

Council Substitute for House Bill No. 1475

An act relating to the Underground Facility Damage Prevention and Safety Act; amending s. 556.101, F.S.; revising legislative intent; amending s. 556.102, F.S.; redefining the terms “business hours,” “excavate,” and “system”; defining the terms “design services,” “positive response,” “premark,” and “tolerance zone”; amending s. 556.104, F.S.; providing for a free-access notification system; amending s. 556.105, F.S.; revising the procedures for excavation and notification; amending s. 556.106, F.S.; revising liability provisions; amending s. 556.107, F.S.; revising noncriminal and criminal penalties; creating s. 556.112, F.S.; prescribing requirements for member operators and requests for design services; providing application; providing an effective date.

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

Section 1. Section 556.101, Florida Statutes, is amended to read:

556.101 Short title; legislative intent.—

(1) This act may be cited as the “Underground Facility Damage Prevention and Safety Act.”

(2) It is the intent of the Legislature to provide access ~~a single toll-free telephone number~~ for excavating contractors and the general public to provide call for notification to the system of their intent to engage in excavation or demolition. This notification system shall provide the member operators an opportunity to identify and locate their underground facilities.

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

(a) Aid the public by preventing injury to persons or property and the interruption of services resulting from damage to an underground facility caused by excavation or demolition operations.

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

(c) Fund the cost of administration through entirely and exclusively by assessed contributions from the member operators for services provided to the member operators and from charges made to others for services requested and provided, such as record searches, education or training, and damage prevention activities.

(d) Reserve to the state the power to regulate any subject matter specifically addressed in this act.

(e) Permit any local law enforcement officer or permitting agency inspector to enforce this act without the need to incorporate the provisions of this act into any local code or ordinance.

(4) It is not the purpose of this act to create liability for negligence on the part of any ~~small municipality or county~~ operator of an underground facility which elects to not participate in the one-call notification system in the manner set forth in s. 556.103(1) created by this act. ~~This subsection expires January 1, 2003.~~

(5) It is not the purpose of this act to ~~amend or void any permit issued by a state agency for placement or maintenance of facilities in its right-of-way.~~

Section 2. Section 556.102, Florida Statutes, is amended to read:

556.102 Definitions.—As used in this act:

(1) “Business days” means Monday through Friday, excluding the following holidays: New Year’s Day, Birthday of Dr. Martin Luther King, Jr., Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the following Friday, Christmas Eve, and Christmas Day. Any such holiday that falls on a Saturday shall be observed on the preceding Friday. Any such holiday that falls on a Sunday shall be observed on the following Monday.

(2) “Business hours” means the hours of a day during which the system is open for business ~~toll-free telephone number is answered by a natural person.~~

(3) “Damage” means any impact upon or contact with, including, without limitation, penetrating, striking, scraping, displacing, or denting, however slight, the protective coating, housing, or other protective devices of any underground facility, or the removal or weakening of any lateral or vertical support from any underground facility, or the severance, partial or complete, of any underground facility.

(4) “Demolish” or “demolition” means any operation by which a structure or mass of material is wrecked, razed, rended, moved, or removed by means of any tool, equipment, or discharge of explosives, or any disturbance of the earth in any manner on public or private lands which could damage any underground facility.

(5) “Design services” means services that may be provided by a member operator to a design engineer, architect, surveyor, or planner, if the presence of underground facilities is known to a member operator, upon payment of a fee to the member operator, which services may be based on:

(a) Information obtained solely from a review of utility records.

(b) Information to augment utility records, such as topographic surveying of above-ground utility features.

(c) Information obtained through the use of designating technologies to obtain horizontal underground facility locations.

(d) Information obtained from physically exposing underground facilities.

(6)(5) “Excavate” or “excavation” means any manmade cut, cavity, trench, or depression in the earth’s surface, formed by removal of earth, intended to change the grade or level of land, or intended to penetrate or disturb the surface of the earth, including land beneath the waters of the state, as defined in s. 373.019(17), and the term includes pipe bursting and directional drilling or boring from one point to another point beneath the surface of the earth, or other trenchless technologies.

(7)(6) “Excavator” or “excavating contractor” means any person performing excavation or demolition operations.

(8)(7) “Member operator” means any person who furnishes or transports materials or services by means of an underground facility except a small municipality or county that has elected not to participate in the one-call notification system in the manner set forth in s. 556.103(1).

(9)(8) “Person” means any individual, firm, joint venture, partnership, corporation, association, municipality, or other political subdivision, governmental unit, department, or agency, and includes any trustee, receiver, assignee, or personal representative of a person.

(10) “Positive response” means the communications among member operators, excavators, and the system concerning the status of locating an underground facility.

(11) “Premark” means to delineate the general scope of the excavation on the surface of the ground using white paint, white stakes, or other similar white markings.

(12) “Tolerance zone” means 24 inches from the outer edge of either side of the exterior surface of a marked underground facility.

(13)(9) “Underground facility” means 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.

(14)(10) “System” means a free-access one-call toll-free telephone notification system established by the corporation as provided in this act.

Section 3. Section 556.104, Florida Statutes, is amended to read:

556.104 Free-access One-call notification system.—The corporation shall ~~maintain a free-access~~ establish a one-call toll-free telephone notification system which shall be operational by June 1, 1994. Any person who furnishes or transports materials or services by means of an underground facility in this state shall participate as a member operator of the system except that a small city as defined in s. 120.52 may elect not to participate in the system in the manner set forth in s. 556.103(1). The purpose of the system is to receive notification of planned excavation or demolition activities and to notify member operators of such planned excavation or demolition activities. The system shall provide a single toll-free telephone number within this state which excavators can use to notify member operators of planned excavation or demolition activities, and the system may also provide additional modes of access at no cost to the user.

Section 4. Section 556.105, Florida Statutes, is amended to read:

556.105 Procedures.—

(1)(a) Not less than 2 nor more than 5 full business days before beginning any excavation or demolition, 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.

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.

(b) The excavator shall provide such information by notifying the system through its free-access notification system ~~calling the statewide toll-free number~~ during business hours, as determined by the corporation, or by such other method as authorized by the corporation. Any notification received by the system at any time other than during business hours shall be considered to be received at the beginning of the next business day.

(c) Information provided by an excavator shall be considered valid for a period of 20 calendar days after each date such information is provided to

the system. In computing the period for which information furnished is considered valid, the date the notice is provided shall not be counted, but the last day of such period shall be counted unless it is a Saturday, Sunday, or a legal holiday, in which event, the period shall run until the end of the next day which is not a Saturday, Sunday, or a legal holiday.

(2) Each notification by means of the system shall be recorded to document compliance with this act. Such record may be made by means of electronic, mechanical, or any other method of all incoming and outgoing wire and oral communications concerning location requests in compliance with chapter 934. Such records shall be kept for a period of 5 years and, upon written request, shall be available to the excavator making the request, the member operator intended to receive the request, and their agents. However, custody of the records shall not be transferred from the system except under subpoena.

(3) The system shall provide the person who provided notification with the names of the member operators who will be advised of the notification and a notification number which specifies the date and time of the notification.

(4) 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 such 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 pre-mark 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.

~~(b)(5)~~ 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 (c), 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 48 hours, excluding days other than 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.

(c) If a member operator determines that a proposed excavation is in proximity to or in conflict with an underground facility of the member opera-

tor 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.

(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.

(5)(6)(a) An excavator shall avoid excavation in the area described in the notice given pursuant to 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 (4)(b) and (c) 48 hours, excluding days other than business days, after notification under the system, 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 (4)(b) and (c) 48 hours, excluding days other than business days, after notification under the system, the excavator may proceed with the excavation, provided the excavator does so with reasonable care, and provided, further, that detection equipment or other acceptable means to locate underground facilities are used.

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

(6)(a)(7) A member operator that states which certifies that it does not have accurate information concerning the exact location of its underground facilities is exempt from the requirements of paragraphs (4)(b) and (c) subsection (5), 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.

(b) A member operator may not exercise the exemption provided by this subsection if the member operator has underground facilities that have not been taken out of service and that are locatable using available designating technologies to locate underground facilities.

(7)(8)(a) If extraordinary circumstances exist, a member operator shall notify the system of the member operator's inability to comply with this section. For the purposes of this section, "extraordinary circumstances" means circumstances other than normal operating conditions which exist and make it impractical for a member operator to comply with the provisions of this act. After the system has received notification of a member operator's

~~inability to comply, the system shall make that information known to excavators who subsequently notify the system of an intent to excavate. The system shall notify only those prospective excavators who make requests for notification after the member operator reported the member operator's inability to comply.~~ The member operator is relieved of responsibility for compliance under the law during the period that the extraordinary circumstances exist and shall promptly notify the system when the extraordinary circumstances cease to exist.

(b) During the period ~~when that~~ extraordinary circumstances exist, the system shall remain available during business hours to provide information to governmental agencies, member operators affected by the extraordinary circumstances, and member operators who can provide relief to the affected parties, unless the system itself has been adversely affected by extraordinary circumstances.

~~(8)(a)(9)~~ If a member operator determines that the excavation or demolition is not near an existing underground facility of the member operator, the member operator shall notify the excavator within 2 full 48 hours, excluding days other than business days after, ~~from~~ the time of the notification to the system that no conflict exists and that the excavation or demolition area is clear. An excavator who has knowledge of the existence of an underground facility of a member operator in the area is responsible for contacting the member operator if a facility is not marked.

(b) The system shall implement procedures for positive response by January 1, 2004.

~~(9)(10)~~ A member operator shall use the recommended guidelines for uniform temporary marking of underground facilities as approved by the Utility Location and Coordinating Council of the American Public Works Association when marking the horizontal route of any underground facility of the operator.

~~(10)(11)~~ Prior to or during excavation or demolition, if the marking of the horizontal route of any facility is removed or is no longer visible, the excavator shall stop excavation or demolition activities in the vicinity of the facility and shall notify the system to have the route remarked.

~~(11)(12)~~ If any contact with or damage to any pipe, cable, or its protective covering, or any other underground facility occurs, the excavator causing the contact or damage shall immediately notify the member operator. Upon receiving notice, the member operator shall send personnel to the location as soon as possible to effect temporary or permanent repair of the contact or damage. Until such time as the contact or damage has been repaired, the excavator shall cease excavation or demolition activities that may cause further damage to such underground facility.

Section 5. Paragraph (a) of subsection (2) of section 556.106, Florida Statutes, is amended, present subsections (4) and (5) of said section are renumbered as subsections (5) and (6), respectively, and a new subsection (4) is added to said section, to read:

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

(2)(a) In the event any person violates s. 556.105(1) or (5) (6), and subsequently, whether by himself or herself or through the person's employees, contractors, subcontractors, or agents, performs an excavation or demolition which damages an underground facility of a member operator, it shall be rebuttably presumed that such person was negligent. Such person, if found liable, shall be 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 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. Any liability of the state and its agencies and its subdivisions which arises out of this chapter shall be subject to the provisions of s. 768.28.

(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.

Section 6. 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(5) ~~556.105(6)~~, relating to the avoidance of excavation.
3. Section 556.105(10) ~~556.105(11)~~, relating to the need to stop excavation or demolition.
4. Section 556.105(11) ~~556.105(12)~~, relating to the need to cease excavation or demolition activities.

5. Section 556.105(4)(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.

(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 or permitting agency inspector, and the issuer of a citation may require any excavator to cease work on any excavation or not start a proposed excavation until there has been compliance with the provisions of this act. Citations may be issued to any employee of the excavator or member operator who is directly involved in the noncriminal infraction.

(c) Any excavator or member operator who commits a noncriminal infraction under paragraph (a) may be required to appear before the county court. The civil penalty for any such infraction is \$250, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a citation issued pursuant to paragraph (d) shall, in addition to the citation, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect 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; or
2. Sign and accept a citation indicating a promise to appear before the county court.

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

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

1. Pay the civil penalty, in lieu of appearance, either by mail or in person, within 10 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 follows either of the above procedures, she or he shall be 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. Such admission may be used as evidence in any other proceeding under this act.

(f) Any person electing to appear before the county court 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. In determining the amount of the civil penalty, the court may consider previous noncriminal infractions committed.

(g) At a 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 the hearing official to have committed an infraction, such person may appeal that finding to the circuit court.

(2) MISDEMEANORS.—Any person who knowingly and willfully removes or otherwise destroys the valid stakes or other valid physical mark-

ings described in s. 556.105(4)(b) and (c) 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 20 calendar days after information is provided to the system under s. 556.105(1)(c).

Section 7. Section 556.112, Florida Statutes, is created to read:

556.112 Design services.—

(1) Each member operator shall provide to the system annually, and shall thereafter keep current, the contact names and telephone numbers of individuals who may be contacted by design engineers, architects, surveyors, and planners for the purpose of responding to requests for design services.

(2) Each member operator shall provide to the system annually, and shall thereafter keep current, a list of fees applicable to each type of design service that each member operator chooses to offer to design engineers, architects, surveyors, and planners.

(3) Each member operator, within 20 business days after receipt of the fee provided for in subsection (2), shall either respond to a request for design services, if the member operator chooses to provide the services requested, or shall notify the party requesting services that the services will not be provided.

(4) The system shall study the feasibility of implementing a procedure for notification to member operators of requests for design services from design engineers, architects, surveyors, and planners, including the right to recover reasonable and compensatory costs from the users, and the system shall report the results of the study to the Legislature before January 1, 2004.

(5) This section shall not apply to any state agency, municipality, or county, or contractors, consultants, agents, or persons or firms acting under their authority, in the planning, preparing, or performance of work in their right-of-way. This section shall not limit or expand any existing law governing the process a state agency, municipality, or county uses to request design services from member operators or the responsibility for providing or paying for such services.

Section 8. This act shall take effect October 1, 2002.

Approved by the Governor May 6, 2002.

Filed in Office Secretary of State May 6, 2002.