Energy & Utilities Subcommittee

Tuesday, January 21, 2020
10:00 AM – 12:00 PM
Webster Hall (212 Knott)

Meeting Packet

Jose Oliva
Speaker

Charlie Stone
Chair

The Florida House of Representatives

Commerce Committee

Energy & Utilities Subcommittee

Jose Oliva
Speaker

Charlie Stone
Chair

AGENDA

Tuesday, January 21, 2020
Webster Hall (212 Knott)
10:00 AM – 12:00 PM

I. Call to Order & Roll Call

II. Welcoming Remarks

III. Consideration of the following bills(s):

HB 755 by *Rep. DuBose*
Pub. Rec. and Meetings/911 and E911 Communication Systems

HB 969 by *Rep. Drake*
Broadband Internet Service

HB 1095 by *Rep. Fitzenhagen*
Underground Facility Damage Prevention and Safety

IV. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4873 Fax: (850) 413-0419

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Energy & Utilities Subcommittee

Start Date and Time:	Tuesday, January 21, 2020 10:00 am
End Date and Time:	Tuesday, January 21, 2020 12:00 pm
Location:	Webster Hall (212 Knott)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 755 Pub. Rec. and Meetings/911 and E911 Communication Systems by DuBose
HB 969 Broadband Internet Service by Drake
HB 1095 Underground Facility Damage Prevention and Safety by Fitzenhagen

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Friday, January 17, 2020.

By request of Chair Stone, all Energy & Utilities Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Friday, January 17, 2020.

NOTICE FINALIZED on 01/16/2020 4:02PM by Rigas.Amanda

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 755 Pub. Rec. and Meetings/911 and E911 Communication Systems
SPONSOR(S): DuBose
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1060

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee		Keating CK	Keating CK
2) Oversight, Transparency & Public Management Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Current law provides public record exemptions for various records related to the physical security of certain structures and for certain information related to the Nationwide Public Safety Broadband Network. There is not a specific public record exemption for records related to infrastructure used to provide 911 or E911 communication service.

The bill creates a public record exemption for specific records that identify the design, scope, and location of 911 or E911 communication system infrastructure owned and operated by an agency before, on, or after the effective date of the bill. The bill also creates a public meeting exemption for any portion of a meeting that would reveal these records. Specifically, the bill creates a public record exemption for:

- Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 or E911 communication structures or facilities owned and operated by an agency; and
- Geographical maps indicating the actual or proposed locations of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 services, or other 911 or E911 communication structures or facilities owned and operated by an agency.

The bill identifies specific circumstances in which these records may be disclosed.

The bill provides that these public meeting and public record exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 1, 2025, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides that it will take effect upon becoming law.

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public meeting or public record exemption. The bill creates a new public meeting and public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a).[1] The general law must state with specificity the public necessity justifying the exemption[2] and must be no more broad than necessary to accomplish its purpose.[3]

Public Meetings

Article I, section 24(b) of the Florida Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.[4] The board or commission must provide reasonable notice of all public meetings.[5] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or that operates in a manner that unreasonably restricts the public's access to the facility.[6] Minutes of a public meeting must be promptly recorded and open to public inspection.[7]

The Legislature may provide by general law for the exemption of meetings from the requirements of article I, section 24(b) of the Florida Constitution.[8] The general law must state with specificity the public necessity justifying the exemption[9] and must be no more broad than necessary to accomplish its purpose.[10]

Open Government Sunset Review

The Open Government Sunset Review Act[11] provides that a public meeting and public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than necessary to meet one of the following purposes:

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[1] FLA. CONST. art. I, s. 24(c).
[2] This portion of a public record exemption is commonly referred to as a "public necessity statement."
[3] FLA. CONST. art. I, s. 24(c).
[4] S. 286.011(1), F.S.
[5] *Id.*
[6] S. 286.011(6), F.S.
[7] S. 286.011(2), F.S.
[8] FLA. CONST. art. I, s. 24(c).
[9] This portion of a public meeting exemption is commonly referred to as a "public necessity statement."
[10] FLA. CONST. art. I, s. 24(c).
[11] S. 119.15, F.S.

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.[12]

The Act requires the automatic repeal of a public meeting or public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.[13]

Public Record and Public Meeting Exemptions for Building Security and Public Safety Communications System Information

Current law provides a public record exemption for various records related to the physical security of certain structures. For example, building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency[14] are exempt from disclosure as a public record.[15] This information may be disclosed to another governmental entity if necessary in the performance of its duties and responsibilities or to a licensed architect, contractor, or engineer who is performing work on or related to the structure at issue. If disclosed, the entity that receives the information must maintain its exempt status.

In addition, current law provides a public record exemption for certain information related to the Nationwide Public Safety Broadband Network[16] that is held by an agency. This information, which includes geographical maps indicating actual or proposed locations of network infrastructure or facilities, among other things, is confidential and exempt from disclosure as a public record.[17]

Effect of Proposed Changes

The bill creates a public record exemption for specific records that identify the design, scope, and location of 911 or E911 communication system infrastructure owned and operated by an agency before, on, or after the effective date of the bill. The bill also creates a public meeting exemption for any portion of a meeting that would reveal these records.

Specifically, the bill creates a public record exemption for:

- Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide

[12] S. 119.15(6)(b), F.S.
[13] S. 119.15(3), F.S.
[14] For purposes of the public record law, an "agency" means "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." S. 119.011(2), F.S.
[15] S. 119.017(3)(b), F.S.
[16] In 2012, Federal law mandated the development of a nationwide, interoperable public safety broadband network. 47 U.S.C. ss. 1401, et seq. The network is based on a single, national network architecture that evolves with technological advances and that initially consists of a core network of national and regional data center that provides connectivity between the radio access network and the public Internet or public switched network, or both. 47 U.S.C. s. 1422. The network was created "to give public safety 21st century communication tools to help save lives, solve crimes and keep our communities and emergency responders safe." FirstNet, *The Network*, https://firstnet.gov/network (last visited Jan. 17, 2020).
[17] S. 119.017(3)(d), F.S.

911 or E911 communication services, or other 911 or E911 communication structures or facilities owned and operated by an agency; and
- Geographical maps indicating the actual or proposed locations of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 services, or other 911 or E911 communication structures or facilities owned and operated by an agency.

The bill provides that this information may be disclosed in three circumstances, provided that any entity who receives the information must maintain its exempt status. First, it may be disclosed to another governmental entity if necessary for the receiving entity to perform its duties and responsibilities. Second, it may be disclosed to a licensed architect, contractor, or engineer who is performing work on or related to the 911 or E911 communication system infrastructure. Third, it may be disclosed upon a showing of good cause before a court of competent jurisdiction.

The bill provides a statement of public necessity as required by the Florida Constitution. It includes the following legislative findings:
- The records for which the bill creates a public record exemption and public meeting exemption identify information concerning the design, scope, and location of 911 and E911 communication system infrastructure, both within and external to buildings and other structures.
- These records could be used by criminals or terrorists to examine 911 and E911 communication system infrastructure for vulnerabilities and to plan and execute criminal actions including cyber-crime, arson, and terrorism.
- This infrastructure must be protected to avoid disruption during an active shooter or other terror event, as disruption could result in greater loss of life and property damage.
- It is a public necessity to exempt these records from disclosure to reduce exposure to these security threats and to protect the public.

In accordance with s. 119.15, F.S, these exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 1, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

B. SECTION DIRECTORY:

Section 1. Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2. Amends s. 286.0113, F.S., relating to general exemptions from public meetings.

Section 3. Provides a statement of public necessity.

Section 4. Provides for the bill to take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on government entities that handle records that qualify for the exemptions created by the bill. Staff responsible for complying with public meeting and public record requirements may require training related to implementation of the exemptions. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of these entities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement
Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public meeting or public record exemption. The bill creates a new public meeting and public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement
Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public meeting or public record exemption. The bill creates a new public meeting and public record exemption and includes a statement supporting the public necessity for these exemptions.

Breadth of Exemption
Article I, section 24(c) of the Florida Constitution requires a newly created public meeting or public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for specified documents that depict structural elements of 911 or E911 communication system infrastructure and the locations of such infrastructure used to provide 911 or E911 services. The bill creates a public meeting exemption for only the portion of a public meeting that would reveal such documents. The bill identifies specific entities to whom the exempt information may be disclosed as necessary. The exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to public records and meetings; amending s. 119.071, F.S.; providing an exemption from public records requirements for certain documents which depict the structural elements of certain 911 or E911 communication system infrastructure, structures, or facilities; providing an exemption from public records requirements for geographical maps indicating the actual or proposed locations of certain 911 or E911 communication system infrastructure, structures, or facilities; providing for retroactive application; authorizing disclosure under certain circumstances; providing for future legislative review and repeal of the exemptions; amending s. 286.0113, F.S.; providing an exemption from public meetings requirements for portions of meetings that would reveal certain documents depicting the structural elements of 911 or E911 communication system infrastructure, structures, or facilities, or geographic maps indicating the locations or proposed locations of 911 or E911 communication system infrastructure, structures, or facilities; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

Section 1. Paragraph (e) is added to subsection (3) of section 119.071, Florida Statutes, to read:

119.071 General exemptions from inspection or copying of public records.—

(3) SECURITY AND FIRESAFETY.—

(e)1.a. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 or E911 communication structures or facilities owned and operated by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

b. Geographical maps indicating the actual or proposed locations of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 services, or other 911 or E911 communication structures or facilities owned and operated by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This exemption applies to building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary,

and final formats, which depict the structural elements of 911 or E911 communication system infrastructure or other 911 and E911 communication structures or facilities owned and operated by an agency, and geographical maps indicating actual or proposed locations of 911 or E911 communication system infrastructure or other 911 or E911 communication structures or facilities owned and operated by an agency, before, on, or after the effective date of this act.

3. Information made exempt by this paragraph may be disclosed:

a. To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;

b. To a licensed architect, engineer, or contractor who is performing work on or related to the 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 or E911 communication structures or facilities owned and operated by an agency; or

c. Upon a showing of good cause before a court of competent jurisdiction.

4. The entities or persons receiving such information must maintain the exempt status of the information.

5. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

on October 1, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Subsection (4) is added to section 286.0113, Florida Statutes, to read:

286.0113 General exemptions from public meetings.—

(4)(a) Any portion of a meeting that would reveal building plans, blueprints, schematic drawings, or diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 and E911 communication structures or facilities made exempt by s. 119.071(3)(e)1.a. is exempt from s. 286.011 and s. 24, Art. I of the State Constitution.

(b) Any portion of a meeting that would reveal geographical maps indicating the actual or proposed locations of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 or E911 communication structures or facilities made exempt by s. 119.071(3)(e)1.b. is exempt from s. 286.011 and s. 24, Art. I of the State Constitution.

(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 1, 2025, unless reviewed and saved from

repeal through reenactment by the Legislature.

Section 3. The Legislature finds that it is a public necessity that building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, and other 911 or E911 communication structures or facilities owned and operated by an agency, and geographic maps indicating the actual or proposed locations of such communication system infrastructure, structures, or facilities should be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution to ensure the security of emergency communication infrastructure, structures, and facilities. In addition, the Legislature finds that it is a public necessity that any portion of a meeting revealing such documents and maps that are held by an agency should be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Art. I of the State Constitution. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, received and held by counties, municipalities, and other governmental agencies that depict the structural elements of 911 or E911 communication system infrastructure, structures, and facilities are currently subject to release as public records upon request. Similarly,

geographical maps showing the present or proposed locations of such 911 or E911 communication system infrastructure, structures, and facilities that are in the possession of counties, municipalities, and other governmental agencies are also subject to release as public records upon request. Counties, municipalities and other governmental agencies may review the building plans or geographical maps to ensure compliance with land development regulations, building codes, agency rules, and standards to protect the public health and safety. These building plans include diagrams and schematic drawings of emergency communication systems, electrical systems, and other physical plant and security details which depict the structural elements of such emergency communications facilities and structures. 911 and E911 communication facilities, including towers and antennae, are a vital link in the chain of survival. Such critical infrastructure must be protected as any disruption during an active shooter or other terror event is very likely to result in greater loss of life and property damage. To function properly, towers and antennae need to be visible, increasing the security risk of such facilities. Because architectural and engineering plans reviewed and held by counties, municipalities and other government agencies include information about tower, equipment, ancillary facilities, critical systems, and restricted areas, these plans could be used by criminals or terrorists to examine the physical plant for vulnerabilities.

Information contained in these documents could aid in the planning of, training for, and execution of criminal actions including cyber-crime, arson, and terrorism. Consequently, the Legislature finds that it is a public necessity to exempt such information from public records requirements to reduce exposure to security threats and protect the public.

Section 4. This act shall take effect upon becoming a law.

ENERGY & UTILITIES SUBCOMMITTEE

HB 755 by Rep. DuBose
PUB. REC. AND MEETINGS / 911 AND E911 COMMUNICATION SYSTEMS

AMENDMENT SUMMARY
January 21, 2020

Amendment 1 by Rep. DuBose (# 508983)

- Requires recording and transcription of the portions of a public meeting exempted by the bill from the public meetings law, and provides that such recordings and transcripts are confidential and exempt from the public records law except to the extent that any portion of the recording or transcript is determined by a court of competent jurisdiction to reveal nonexempt data.
- Corrects the date upon which each exemption created by the bill will stand repealed unless reviewed and saved from repeal through reenactment.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Energy & Utilities Subcommittee

Representative DuBose offered the following:

Amendment (with title amendment)

Remove lines 76-100 and insert:

on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Subsection (4) is added to section 286.0113, Florida Statutes, to read:

286.0113 General exemptions from public meetings.—

(4)(a) Any portion of a meeting that would reveal building plans, blueprints, schematic drawings, or diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure, including towers, antennae, equipment or

facilities used to provide 911 or E911 communication services, or other 911 and E911 communication structures or facilities made exempt by s. 119.071(3)(e)1.a. is exempt from s. 286.011 and s. 24, Art. I of the State Constitution.

(b) Any portion of a meeting that would reveal geographical maps indicating the actual or proposed locations of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 or E911 communication structures or facilities made exempt by s. 119.071(3)(e)1.b. is exempt from s. 286.011 and s. 24, Art. I of the State Constitution.

(c) No portion of an exempt meeting under paragraphs (a) or (b) may be off the record. All exempt portions of such meeting shall be recorded and transcribed. Such recordings and transcripts are confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, after an in-camera review, determines that the meeting was not restricted to the discussion of the information made exempt by s. 119.071(3)(e)1.a or b. In the event of such a judicial determination, only that portion of the recording and transcript which reveals nonexempt information may be disclosed to a third party.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from

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T I T L E A M E N D M E N T

Remove line 22 and insert:
facilities; requiring the recording and transcription of exempt portions of such meetings; providing an exemption from public records requirements for such recordings and transcripts; providing an exception; providing for future legislative review

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 969 Broadband Internet Service
SPONSOR(S): Drake
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee		Keating CK	Keating CK
2) Transportation & Tourism Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

In 2009, the Legislature authorized the Department of Management Services (DMS) to perform certain functions to promote the increased use of broadband Internet service in the state. Under this authority, DMS was awarded federal grant funding through a 2009 U.S. Department of Commerce State Broadband Initiative program. Those funds have since been depleted, and the state broadband program is dormant.

The bill designates the Department of Economic Opportunity (DEO) as the lead state agency to facilitate the expansion of broadband Internet service in the state. It creates the Florida Office of Broadband (Office) within DEO's Division of Community Development for purposes of developing, marketing, and promoting broadband Internet service in the state.

The bill transfers to the new Office most of the powers and duties previously given to DMS. Specifically, the Office must:

- Create a strategic plan for increasing the use of broadband Internet service in the state;
- Build local technology planning teams representing, among others, libraries, schools, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture; and
- Encourage the use of broadband Internet service, especially in rural, unserved, and underserved areas of the state through grant programs.

For these purposes, the bill authorizes DEO to apply for and accept federal grant funds, enter into necessary or useful contracts, and establish any committee or workgroup to administer the program.

The bill also repeals ch. 2012-131, L.O.F., which became obsolete when the federal grant funds previously awarded to DMS were depleted.

The bill will likely require DEO to expend resources to perform the duties required of the new Office. DEO asserts that these duties can be absorbed through existing agency resources. The bill is not expected to have a fiscal impact on local government.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In 2009, the Legislature authorized the Department of Management Services (DMS) to work collaboratively with Enterprise Florida, state agencies, local governments, private businesses, and community organizations to:

- Assess the needs for broadband Internet service and develop data and maps that provide a baseline assessment of the availability and speed of broadband service throughout Florida;
- Create a strategic plan to increase use of broadband Internet service in Florida;
- Build local technology planning teams representing, among others, libraries, schools, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture; and
- Encourage the use of broadband Internet service, especially in rural, unserved, and underserved areas of the state through grant programs.

DMS was also authorized to apply for and accept federal funds, as well as gifts and donations from individuals, foundations, and private organizations, for these purposes.[1]

In 2009, the U.S. Department of Commerce's National Telecommunications Information Administration (NTIA) launched the State Broadband Initiative (SBI) to implement two federal laws, the American Recovery and Reinvestment Act of 2009 and the Broadband Data Improvement Act of 2008. According to the NTIA's SBI website,[2] twelve separate entities within Florida were awarded grants totaling $183.7 million for broadband infrastructure, sustainable adoption, and public computer center projects. Among those grants, DMS was awarded a total of $8,877,028.[3]

In 2012, the Legislature passed a law transferring the state's broadband program from DMS to the Department of Economic Opportunity (DEO) and designating DEO as the single state entity to receive and manage all federal SBI funds.[4] By its terms, this law would become effective only if the U.S. Department of Commerce approved the transfer of the existing federal SBI grant from DMS to DEO. This approval was never provided, thus the program remains under DMS. After depletion of the remaining SBI grant funds, the state broadband program has been unfunded and dormant.

Currently, the U.S. Department of Agriculture (USDA), through its ReConnect Program, offers federal loans, grants, and loan/grant combinations to facilitate broadband deployment to rural areas without access to sufficient broadband service.[5] Eligible entities include cooperatives and non-profits, for-profit companies, and state and local governments and their agencies and political subdivisions. Applicants requesting a grant or a loan/grant combination under the ReConnect Program are required to submit a scoring sheet by which USDA may analyze nine separate evaluation criteria to score the application. One of the evaluation criteria is whether the proposed project is in a state with a broadband plan that has been updated within the previous 5 years.[6]

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[1] Ch. 2009-226, L.O.F., codified at s. 364.0135, F.S.
[2] Broadband USA - NTIA, *State Broadband Initiative*, http://www2.ntia.doc.gov/SBDD (last visited Jan. 17, 2020).
[3] Broadband USA - NTIA, *Florida Department of Management Services,* http://www2.ntia.doc.gov/grantee/florida-department-of-management-services (last visited Jan. 17, 2020).
[4] Ch. 2012-131, L.O.F.
[5] USDA, *Broadband*, https://www.usda.gov/broadband (last visited Jan. 17, 2020).
[6] *Id.*

Effect of Proposed Changes

The bill designates DEO as the lead state agency to facilitate the expansion of broadband Internet service in the state. It creates the Florida Office of Broadband (Office) within DEO's Division of Community Development for purposes of developing, marketing, and promoting broadband Internet service in the state.

The bill maintains most of the requirements previously imposed on DMS[7] and imposes them instead on the new Office. Specifically, the Office must:

- Create a strategic plan for increasing the use of broadband Internet service in the state;
- Build local technology planning teams representing, among others, libraries, schools, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture; and
- Encourage the use of broadband Internet service, especially in rural, unserved, and underserved areas of the state through grant programs.

For these purposes, the bill authorizes DEO to apply for and accept federal grant funds, enter into necessary or useful contracts, and establish any committee or workgroup to administer the program.

The bill repeals ch. 2012-131, L.O.F. This law is obsolete. The contingency upon which this law would have become effective – federal approval of the transfer from DMS to DEO of a now-depleted federal grant – did not, and can no longer, occur.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1. Amends s. 364.0135, F.S., relating to promotion of broadband adoption.

Section 2. Repeals ch. 2012-131, L.O.F.

Section 3. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Implementation of the bill will likely require DEO to expend resources to perform the duties required of the new Florida Office of Broadband created by the bill. DEO asserts that these duties can be absorbed through existing agency resources, as its Division of Community Development currently works with rural and underserved communities.

[7] The bill does not require the Office to develop data and maps related to the availability and speed of broadband service throughout Florida.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

By requiring the creation of a strategic broadband plan for the state through a new Florida Office of Broadband, the bill may improve the opportunity for entities within the state to receive funding for rural broadband deployment through the USDA's ReConnect Program.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to broadband Internet service; amending s. 364.0135, F.S.; defining terms; designating the Department of Economic Opportunity as the lead state agency to facilitate the expansion of broadband Internet service in the state; requiring the department to work collaboratively with certain entities; creating the Florida Office of Broadband within the Division of Community Development in the department; providing purpose and duties of the office; repealing chapter 2012-131, Laws of Florida, relating to broadband Internet service; providing an effective date.

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

Section 1. Section 364.0135, Florida Statutes, is amended to read:

364.0135 Promotion of broadband adoption; Florida Office of Broadband.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that the sustainable adoption of broadband Internet service is critical to the economic and business development of this the state and is beneficial for libraries, schools, colleges and universities, health care providers, and community organizations.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Department" means the Department of Economic Opportunity.

(b) "Office" means the Florida Office of Broadband.

(c) "Sustainable adoption" means the ability for communications service providers to offer broadband services in all areas of the state by encouraging adoption and utilization levels that allow for these services to be offered in the free market absent the need for governmental subsidy.

(3) ~~(2)~~ STATE AGENCY.—The department is designated as the lead state agency to facilitate the expansion of broadband Internet service in the state. The department shall ~~of Management Services is authorized to~~ work collaboratively with, and to receive staffing support and other resources from, Enterprise Florida, Inc., state agencies, local governments, ~~private businesses,~~ and community organizations. ~~to:~~

(4) FLORIDA OFFICE OF BROADBAND.—The Florida Office of Broadband is created within the Division of Community Development in the department for the purpose of developing, marketing, and promoting broadband Internet services in the state. The office, in the performance of its duties, shall do all of the following:

(a) ~~Monitor the adoption of broadband Internet service in collaboration with communications service providers, including, but not limited to, wireless and wireline Internet service~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

~~providers, to develop geographical information system maps at the census tract level that will:~~

~~1. Identify geographic gaps in broadband services, including areas unserved by any broadband provider and areas served by a single broadband provider;~~

~~2. Identify the download and upload transmission speeds made available to businesses and individuals in the state, at the census tract level of detail, using data rate benchmarks for broadband service used by the Federal Communications Commission to reflect different speed tiers; and~~

~~3. Provide a baseline assessment of statewide broadband deployment in terms of percentage of households with broadband availability.~~

~~(b)~~ Create a strategic plan that has goals and strategies for increasing the use of broadband Internet service in the state.

(b) ~~(c)~~ Build and facilitate local technology planning teams or partnerships with members representing cross-sections of the community, which may include, but are not limited to, representatives from the following organizations and industries: libraries, K-12 education, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture.

(c) ~~(d)~~ Encourage the use of broadband Internet service,

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

especially in the rural, unserved, or ~~and~~ underserved communities of the state through grant programs having effective strategies to facilitate the statewide deployment of broadband Internet service. For any grants to be awarded, priority must be given to projects that:

1. Provide access to broadband education, awareness, training, access, equipment, and support to libraries, schools, colleges and universities, health care providers, and community support organizations.

2. Encourage the sustainable adoption of broadband in primarily underserved ~~unserved~~ areas by removing barriers to entry.

3. Work toward encouraging investments in establishing affordable and sustainable broadband Internet service in underserved ~~unserved~~ areas of the state.

4. Facilitate the development of applications, programs, and services, including, but not limited to, telework, telemedicine, and e-learning to increase the usage of, and demand for, broadband Internet service in the state.

(5) ~~(3)~~ ADMINISTRATION.—The department may:

(a) Apply for and accept federal funds for purposes of this section~~, as well as gifts and donations from individuals, foundations, and private organizations~~.

(b) ~~(4) The department may~~ Enter into contracts necessary or useful to carry out the purposes of this section.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(c) ~~(5) The department may~~ Establish any committee or workgroup to administer and carry out the purposes of this section.

Section 2. Chapter 2012-131, Laws of Florida, is repealed.

Section 3. This act shall take effect July 1, 2020.

ENERGY & UTILITIES SUBCOMMITTEE

HB 969 by Rep. Ausley
BROADBAND INTERNET SERVICE

AMENDMENT SUMMARY
January 21, 2020

Amendment 1 by Rep. Ausley (# 668159)

- Expands the duties of the new Florida Office of Broadband to include:
  - Developing geographical information system maps, consistent with reporting standards established by the Federal Communications Commission, that identify areas within the state where broadband-capable networks exist and broadband Internet service is available to end users and that identify download and upload date transmission speeds available in each area;
  - Establishing a mechanism to receive and verify public input concerning the accuracy of this data; and
  - Monitoring, participating in, and providing input in federal proceedings related to the geographic availability and deployment of broadband Internet service in the state.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Energy & Utilities Subcommittee

Representative Ausley offered the following:

Amendment

Remove lines 48-64 and insert:

(a) Monitor the adoption of broadband Internet service in collaboration with communications service providers, including, but not limited to, wireless and wireline Internet service providers, and ~~to~~ by June 30, 2021, and annually thereafter, develop geographical information system maps ~~at the census tract level~~ consistent with the Digital Opportunity Data Collection program reporting standards established by the Federal Communications Commission, that will:

1. Identify geographic areas and locations in the state where broadband-capable networks exist and broadband Internet

service is available to end users ~~gaps in broadband services, including areas unserved by any broadband provider and areas served by a single broadband provider~~; and

2. Identify the download and upload data transmission speeds available in each geographic area ~~made available to businesses and individuals in the state, at the census tract level of detail, using data rate benchmarks for broadband service used by the Federal Communications Commission to reflect different speed tiers; and~~

~~3. Provide a baseline assessment of statewide broadband deployment in terms of percentage of households with broadband availability~~.

In developing the maps required by this subsection, the office shall establish a mechanism to receive and verify public input that identifies locations in which broadband Internet service is not available, including locations in which broadband Internet service is provided at data transmission speeds below the standard established by the Federal Communications Commission for broadband Internet service. The office shall monitor, participate in, and provide input in proceedings of the Federal Communication Commission and other federal agencies related to the geographic availability and deployment of broadband Internet service in the state as necessary to ensure that this information is accurately presented and that rural, unserved,

and underserved areas of the state are best positioned to benefit from federal broadband deployment programs.

(b) Create a strategic plan that has goals and strategies

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1095 Underground Facility Damage Prevention and Safety
SPONSOR(S): Fitzenhagen
TIED BILLS: **IDEN./SIM. BILLS:** SB 1464

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee		Keating	Keating
2) Government Operations & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Chapter 556, F.S., is the "Underground Facility Damage Prevention and Safety Act" (Act). The stated purpose of the Act is to identify and locate underground facilities prior to an excavation or demolition to prevent injury to persons or property or interruption of services resulting from damage to those facilities. To accomplish this, the Act creates a not-for-profit corporation (Sunshine 811) to administer a free-access notification system.

The bill amends ch. 556, F.S., to:

- Expand the list of entities that may issue citations for violations of ch. 556, F.S., to include the State Fire Marshal and local fire chiefs.
- Increase the maximum civil penalty (up to $2,500 plus 5 percent, in addition to any other court costs) for certain violations of ch. 556, F.S., that involve an underground pipe or facility transporting hazardous materials regulated by the U.S. DOT Pipeline and Hazardous Material Safety Administration (PHMSA). One hundred percent of the civil penalty will be distributed to the entity that issued the citation.
- Require each clerk of court to submit an annual report to the State Fire Marshal listing each violation notice written under ch. 556, F.S., which was filed in that county during the preceding calendar year.
- Require Sunshine 811 to transmit reports of incidents that involve high-priority subsurface installations (HPSI) for investigation by one of the following authorities, who may issue a citation and impose a civil penalty for a violation of ch. 556, F.S., that was a proximate cause of the incident: the State Fire Marshal, the fire chief of the county in which the incident occurred, a local or state law enforcement officer, a government code inspector, or a code enforcement officer. Ninety-five percent of the civil penalty will be distributed to the investigating authority that issued the citation, with the remaining 5 percent retained by the clerk of court for administrative costs.
- Create an "underground facility damage prevention review panel" (review panel) under the State Fire Marshal for the purpose of reviewing complaints of alleged violations of ch. 556, F.S., and identifying issues or potential issues related to damage prevention and enforcement.

The bill may have an indeterminate positive impact on state and local government revenues. The bill will require the expenditure of resources by the State Fire Marshall to support the review panel, and it may require the expenditure of resources by a state or local government entity to whom an HPSI incident is referred for investigation. These expenditures may be offset in whole or in part by the portion of any civil penalties collected and distributed to these entities through their enforcement of ch. 556, F.S.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Underground Facility Damage Prevention and Safety Act

Chapter 556, F.S., is the "Underground Facility Damage Prevention and Safety Act" (Act). The goal of the Act is to identify and locate underground facilities[1] prior to an excavation or demolition to prevent injury to persons or property or interruption of services resulting from damage to those facilities.[2] To accomplish this, the Act creates a not-for-profit corporation to administer a free-access notification system whereby a person intending to conduct excavation or demolition activities can give prior notice to the system of the person's intended activities, allowing operators of underground facilities the opportunity to identify and locate their nearby facilities.[3] All operators of underground facilities in the state are required to be members of the corporation ("member operators") and are required to use and participate in the system.[4]

The not-for-profit corporation created under the Act is Sunshine State One-Call of Florida, Inc., which operates under the name "Sunshine 811" and exercises its powers through a board of directors.[5] The system is required to provide a single toll-free telephone number (811) within Florida which excavators can use to notify member operators of planned excavation or demolition activities.[6] The person intending to conduct excavation or demolition must notify the system not less than two full business days before beginning the operations.[7] The person must also provide specified identification, location, and operational information which remain valid for 30 calendar days.[8] Upon receipt of this notice, the system provides to the person a list of names of the member operators who will be advised of the notification.[9]

The system operator in turn notifies the potentially affected member operators of the planned excavation or demolition activities.[10] Within two full business days after the time the notification is received by the system (or 10 days if the proposed excavation is in proximity to facilities beneath state waters), potentially affected member operators must determine the location of their underground facilities in relation to the proposed excavation or demolition. If this cannot be done in this time period,

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[1] s. 556.102(13), F.S., defines "underground facility" as "any public or private personal property which is buried, placed below ground, or submerged on any member operator's right-of-way, easement, or permitted use which is being used or will be used in connection with the storage or conveyance of water; sewage; electronic, telephonic, or telegraphic communication; electric energy; oil; petroleum products; natural gas; optical signals; or other substances, and includes, but is not limited to, pipelines, pipes, sewers, conduits, cables, valves, and lines. For purposes of this act, a liquefied petroleum gas line regulated under chapter 527 is not an underground facility unless such line is subject to the requirements of Title 49 C.F.R. adopted by the Department of Agriculture and Consumer Services, provided there is no encroachment on any member operator's right-of-way, easement, or permitted use. Petroleum storage systems subject to regulation pursuant to chapter 376 are not considered underground facilities for the purposes of this act unless the storage system is located on a member operator's right-of-way or easement. Storm drainage systems are not considered underground facilities."

[2] S. 556.101(3), F.S.

[3] S. 556.101(2), F.S.

[4] S. 556.103(1), F.S.

[5] S. 556.103, F.S.

[6] S. 556.104, F.S.

[7] S. 556.105(1)(a), F.S. The law provides an exception to this requirement for excavation beneath state waters, but does not specify a time frame for notifying the system of such an excavation.

[8] S. 556.105(1)(c), F.S.

[9] S. 556.105(3), F.S.

[10] S. 556.105(5), F.S. The statute also provides 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 facilities.

the member operator must contact the person giving notice and negotiate a new schedule and time that is agreeable and does not unreasonably delay the excavator. If a member operator determines that a proposed excavation or demolition is in proximity to or conflicts with an underground facility, the member operator must identify the horizontal route of the facility in a specified manner.[11]

An excavator is required to delay excavations until the first of the following events occurs: (1) each member operator's underground facilities have been marked and located; (2) the excavator has been notified that no member operator has underground facilities in the area described in the notice; or (3) expiration of the time allowed for markings. If a member operator has not located and marked its underground facilities within the time allowed for marking, the excavator may proceed with the excavation, provided that the excavator does so with reasonable care and that detection equipment or other acceptable means to locate underground facilities are used. An excavator may not conduct demolition in an area until all member operators' underground facilities have been marked and located or removed.[12]

Violations of certain provisions are noncriminal infractions enforceable by citations which may be issued by any local or state law enforcement officer, government code inspector, or code enforcement officer. The law establishes a civil penalty of $500, plus court costs, for such infractions.[13] Eighty percent of the civil penalty collected by the clerk of the court will be distributed to the government entity whose employee issued the citation, with 20 percent of the penalty retained by the clerk of the court to cover administrative costs.[14] The fine and forfeiture fund is established by the clerk of the circuit court in each county of this state and functions as a separate fund for use by the clerk of the circuit court in performing court-related functions.

In 2010, the Legislature established a special process to address damages to any facility identified as a "high-priority subsurface installation."[15] These facilities are defined as "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" that the pipeline's operator has identified as critical.[16] If an alleged violation of a required procedure involves damage to a high-priority subsurface installation and the damage results in death or serious bodily injury or results in property damage, including service-restoration costs, of more than $50,000 or interruption of service to at least 2,500 customers, the incident must be reported to Sunshine 811 by the excavator or member operator within 24 hours.[17] Sunshine 811 must then transmit an incident report to the Division of Administrative Hearings (DOAH) for a hearing to determine whether a violation of required procedure was a proximate cause of the incident. If DOAH finds that a violation was a proximate cause of the incident, it may impose a fine not to exceed $50,000 (or $10,000 if a state agency or political subdivision caused the incident).[18] Funds collected from a fine issued by DOAH are paid to Sunshine 811 to cover its costs to engage DOAH's services, and any remaining funds may be used only for damage-prevention education.[19]

In 2017, the Legislature established additional reporting requirements. First, an excavator must immediately call 911 to report any contact with or damage to an underground facility that results in the escape of natural gas or other hazardous substance or material regulated by the U.S. Department of Transportation (DOT) Pipeline and Hazardous Material Safety Administration (PHMSA). Second, if an

[11] S. 556.105(5), F.S.
[12] S. 556.105(6), F.S.
[13] S. 556.107(1), F.S.
[14] S. 556.107(1)(c), F.S.
[15] Ch. 2010-100, L.O.F., s. 10.
[16] S. 556.116, F.S.
[17] *Id.*
[18] *Id.*
[19] *Id.*

event damages any pipe, cable, or other underground facility, the member operator must file a report with Sunshine 811.[20]

By March 31 of each year, each clerk of court must submit a report to Sunshine 811 listing each violation notice written under s. 556.107(1)(a), F.S., which was filed in that county during the preceding calendar year.[21] 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.[22] The Sunshine 811 board must submit an annual progress report to the President of the Senate, the Speaker of the House of Representative, and the Governor, no later than 60 days before the convening of each regular session of the Legislature.[23] This report must include a summary of the reports provided by the clerks of court, a summary of damage data reported to the system for the prior year, and any analysis of this data by the board.[24]

In its most recent Annual Report, Sunshine 811 indicates that 16,576 damage incidents were reported in 2018, while 13 citations were issued by entities authorized to enforce the Act.[25] These citations resulted in $6,602.50 of fines being levied. Further, the Annual Report identifies one case referred to DOAH involving damage to a natural gas distribution main. In that case, DOAH found that the excavator's failure to notify Sunshine 811 prior to excavation was the proximate cause of the incident and imposed a $5,000 fine.[26]

U.S. DOT Pipeline and Hazardous Material Safety Administration - Pipeline Damage Prevention Programs

The U.S. DOT has back-stop authority to conduct administrative civil enforcement proceedings against excavators who damage hazardous liquid and natural gas pipelines in a state that has failed to adequately enforce its excavation damage prevention or one-call laws.[27]

On July 13, 2015, PHMSA announced the issuance of a final rule to establish the process for evaluating state excavation damage prevention law enforcement programs and enforcing minimum Federal damage prevention standards in states where damage prevention law enforcement is deemed inadequate or does not exist.[28]

Under its rule, PHMSA uses the following criteria in evaluating the effectiveness of a state damage prevention program[29]:

- Does the state have the authority to enforce its state excavation damage prevention law using civil penalties and other appropriate sanctions for violations?
- Has the state designated a state agency or other body as the authority responsible for enforcement of the state excavation damage prevention law?
- Is the state assessing civil penalties and other appropriate sanctions for violations at levels sufficient to deter noncompliance and is the state making publicly available information that demonstrates the effectiveness of the state's enforcement program?

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[20] Ch. 2017-102, L.O.F.
[21] S. 556.107(2), F.S.
[22] *Id.*
[23] S. 556.103(5), F.S.
[24] *Id.*
[25] Sunshine 811, *2018-19 Annual Report*, available at https://static1.squarespace.com/static/533db0bde4b0d9f7ba7f1ee7/t/5dcf0cd17b2a3459bd9a81d6/1573850332734/2018-19_annualrpt.pdf (last visited Jan. 18, 2020).
[26] *Id.*
[27] 49 U.S.C. § 60114.
[28] Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 80 Fed. Reg. 43,868 (July 23, 2015) (codified at 49 C.F.R. Pts. 196 and 198).
[29] *Id.*

- Does the enforcement authority (if one exists) have a reliable mechanism (e.g., mandatory reporting, complaint driven reporting) for learning about excavation damage to underground facilities?
- Does the state employ excavation damage investigation practices that are adequate to determine the responsible party or parties when excavation damage to underground facilities occurs?
- At a minimum, do the state's excavation damage prevention requirements include the following:
    - Excavators may not engage in excavation activity without first using an available one-call notification system to establish the location of underground facilities in the excavation area.
    - Excavators may not engage in excavation activity in disregard of the marked location of a pipeline facility as established by a pipeline operator.
    - An excavator who causes damage to a pipeline facility:
        - Must report the damage to the operator of the facility at the earliest practical moment following discovery of the damage; and
        - If the damage results in the escape of any PHMSA regulated natural and other gas or hazardous liquid, must promptly report to other appropriate authorities by calling the 911 emergency telephone number or another emergency telephone number.
- Does the state limit exemptions for excavators from its excavation damage prevention law?
    - A state must provide to PHMSA a written justification for any exemptions for excavators from state damage prevention requirements.
    - PHMSA will make the written justifications available to the public.

PHMSA will enforce federal requirements and may take immediate enforcement against excavators in states where a state pipeline excavation damage prevention law enforcement program is not determined to be adequate by the criteria and procedures used by PHMSA.[30] States that fail to establish an adequate enforcement program within five years of the date of a finding of inadequacy may be subject to up to a 4 percent reduction in base state pipeline safety grant funding.[31]

State Fire Marshal

Florida's Chief Financial Officer is designated by law as the State Fire Marshal.[32] The State Fire Marshal is responsible for minimizing the loss of life and property in the state due to fire.[33] It is also charged with enforcing laws related to: the prevention of fire and explosion through the regulation of conditions which could lead to fire and explosion; installation and maintenance of fire alarm systems and fire protection systems; the maintenance of fire cause and loss records; and suppression of arson and the investigation of the cause, origin, and circumstances of fire.[34]

The State Fire Marshal operates as a division of the Department of Financial Services. It operates through an Office of the Director and two bureaus: the Bureau of Fire Prevention and the Bureau of Firefighter Standards and Training.[35] The Bureau of Firefighter Standards and Training approves firefighter training curricula, offers fire service training at the Florida State Fire College, and certifies fire service members that meet standards. The Bureau of Fire Prevention conducts fire/life safety inspections and reviews construction plans for all state-owned buildings, regulates the fireworks and fire sprinkler industries, inspects and licenses boilers, and certifies fire suppression industry workers. It has six field offices and 3 satellite offices around the state.[36]

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[30] *Id.*
[31] *Id.*
[32] S. 633.104(1), F.S.
[33] S. 633.104(2), F.S.
[34] *Id.*
[35] Chief Financial Officer, *Division of State Fire Marshal*, https://www.myfloridacfo.com/Division/SFM/ (last visited Jan. 28, 2020).
[36] *Id.*

Florida law provides investigatory authority for the State Fire Marshal.[37] Upon request, the State Fire Marshall must investigate the cause, origin, and circumstances of fires and explosions where property has been damaged or destroyed and there is probable cause to believe that the fire or explosion was the result of carelessness or design. If the fire or explosion occurs in a municipality, county, or special district with an organized fire department, the local fire official must provide for an initial investigation before requesting an investigation by the State Fire Marshal. In an investigation, the State Fire Marshal may require testimony under oath from persons believed to be aware of any facts related to matters under investigation. If the State Fire Marshal believes that there is sufficient evidence to charge a person with an offense, he or she must cause the person to be arrested and must provide the appropriate prosecuting office with all pertinent information collected. The State Fire Marshal may compel the testimony of witnesses and the production of pertinent documents and may seize personal property to be held for evidence. The State Fire Marshal may designate an agent for the purpose of conducting an investigation, and the agent may hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, receive evidence, and require the attendance and testimony of witnesses and the production of documents or other evidence material to the investigation. The State Fire Marshal must keep a record of all fires and explosions investigated under its authority.

Effect of Proposed Changes

Expanded Enforcement Authority

The bill expands the list of entities that may issue citations for certain violations of ch. 556, F.S. The bill authorizes the State Fire Marshal and local fire chiefs to issue such citations.

Enhanced Civil Penalties for Certain Violations

The bill provides for civil penalties of up to $2,500 (plus 5 percent, in addition to any other court costs) for certain violations of ch. 556, F.S., that involve an underground pipe or other underground facility transporting hazardous materials regulated by PHMSA. Specifically, the following violations are subject to this enhanced civil penalty:

- Failure by an excavator to comply with s. 556.105(1), F.S., which requires an excavator to provide notice and certain information to the Sunshine 811 system within specified timeframes prior to beginning excavation of demolition work.
- Failure by an excavator to comply with s. 556.105(5)(c), F.S., which requires an excavator to use increased caution when working within a tolerance zone,[38] such as hand digging, pot holing, soft digging, vacuum methods, or other similar procedures.
- Failure by an excavator to comply with s. 556.105(6), F.S., which requires an excavator to avoid excavation in an area until whichever of the following occurs first: each member operator's underground facilities have been located and marked; the exactor has been notified that no member operator has underground facilities in the area; or the time allowed for markings has expired.
- Failure by an excavator to comply with s. 556.106(11), F.S., which requires an excavator to stop excavation and demolition activities in the vicinity of an underground facility and notify the Sunshine 811 system if the marking for the facility is removed or no longer visible.
- Failure by an excavator to comply with s. 556.105(12), F.S., which requires an excavator to immediately notify the appropriate member operator if the excavator causes contact with or damage to a pipe and to immediately call 911 to report contact or damage that causes the escape of any natural gas or other hazardous substance or material regulated by PHMSA.

[37] S. 366.112, F.S.

[38] "Tolerance zone" means "24 inches from the outer edge of either side of the exterior surface of a marked underground facility." S. 556.102(12), F.S.

If the clerk of court collects a civil penalty for one of these violations, the bill provides that 100 percent of the civil penalty will be distributed to the entity that issued the citation. The additional five percent, plus any additional court costs, is retained by the clerk to cover administrative costs. The bill provides that a person who fails to properly respond to a citation issued for one of these violations will be charged with the offense of failing to respond to the citation and, if convicted, commits a misdemeanor of the second degree. The bill provides that a written warning to this effect must be provided at the time the citation is issued.

Reporting Requirements

The bill provides that, by March 31 of each year, each clerk of court must submit a report to the State Fire Marshal listing each violation notice written under s. 556.107(1)(a), F.S., 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. This is the same information currently reported by the clerks of court to Sunshine 811.

Incidents involving High-Priority Subsurface Installations

For incidents reported to Sunshine 811 that involve high-priority subsurface installations, Sunshine 811 must transmit the incident report to one of the following enforcement authorities: the State Fire Marshal, the fire chief of the county in which the incident occurred, a local or state law enforcement officer, a government code inspector, or a code enforcement officer. The authority to whom the incident report is transmitted must conduct an investigation to determine whether an incident has occurred and, if so, whether a violation of s. 556.107(1)(a), F.S., was a proximate cause of the incident. The investigating authority may issue a citation and impose a civil penalty if it finds that a violation occurred and was a proximate cause of the incident. Upon collection of the civil penalty, the clerk of court must distribute 95 percent of the penalty to the investigating authority that issued the citation. The remaining five percent is retained by the clerk to cover administrative costs.

These provisions replace the requirement in current law that DOAH conduct investigations of incidents involving high-priority subsurface installations. The bill removes all provisions of current law that establish the procedural requirements for DOAH review of such incidents.

Underground Facility Damage Prevention Review Panel

The bill creates "underground facility damage prevention review panel" (review panel) under the State Fire Marshal. The review panel is responsible for reviewing complaints of alleged violations of ch. 556, F.S., and identifying issues or potential issues related to damage prevention and enforcement. The review panel must identify areas where additional education is needed and recommend solutions to issues it has identified. The review panel also must review current practices for locating underground pipes or other underground facilities that transport materials regulated by PHMSA and determine whether statutory changes are needed to make these pipes or facilities more resilient and safer for communities. The bill requires the review panel to operate consistent with s. 20.052, F.S., which governs advisory bodies created by statute as adjuncts to an executive agency.

The review panel must consist of nine members appointed by the Sunshine 811 board and must include a seat for each of the following:

- One member representing the electric utility industry;
- One member representing the telecommunications industry;
- One member licensed as an underground utility and excavation contractor under ch. 489, F.S., and engaged in work within road or highway rights-of-way;
- One member representing the natural gas industry;
- One member representing the utility locator industry;
- One member representing county or municipal water and sewer service providers;

- One member representing excavators performing work unrelated to construction in road or highways rights-of-way, including landscaping, fencing, or plumbing contractors;
- One member licensed as an underground utility and excavation contractor under ch. 489, F.S., and engaged in work for public utilities; and
- One member representing the public at large.

The bill provides for staggered two-year terms for each seat on the review panel and requires the review panel to elect a chair and vice chair from its membership. The review panel must meet quarterly in conjunction with the meeting of the Sunshine 811 board or at the call of the chair. The bill requires the board to establish a process for receiving applications for appointment to the review panel.

The bill requires the State Fire Marshal to provide staff support and meeting space for the review panel. To the extent that expenses to operate the review panel are not offset through civil penalties collected under ch. 556, F.S, the bill requires member operators to make up the difference by paying monthly assessments in equal share.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1. Amends s. 556.107, F.S., relating to violations.

Section 2. Amends s. 556.116, F.S., relating to high-priority subsurface installations.

Section 3. Creates s. 556.117, F.S., establishing an underground facility damage prevention review panel.

Section 4. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

The bill authorizes the State Fire Marshal to issue citations for certain violations specified in ch, 556, F.S. Further, the bill increases the maximum fine that may be imposed as a civil penalty for violations related to an underground pipe or other underground facility transporting hazardous materials regulated by PHMSA. Because the State Fire Marshal and other state law enforcement entities that issue such citations will receive between 80 and 100 percent of the resulting civil penalties collected by the clerk of court, the bill may encourage greater enforcement efforts by these entities, leading to additional state revenues. The significance of the increase in state revenues will depend on compliance with ch. 556, F.S., and the enforcement efforts of the State Fire Marshal and state law enforcement officers.

2. Expenditures:

The bill may require the expenditure of resources by the State Fire Marshal or another state law enforcement authority to whom an alleged HPSI incident is referred for investigation. The bill also requires the State Fire Marshal to provide staff support and meeting space for the underground facility damage prevention review panel created by the bill. Expenditures to perform these functions may be offset in whole or in part by the portion of any civil penalties collected and distributed to these entities through their enforcement of ch, 556, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

The bill authorizes fire chiefs to issue citations for certain violations specified in ch, 556, F.S. Further, the bill increases the maximum fine that may be imposed as a civil penalty for violations related to an underground pipe or other underground facility transporting hazardous materials regulated by PHMSA. Because fire chiefs that issue such citations will receive between 80 and 100 percent of the resulting civil penalties collected by the clerk of court, the bill may encourage greater enforcement efforts by fire chiefs, leading to additional revenues. The significance of the increase in revenues will depend on compliance with ch. 556, F.S., and the enforcement efforts of fire chiefs.

2. Expenditures:

The bill may require the expenditure of resources by a fire chief, local law enforcement authority, or local code inspection or enforcement authority to whom an alleged HPSI incident is referred for investigation. These expenditures may be offset in whole or in part by the portion of any civil penalties collected and distributed to these entities through their enforcement of ch, 556, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may encourage increased enforcement of ch, 556, F.S. Increased enforcement will result in additional fines imposed on persons who violate certain provisions of ch. 556, F.S. As a result, increased enforcement may deter behaviors that cause damages to property, utility service outages, and serious bodily injury.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to underground facility damage prevention and safety; amending s. 556.107, F.S.; providing noncriminal violations relating to the transportation of certain hazardous materials; authorizing the State Fire Marshall or local fire chief to issue certain citations; providing enhanced civil penalties; providing disposition of the civil penalty; requiring a report by additional entities; amending s. 556.116, F.S.; providing that certain incident reports must be submitted to, and investigated by, the State Fire Marshall, local fire chief, local or state law enforcement officer, government code inspector, or code enforcement officer; authorizing the State Fire Marshall, local fire chief, or any local or state law enforcement officer, government code inspector, or code enforcement officer to issue citations and civil penalties; providing for disposition of the civil penalty; removing provisions relating to hearings by the Division of Administrative Hearings of certain incidents; creating s. 556.117, F.S.; creating an underground facility damage prevention review panel; providing duties and membership of the review panel; specifying the term limits of the review panel;

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

requiring the State Fire Marshall to provide support to the review panel; specifying how the review panel will be funded; providing an effective date.

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

Section 1. 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.~~2.~~ Section 556.105(6), relating to the avoidance of excavation.

c.~~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.

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

e.~~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.

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

g.~~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 when related to an underground pipe or other 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 no longer visible or are 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, the fire chief of the county in which the infraction happened, 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 the State Fire Marshal, a fire chief, 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 shall be distributed to the 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. Any person who fails to properly

respond to a citation issued under ~~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 under ~~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 5 percent in addition to any other court costs for each infraction. If a citation is issued by the State Fire Marshal, a fire chief, a state law enforcement officer, a local law enforcement officer, a local government code inspector, or a code enforcement officer, 100 percent of the civil penalty collected by the clerk of the court shall be distributed to the governmental entity whose employee issued the citation. The additional 5 percent, plus any additional court costs, is to be retained by the clerk to cover administrative costs. Any person who 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) 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) 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 $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 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, the Public Service Commission, and 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) 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) 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).

Section 2. 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.~~

(a)~~(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 under ~~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.

(b) ~~(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 State Fire Marshall, the fire chief of the county in which the incident happened, a local or state law enforcement officer, a government code inspector, or a code enforcement officer in order to ~~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 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 Marshall, a local fire chief, a local or state law enforcement officer, a government code inspector, or a code enforcement officer ~~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 a civil penalty is imposed by the State Fire Marshall, a local fire chief, a local or state law enforcement officer, a government code inspector, or a code enforcement officer under this subsection, 95 percent of the civil penalty collected by the clerk of the court shall be distributed to the governmental entity whose employee issued the citation and civil penalty and 5 percent of the civil penalty shall be retained by the clerk to cover administrative costs ~~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 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 3. Section 556.117, Florida Statutes, is created to read:

556.117 Underground facility damage prevention review panel.—

(1) The underground facility damage prevention review panel is established under the Division of State Fire Marshal within the Department of Financial Services to review complaints of an alleged violation under this chapter to identify issues or potential issues with damage prevention and enforcement. The review panel shall identify areas in the state where additional education related to damage prevention and enforcement is needed and shall create solutions to remedy issues related to damage prevention and enforcement. The review panel shall also review current practices for locating underground pipes or other underground facilities that transport hazardous materials which are regulated by the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation in the state and determine if any statutory changes are needed to make such pipelines or facilities more resilient and safer for communities. Except as otherwise provided in this section, the review panel shall operate in a manner consistent with s.

20.052.

(2) The review panel shall consist of nine members appointed by the Sunshine State One-Call of Florida, Inc., board of directors and shall include the following:

(a) One member representing the electrical utility industry.

(b) One member representing the telecommunications industry.

(c) One member licensed as an underground utility and excavation contractor under chapter 489 and engaged in work within road or highway rights-of-way.

(d) One member representing the natural gas industry.

(e) One member representing the utility locator industry.

(f) One member representing county or municipal water and sewer service providers.

(g) One member representing excavators performing work unrelated to construction in road or highway rights-of-way, including landscaping, fencing, or plumbing contractors.

(h) One member licensed as an underground utility and excavation contractor under chapter 489 and engaged in work for public utilities.

(i) One member representing the public at large.

(3) The board of directors shall establish a process to receive applications for the purpose of appointing members to the review panel.

(4) Each member shall serve for a 2-year term. A member may not serve more than two consecutive 2-year terms, except that members listed in paragraphs (2)(a)-(e) shall initially serve a 1-year term and those members listed in paragraphs (2)(f)-(i) shall serve a 2-year term. All subsequent appointments shall be for 2-year terms. A vacancy for an unexpired term of a member shall be filled in the same manner as the original appointment. The review panel shall elect from among its members a chair and vice chair and meet quarterly in conjunction with the meeting of the board of directors or at the call of the chair.

(5) The Division of State Fire Marshall shall provide staff support and meeting space to the review panel. To the extent expenses to operate the review panel are not offset through civil penalties recovered under s. 556.107, member operators must equally share in the cost of the operation of the review panel through monthly assessments, which are in addition to the monthly assessments under provided in s. 556.110.

Section 4. This act shall take effect July 1, 2020.

ENERGY & UTILITIES SUBCOMMITTEE

HB 1095 by Rep. Fitzenhagen
UNDERGROUND FACILITY DAMAGE PREVENTION AND SAFETY

AMENDMENT SUMMARY
January 21, 2020

Amendment 1 by Rep. Fitzenhagen (# 012929)

- Replaces all references to "fire chief" with the term "fire chief of the special district, municipality, or county."
- Removes the bill's requirement that an annual report of infractions be sent by each clerk of court to the Public Service Commission.
- Requires the State Fire Marshal to appoint the members of the underground facility damage prevention review panel created by the bill.
- Provides that members of the review panel will serve without compensation or reimbursement of expenses.
- Removes a provision that requires member operators to share equally in the costs of operating the review panel to the extent that those costs exceed the civil penalties recovered through citations issued by the State Fire Marshal.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Energy & Utilities Subcommittee

Representative Fitzenhagen offered the following:

Amendment (with title amendment)

Remove lines 76-418 and insert:

(b) Any excavator or member operator who commits a noncriminal infraction under paragraph (a) may be issued a citation by the State Fire Marshal, the fire chief of the special district, municipality, or county, 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 the State Fire Marshal, the fire chief of the special district, municipality, or county, 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 shall be distributed to the 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. Any person who fails to properly respond to a citation issued under ~~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 under ~~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 5 percent in addition to any other court costs for each infraction. If a citation is issued by the State Fire Marshal, the fire chief of the special district, municipality, or county, a state law enforcement officer, a local law enforcement officer, a local government code inspector, or a code enforcement officer, 100 percent of the civil penalty collected by the clerk of the court shall be distributed to the governmental entity whose employee issued the citation. The additional 5 percent, plus any additional court costs, is to be retained by the clerk to cover administrative costs. Any person who 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) 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) 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 $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 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 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) 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) 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).

Section 2. 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.~~

(a)~~(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 under ~~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.

(b)~~(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

State Fire Marshal, the fire chief of the special district, municipality, or county, a local or state law enforcement officer, a government code inspector, or a code enforcement officer in order to ~~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 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, the fire chief of the special district, municipality, or county, a local or state law enforcement officer, a government code inspector, or a code enforcement officer ~~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 a civil penalty is imposed by the State Fire Marshal, the fire chief of the special district, municipality, or county, a local or state law enforcement officer, a government code inspector, or a code enforcement officer under this subsection, 95 percent of the civil penalty collected by the clerk of the court shall be distributed to the governmental entity whose employee issued the citation and civil penalty and 5 percent of the civil penalty shall be retained by the clerk to cover administrative costs ~~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 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 3. Section 556.117, Florida Statutes, is created to read:

556.117 Underground facility damage prevention review panel.—

(1) The underground facility damage prevention review panel is established under the Division of State Fire Marshal within the Department of Financial Services to review complaints of an alleged violation under this chapter to identify issues or potential issues with damage prevention and enforcement. The review panel 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 review panel shall also review current practices for locating underground pipes or other underground facilities that transport hazardous materials which are regulated by the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation in the state and determine if any statutory changes are needed to make such pipelines or facilities more resilient and safer for communities. Except as otherwise provided in this section, the review panel shall operate in a manner consistent with s. 20.052.

(2) The review panel shall consist of nine members appointed by the State Fire Marshal and shall include the following:

(a) One member representing the electrical utility industry.

(b) One member representing the telecommunications industry.

(c) One member licensed as an underground utility and excavation contractor under chapter 489 and engaged in work within road or highway rights-of-way.

(d) One member representing the natural gas industry.

(e) One member representing the utility locator industry.

(f) One member representing county or municipal water and sewer service providers.

(g) One member representing excavators performing work unrelated to construction in road or highway rights-of-way, including landscaping, fencing, or plumbing contractors.

(h) One member licensed as an underground utility and excavation contractor under chapter 489 and engaged in work for public utilities.

(i) One member representing the public at large.

(3) The board of directors shall establish a process to receive applications for the purpose of appointing members to the review panel.

(4) Each member shall serve for a 2-year term. A member may not serve more than two consecutive 2-year terms, except that members listed in paragraphs (2)(a)-(e) shall initially serve a 1-year term and those members listed in paragraphs (2)(f)-(i) shall serve a 2-year term. All subsequent appointments shall be for 2-year terms. A vacancy for an

unexpired term of a member shall be filled in the same manner as the original appointment. The review panel shall elect from among its members a chair and vice chair and meet quarterly in conjunction with the meeting of the board of directors or at the call of the chair.

(5) The Division of State Fire Marshal shall provide staff support and meeting space to the review panel. Members of the panel shall serve without reimbursement of expenses and shall receive no compensation for their service.

T I T L E A M E N D M E N T

Remove lines 27-28 and insert:
to the review panel; providing an effective date.