, and charges that are just~~
32 ~~and equitable and which are based on the same factors used in~~
33 ~~fixing the rates, fees, and charges for consumers inside the~~
34 ~~municipal boundaries. In addition thereto, the municipality may~~
35 ~~add a surcharge not to exceed 25 percent of such rates, fees,~~
36 ~~and charges for said services to consumers outside the~~
37 ~~boundaries. However, the total of all such rates, fees, and~~
38 ~~charges for the services to consumers outside the boundaries~~
39 ~~shall not be more than 50 percent in excess of the total amount~~
40 ~~the municipality charges consumers served within the~~
41 ~~municipality for corresponding service. No such rates, fees, and~~
42 ~~charges shall be fixed until after a public hearing at which all~~
43 ~~of the users of the water or sewer systems; owners, tenants, or~~
44 ~~occupants of property served or to be served thereby; and all~~
45 ~~others interested shall have an opportunity to be heard~~
46 ~~concerning the proposed rates, fees, and charges. Any change or~~
47 ~~revision of such rates, fees, or charges may be made in the same~~
48 ~~manner as such rates, fees, or charges were originally~~
49 ~~established, but if such change or revision is to be made~~
50 ~~substantially pro rata as to all classes of service, both inside~~

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51 | and outside the municipality, no hearing or notice shall be
52 | required.

53 | (5) Each municipality subject to subsection (1) must
54 | conduct a rate study by January 1, 2027, and every 7 years
55 | thereafter.

56 | Section 2. This act shall take effect July 1, 2024.

**Energy, Communications & Cybersecurity Subcommittee
HB 777 by Rep. Brackett
Municipal Water or Sewer Utility Rates, Fees, and Charges**

**AMENDMENT SUMMARY
January 10, 2024**

Amendment 1 by Brackett (lines 32-55):

- Clarifies that a municipality providing water or sewer utility service to consumers outside of the boundaries of such municipality must charge all consumers the same rates, fees, and charges.
- Specifies the minimum components of a rate study.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Energy, Communications &
 2 Cybersecurity Subcommittee

3 Representative Brackett offered the following:

4

5 **Amendment**

6 Remove lines 32-55 and insert:

7 and equitable and which are ~~based on the same factors used in~~
 8 ~~fixing the rates, fees, and charges for consumers inside the~~
 9 ~~municipal boundaries. In addition thereto, the municipality may~~
 10 ~~add a surcharge not to exceed 25 percent of such rates, fees,~~
 11 ~~and charges for said services to consumers outside the~~
 12 ~~boundaries. However, the total of all such rates, fees, and~~
 13 ~~charges for the services to consumers outside the boundaries~~
 14 ~~shall not be more than 50 percent in excess of the total amount~~
 15 ~~the municipality charges consumers served within the~~
 16 ~~municipality for corresponding service. No such rates, fees, and~~

Amendment No. 1

17 charges shall be fixed until after a public hearing at which all
18 of the users of the water or sewer systems; owners, tenants, or
19 occupants of property served or to be served thereby; and all
20 others interested shall have an opportunity to be heard
21 concerning the proposed rates, fees, and charges. Any change or
22 revision of such rates, fees, or charges may be made in the same
23 manner as such rates, fees, or charges were originally
24 established, but if such change or revision is to be made
25 substantially pro rata as to all classes of service, both inside
26 and outside the municipality, no hearing or notice shall be
27 required.

28 (5) By January 1, 2027, and every 7 years thereafter, each
29 municipality subject to subsection (1) must conduct a rate study
30 which evaluates, at a minimum, the utility's future capital
31 investment needs, whether the utility's rates are expected to
32 generate sufficient revenues to cover its operating and
33 maintenance costs and support current and planned capital
34 investment, and whether costs are equitably distributed among
35 all customer classes.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 825 Underground Facilities
SPONSOR(S): Koster
TIED BILLS: IDEN./SIM. BILLS: SB 708

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee		Phelps	Keating
2) Commerce Committee			

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.

This bill amends the “Underground Facility Damage Prevention and Safety Act” by:

- Extending the time for excavators to notify SSOCOF before excavating to three full business days;
- Extending the time for potentially affected member operators to mark the location of their underground facilities in relation to the proposed excavation or demolition to three full business days; and
- Implementing an enhanced civil penalty for an excavator’s failure to notify a high-priority subsurface installation (HPSI) operator of the start time and date of a planned excavation if the HPSI operator provides timely notice of the existence of a HPSI.

The bill may have an insignificant, positive fiscal impact on state and local government revenues. The bill does not appear to impact state or local government expenditures.

The bill provides an effective date of October 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Underground Facility Damage Prevention and Safety Act

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 not-for-profit corporation created under the Act is Sunshine State One-Call of Florida, Inc. (SSOCOF), which exercises its powers through a board of directors.⁵ SSOCOF 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 through the system.⁶ The person intending to conduct excavation or demolition must notify the system not less than two full business days before beginning the operations, and not less than 10 full business days before beginning any excavation or demolition that is beneath state waters.⁷ The person must also provide specified identification, location, and operational information which remain 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.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.¹¹ 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

¹ S. 556.102(16), 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 S. 556.101(3), F.S.

³ S. 556.101(2), F.S.

⁴ S. 556.103(1), F.S.

⁵ S. 556.103, F.S.

⁶ S. 556.104, F.S.

⁷ S. 556.105(1)(a), F.S.

⁸ S. 556.105(1)(c), F.S.

⁹ S. 556.105(3), F.S.

¹⁰ S. 556.105(5), F.S.

¹¹ S. 556.105(5) and (9), F.S.

is agreeable and does not unreasonably delay the excavator.¹² 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.¹³

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.¹⁴ 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 uses detection equipment or other acceptable means to locate underground facilities.¹⁵ An excavator may not conduct demolition in an area until all member operators' underground facilities have been marked and located or removed.¹⁶

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.¹⁷ The Act establishes a civil penalty of \$500, plus court costs, for such infractions.¹⁸ Violations of certain provisions involving an underground facility transporting hazardous materials regulated by the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation (PHMSA) are noncriminal infractions subject to enhanced civil penalties of \$2,500, plus court costs.¹⁹

High-priority Subsurface Installations

A high-priority subsurface installation (HPSI) is an "underground gas transmission or gas distribution pipeline, or an underground pipeline used to transport gasoline, jet fuel, or any other refined petroleum product or hazardous or highly volatile liquid, such as anhydrous ammonia or carbon dioxide."²⁰ Currently, if an excavation is proposed within 15 feet of such an installation, as identified by the operator, the HPSI member operator shall notify the excavator of the existence of the installation and shall mark its location in the time frame provided by s. 556.105, F.S.²¹ After receiving this notice, the excavator must provide notice to the HPSI member operator of the planned excavation start date and time.²² If the HPSI member operator does not provide timely notice, the excavator may proceed to excavate without notifying the HPSI member operator of the excavation start date and time.²³

Increased Locate/Ticket Requests

Due to increased development in Florida over the last decade, the number of locate requests to the SSOCOF system has increased over 50% from fiscal year (FY) 2014-2015 to FY 2022-2023.²⁴ The growth in requests has made it difficult for SSOCOF to fulfill all of them within the two day timeframe required by law; approximately 16% of locate requests were not fulfilled within two days over SSOCOF's last fiscal year.²⁵ This allows excavators to proceed with reasonable care in conducting the excavation without member operators marking their facilities.

¹² S. 556.105(5)(a), F.S.

¹³ S. 556.105(5)(a) and (b), F.S.

¹⁴ S. 556.105(6), F.S.

¹⁵ *Id.*

¹⁶ S. 556.105(6)(b), F.S.

¹⁷ S. 556.107, F.S.

¹⁸ S. 556.107(1)(c), F.S.

¹⁹ S. 556.107(1)(c)2., F.S.

²⁰ S. 556.102(8), F.S.

²¹ S. 556.116(1), F.S.

²² *Id.* A failure to provide the date and start of an excavation is not listed among the five violations for which an excavator can be issued a citation under s. 556.107(1)(a)2.

²³ *Id.*

²⁴ Compare Sunshine 881, 2014-15 Annual Report, p. 3, available at <https://www.sunshine811.com/annual-reports> (1.4 million tickets), with Sunshine 881, 2022-23 Annual Report, p. 3, available at <https://www.sunshine811.com/annual-reports> (2.2 million tickets).

²⁵ Email from Chris Lyon, Attorney, Lewis, Longman & Walker, P.A. representing Sunshine 811, HB 825, (Jan. 4, 2024).

Effect of Bill

Extension of Time

The bill extends the time for excavators to notify SSOCOF before excavating from at least two full business days to at least three full business days.

The bill also extends the time for potentially affected member operators to determine the location of their underground facilities in relation to a proposed excavation or demolition from two full business days to three full business days.

Penalties for HPSI Infractions

The bill makes an excavator's failure to notify the HPSI member operator of the start time and date of a planned excavation (if the HPSI member operator has provided a timely notice of the existence of a HPSI) a violation under s. 556.107(1)(a)(2), F.S. This subjects the excavator to an enhanced civil penalty of \$2,500 plus court costs for each infraction.²⁶

The act will take effect October 1, 2024.

B. SECTION DIRECTORY:

Section 1. Amends s. 556.105, F.S., relating to procedures.

Section 2. Amends s. 556.107, relating to violations.

Section 3. Reenacts s. 556.102(8), F.S., relating to definitions.

Section 4. Reenacts s. 556.108, F.S., relating to exemptions.

Section 5. Reenacts s. 556.114(1)-(4), F.S., relating to low-impact marking practices.

Section 6. Reenacts s. 556.116(1)-(2)(a)-(d), F.S., relating to high-priority subsurface installations.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate, positive impact on state government revenues.

The bill adds that certain violations of s. 556.116(1), F.S., are subject to an enhanced civil penalty of \$2,500 plus court costs. If a citation is issued by the State Fire Marshal for such a violation, 80 percent of the civil penalty collected by the clerk of the court must be distributed to the State Fire Marshal and 20 percent must be retained by the clerk in addition to any court costs.²⁷ The significance of any increase in revenue as a result of this penalty depends entirely on compliance with and enforcement of s. 556.116(1), F.S.

2. Expenditures:

None.

²⁶ S. 556.107(1)(c)(2), F.S.

²⁷ *Id.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have an indeterminate, positive impact on local government revenues.

The bill adds that certain violations of s. 556.116(1), F.S., are subject to an enhanced civil penalty of \$2,500 plus court costs. 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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Excavators will become subject to a fine of \$2,500 for failing to notify HPSI member operators of a planned excavation start time and date. This may encourage greater compliance with this provision of the Act.

D. FISCAL COMMENTS:

None.

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 action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to underground facilities; amending s.
3 556.105, F.S.; revising the timeframe within which an
4 excavator is required to provide certain information
5 through the free-access notification system
6 established by Sunshine State One-Call of Florida,
7 Inc., before beginning certain excavation or
8 demolition activities; revising the timeframes during
9 which member operators who receive such notifications
10 are required to mark the horizontal route of an
11 underground facility and provide a positive response
12 to the system; making technical changes; reordering
13 and amending s. 556.107, F.S., and reenacting
14 paragraph (3)(a) of that section; providing a
15 noncriminal infraction subject to enhanced civil
16 penalties for a specified violation; making technical
17 changes; reenacting ss. 556.102(8), 556.108, and
18 556.114(1)-(4), F.S., relating to the definition of
19 the term "high-priority subsurface installation,"
20 exemptions to certain notification requirements, and
21 low-impact marking practices, respectively, to
22 incorporate the amendment made to s. 556.105, F.S., in
23 references thereto; reenacting s. 556.116(1) and
24 (2)(a)-(d), F.S., relating to high-priority subsurface
25 installations, to incorporate the amendments made to

26 ss. 556.105 and 556.107, F.S., in references thereto;
 27 providing an effective date.

28

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

30

31 Section 1. Paragraph (a) of subsection (1), paragraph (a)
 32 of subsection (5), and paragraph (a) of subsection (9) of
 33 section 556.105, Florida Statutes, are amended to read:

34 556.105 Procedures.—

35 (1)(a) Not less than 3 ~~2~~ full business days before
 36 beginning any excavation or demolition that is not beneath the
 37 waters of the state, and not less than 10 full business days
 38 before beginning any excavation or demolition that is beneath
 39 the waters of the state, an excavator shall provide the
 40 following information through the system:

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

44 2. The name and telephone number of the representative for
 45 the excavator, and a valid electronic address to facilitate a
 46 positive response by the system should be provided, if
 47 available.

48 3. The county, the city or closest city, and the street
 49 address or the closest street, road, or intersection to the
 50 location where the excavation or demolition is to be performed,

51 and the construction limits of the excavation or demolition.

52 4. The commencement date and anticipated duration of the
53 excavation or demolition.

54 5. Whether machinery will be used for the excavation or
55 demolition.

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

57 7. The type of work to be done.

58 8. The approximate depth of the excavation.

59 (5) All member operators within the defined area of a
60 proposed excavation or demolition shall be promptly notified
61 through the system, except that member operators with state-
62 owned underground facilities located within the right-of-way of
63 a state highway need not be notified of excavation or demolition
64 activities and are under no obligation to mark or locate the
65 facilities.

66 (a) If a member operator determines that a proposed
67 excavation or demolition is in proximity to or in conflict with
68 an underground facility of the member operator, except a
69 facility beneath the waters of the state, which is governed by
70 paragraph (b), the member operator must ~~shall~~ identify the
71 horizontal route by marking to within 24 inches from the outer
72 edge of either side of the underground facility by the use of
73 stakes, paint, flags, or other suitable means within 3 ~~2~~ full
74 business days after the time the notification is received under
75 subsection (1). If the member operator is unable to respond

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76 | within such time, the member operator must ~~shall~~ communicate
77 | with the person making the request and negotiate a new schedule
78 | and time that is agreeable to, and should not unreasonably
79 | delay, the excavator.

80 | (9)(a) After receiving notification from the system, a
81 | member operator shall provide a positive response to the system
82 | within 3 ~~2~~ full business days, or 10 such days for an underwater
83 | excavation or demolition, indicating the status of operations to
84 | protect the facility.

85 | Section 2. Paragraph (a) of subsection (1) of section
86 | 556.107, Florida Statutes, is reordered and amended, and
87 | paragraph (a) of subsection (3) is reenacted, to read:

88 | 556.107 Violations.—

89 | (1) NONCRIMINAL INFRACTIONS.—

90 | (a)1. Violations of the following provisions are
91 | noncriminal infractions:

92 | a. Section 556.105(1), relating to providing required
93 | information.

94 | ~~c.b.~~ Section 556.105(5)(c), relating to excavation
95 | practices in tolerance zones.

96 | ~~d.e.~~ Section 556.105(6), relating to the avoidance of
97 | excavation.

98 | ~~e.d.~~ Section 556.105(11), relating to the need to stop
99 | excavation or demolition because marks are no longer visible,
100 | or, in the case of underwater facilities, are inadequately

101 | documented.

102 | ~~f.e.~~ Section 556.105(12), relating to the need to cease
 103 | excavation or demolition activities because of contact or damage
 104 | to an underground facility.

105 | ~~b.f.~~ Section 556.105(5)(a) and (b), relating to
 106 | identification of underground facilities, if a member operator
 107 | does not mark an underground facility, but not if a member
 108 | operator marks an underground facility incorrectly.

109 | g. Section 556.109(2), relating to falsely notifying the
 110 | system of an emergency situation or condition.

111 | h. Section 556.114(1), (2), (3), and (4), relating to a
 112 | failure to follow low-impact marking practices, as defined
 113 | therein.

114 | 2. Violations of the following provisions involving an
 115 | underground facility transporting hazardous materials ~~that are~~
 116 | regulated by the Pipeline and Hazardous Materials Safety
 117 | Administration of the United States Department of Transportation
 118 | are noncriminal infractions, subject to enhanced civil penalties
 119 | under paragraph (c):

120 | a. Section 556.105(1), relating to providing required
 121 | information.

122 | b. Section 556.105(5)(c), relating to excavation practices
 123 | in tolerance zones.

124 | c. Section 556.105(6), relating to the avoidance of
 125 | certain excavation.

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126 d. Section 556.105(11), relating to the need to stop
127 excavation or demolition because certain marks are removed, no
128 longer visible, or inadequately documented.

129 e. Section 556.105(12), relating to the need to cease
130 excavation or demolition activities because of contact or damage
131 to an underground facility.

132 f. Section 556.116(1), relating to a failure to notify of
133 the planned excavation start date and time before beginning
134 excavation, if the member operator provides timely notice of the
135 existence of a high-priority subsurface installation.

136 (3) MISDEMEANORS.—

137 (a) Any person who knowingly and willfully removes or
138 otherwise destroys the valid stakes or other valid physical
139 markings described in s. 556.105(5) (a) and (b) used to mark the
140 horizontal route of an underground facility commits a
141 misdemeanor of the second degree, punishable as provided in s.
142 775.082 or s. 775.083. For purposes of this subsection, stakes
143 or other nonpermanent physical markings are considered valid for
144 30 calendar days after information is provided to the system
145 under s. 556.105(1) (a).

146 Section 3. For the purpose of incorporating the amendment
147 made by this act to section 556.105, Florida Statutes, in a
148 reference thereto, subsection (8) of section 556.102, Florida
149 Statutes, is reenacted to read:

150 556.102 Definitions.—As used in this act:

151 (8) "High-priority subsurface installation" means an
152 underground gas transmission or gas distribution pipeline, or an
153 underground pipeline used to transport gasoline, jet fuel, or
154 any other refined petroleum product or hazardous or highly
155 volatile liquid, such as anhydrous ammonia or carbon dioxide, if
156 the pipeline is deemed to be critical by the operator of the
157 pipeline and is identified as a high-priority subsurface
158 installation to an excavator who has provided a notice of intent
159 to excavate under s. 556.105(1), or would have been identified
160 as a high-priority subsurface installation except for the
161 excavator's failure to give proper notice of intent to excavate.

162 Section 4. For the purpose of incorporating the amendment
163 made by this act to section 556.105, Florida Statutes, in a
164 reference thereto, section 556.108, Florida Statutes, is
165 reenacted to read:

166 556.108 Exemptions.—The notification requirements provided
167 in s. 556.105(1) do not apply to:

168 (1) Any excavation or demolition performed by the owner of
169 a single-family residential property, not including property
170 that is subdivided or is to be subdivided into more than one
171 single-family residential property; or for such owner by a
172 member operator or an agent of a member operator when such
173 excavation or demolition is made entirely on such land, and only
174 up to a depth of 10 inches; provided due care is used and there
175 is no encroachment on any member operator's right-of-way,

176 | easement, or permitted use.

177 | (2) Any excavation or demolition associated with normal
178 | agricultural or railroad activities, provided such activities
179 | are not performed on any operator's marked right-of-way,
180 | easement, or permitted use.

181 | (3) Any excavation or demolition that occurs as the result
182 | of normal industrial activities, provided such activities are
183 | confined to the immediate secured property of the facility and
184 | the activities are not performed on any operator's marked right-
185 | of-way, easement, or permitted use. For the purposes of this
186 | act, the industrial activities are limited to the following list
187 | of Standard Industrial Classifications: Industry Group Numbers
188 | 141, 206, 242, 243, and 491, and Major Group Numbers 13, 26, 28,
189 | and 29, as published by the United States Office of Management
190 | and Budget in 1987.

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

192 | (a) Surveying public or private property by surveyors or
193 | mappers as defined in chapter 472 and services performed by a
194 | pest control licensee under chapter 482, excluding marked
195 | rights-of-way, marked easements, or permitted uses where marked,
196 | if mechanized equipment is not used in the process of such
197 | surveying or pest control services and the surveying or pest
198 | control services are performed in accordance with the practice
199 | rules established under s. 472.027 or s. 482.051, respectively;

200 | (b) Maintenance activities performed by a state agency and

201 its employees when such activities are within the right-of-way
 202 of a public road; however, if a member operator has permanently
 203 marked facilities on such right-of-way, mechanized equipment may
 204 not be used without first providing notification; or

205 (c) Locating, repairing, connecting, adjusting, or routine
 206 maintenance of a private or public underground utility facility
 207 by an excavator, if the excavator is performing such work for
 208 the current owner or future owner of the underground facility
 209 and if mechanized equipment is not used.

210 (5)(a) Any excavation with hand tools by a member operator
 211 or an agent of a member operator for:

212 1. Locating, repairing, connecting, or protecting, or
 213 routine maintenance of, the member operator's underground
 214 facilities; or

215 2. The extension of a member operator's underground
 216 facilities onto the property of a person to be served by such
 217 facilities.

218 (b) The exemption provided in this subsection is limited
 219 to excavations to a depth of 30 inches if the right-of-way has
 220 permanently marked facilities of a company other than the member
 221 operator or its agents performing the excavation.

222 Section 5. For the purpose of incorporating the amendment
 223 made by this act to section 556.105, Florida Statutes, in
 224 references thereto, subsections (1) through (4) of section
 225 556.114, Florida Statutes, are reenacted to read:

226 556.114 Low-impact marking practices.—

227 (1) An excavator providing notice under s. 556.105(1)(a)
228 shall identify in its notice only the area that will be
229 excavated during the period that the information in such notice
230 is considered valid under s. 556.105(1)(c).

231 (2) When an excavator has not completed an excavation
232 noticed under s. 556.105(1)(a) within the period that the
233 information in the notice is considered valid under s.
234 556.105(1)(c), the excavator must provide a subsequent notice to
235 the system under s. 556.105(1)(a) to continue with the
236 excavation, and such subsequent notice shall identify only the
237 remaining area to be excavated.

238 (3) When an excavation site cannot be described in
239 information provided under s. 556.105(1)(a) with sufficient
240 particularity to enable the member operator to ascertain the
241 excavation site, and if the excavator and member operator have
242 not mutually agreed otherwise, the excavator shall premark the
243 proposed area of the excavation before a member operator is
244 required to identify the horizontal route of its underground
245 facilities in the proximity of any excavation. However,
246 premarking is not required when the premarking could reasonably
247 interfere with traffic or pedestrian control.

248 (4) A member operator shall identify the horizontal route
249 of its underground facilities as set forth in s. 556.105(5)(a)
250 and (b), and excavators shall premark an excavation site as set

251 forth in subsection (3) using flags or stakes or temporary,
252 nonpermanent paint or other industry-accepted low-impact marking
253 practices.

254 Section 6. For the purpose of incorporating the amendments
255 made by this act to sections 556.105 and 556.107, Florida
256 Statutes, in references thereto, subsection (1) and paragraphs
257 (a) through (d) of subsection (2) of section 556.116, Florida
258 Statutes, are reenacted to read:

259 556.116 High-priority subsurface installations; special
260 procedures.—

261 (1) When an excavator proposes to excavate or demolish
262 within 15 feet of the horizontal route of an underground
263 facility that has been identified as a high-priority subsurface
264 installation by the operator of the facility, the operator
265 shall, in addition to identifying the horizontal route of its
266 facility as set forth in s. 556.105(5) (a) and (b), and within
267 the time period set forth in s. 556.105(9) (a) for a positive
268 response, notify the excavator that the facility is a high-
269 priority subsurface installation. If the member operator
270 provides such timely notice of the existence of a high-priority
271 subsurface installation, an excavator shall notify the operator
272 of the planned excavation start date and time before beginning
273 excavation. If the member operator does not provide timely
274 notice, the excavator may proceed, after waiting the prescribed
275 time period set forth in s. 556.105(9) (a), to excavate without

276 notifying the member operator of the excavation start date and
277 time. The exemptions stated in s. 556.108 apply to the
278 notification requirements in this subsection.

279 (2)(a) An alleged commission of an infraction listed in s.
280 556.107(1) which results in an incident must be reported to the
281 system and the State Fire Marshal by a member operator or an
282 excavator within 24 hours after learning of the alleged
283 occurrence of an incident.

284 (b) Upon receipt of an allegation that an incident has
285 occurred, the member operator or excavator shall transmit an
286 incident report to the State Fire Marshal, who shall conduct an
287 investigation to determine whether an incident has occurred,
288 and, if so, whether a violation of s. 556.107(1)(a) was a
289 proximate cause of the incident. The State Fire Marshal may
290 authorize his or her agents, as provided in ss. 633.114,
291 633.116, and 633.118, to conduct investigations of incidents.

292 (c) The State Fire Marshal or his or her agents as
293 provided in ss. 633.114, 633.116, and 633.118 may issue a
294 citation and impose a civil penalty against a violator in an
295 amount not to exceed \$50,000 if the person violated a provision
296 of s. 556.107(1)(a) and that violation was a proximate cause of
297 the incident. However, if a state agency or political
298 subdivision caused the incident, the state agency or political
299 subdivision may not be fined in an amount in excess of \$10,000.

300 (d) The civil penalty imposed under this subsection is in

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301 | addition to any amount payable as a result of a citation
302 | relating to the incident under s. 556.107(1)(a).

303 | Section 7. This act shall take effect October 1, 2024.