

CHAPTER 2020-137

Committee Substitute for Committee Substitute for House Bill No. 1095

An act relating to infrastructure regulation; amending s. 350.061, F.S.; providing term limits for the Public Counsel; providing an exception for time served before a specified date; providing for the appointment and removal of the Public Counsel; requiring the Committee on Public Counsel Oversight to receive applications, conduct interviews, and appoint a Public Counsel by a specified date every 4 years; providing for the filling of vacancies; amending s. 556.102, F.S.; providing definitions; amending s. 556.107, F.S.; revising and providing noncriminal violations relating to the transportation of certain hazardous materials; authorizing the State Fire Marshal or his or her agents to issue certain citations; providing enhanced civil penalties; providing disposition of the civil penalty; requiring a report by additional entities; providing requirements for the report; providing civil penalties; amending s. 556.116, F.S.; deleting definitions; requiring certain persons to transmit an incident report to the State Fire Marshal; providing that certain incident reports must be submitted to, and investigated by, the State Fire Marshal or his or her agents; authorizing the State Fire Marshal or his or her agents to issue citations and civil penalties; providing for disposition of the civil penalty; requiring written warnings for certain noncriminal infractions; providing for an enhanced penalty upon conviction for a failure to respond; removing provisions relating to hearings by the Division of Administrative Hearings of certain incidents; creating s. 556.117, F.S.; requiring Sunshine State One-Call of Florida, Inc., to review certain reports and complaints; requiring the corporation to identify areas in the state in need of additional education and to recommend solutions; requiring an annual report to the Governor and the Legislature by a specified date; providing an effective date.

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

Section 1. Subsection (1) of section 350.061, Florida Statutes, is amended to read:

350.061 Public Counsel; appointment; oath; restrictions on Public Counsel and his or her employees.—

(1) The committee designated by joint rule of the Legislature or by agreement between the President of the Senate and the Speaker of the House of Representatives as the Committee on Public Counsel Oversight shall appoint a Public Counsel to represent the general public of Florida before the Florida Public Service Commission. The Public Counsel shall be an attorney admitted to practice before the Florida Supreme Court, ~~and shall be appointed for a term of 4 years, and may be reappointed thereafter,~~ provided that a person appointed as the Public Counsel may not serve more

than 12 consecutive years in the position. However, the time served by the Public Counsel before July 1, 2020, may not be considered in applying the limitation on consecutive years of service. The Public Counsel shall be appointed by a majority vote of the committee appointees of each house and may be removed from office by a majority vote of the committee appointees of each house. A person may continue as Public Counsel beyond the 4-year term until his or her successor is appointed and takes office, unless the person is removed by a vote of the committee. The Committee on Public Counsel Oversight shall receive applications, conduct interviews, and appoint a Public Counsel to a 4-year term beginning on March 1, 2021, and every 4 years thereafter serve at the pleasure of the Committee on Public Counsel Oversight, subject to biennial reconfirmation by the committee. The Public Counsel shall perform his or her duties independently. Vacancies in the office shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

Section 2. Subsections (8) and (9) through (14) of section 556.102, Florida Statutes, are renumbered as subsections (10) and (12) through (17), respectively, and new subsections (8), (9), and (11) are added to that section, to read:

556.102 Definitions.—As used in this act:

(8) “High-priority subsurface installation” means 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, 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 under 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.

(9) “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 s. 556.116(1) 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 an interruption of service to 2,500 or more customers.

(11) “Permanent marker” means a clearly visible indication of the approximate location of an underground facility which is made of material that is durable in nature and which is reasonably expected to remain in position for the life of the underground facility.

Section 3. Section 556.107, Florida Statutes, is amended to read:

556.107 Violations.—

(1) NONCRIMINAL INFRACTIONS.—

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

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

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

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

d.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.

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

f.5. Section 556.105(5)(a) and (b), 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.

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

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

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

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

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

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

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

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

(b) Any excavator or member operator who commits a noncriminal infraction under paragraph (a) may be issued a citation by the State Fire Marshal or his or her agents as provided in ss. 633.114 and 633.116; the fire chief of the special district, municipality, or county; or 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)1. Any excavator or member operator who commits a noncriminal infraction under subparagraph (a)1. paragraph (a) may be required to pay a civil penalty of \$500 plus court costs for each infraction, which is \$500 plus court costs. If a citation is issued by a state law enforcement officer, 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 must shall be distributed to the governmental entity whose employee issued the citation and 20 percent of the penalty must shall be retained by the clerk to cover administrative costs, in addition to any other court costs. Any person who fails to properly respond to a citation issued pursuant to paragraph (b) shall, in addition to the citation, be charged with the offense of failing to respond to the 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 be provided at the time any citation is issued pursuant to paragraph (b).~~

2. Any excavator or member operator who commits a noncriminal infraction under subparagraph (a)2. may be required to pay an enhanced civil penalty of \$2,500 plus court costs for each infraction. If a citation is issued, 80 percent of the civil penalty collected by the clerk of the court must be distributed to the governmental entity whose employee issued the citation and 20 percent must be retained by the clerk in addition to any court costs.

3. Any person who willfully fails to properly respond to a citation issued under paragraph (b) shall, in addition to the citation, be charged with the offense of failing to respond to the 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 be provided at the time a citation is issued under paragraph (b).

(d) Any person cited for an infraction under paragraph (a) or s. 556.116(2)(c) may post a bond, which must shall be equal in amount to the applicable civil penalty plus any additional court costs.

(e) A person charged with a noncriminal infraction under paragraph (a) or s. 556.116(2)(c) may pay the applicable civil penalty plus the additional court costs, by mail or in person, within 30 days after the date of receiving

the citation. If the person cited pays the civil penalty, 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 to have a hearing on the commission of the infraction appear before the county court. A person who elects to have a hearing waives and if so electing is deemed to have waived the limitations on the civil ~~penalties~~ 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 the applicable civil penalty \$5,000 plus court costs for each infraction. 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 the court finds that a person is ~~found by a judge or hearing official to have~~ committed an infraction, the person may appeal that finding or the amount of the civil penalties imposed 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~~ 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 the State Fire Marshal and Sunshine State One-Call of Florida, Inc., listing each citation issued for a violation notice written under paragraph (1)(a) and s. 556.116(2)(c) 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, the enforcement authority, the specific statutory infraction, and the type of underground facility related to the infraction and must indicate whether or not the civil penalty for the infraction was paid.

(3) MISDEMEANORS.—

(a) 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) 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).

(b) Any person who knowingly and willfully removes or damages a permanent marker placed to identify the approximate location of an underground facility commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 4. Section 556.116, Florida Statutes, is amended 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.~~

~~(1)(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.

~~(2)(a)(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 and the State Fire Marshal 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 member operator or excavator system shall transmit an incident report to the State Fire Marshal who shall ~~division and contract with the division so that the division may conduct an investigation 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 State Fire Marshal may authorize his or her agents, as provided in ss. 633.114, 633.116, and 633.118, to conduct investigations of incidents~~ 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(9).

(c) The State Fire Marshal or his or her agents as provided in ss. 633.114, 633.116, and 633.118 ~~division has jurisdiction in a proceeding under this section to determine the facts and law concerning an alleged incident. The division may issue a citation and impose a civil penalty 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) The civil penalty ~~A fine imposed under this subsection 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) If an additional civil penalty is imposed by the State Fire Marshal or his or her agents, 5 percent of the civil penalty must be retained by the clerk to cover administrative costs, and the remainder of the civil penalty must be distributed equally between the system and the State Fire Marshal. The portion of the civil penalty distributed to the system must be used exclusively to fund damage-prevention education. The portion of the civil penalty distributed to the State Fire Marshal must be used exclusively to fund programs created within the State Fire Marshal's office that provide need-based financial assistance to help fire departments, including volunteer fire departments, procure equipment, supplies, and educational training designed to mitigate firefighter exposure to hazardous, cancer-causing chemicals ~~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) Any excavator or member operator who commits a noncriminal infraction under s. 556.116(2)(c) must be provided a written warning at the time a citation is issued stating that any person who willfully fails to properly respond to a citation will be charged, in addition to the citation, with the offense of failing to respond to the citation and, if convicted, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(g) This section does not change the basis for civil liability. The findings and results of an investigation 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 include 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 5. Section 556.117, Florida Statutes, is created to read:

556.117 Underground facility damage prevention review.—Sunshine State One-Call of Florida, Inc., shall review the reports submitted by the clerks of court to the State Fire Marshal and any complaints of an alleged violation under this chapter to identify issues or potential issues with damage prevention and enforcement. The corporation shall identify areas in the state where additional education related to damage prevention and enforcement is needed and shall recommend solutions to remedy issues related to damage prevention and enforcement. The corporation shall, by October 1 of each year, submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives an analysis of its reviews and any recommendations for improving underground facility damage prevention and enforcement.

Section 6. This act shall take effect July 1, 2020.

Approved by the Governor June 29, 2020.

Filed in Office Secretary of State June 29, 2020.