

1                   A bill to be entitled  
2           An act relating to underground facility damage  
3           prevention and safety; amending s. 556.102, F.S.;  
4           defining terms; amending s. 556.105, F.S.; changing  
5           the number of days' notice an excavator must provide  
6           to the free-access notification system before  
7           beginning any excavation or demolition; amending s.  
8           556.107, F.S.; repealing provisions regarding  
9           citations for specified noncriminal infractions;  
10          creating an underground facility damage prevention  
11          review panel; providing the membership of the review  
12          panel; specifying the term limits of the review panel;  
13          requiring Sunshine State One-Call of Florida, Inc. to  
14          provide support to the panel; specifying how the  
15          review panel will be funded; providing dates by which  
16          alleged violations must be reported; providing a  
17          hearing process to allow the review panel to hear  
18          complaints regarding certain alleged violations;  
19          specifying the civil penalties which the review panel  
20          may assess; providing a review process through the  
21          Division of Administrative Hearings for infractions  
22          not resolved by the review panel; specifying a penalty  
23          for any person who removes or damages permanent  
24          underground facility markers under certain  
25          circumstances; amending s. 556.114, F.S.; authorizing

26 member operators to place permanent markers for  
 27 certain purposes; amending s. 556.116, F.S.;  
 28 conforming provisions to changes made by the act;  
 29 providing an effective date.

30  
 31 Be It Enacted by the Legislature of the State of Florida:

32  
 33 Section 1. Section 556.102, Florida Statutes, is amended  
 34 to read:

35 556.102 Definitions.—As used in this act:

36 (1) "Board of directors" or "board" means the board of  
 37 directors of the corporation.

38 (2)~~(1)~~ "Business days" means Monday through Friday,  
 39 excluding the following holidays: New Year's Day, Birthday of  
 40 Dr. Martin Luther King, Jr., Memorial Day, Independence Day,  
 41 Labor Day, Thanksgiving Day and the following Friday, Christmas  
 42 Eve, and Christmas Day. Any such holiday that falls on a  
 43 Saturday shall be observed on the preceding Friday. Any such  
 44 holiday that falls on a Sunday shall be observed on the  
 45 following Monday.

46 (3)~~(2)~~ "Business hours" means the hours of a day during  
 47 which the system is open for business.

48 (4) "Corporation" means Sunshine State One-Call of  
 49 Florida, Inc.

50 (5)~~(3)~~ "Damage" means any impact upon or contact with,

51 including, without limitation, penetrating, striking, scraping,  
52 displacing, or denting, however slight, the protective coating,  
53 housing, or other protective devices of any underground  
54 facility, or the removal or weakening of any lateral or vertical  
55 support from any underground facility, or the severance, partial  
56 or complete, of any underground facility.

57 (6)~~(4)~~ "Demolish" or "demolition" means any operation by  
58 which a structure or mass of material is wrecked, razed, rended,  
59 moved, or removed by means of any tool, equipment, or discharge  
60 of explosives, or any disturbance of the earth in any manner on  
61 public or private lands which could damage any underground  
62 facility.

63 (7)~~(5)~~ "Design services" means services that may be  
64 provided by a member operator to a design engineer, architect,  
65 surveyor, or planner, if the presence of underground facilities  
66 is known to a member operator, upon payment of a fee to the  
67 member operator, which services may be based on:

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

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

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

75 (d) Information obtained from physically exposing

76 | underground facilities.

77 |       (8) "Division" means the Division of Administrative  
 78 | Hearings.

79 |       ~~(9)-(6)~~ "Excavate" or "excavation" means any manmade cut,  
 80 | cavity, trench, or depression in the earth's surface, formed by  
 81 | removal of earth, intended to change the grade or level of land,  
 82 | or intended to penetrate or disturb the surface of the earth,  
 83 | including land beneath the waters of the state, as defined in s.  
 84 | 373.019(22), and the term includes pipe bursting and directional  
 85 | drilling or boring from one point to another point beneath the  
 86 | surface of the earth, or other trenchless technologies.

87 |       ~~(10)-(7)~~ "Excavator" or "excavating contractor" means any  
 88 | person performing excavation or demolition operations.

89 |       ~~(11)-(8)~~ "Member operator" means any person who furnishes  
 90 | or transports materials or services by means of an underground  
 91 | facility.

92 |       (12) "Permanent marker" means a clearly visible indication  
 93 | of the approximate location of an underground facility made of  
 94 | material that is durable in nature and which is reasonably  
 95 | expected to remain in position for the life of the underground  
 96 | facility.

97 |       ~~(13)-(9)~~ "Person" means any individual, firm, joint  
 98 | venture, partnership, corporation, association, municipality, or  
 99 | other political subdivision, governmental unit, department, or  
 100 | agency, and includes any trustee, receiver, assignee, or

101 personal representative of a person.

102 (14)~~(10)~~ "Positive response" means the communications  
103 among member operators, excavators, and the system concerning  
104 the status of locating an underground facility.

105 (15)~~(11)~~ "Premark" means to delineate the general scope of  
106 the excavation on the surface of the ground using white paint,  
107 white stakes, or other similar white markings.

108 (16)~~(14)~~ "System" means a free-access notification system  
109 established by the corporation as provided in this act.

110 (17)~~(12)~~ "Tolerance zone" means 24 inches from the outer  
111 edge of either side of the exterior surface of a marked  
112 underground facility.

113 (18)~~(13)~~ "Underground facility" means any public or  
114 private personal property which is buried, placed below ground,  
115 or submerged on any member operator's right-of-way, easement, or  
116 permitted use which is being used or will be used in connection  
117 with the storage or conveyance of water; sewage; electronic,  
118 telephonic, or telegraphic communication; electric energy; oil;  
119 petroleum products; natural gas; optical signals; or other  
120 substances, and includes, but is not limited to, pipelines,  
121 pipes, sewers, conduits, cables, valves, and lines. For purposes  
122 of this act, a liquefied petroleum gas line regulated under  
123 chapter 527 is not an underground facility unless such line is  
124 subject to the requirements of Title 49 C.F.R. adopted by the  
125 Department of Agriculture and Consumer Services, provided there

126 is no encroachment on any member operator's right-of-way,  
 127 easement, or permitted use. Petroleum storage systems subject to  
 128 regulation pursuant to chapter 376 are not considered  
 129 underground facilities for the purposes of this act unless the  
 130 storage system is located on a member operator's right-of-way or  
 131 easement. Storm drainage systems are not considered underground  
 132 facilities.

133 Section 2. Paragraph (a) of subsection (1), paragraph (a)  
 134 of subsection (5), and paragraph (a) of subsection (9) of  
 135 section 556.105, Florida Statutes, are amended to read:

136 556.105 Procedures.—

137 (1) (a) Not less than 3 ~~2~~ full business days before  
 138 beginning any excavation or demolition that is not beneath the  
 139 waters of the state, and not less than 10 ~~full~~ business days  
 140 before beginning any excavation or demolition that is beneath  
 141 the waters of the state, an excavator shall provide the  
 142 following information through the system:

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

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

150 3. The county, the city or closest city, and the street

151 address or the closest street, road, or intersection to the  
152 location where the excavation or demolition is to be performed,  
153 and the construction limits of the excavation or demolition.

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

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

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

159 7. The type of work to be done.

160 8. The approximate depth of the excavation.

161 (5) All member operators within the defined area of a  
162 proposed excavation or demolition shall be promptly notified  
163 through the system, except that member operators with state-  
164 owned underground facilities located within the right-of-way of  
165 a state highway need not be notified of excavation or demolition  
166 activities and are under no obligation to mark or locate the  
167 facilities.

168 (a) If a member operator determines that a proposed  
169 excavation or demolition is in proximity to or in conflict with  
170 an underground facility of the member operator, except a  
171 facility beneath the waters of the state, which is governed by  
172 paragraph (b), the member operator shall identify the horizontal  
173 route by marking to within 24 inches from the outer edge of  
174 either side of the underground facility by the use of stakes,  
175 paint, flags, or other suitable means within 3 ~~2~~ full business

176 days after the time the notification is received under  
177 subsection (1). If the member operator is unable to respond  
178 within such time, the member operator shall communicate with the  
179 person making the request and negotiate a new schedule and time  
180 that is agreeable to, and should not unreasonably delay, the  
181 excavator.

182 (9) (a) After receiving notification from the system, a  
183 member operator shall provide a positive response to the system  
184 within 3 ~~2~~ full business days, or 10 such days for an underwater  
185 excavation or demolition, indicating the status of operations to  
186 protect the facility.

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

189 556.107 Violations.—

190 (1) NONCRIMINAL INFRACTIONS.—

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

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

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

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



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

204        (e)5. Section 556.105(5)(a) and (b), relating to  
205 identification of underground facilities, if a member operator  
206 does not mark an underground facility, but not if a member  
207 operator marks an underground facility incorrectly.

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

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

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

224        ~~(c) Any excavator or member operator who commits a  
225 noncriminal infraction under paragraph (a) may be required to~~

226 ~~pay a civil penalty for each infraction, which is \$500 plus~~  
227 ~~court costs. If a citation is issued by a state law enforcement~~  
228 ~~officer, a local law enforcement officer, a local government~~  
229 ~~code inspector, or a code enforcement officer, 80 percent of the~~  
230 ~~civil penalty collected by the clerk of the court shall be~~  
231 ~~distributed to the governmental entity whose employee issued the~~  
232 ~~citation and 20 percent of the penalty shall be retained by the~~  
233 ~~clerk to cover administrative costs, in addition to other court~~  
234 ~~costs. Any person who fails to properly respond to a citation~~  
235 ~~issued pursuant to paragraph (b) shall, in addition to the~~  
236 ~~citation, be charged with the offense of failing to respond to~~  
237 ~~the citation and, upon conviction, commits a misdemeanor of the~~  
238 ~~second degree, punishable as provided in s. 775.082 or s.~~  
239 ~~775.083. A written warning to this effect must be provided at~~  
240 ~~the time any citation is issued pursuant to paragraph (b).~~

241 ~~(d) Any person cited for an infraction under paragraph (a)~~  
242 ~~may post a bond, which shall be equal in amount to the~~  
243 ~~applicable civil penalty plus court costs.~~

244 ~~(e) A person charged with a noncriminal infraction under~~  
245 ~~paragraph (a) may pay the civil penalty plus court costs, by~~  
246 ~~mail or in person, within 30 days after the date of receiving~~  
247 ~~the citation. If the person cited pays the civil penalty, she or~~  
248 ~~he is deemed to have admitted to committing the infraction and~~  
249 ~~to have waived the right to a hearing on the issue of commission~~  
250 ~~of the infraction. The admission may be used as evidence in any~~

251 ~~other proceeding under this chapter.~~

252 ~~(f) Any person may elect to appear before the county court~~  
253 ~~and if so electing is deemed to have waived the limitations on~~  
254 ~~the civil penalty specified in paragraph (c). The court, after a~~  
255 ~~hearing, shall make a determination as to whether an infraction~~  
256 ~~has been committed. If the commission of an infraction has been~~  
257 ~~proven, the court may impose a civil penalty not to exceed~~  
258 ~~\$5,000 plus court costs. In determining the amount of the civil~~  
259 ~~penalty, the court may consider previous noncriminal infractions~~  
260 ~~committed.~~

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

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

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

275 (2) UNDERGROUND FACILITY DAMAGE PREVENTION REVIEW PANEL

276 CREATION.—

277 (a) The underground facility damage prevention review  
278 panel is established to review complaints of any alleged  
279 violation identified in subsection (1) or s. 556.116(2). The  
280 review panel shall consist of nine members appointed by the  
281 board of directors and shall include the following:

282 1. One member representing the electrical utility  
283 industry.

284 2. One member representing the telecommunications  
285 industry.

286 3. One member licensed as an underground utility and  
287 excavation contractor under chapter 489 and engaged in work  
288 within road or highway rights-of-way.

289 4. One member representing the natural gas industry.

290 5. One member representing the utility locator industry.

291 6. One member representing county or municipal water and  
292 sewer service providers.

293 7. One member representing excavators performing work  
294 unrelated to construction in road or highway rights-of-way,  
295 including landscaping, fencing, or plumbing contractors.

296 8. One member licensed as an underground utility and  
297 excavation contractor under chapter 489 and engaged in work for  
298 public utilities.

299 9. One member representing the public at large.

300 (b) The board of directors shall establish a process to

301 receive applications for the purpose of appointing members to  
302 the review panel.

303 (c) Each review panel member shall serve a 2-year term. A  
304 member may not serve more than two consecutive 2-year terms,  
305 except that members listed in subparagraphs (a)1.-5. shall  
306 initially serve a 1-year term and those members listed in  
307 subparagraphs (a)6.-9. shall serve a 2-year term. All subsequent  
308 appointments shall be for 2-year terms. A vacancy for an  
309 unexpired term of a member shall be filled in the same manner as  
310 the original appointment. The review panel shall elect a  
311 chairperson and vice chairperson and meet quarterly in  
312 conjunction with the meeting of the board of directors or at the  
313 call of the chair.

314 (d) The corporation shall provide staff support and  
315 meeting space to the review panel. To the extent expenses to  
316 operate the review panel are not offset through civil penalties  
317 recovered pursuant to subsection (5), member operators must  
318 equally share in the cost of the operation of the review panel  
319 through monthly assessments, which are in addition to those  
320 monthly assessments provided in s. 556.110.

321 (3) COMPLAINTS.-

322 (a) A complaint regarding an alleged violation listed in  
323 paragraph (1)(a) or s. 556.116(2) shall be submitted to the  
324 free-access notification system. Each complaint must include a  
325 short, plain statement identifying each transaction or

326 occurrence giving rise to the complaint, the specific provisions  
327 in subsection (1) or s. 556.116(2) that were violated, the facts  
328 supporting the allegation that the violation occurred, and any  
329 other evidence supporting the complaint. A complaint may not be  
330 filed later than 30 days after the date the violation occurred  
331 or, for those violations that were not immediately observable or  
332 discoverable, 30 days after the date the complaining party knew  
333 or reasonably should have known of the existence of the  
334 violation.

335 (b) Within 5 business days after receiving a complaint  
336 submitted to the free-access notification system, the  
337 corporation must provide a copy of the complaint and supporting  
338 documents to the review panel. The corporation must also provide  
339 a copy and supporting documents to the party identified in the  
340 complaint as having committed a violation, together with a  
341 notice of the date and time of a meeting during which time the  
342 complaint will be considered by the review panel.

343 (4) REVIEW PANEL PROCESS AND DUTIES.—

344 (a) At the designated meeting date, the review panel must  
345 provide each party responding to a complaint an opportunity to  
346 present his or her argument and provide mitigating evidence  
347 regarding the alleged violation. At the conclusion of any  
348 presentation, the review panel shall determine whether the  
349 alleged violation occurred, and if it determines a violation has  
350 occurred, a recommendation as to civil penalties as set forth in

351 subsection (5).

352 (b) The review panel's determination and recommendation  
353 for a penalty shall be made by majority vote and must be reduced  
354 to writing. If the responding party consents to the  
355 determination and recommendation, the responding party shall  
356 execute the written document and agree to be bound by its  
357 provisions. The chair of the review panel shall also execute the  
358 document which shall be enforceable in circuit court.

359 (5) PENALTIES.—If the review panel determines that the  
360 responding party has violated subsection (1) or s. 556.116(2),  
361 it may recommend that the party be required to pay a civil  
362 penalty consistent with the following guidelines:

363 (a) For a first violation, a civil penalty of up to  
364 \$1,000.

365 (b) For a second or subsequent violation, a civil penalty  
366 of up to \$5,000.

367 (c) A civil penalty of up to \$50,000, irrespective of  
368 whether it is a first or second violation may be assessed if a  
369 violation:

370 1. Damages property or facilities, including restoration  
371 costs, of greater than \$10,000;

372 2. Interrupts service to 500 or more customers;

373 3. Interrupts service to critical infrastructure  
374 facilities, including airports, hospitals, law enforcement, or  
375 fire and rescue facilities; or

376 4. Results in death or serious bodily injury requiring  
377 inpatient hospitalization.

378  
379 In lieu of or in addition to imposing a civil penalty for a  
380 first violation or in addition to imposing a civil penalty for a  
381 second or subsequent violation or for a violation meeting the  
382 thresholds in paragraph (c), the review panel may recommend  
383 damage prevention education and training.

384 (6) APPEALS.—

385 (a) If the responding party disputes the written document,  
386 either regarding the existence of a violation or regarding the  
387 penalty recommended therein, no later than 21 days after receipt  
388 of the written document, the responding party may request a  
389 hearing before the division. The request must be filed in  
390 writing with the free-access notification system and must  
391 specify the specific findings in the written document that are  
392 disputed. The free-access notification system must transmit the  
393 hearing request to the division within 5 business days after  
394 receipt so that the division may conduct a hearing to determine  
395 whether a violation has occurred and whether the penalty  
396 recommendation made by the review panel should be sustained.

397 (b)1. The division has jurisdiction under this section to  
398 determine the facts and law concerning an alleged violation of  
399 any of the provisions of subsection (1) or s. 556.116(2).

400 2. The division may impose a civil penalty in an amount



401 not exceeding the maximum civil penalty amount provided for in  
402 subsection (5), or require the violator to receive damage  
403 prevention education and training, or both, if it finds a  
404 violation was committed.

405 3. The division shall issue and serve on all original  
406 parties an initial order that assigns the case to a specific  
407 administrative law judge and requests information regarding  
408 scheduling the final hearing within 5 business days after the  
409 division receives the request for hearing. The original parties  
410 in the proceeding include the petitioning party and person or  
411 entity that filed the original complaint. The final hearing must  
412 be conducted within 60 days after the date the request for  
413 hearing is filed with the division.

414 4. Unless the parties otherwise agree, venue for the  
415 hearing shall be in the county in which the violation occurred.

416 5. An intervenor in the proceeding must file a petition to  
417 intervene no later than 15 business days before the final  
418 hearing. A person who has a substantial interest in the  
419 proceeding may intervene.

420 6. In any hearing, the following procedures apply:

421 a. A motion in opposition to the petition may be filed.

422 b. A motion requesting discovery beyond the informal  
423 exchange of documents and witness lists described in  
424 subparagraph 7. may be filed. Upon a showing of necessity,  
425 additional discovery may be permitted in the discretion of the

426 administrative law judge, but only if the discovery can be  
427 completed no later than 5 business days before the final  
428 hearing.

429 c. A motion for continuance of the final hearing date may  
430 be filed.

431 d. No motions, other than those provided in this  
432 subparagraph, may be filed.

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

441 8. The parties shall furnish to each other copies of  
442 documentary evidence and lists of witnesses who may testify at  
443 the final hearing at least 5 business days before the final  
444 hearing.

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

449 10. The record shall consist only of:

450 a. All notices, pleadings, motions, and intermediate

451 rulings.

452 b. Evidence received during the final hearing.

453 c. A statement of matters officially recognized.

454 d. Proffers of proof and objections and rulings thereon.

455 e. Matters placed on the record after an ex parte

456 communication.

457 f. The written final order of the administrative law judge  
458 presiding at the final hearing.

459 g. The official transcript of the final hearing.

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

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

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

470 2. Conclusions of law. In determining whether a party has  
471 committed a violation of subsection (1) or s. 556.116(2), the  
472 violation must be proven by a preponderance of the evidence.

473 3. Imposition of a civil penalty or a requirement for  
474 receiving damage prevention education and training, if  
475 applicable.

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

478  
479 The final order of the administrative law judge constitutes  
480 final agency action subject to judicial review pursuant to s.  
481 120.68.

482 (e) This subsection does not prevent the parties from  
483 reaching a voluntary resolution of the issues raised in the  
484 request for hearing at any time before the entry of a final  
485 order by the administrative law judge.

486 (7) FAILURE TO REQUEST A HEARING.—If a responding party  
487 disagrees with the determination or recommendation of the review  
488 panel, but fails to request a hearing before the division within  
489 21 days following the meeting as described in subsection (4),  
490 the review panel's written document shall become a final order,  
491 enforceable in circuit court.

492 (8) PAYMENT OF CIVIL PENALTIES.—Any civil penalties  
493 imposed under this section shall be paid to the free-access  
494 notification system, which shall use the collected penalties to  
495 satisfy the costs incurred by the system for any proceeding  
496 under this section, including expenses related to the review  
497 panel process. To the extent there are any funds remaining, the  
498 system may use the funds exclusively for damage prevention  
499 education and training.

500 ~~(2) REPORT OF INFRACTIONS.—By March 31 of each year, each~~

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

508 (9) ~~(3)~~ MISDEMEANORS.—

509 (a) Any person who knowingly and willfully removes or  
510 otherwise destroys the valid stakes or other valid physical  
511 markings described in s. 556.105(5) (a) and (b) used to mark the  
512 horizontal route of an underground facility commits a  
513 misdemeanor of the second degree, punishable as provided in s.  
514 775.082 or s. 775.083. For purposes of this subsection, stakes  
515 or other nonpermanent physical markings are considered valid for  
516 30 calendar days after information is provided to the system  
517 under s. 556.105(1) (a).

518 (b) Any person who knowingly and willfully removes or  
519 damages a permanent marker, as defined in s. 556.102, placed to  
520 identify the approximate location of an underground facility,  
521 commits a misdemeanor of the second degree, punishable as  
522 provided in s. 775.082 or s. 775.083.

523 Section 4. Subsection (4) of section 556.114, Florida  
524 Statutes, is amended to read:

525 556.114 Low-impact marking practices.—

526 (4) A member operator shall identify the horizontal route  
527 of its underground facilities as set forth in s. 556.105(5) (a)  
528 and (b), and excavators shall premark an excavation site as set  
529 forth in subsection (3) using flags or stakes or temporary,  
530 nonpermanent paint or other industry-accepted low-impact marking  
531 practices. However, a member operator may place permanent  
532 markers, as defined in s. 556.102, to permanently mark the  
533 approximate location of underground facilities.

534 Section 5. Paragraphs (b), (c), and (d) of subsection (3)  
535 and paragraph (g) of subsection (5) of section 556.116, Florida  
536 Statutes, are amended to read:

537 556.116 High-priority subsurface installations; special  
538 procedures.—

539 (3)

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

551 120.65(9).

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

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

564 (5) The following procedures apply:

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

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

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

576 |           3. Imposition of a fine, if applicable.

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

579 |

580 | The final order of the administrative law judge constitutes  
581 | final agency action subject to judicial review pursuant to s.  
582 | 120.68.

583 |           Section 6. This act shall take effect July 1, 2019.