

## CHAPTER 2010-100

### Committee Substitute for Committee Substitute for Senate Bill No. 982

An act relating to underground facility damage prevention and safety; amending s. 556.101, F.S.; prohibiting municipalities, counties, districts, and other local governments from enacting ordinances or rules that conflict with ch. 556, F.S.; amending s. 556.103, F.S.; requiring that the board of directors of Sunshine State One-Call of Florida, Inc., present to the Governor and Legislature an annual report that includes a summary of reports issued by the clerks of court; amending s. 556.105, F.S.; requiring that an excavator provide the Sunshine State One-Call of Florida, Inc., system with certain specified information not less than 10 full business days before beginning an excavation or demolition beneath the waters of the state; prohibiting the use of such information by member operators for sales or marketing purposes; deleting obsolete provisions; removing provisions requiring the premarking of certain proposed excavation sites; requiring a mutually agreed excavation plan for high-priority excavations; amending s. 556.106, F.S.; removing redundant provisions that provide a limited waiver of sovereign immunity for the state and its agencies and subdivisions arising from matters involving underground facilities; amending s. 556.107, F.S.; providing increased penalties for noncriminal infractions of the Sunshine State One-Call of Florida, Inc., system; requiring each clerk of court to submit a report to Sunshine State One-Call of Florida, Inc., by a specified date listing each violation that has been filed in the county during the preceding calendar year; amending s. 556.109, F.S.; specifying circumstances under which an excavator shall not notify the Sunshine State One-Call of Florida, Inc., system that there is an emergency; amending s. 556.110, F.S.; deleting a provision that limits assessments against a member operator who receives fewer than 10 notifications in any month; creating s. 556.114, F.S.; providing requirements for low-impact marking practices; providing procedures and methods to mark areas of excavation; requiring Sunshine State One-Call of Florida, Inc., to establish an educational program for the purpose of informing excavators and member operators about low-impact marking practices; creating s. 556.115, F.S.; requiring Sunshine State One-Call of Florida, Inc., to create a voluntary alternative dispute resolution program that is open to all member operators, excavators, and other stakeholders; requiring the voluntary users of the alternative dispute resolution program to choose the form of alternative dispute resolution to be used; requiring that the costs of using the voluntary program be borne by the users; providing that unless binding arbitration is the chosen method of alternative dispute resolution, the users or any one of such users may end the process at any time and proceed in a court of competent jurisdiction or before the Division of Administrative Hearings; creating s. 556.116, F.S.; defining the terms “high-priority subsurface installations” and “incident”; providing that if an excavation is proposed within 15 feet of a high-priority

subsurface installation and is identified as such by the facility operator, the facility operator must notify the excavator of the existence of the high-priority subsurface installation and mark its location before excavation may begin; requiring an excavator to notify the operator of the excavation start time in the vicinity of a high-priority subsurface installation; providing that an alleged infraction that results in an incident must be reported to the system by an operator or an excavator; providing that the system shall transmit incident reports to the Division of Administrative Hearings; providing that the system and the division may contract for the division to conduct proceedings; providing that the division has jurisdiction to determine the facts and law concerning an alleged incident; authorizing the division to impose a fine on a violator if the violation was a proximate cause of the incident; providing procedures, venue, and standard of proof; providing an effective date.

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

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

556.101 Short title; legislative intent.—

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

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

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

2. Require premarking or marking.

3. Specify the types of paint or other marking devices that are used to identify underground facilities.

4. Require removal of marks.

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

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

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

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

Section 3. Paragraphs (a) and (d) of subsection (1), subsections (5) and (6), paragraph (a) of subsection (7), paragraph (a) of subsection (9), and subsection (11) of section 556.105, Florida Statutes, are amended to read:

556.105 Procedures.—

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

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

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

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

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

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

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

7. The type of work to be done.

8. The approximate depth of the excavation.

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

~~1. The system shall study the feasibility of the establishment or recognition of zones for the purpose of allowing excavation within such~~

~~zones to be undertaken without notice to the system as now required by this chapter when such zones are:~~

- ~~a. In areas within which no underground facilities are located.~~
- ~~b. Where permanent markings, permit and mapping systems, and structural protection for underwater crossings are required or in place.~~
- ~~c. For previously marked utilities on construction of one or two family dwellings where the contractor remains in custody and control of the building site for the duration of the building permit.~~

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

(5) All member operators within the defined area of a proposed excavation or demolition shall be promptly notified through the system, except 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 the facilities.

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

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

~~(b)(e) If a member operator determines that a proposed excavation is in proximity to or in conflict with an underground facility of the member operator beneath the waters of the state, the member operator shall identify the estimated horizontal route of the underground facility, within 10 business days, using marking buoys or other suitable devices, unless directed~~

otherwise by an agency having jurisdiction over the waters of the state under which the member operator's underground facility is located.

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

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

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

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

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

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

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

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

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

(2)(a) If a person violates s. 556.105(1) or (6), and subsequently, whether by himself or herself or through the person's employees, contractors, subcontractors, or agents, performs an excavation or demolition that damages an underground facility of a member operator, it is rebuttably presumed that the person was negligent. The person, if found liable, is liable for the total sum of the losses to all member operators involved as those costs are normally computed. Any damage for loss of revenue and loss of use may not exceed \$500,000 per affected underground facility, except that revenues lost by a governmental member operator whose revenues are used to support payments on principal and interest on bonds may not be limited. ~~Any liability of the state and its agencies and its subdivisions which arises out of this chapter is subject to the provisions of s. 768.28.~~

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

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

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

(3) If, after receiving proper notice, a member operator fails to discharge a duty imposed by ~~the provisions of~~ this act and an underground facility of ~~a~~ such member operator is damaged by an excavator who has complied with ~~the provisions of~~ this act, as a proximate result of the member operator's failure to discharge such duty, ~~the such~~ excavator ~~is~~ shall not be liable for such damage and the member operator, if found liable, ~~is~~ shall be liable to such person for the total cost of any loss or injury to any person or damage to equipment resulting from the member operator's failure to comply with this act. Any damage for loss of revenue and loss of use shall not exceed \$500,000 per affected underground facility, except that revenues lost by a governmental member operator, which revenues are used to support payments on principal and interest on bonds, shall not be limited. ~~The liability of~~

~~governmental member operators shall be subject to limitations provided in chapter 768.~~

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

(5) If, after receiving proper notification, the system fails to discharge its duties, resulting in damage to an underground facility, the system, if found liable, shall be liable to all parties, as defined in this act. Any damage for loss of revenue and loss of use shall not exceed \$500,000 per affected underground facility, except that revenues lost by a governmental member operator, which revenues are used to support payments on principal and interest on bonds, shall not be limited.

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

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

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

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

556.107 Violations.—

(1) NONCRIMINAL INFRACTIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

556.109 Emergency excavations or demolitions attempted; exception.—

~~(1)~~ The provisions of This act does ~~do~~ not apply to making an excavation or demolition during an emergency if, provided ~~if, provided~~ the system or the member operator was notified at the earliest opportunity and all reasonable precautions had been taken to protect any underground facility. For the purposes of this act, “emergency” means 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 that which ~~that~~ necessitates repair beginning immediately after such occurrence.

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

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

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

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

556.114 Low-impact marking practices.—

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

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

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

(4) A member operator shall identify the horizontal route of its underground facilities as set forth in s. 556.105(5)(a) and (b), and excavators shall premark an excavation site as set forth in subsection (3) using flags or stakes or temporary, non-permanent paint or other industry-accepted low-impact marking practices.

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

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

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

556.115 Alternative dispute resolution.—

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

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

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

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

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

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

556.116 High-priority subsurface installations; special procedures.—

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

(a) “Division” means the Division of Administrative Hearings.

(b) “High-priority subsurface installation” means an underground gas transmission or gas distribution pipeline, 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, if the pipeline is deemed to be critical by the operator of the pipeline and is identified as a high-priority subsurface installation to an excavator who has provided a notice of intent to excavate pursuant to s. 556.105(1), or would have been identified as a high-priority subsurface installation except for the excavator’s failure to give proper notice of intent to excavate.

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

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

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

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

(3)(a) An alleged commission of an infraction listed in s. 556.107(1) which results in an incident must be reported to the system by a member operator or an excavator within 24 hours after learning of the alleged occurrence of an incident.

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

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

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

(e) A fine against an excavator or a member operator imposed under this subsection shall be paid to the system, which shall use the collected fines to satisfy the costs incurred by the system for any proceedings under this section. To the extent there are any funds remaining, the system may use the funds exclusively for damage-prevention education.

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

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

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

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

(5) The following procedures apply:

(a) Motions shall be limited to the following:

1. A motion in opposition to the petition.

2. A motion requesting discovery beyond the informal exchange of documents and witness lists described in paragraph (c). Upon a showing of necessity, additional discovery may be permitted in the discretion of the administrative law judge, but only if the discovery can be completed no later than 5 days before the final hearing.

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

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

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

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

(e) The record shall consist only of:

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

2. Evidence received during the final hearing.

3. A statement of matters officially recognized.

4. Proffers of proof and objections and rulings thereon.

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

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

7. The official transcript of the final hearing.

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

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

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

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

3. Imposition of a fine, if applicable.

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

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

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

Approved by the Governor May 26, 2010.

Filed in Office Secretary of State May 26, 2010.