Committee on Utilities & Telecommunications

Tuesday, February 21, 2006
9:00 a.m. – 12:00 p.m.
404 HOB

Allan G. Bense
Speaker

Ken Littlefield
Chair

Florida House of Representatives

Commerce Council
Utilities & Telecommunications Committee

Kenneth W. "Ken" Littlefield
Committee Chairman

Bob "Coach" Henriquez
Committee Vice-Chairman

Agenda

Utilities and Telecommunications Committee
February 21, 2006 9:00 a.m.–12:00 p.m. 404 HOB

I. Welcome and Opening Remarks by the Chairman

II. Roll Call

III. HB 431 – Local Government Land Development Regulation - Littlefield

IV. HB 661 – Government Services Telephone Systems - Arza

V. HB 789 – Damage Prevention and Safety of Underground Facilities - Murzin

VI. General Committee Discussion on Energy-Related

VII. Closing Remarks by the Chairman

VIII. Adjourn

HB 431 - Littlefield

1 A bill to be entitled
2 An act relating to local government land development
3 regulation; creating s. 163.3206, F.S.; providing
4 legislative intent; providing that electrical substations
5 shall be considered a permittable use in all land use
6 categories and zoning districts; creating s. 163.3208,
7 F.S.; prohibiting a local government from requiring
8 permits or other approvals for vegetation management and
9 tree trimming within an established electric power line
10 right-of-way; providing an effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Section 163.3206, Florida Statutes, is created
15 to read:
16 163.3206 Electrical substations; permittable use.--
17 (1) It is the intent of the Legislature to maintain,
18 encourage, and ensure adequate and reliable electrical
19 infrastructure in the state. It is essential that electrical
20 infrastructure be constructed and maintained in various
21 locations in order to ensure the efficient and reliable delivery
22 of electric service.
23 (2) Electrical substations are a critical component of
24 electric transmission and distribution. Reasonable setback,
25 landscaping, buffering, or screening standards for substations
26 may be enacted by local government; however, substations shall
27 be considered a permittable use in all land use categories and
28 zoning districts.

29 Section 2. Section 163.3208, Florida Statutes, is created
30 to read:
31 163.3208 Electric power line right-of-way
32 maintenance.--After a right-of-way for any electric power line
33 has been established, a local government shall not require any
34 permits or other approvals for vegetation management and tree
35 trimming within that established right-of-way. Upon request of
36 the local government, the electric utility shall meet with the
37 local government to discuss the utility's vegetation maintenance
38 plan, including the utility's trimming specifications and
39 management practices.
40 Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 431 Local Government Land Development Regulation
SPONSOR(S): Littlefield
TIED BILLS: **IDEN./SIM. BILLS:** SB 980

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee		Cater	Holt
2) Growth Management Committee			
3) Local Government Council			
4) Commerce Council			
5)			

SUMMARY ANALYSIS

HB 431 creates ss. 163.3206 and 163.3208, F.S., relating to local government's authority with respect to the siting of electrical substations, as well as vegetation management and tree trimming within an established electric power line right-of-way. Specifically, it provides that electrical substations are a permittable use in all land use categories and zoning districts. Local governments may establish reasonable setback, landscaping, buffering, or screening standards for substations. However, local government shall not require a permit or other approval for vegetation management and tree trimming within an established right-of-way for an electric power line. Moreover, if requested by the local government, the electric utility is required to meet with the local government to discuss its vegetation maintenance plan.

Based on information provided by the investor-owned electric utilities, some local governments require them to pay permit fees in order to trim trees in rights-of-way. However, in the aggregate, the total amount paid is negligible. Therefore, the bill is expected to have a negligible negative fiscal impact on individual cities and counties due to the loss of tree trimming permit fees paid by electric utilities.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government-The bill provides that electrical substations shall be considered a permittable use in all land use categories and zoning districts. The bill also provides that a local government shall not require permits or other approval for vegetation management and tree trimming within an electric utility's established right-of-way.

Maintain Public Security-The bill may increase electric reliability by making electrical substations permittable in all land use and zoning districts and by making it easier for electric utilities to manage vegetation within their rights-of-way. Based on a compilation of the 2004 Distribution Service Reliability Reports the investor-owned electric utilities filed with the Public Service Commission, vegetation was the cause of approximately 17 percent of all electric outages, second only to equipment failures.[1]

B. EFFECT OF PROPOSED CHANGES:

Background

Comprehensive Planning and Zoning

The Local Government Comprehensive Planning and Land Development Regulation Act, ss. 163.3161 – 163.3217, F.S., requires local governments to plan for future development and growth through the adoption and amendment of their comprehensive plans. Local governments enjoy broad constitutional and statutory powers to plan for and regulate land use. A local government's comprehensive plan and land use classifications dictate the allowable land uses for each parcel.

Each local government is required to adopt and enforce land development regulations that are consistent with and implement their adopted comprehensive plan.[2] Section 163.3164(23), F.S., defines the term "land development regulations" as "ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land, . . ." A substantially affected person, as defined in ch. 120, F.S., may challenge a land development regulation on the basis that it is inconsistent with the local government's comprehensive plan.[3] Citizens also enjoy standing to enforce a local comprehensive plan through challenging the consistency of a development order with that plan.[4]

Electrical Power Plant and Transmission Line Siting

Part II of ch. 403, F.S., governs electrical power plant and transmission line siting. It sets forth a process for applying for electrical power plant site certification with the Department of Environmental Protection. Within 90 days after the department receives a complete application, a designated administrative law judge holds a land use hearing in the county of the proposed site.[5] The sole issue for determination at the hearing is whether the proposed site is consistent and in compliance with the jurisdiction's existing land use plan and zoning ordinances.[6] For purposes of this application process,

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[1] It should be noted pursuant to s. 25-6.0455(2) F.A.C., outage events directly caused by hurricanes, tornados, and other severe weather events may be excluded from the report.
[2] S. 163.3202(1), Fla. Stat. (2005).
[3] S. 163.3213, Fla. Stat. (2005).
[4] S. 163.3215, Fla. Stat. (2005).
[5] S. 403.508(1), Fla. Stat. (2005).
[6] S. 403.508(2), Fla. Stat. (2005).

an associated transmission line may include any proposed terminal or intermediate substations or substation expansions at the applicant's option.[7] Electrical substations for distribution lines are typically sited as a special use or conditional use through the local government planning and zoning process.

Vegetation Management and Tree Trimming in a Utility Right-of-Way

Based on a compilation of the 2004 Electric Reliability Reports submitted by the investor-owned electric utilities, 17 percent of all electrical outages are vegetation related, making it second only to equipment failures. However, this statistic does exclude events such as hurricanes and tornados since pursuant to s. 25-6.0455(2), FAC, outages related to these events may be excluded from the report.

In order to avoid tree-related outages, the electric utilities have established vegetation management plans. Depending on the species of tree, the management plan will establish a schedule and an allowable distance for trimming. Vegetation management may also include the removal of nuisance trees, the use of growth retardants, and selective directional trimming to maintain a balanced canopy. There are national standards for tree trimming that have been developed by the International Society of Arboriculture and the National Arborist Association. Another vegetation management concern is that fast-growing invasive species in rights-of-way may result in power outages.

Local governments often have tree ordinances that specify the species that must be used in a given area depending on the land use. Some local governments require a permit prior to trimming certain trees. Electric utility providers may be subject to these tree ordinances or permit requirements.

Proposed Changes

Electric Substation Siting

The bill creates s. 163.3206, F.S., relating to electrical substations.[8] It provides legislative intent to maintain, encourage, and ensure adequate and reliable electric infrastructure. It also provides that it is essential that electrical infrastructure be constructed and maintained in various locations to ensure the efficient and reliable delivery of electrical service.

The bill provides that electrical substations are a critical component of electric transmission and distribution. It provides that substations shall be considered a permittable use in all land use categories and zoning districts. The bill allows local governments to set reasonable setback, landscape, buffering, or screening standards for substations.

At this time, which zoning districts that substations are permitted is determined by individual local governments, causing varying regulations among local governments. The bill will provide consistency among the regulations concerning where substations can be located, while retaining a local government's authority to set aesthetic related standards.

Electric Power Right-of-Way

Section 337.401(1), F.S., provides that the Department of Transportation and local governmental entities "that have jurisdiction and control of public roads or publicly owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining along, across, or on any road or publicly owned rail corridors under their respective jurisdictions any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures hereinafter referred to as the "utility."

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[7] S. 403.503(12), Fla. Stat. (2005).

[8] Electric utilities use substations to "step-down" voltage so it is usable by end users.

The bill creates s. 163.3208, F.S. providing that after a right-of-way for an electric power line has been established, a local government shall not require a permit or other approval for vegetation management and tree trimming within the established right-of-way. The bill also requires that the electric utility, upon the request of a local government, shall meet with the local government to discuss the utility's vegetation maintenance plan, including tree trimming specifications and management practices.

C. SECTION DIRECTORY:

Section 1. Creates s. 163.3206, relating to electrical substations.

Section 2. Creates s. 163.3208, F.S., relating to electric power line rights-of-way.

Section 3. This act shall take effect upon becoming 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:

   Based on information provided by the investor-owned electric utilities, they pay permit fees to some local governments in order to trim trees in rights-of-way. However, in the aggregate, the total amount is negligible. Therefore, the bill is expected to have a negligible negative fiscal impact on individual cities and counties due to the loss of tree trimming permit fees paid by electric utilities.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides that an electric utility is no longer required to obtain a permit or other approval from local government for vegetation management and tree trimming within an established right-of-way for an electric power line.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   While some municipalities and counties may lose tree trimming permit fees paid by electric utilities, the amount of the permit fees paid to an individual municipality or county is expected to be negligible.

Therefore, it appears that this bill likely qualifies for the "laws having an insignificant fiscal impact" exemption in Article VII, Section 18(d) of the Florida Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Bill No. **0431**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Utilities & Telecommunications
2 Committee
3 Representative(s) Littlefield offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7
8 Section 1. Section 163.3207, Florida Statutes, is created to
9 read:
10 163.3207 Substation approval process.--
11 (1) It is the intent of the Legislature to maintain,
12 encourage, and assure adequate and reliable electrical
13 infrastructure in the state. It is essential that electrical
14 infrastructure be constructed and maintained in various
15 locations in order to ensure the efficient and reliable delivery
16 of electric service.
17 (2) Electrical substations are a critical component of
18 electrical transmission and distribution. Local governments may
19 adopt and enforce reasonable land development regulations for
20 new substations addressing only setback, landscaping, buffering,
21 screening, and other aesthetic compatibility based standards.
22 Vegetated buffers or screening beneath aerial access points to

23 the substation equipment may not be required to have a mature
24 height in excess of 14 feet. New substations shall be a
25 permittable use in all land use categories in the applicable
26 local government comprehensive plan and in zoning districts
27 within the service territory of a utility, except those
28 designated as preservation or conservation land on the future
29 land use map or in a duly adopted ordinance. If a local
30 government has not adopted reasonable standards for substation
31 siting in accordance with applicable adoption procedures,
32 including public hearings, the following standards apply:
33 (a) In nonresidential areas, the substation must comply
34 with the criteria for a setback and landscaped buffer area which
35 apply to other similar uses in that district.
36 (b) In residential areas, a setback of up to 100 feet
37 between the property boundary of the substation and permanent
38 equipment structures must be maintained as follows:
39 1. For setbacks between 100 feet and 50 feet, a landscaped
40 area having native trees and shrub material with a security
41 fence around the substation equipment must be installed,
42 creating an open green-space area.
43 2. For setbacks between 25 feet and 49 feet, an 8-foot
44 buffer wall or 8-foot fence with native landscaping must be
45 installed around the substation.
46 3. For setbacks of less than 25 feet, a decorative wall or
47 facade at least 10 feet in height with exterior native
48 landscaping must be installed around the substation.
49 (3) Standards for the siting of a substation which are
50 adopted after the effective date of this act do not apply to
51 applications for an electrical utility substation which were
52 submitted prior to notice of the adoption hearing by the local
53 government.

54 (4)(a) If a local government has adopted standards for the
55 siting of electrical substations within any of the land use and
56 zoning districts of the local government, the local government
57 shall grant or deny a properly completed application for a
58 permit to locate an electrical substation within the land use
59 and zoning district within 60 business days after the date the
60 properly completed application is declared complete in
61 accordance with the application procedures of the local
62 government, if issuance of such permit does not relieve the
63 applicant from complying with applicable federal or state laws
64 or rules and applicable local land development or building
65 rules. If the local government fails to grant or deny a properly
66 completed application for an electrical substation within the
67 timeframes set forth, the application shall be deemed
68 automatically approved and the applicant may proceed with
69 construction consistent with its application without
70 interference or penalty.
71 (b) The local government shall notify the permit applicant
72 within 30 business days after the date the application is
73 submitted as to whether the application is, for administrative
74 purposes only, properly completed and has been properly
75 submitted. Further determinations of completeness shall be
76 provided within 15 days after the receipt of additional
77 information. However, such determination is not deemed as an
78 approval of the application.
79 (5) This section does not affect the applicability and
80 enforceability of any existing local regulatory land use
81 procedures for conditional use or special exceptions which
82 provide for public input in a workshop or informational format
83 if such are in effect as of the effective date of this section.
84 However, in a land use, conditional use, or special-exception

85 review of an electrical substation, the local government is
86 limited to imposing those standards and conditions previously
87 adopted under subsection (2), and public input may be provided
88 in a workshop or informational format.
89 Section 2. Section 163.3209, Florida Statutes, is created
90 to read:
91 163.3209 Electrical transmission and distribution line
92 right-of-way maintenance.--After a right-of-way for any
93 electrical transmission or distribution line has been
94 established and constructed, a local government may not require
95 any permits or other approvals for vegetation maintenance and
96 tree pruning or trimming within the established right-of-way.
97 Before conducting vegetation-maintenance activities within an
98 established right-of-way, the utility shall provide the local
99 government with a minimum of 5 days' advance notice, except in
100 emergencies or when required to restore electric service. Upon
101 the request of the local government, the electric utility shall
102 meet with the local government to discuss and submit the
103 utility's vegetation-maintenance plan, including the utility's
104 trimming specifications and maintenance practices. Vegetation
105 maintenance shall conform to ANSI A300 (Part I) - 2001 pruning
106 standards and ANSI Z133.1-2000 Pruning, Repairing, Maintaining,
107 and Removing Trees, and Cutting Brush - Safety Requirements.
108 Vegetation management conducted by utilities must be supervised
109 by qualified personnel from the electric utility or licensed
110 contractors under control of the utility or by certified
111 arborists certified by the International Society of
112 Arboriculture. A local government may not adopt an ordinance or
113 land development regulation that requires the planting of a tree
114 or other vegetation that will achieve a height greater than 14
115 feet in an established right-of-way for an electric utility or

116 intrude from the side closer than the clearance distance
117 specified in Table 2 of ANSI Z133.1-2000. For lines affected by
118 the North American Electric Reliability Council Standard, FAC
119 003.1 requirement R1.2 applies. This section does not supersede
120 or nullify the terms of specific franchise agreements between an
121 electric utility and a local government, and may not be
122 construed to limit the franchising authority of a local
123 government. This section does not supersede local government
124 ordinances or rules governing removal of specimen trees,
125 historical trees, or trees within canopy road protection areas.
126 Section 3. Section 186.008, Florida Statutes, is created
127 to read:
128 186.008 Electrical substation planning.--Electrical
129 utility substations respond to development and consequently
130 siting locations cannot be precisely planned years in advance.
131 On or before June 1st of every year after the effective date of
132 this act, the electric utilities having service areas within
133 each regional planning council shall notify the regional
134 planning council of the utilities' current plans over a 3-year
135 period to site electrical substations within the local
136 governments contained within each region. This information is
137 advisory and must be included in the annual report of the
138 regional planning council prepared pursuant to s. 186.513.
139 Section 4. This act shall take effect upon becoming a law.
140
141 ========== T I T L E A M E N D M E N T ==========
142 Remove the entire title and insert:
143
144 A bill to be entitled
145 An act relating to energy reliability; creating s.
146 163.3207, F.S.; providing legislative intent; providing

147 that new substations are a permittable use in all land use
148 categories and zoning districts within a utility's service
149 territory; providing standards if a local government does
150 not adopt reasonable standards for substation siting;
151 providing an exemption; providing a timeframe for a local
152 government to grant or deny an application for an
153 electrical substation or the application is deemed
154 approved; providing for public input; creating s.
155 163.3209, F.S.; prohibiting local governments from
156 requiring any permits or other approvals for vegetation
157 maintenance in an established electrical transmission or
158 distribution line right-of-way; requiring a utility to
159 give a local government 5 days' advance notice before
160 conducting vegetation-maintenance activities in an
161 established right-of-way; specifying standards for
162 vegetation maintenance; limiting the height of a tree or
163 other vegetation which may be required by a local
164 government in an established right-of-way; providing an
165 exemption; creating s. 186.008, F.S.; providing for the
166 submission of substation plans as part of the annual
167 regional planning council report; providing an effective
168 date.
169

HB 661 - Arza

1 A bill to be entitled
2 An act relating to governmental services telephone
3 systems; creating s. 365.180, F.S.; providing legislative
4 findings; defining the term "coordinated 311 nonemergency
5 and other governmental services telephone system";
6 authorizing the Department of Community Affairs to accept
7 and administer funds to provide grants for certain
8 governmental services telephone systems; authorizing
9 counties and municipalities to apply for grants; requiring
10 a county or municipality to provide matching funds;
11 providing procedures for approval of grant awards;
12 requiring approval by the Secretary of Community Affairs
13 or appropriation by the Legislature; providing for certain
14 limitations on grant funds amounts; requiring a report to
15 the Governor and the Legislature detailing expenditures;
16 authorizing the department to adopt rules; providing an
17 appropriation; providing an effective date.
18
19 WHEREAS, in 1997, the Federal Communications Commission
20 authorized the use of 311 as a telephone number for
21 "nonemergency police and other governmental services," and
22 WHEREAS, in 2001, the Legislature authorized a 311 pilot
23 project in chapter 2001-133, Laws of Florida, to improve the
24 overall efficiency of 911 telephone systems and reduce 911
25 emergency response times, and
26 WHEREAS, several counties and municipalities in Florida
27 have thus far implemented 311 telephone systems that provide a
28 single access point to nonemergency and other governmental

29 services, and
30 WHEREAS, 311 alleviates congestion on 911 circuits and
31 helps make 911 emergency systems more efficient by diverting
32 nonemergency calls that could impede emergency responses, and
33 WHEREAS, 311 has proven to be critical during hurricanes
34 and other emergency situations and disasters by diverting many
35 calls from 911 emergency systems and keeping 911 open and
36 available for truly life-threatening situations, and
37 WHEREAS, 311 provides important information not only to
38 citizens, but to government by providing data about the source
39 of and the reasons for calls, and
40 WHEREAS, 311's greatest value is its ability to coordinate
41 the efforts of municipalities, counties, and other state and
42 local jurisdictions to provide an integrated, seamless single
43 source for nonemergency and other governmental services, and
44 WHEREAS, 311 systems could provide mutual aid to
45 neighboring areas by serving as backup call centers under
46 circumstances where disaster may disable local city or county
47 communication networks, and
48 WHEREAS, 911 was established to provide "rapid direct
49 access to public safety agencies," and the Florida 211 Network
50 was established to provide "coordination for information and
51 referral for health and human services," and
52 WHEREAS, 311 serves as an effective component of unified
53 governmental services which complements but does not duplicate
54 the services provided by 911 and 211, NOW, THEREFORE,
55
56 Be It Enacted by the Legislature of the State of Florida:

57
58 Section 1. Section 365.180, Florida Statutes, is created
59 to read:
60 365.180 Coordinated 311 nonemergency and other
61 governmental services telephone system grant program; grants for
62 operation; funding; approval; allocation.--
63 (1) The Legislature finds that a 311 telephone system for
64 nonemergency and other governmental services may reduce the
65 volume of nonemergency calls to 911 public safety answering
66 points, particularly in times of a disaster. The Legislature
67 further finds that 311 systems improve public access to
68 government by providing seamless access to various governmental
69 entities, enhancing coordination among state and various local
70 jurisdictions, and improving service delivery.
71 (2) As used in this section, the term "coordinated 311
72 nonemergency and other governmental services telephone system"
73 means a 311 system that is multijurisdictional in nature such
74 that it is designed to provide seamless access to nonemergency
75 and other governmental services.
76 (3) The Department of Community Affairs may accept and
77 administer funds that are appropriated to it for providing
78 grants to counties and municipalities for the operation of a
79 coordinated 311 nonemergency and other governmental services
80 telephone system.
81 (4) A county or municipality may apply for a grant of
82 state funds to support the implementation and operation of a
83 coordinated 311 nonemergency and other governmental services
84 telephone system.

85 (5) A state grant awarded under this section must be
86 matched by a contribution from the county or municipality in an
87 amount equal to $1 for each $1 awarded under this section.
88 (6) The Department of Community Affairs shall review each
89 application submitted under subsection (4) for a grant to
90 implement a coordinated 311 nonemergency and other governmental
91 services telephone system and, annually, shall submit a list of
92 all applications received and a list of the systems that are
93 recommended for the award of grants, arranged in order of
94 priority, to the secretary of the Department of Community
95 Affairs for the secretary's approval. The Department of
96 Community Affairs may allocate grants only for coordinated 311
97 nonemergency and other governmental services telephone systems
98 that are approved by the secretary or for which funds are
99 appropriated by the Legislature.
100 (7) The annual amount of any one grant made under this
101 section may not exceed the lesser of $2.5 million or 50 percent
102 of the total annual cost of operating the coordinated 311
103 nonemergency and other governmental services telephone system.
104 The total amount of the grants awarded to a coordinated 311
105 nonemergency and other governmental services telephone system in
106 a 5-year period may not exceed $10 million.
107 (8) No later than December 15, 2007, each 311 system that
108 receives funding under this section shall submit a report to the
109 Governor, the President of the Senate, and the Speaker of the
110 House of Representatives detailing expenditure of the funds
111 appropriated to it for the purposes of this section.
112 (9) The Department of Community Affairs may adopt rules

113 prescribing the criteria to be applied to applications for
114 grants and rules providing for the administration of this
115 section.
116 Section 2. For fiscal year 2006-2007, the sum of $10
117 million is appropriated from the General Revenue Fund to the
118 Department of Community Affairs to fund the coordinated 311
119 nonemergency and other governmental services telephone system
120 grant program.
121 Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 661 Governmental Services Telephone Systems
SPONSOR(S): Arza
TIED BILLS: **IDEN./SIM. BILLS:** SB 1062

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee		Cater	Holt
2) Transportation & Economic Development Appropriations Committee			
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

The bill establishes within the Department of Community Affairs (DCA) a matching grant program to provide funds to local governments for the implementation and coordination of "311 nonemergency and other governmental services telephone systems." It provides legislative intent that a coordinated 311 system may reduce the volume of nonemergency 911 calls and provide seamless access to various governmental entities. It authorizes DCA to accept and administer appropriated funds to provide grants. With the grant program, a municipality or county that wishes to receive grant funds must provide $1 for every dollar in grant money it wishes to receive. The bill provides a system for awarding the grants, but limits the award amount that a municipality or county may receive. The bill provides that a report be submitted by each 311 system receiving funding by December 15, 2007. The bill gives DCA rulemaking authority to administer this section.

For the 2006-2007 fiscal year, the bill appropriates $10 million to DCA from General Revenue to fund the grant program.

The bill assigns the DCA the tasks of reviewing each grant application, arranging them in order of priority, and approving/disapproving funding. However, the bill provides no criteria by which to evaluate or prioritize the applications. As a result, concern has been raised about whether the legislation is unlawful delegation of authority to DCA.

This act shall take effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government-The bill creates a matching grant program where municipalities and counties can obtains funds from DCA to implement a coordinated 311 telephone system.

Maintain Public Security-The bill provides legislative findings that a 311 telephone system for nonemergency and other governmental services may reduce the volume of nonemergency calls to 911 public safety answering points.

B. EFFECT OF PROPOSED CHANGES:

Background

The History of 311 Systems

In 1997 the Federal Communications Commission designated "311" as a national, voluntary, non-toll, three-digit telephone number for non-emergencies.[1] This designation was prompted by concerns relating to the misuse of 911 emergency systems. Evaluations of 911 usage during the mid-1990's indicated that 50 to 90 percent of all calls to 911 were not actual emergencies.[2] These nonemergency calls resulted in backlogs and inefficiencies for public safety agencies, as well as frustration for callers with emergency needs.

According to the U.S. Department of Justice, 311 systems vary in the types of non-emergency calls handled, as designated by individual jurisdictions. Similar to 911 systems, 311 call centers generally operate 24 hours a day, take requests for service only inside their jurisdictions, and often dispatch assistance. Employees are also trained to deal with 911 emergencies in case of inappropriate/misdirected calls. Examples of non-emergency calls include incidents that are non-life threatening and do not require an immediate response, such as:

- animal disturbances,
- loitering,
- loud noise,
- abandoned cars,
- parking complaints,
- garbage pile-ups,
- water leaks,
- potholes,
- street-light outages,
- street closure inquiries, and
- stolen property.

Florida's 311 Experience

Miami-Dade County activated its 311 system on November 29, 2004, where it is a central number for reaching a wide variety of government services. Emergency management officials in Miami-Dade County made extensive use of the recently activated 311 system during the 2005 hurricane season. During the emergency activations for Hurricanes Rita, Katrina and Wilma, 311 handled more than

[1] FCC Order No. FCC 97-51, released February 19, 1997.
[2] U.S. Department of Justice, Office of Community Oriented Policing, "*311 for Non-Emergencies – Helping Communities One Call at a Time*", August 25, 2003.

250,000 calls immediately before, during and after the storms. County officials reported that during these activations, the 311 system was able to take many calls that would have previously gone to 911, enabling the 911 system to remain available for truly life-threatening situations. County officials identified the following benefits associated with the 311 system:

- Provides a fast, simple and convenient single access point for residents to obtain information and request services from their local government;
- Makes delivery of services more efficient and effective by consolidating agency-based answer centers and streamlining processes;
- Increases governments' ability to respond to unanticipated events, e.g. severe storm events and hurricanes, by steering non-emergency calls away from 911, preserving the availability of the emergency system for callers truly in need of immediate response;
- Improves individual department service delivery and accountability through real-time, countywide service performance tracking and reporting;
- Provides 'closed loop' communications with citizens by integrating front-end service requests with the back-end resolution processes; and
- Provides seamless multi-jurisdictional services for citizens regardless to where they live.

Currently, Miami-Dade and Orange are the only Florida counties that have operational 311 systems. However, a number of local governments have expressed interest in implementing a 311 system.

Proposed Changes

The bill creates s. 365.180, F.S., relating to the coordinated 311 nonemergency and other governmental services telephone systems grant program.

The bill provides legislative intent that a 311 telephone system for nonemergency and other governmental services may reduces the volume of nonemergency 911 calls, particularly in times of a disaster.

The bill defines "coordinated 311 nonemergency and governmental services telephone system" as a 311 system that is multi-jurisdictional in nature such that it is designed to provide seamless access to nonemergency and other governmental service.

The bill authorizes the DCA to accept and administer funds that are appropriated to it to provide grants to counties and municipalities for the operation of a coordinated 311 nonemergency and other governmental services telephone system.

A county or municipality may apply for a state grant to support the implementation and operation of a coordinated 311 nonemergency and other governmental services telephone system. A grant awarded under this section must be matched by a contribution from the county or municipality in an amount equal to $1 for each $1 in grant money awarded.

The DCA is required to review each grant application submitted, and annually shall submit two lists to the Secretary of DCA. The first list shall contain all applications received. The second list makes recommendations for grant awards and the system recommendations are arranged in order of priority. The Secretary of DCA must approve the grant before it can be issued. The DCA may allocate grants only for coordinated 311 nonemergency and other governmental services telephone systems that are approved by the Secretary or for which funds are appropriated by the Legislature.

The annual amount of any one grant may not exceed 50 percent of the total annual cost of operating the coordinated 311 system, but an annual grant to a coordinated 311 system is capped at $2.5 million. The total amount of grants awarded to a coordinated 311 system in a 5-year period may not exceed $10 million.

No later than December 15, 2007, each 311 system that receives funding under this section shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing expenditure of the funds appropriated to it for purposes of this section.

The DCA may adopt rules prescribing the criteria to be applied to applications for grants and rules providing for the administration of this section.

For fiscal year 2006-2007, the bill appropriates $10 million from the general revenue fund to DCA to fund the coordinated 311 nonemergency and other governmental services telephone system grant program.

This act shall take effect July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Creates s. 365.180, F.S., related to the coordinated 311 nonemergency and other governmental services telephone system grant program.

Section 2. Provides for an appropriation.

Section 3. This act shall take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   For the 2006-2007 fiscal year, the bill provides for a $10 million appropriation from General Revenue to DCA to fund the coordinated 311 nonemergency and other governmental services telephone system grant plan.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Municipalities and counties are eligible to receive grants from DCA in order to implement a coordinated 311 system.

2. Expenditures:

   In order to receive a grant through this program, a municipality or county is to provide a matched contribution of $1 for every $1 in grant money awarded. These monies would be used to implement a coordinated 311 system. When the five year allocation maximum is reached, some municipalities and counties may have difficulty sustaining the system, if other funds are not secured.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the DCA, it will require two additional positions to administer the grant program. Its five year fiscal estimates are as follows:

2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	Five-Year Total
$109,500	$100,768	$102,054	$103,360	$104,685	$520,367

This estimate is based on the following assumptions:

- A 1.5 percent annual salary increase;
- Two grants of $1,000,000 awarded annually;
- Heavy start-up costs in the 2006-2007 fiscal year.

While the bill contains a $10 million appropriation for the 2006-2007 fiscal year, any unused portion of the appropriation may revert back to General Revenue, and DCA may need to request funds for subsequent fiscal years.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Nondelegation Doctrine

The bill assigns the DCA the tasks of reviewing each grant application, arranging them in order of priority, and approving/disapproving funding. However, the bill provides no criteria by which to evaluate or prioritize the applications. The bill provides that "[t]he Department of Community Affairs may adopt rules prescribing the criteria to be applied to applications for grants and rules providing for the administration of this section." As a result, concern has been raised about whether the legislation is an unlawful delegation of authority to DCA based on the following:

Article II, section 3 of the state constitution provides that "[n]o person belonging to one branch shall exercise any powers appertaining to either the other branches unless expressly provided herein."

The nondelegation doctrine requires, "fundamental and primary policy decisions. . . be made by members of the legislature who are elected to perform those tasks, and [that the] administration of legislative programs must be pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program."[3] The Supreme Court has recognized that how specific the guidelines need to be depends on the subject's complexity and how difficult it would be to articulate finite standards.[4] However, the court has also made clear that "'[even] when a general approach would be more practical than a detailed scheme of legislation, enactments may not be

[3] Bush v. Schiavo, 885 So.2d 321, 332 (Fla. 2004), quoting Askew v. Cross Key Waterways, 372 So. 2d, 912, 925 (Fla. 1978).
[4] Bush v. Schiavo, 885 So.2d 321, 332-333 (Fla. 2004), quoting Brown v. Apalachee Regional Planning Council, 560 So. 2d 782, 784 (Fla. 1990).

drafted in terms so general and unrestrictive that administrators are left without standards for the guidance of their official acts.'"[5]

B. RULE-MAKING AUTHORITY:

The bill allows DCA to adopt rules prescribing the criteria to be applied to applications for grants and for the administration of this section.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comments

Lines 107 through 111 have each 311 system receiving funds to submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives detailing the expenditure of the funds it received pursuant to this section. This report would be due by December 15, 2007. Depending on how many systems receive grants, a large number of individual reports could be received.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

[5] Bush v. Schiavo, 885 So.2d 321, 333 (Fla. 2004), quoting State Dep't of Citrus v. Griffin, 239 So. 2d 577, 581, (Fla. 1970).

HB 789 - Murzin

1 A bill to be entitled
2 An act relating to damage prevention and safety of
3 underground facilities; amending s. 556.101, F.S.;
4 providing legislative intent that Sunshine State One-Call
5 of Florida, Inc., is not required or permitted to locate
6 or mark underground facilities; amending s. 556.102, F.S.;
7 redefining the term "member operator" to remove an
8 exception for a small municipality that elects not to
9 participate in the notification system; amending ss.
10 556.103 and 556.104, F.S.; deleting provisions exempting a
11 small city from membership in the Sunshine State One-Call
12 of Florida, Inc.; amending s. 556.105, F.S.; requiring
13 that specified information be placed in the excavation
14 notification system; providing an exception for underwater
15 excavations; providing that the information is valid for
16 30 calendar days; requiring that a notification number
17 assigned to an excavator be provided to a law enforcement
18 officer, government code inspector, or code enforcement
19 officer upon request; requiring that a member operator
20 respond to the system within a specified time indicating
21 the status of its facility protection operations;
22 requiring the corporation to establish a communication
23 system between member operators and excavators; requiring
24 an excavator to verify the system's positive responses
25 before beginning excavation; requiring operators to use a
26 specified color-code manual; amending s. 556.106, F.S.;
27 providing that the notification system has no duty to and
28 may not mark or locate underground facilities; providing

29 that a person has no right of recovery against the
30 notification system for failing to mark or locate
31 underground facilities; providing that the system is not
32 liable for the failure of a member operator to comply with
33 the requirements of the act; amending s. 556.107, F.S.;
34 correcting cross-references; providing for the
35 distribution of civil penalties; authorizing the
36 corporation to retain legal counsel to represent the
37 corporation in certain legal proceedings; amending s.
38 556.108, F.S.; providing that certain excavations are
39 exempt from mandatory location notification if mechanized
40 equipment is not used; providing an effective date.
41
42 Be It Enacted by the Legislature of the State of Florida:
43
44 Section 1. Section 556.101, Florida Statutes, is amended
45 to read:
46 556.101 Short title; legislative intent.--
47 (1) This act may be cited as the "Underground Facility
48 Damage Prevention and Safety Act."
49 (2) It is the intent of the Legislature to provide access
50 for excavating contractors and the public to provide
51 notification to the system of their intent to engage in
52 excavation or demolition. This notification system shall provide
53 the member operators an opportunity to identify and locate their
54 underground facilities. <u>Under this notification system, Sunshine</u>
55 <u>State One-Call of Florida, Inc., is not required or permitted to</u>
56 <u>locate or mark underground facilities.</u>

57 (3) It is the purpose of this act to:
58 (a) Aid the public by preventing injury to persons or
59 property and the interruption of services resulting from damage
60 to an underground facility caused by excavation or demolition
61 operations.
62 (b) Create a not-for-profit corporation comprised of
63 operators of underground facilities in this state to administer
64 ~~the provisions of~~ this act.
65 (c) Fund the cost of administration through contributions
66 from the member operators for services provided to the member
67 operators and from charges made to others for services requested
68 and provided, such as record searches, education or training,
69 and damage prevention activities.
70 (d) Reserve to the state the power to regulate any subject
71 matter specifically addressed in this act.
72 (e) Permit any local law enforcement officer, local
73 government code inspector, or code enforcement officer ~~or~~
74 ~~permitting agency inspector~~ to enforce this act without the need
75 to incorporate the provisions of this act into any local code or
76 ordinance.
77 (4) It is not the purpose of this act to amend or void any
78 permit issued by a state agency for placement or maintenance of
79 facilities in its right-of-way.
80 Section 2. Subsection (8) of section 556.102, Florida
81 Statutes, is amended to read:
82 556.102 Definitions.--As used in this act:
83 (8) "Member operator" means any person who furnishes or
84 transports materials or services by means of an underground

85 facility ~~except a small municipality that has elected not to~~
86 ~~participate in the one-call notification system in the manner~~
87 ~~set forth in s. 556.103(1)~~.
88 Section 3. Subsection (1) of section 556.103, Florida
89 Statutes, is amended to read:
90 556.103 Creation of the corporation; establishment of the
91 board of directors; authority of the board; annual report.--
92 (1) The "Sunshine State One-Call of Florida, Inc." is
93 ~~hereby~~ created as a not-for-profit corporation. Each operator of
94 an underground facility in this state shall be a member of the
95 corporation and shall use and participate in the system~~, except~~
96 ~~that a small city as defined in s. 120.52 may elect by January~~
97 ~~1, 1998, not to participate in the system until January 1, 2003,~~
98 ~~through a written notification identifying any reasons for~~
99 ~~declining membership. The corporation shall be formed by June 1,~~
100 ~~1993~~. The corporation shall administer the provisions of this
101 act. The corporation shall exercise its powers through a board
102 of directors established pursuant to this section.
103 Section 4. Section 556.104, Florida Statutes, is amended
104 to read:
105 556.104 Free-access notification system.--The corporation
106 shall maintain a free-access notification system. Any person who
107 furnishes or transports materials or services by means of an
108 underground facility in this state shall participate as a member
109 operator of the system ~~except that a small city as defined in s.~~
110 ~~120.52 may elect not to participate in the system in the manner~~
111 ~~set forth in s. 556.103(1)~~. The purpose of the system is to
112 receive notification of planned excavation or demolition

113 activities and to notify member operators of the ~~such~~ planned
114 excavation or demolition activities. The system shall provide a
115 single toll-free telephone number within this state which
116 excavators can use to notify member operators of planned
117 excavation or demolition activities, and the system may also
118 provide additional modes of access at no cost to the user.
119 Section 5. Section 556.105, Florida Statutes, is amended
120 to read:
121 556.105 Procedures.--
122 (1)(a) Not less than 2 ~~nor more than 5~~ full business days
123 before beginning any excavation or demolition, except an
124 excavation beneath the waters of the state, an excavator shall
125 provide the following information through the system:
126 1. The name of the individual who provided notification
127 and the name, address, including the street address, city,
128 state, zip code, and telephone number of her or his employer.
129 2. The name and telephone number of the representative for
130 the excavator and a valid electronic address to facilitate a
131 positive response by the system should be provided, if
132 available.
133 3. The county, the city or closest city, and the street
134 address or the closest street, road, or intersection to the
135 location where the excavation or demolition is to be performed,
136 and the construction limits of the excavation or demolition.
137 4. The commencement date and anticipated duration of the
138 excavation or demolition.
139 5. Whether machinery will be used for the excavation or
140 demolition.

141 6. The person or entity for whom the work is to be done.
142 7. The type of work to be done.
143 8. The approximate depth of the excavation.
144 (b) The excavator shall provide the ~~such~~ information by
145 notifying the system through its free-access notification system
146 during business hours, as determined by the corporation, or by
147 such other method as authorized by the corporation. Any
148 notification received by the system at any time other than
149 during business hours shall be considered to be received at the
150 beginning of the next business day.
151 (c) Information provided by an excavator is ~~shall be~~
152 ~~considered~~ valid for 30 ~~a period of 20~~ calendar days after the
153 ~~each~~ date such information is provided to the system. In
154 computing the period for which information furnished is
155 ~~considered~~ valid, the date the notice is provided is ~~shall~~ not
156 ~~be~~ counted, but the last day of the ~~such~~ period shall be counted
157 unless it is a Saturday, Sunday, or a legal holiday, in which
158 event, the period runs ~~shall run~~ until the end of the next day
159 that ~~which~~ is not a Saturday, Sunday, or a legal holiday.
160 (2) Each notification by means of the system shall be
161 recorded to document compliance with this act. Such record may
162 be made by means of electronic, mechanical, or any other method
163 of all incoming and outgoing wire and oral communications
164 concerning location requests in compliance with chapter 934. The
165 ~~Such~~ records shall be kept for ~~a period of~~ 5 years and, upon
166 written request, shall be available to the excavator making the
167 request, the member operator intended to receive the request,
168 and their agents. However, custody of the records may ~~shall~~ not

169 be transferred from the system except under subpoena.
170 (3) The system shall provide the person who provided
171 notification with the names of the member operators who shall
172 ~~will~~ be advised of the notification and a notification number
173 that ~~which~~ specifies the date and time of the notification.
174 (4) The notification number provided to the excavator
175 under this section shall be provided to any law enforcement
176 officer, government code inspector, or code enforcement officer
177 upon request.
178 (5) ~~(4)~~ All member operators within the defined area of a
179 proposed excavation or demolition shall be promptly notified
180 through the system, except that member operators with state-
181 owned underground facilities located within the right-of-way of
182 a state highway need not be notified of excavation or demolition
183 activities and are under no obligation to mark or locate the
184 ~~such~~ facilities.
185 (a) When an excavation site cannot be described in
186 information provided under subparagraph (1)(a)3. with sufficient
187 particularity to enable the member operator to ascertain the
188 excavation site, and if the excavator and member operator have
189 not mutually agreed otherwise, the excavator shall premark the
190 proposed area of the excavation before a member operator is
191 required to identify the horizontal route of its underground
192 facilities in the proximity of any excavation. However,
193 premarking is not required for any excavation that is over 500
194 feet in length and is not required where the premarking could
195 reasonably interfere with traffic or pedestrian control.
196 (b) If a member operator determines that a proposed

197 excavation or demolition is in proximity to or in conflict with
198 an underground facility of the member operator, except a
199 facility beneath the waters of the state, which is governed by
200 paragraph (c), the member operator shall identify the horizontal
201 route by marking to within 24 inches from the outer edge of
202 either side of the underground facility by the use of stakes,
203 paint, flags, or other suitable means within 2 full business
204 days after the time the notification is received under
205 subsection (1). If the member operator is unable to respond
206 within such time, the member operator shall communicate with the
207 person making the request and negotiate a new schedule and time
208 that is agreeable to, and should not unreasonably delay, the
209 excavator.
210 (c) If a member operator determines that a proposed
211 excavation is in proximity to or in conflict with an underground
212 facility of the member operator beneath the waters of the state,
213 the member operator shall identify the estimated horizontal
214 route of the underground facility, within 10 business days,
215 using marking buoys or other suitable devices, unless directed
216 otherwise by an agency having jurisdiction over the waters of
217 the state under which the member operator's underground facility
218 is located.
219 (d) When excavation is to take place within a tolerance
220 zone, an excavator shall use increased caution to protect
221 underground facilities. The protection requires hand digging,
222 pot holing, soft digging, vacuum excavation methods, or other
223 similar procedures to identify underground facilities. Any use
224 of mechanized equipment within the tolerance zone must be

225 supervised by the excavator.
226 (6)(a) ~~(5)(a)~~ An excavator shall avoid excavation in the
227 area described in the notice given under ~~pursuant to~~ subsection
228 (1) until each member operator underground facility has been
229 marked and located or until the excavator has been notified that
230 no member operator has underground facilities in the area
231 described in the notice, or for the time allowed for markings
232 set forth in paragraphs (5)(b) ~~(4)(b)~~ and (c), whichever occurs
233 first. If a member operator has not located and marked its
234 underground facilities within the time allowed for marking set
235 forth in paragraphs (5)(b) ~~(4)(b)~~ and (c), the excavator may
236 proceed with the excavation, if ~~provided~~ the excavator does so
237 with reasonable care~~,~~ and if ~~provided, further, that~~ detection
238 equipment or other acceptable means to locate underground
239 facilities are used.
240 (b) An excavator may ~~shall~~ not demolish in the area
241 described in the notice given under ~~pursuant to~~ subsection (1)
242 until all member operator underground facilities have been
243 marked and located~~,~~ or removed.
244 (7)(a) ~~(6)(a)~~ A member operator that states that it does
245 not have accurate information concerning the exact location of
246 its underground facilities is exempt from the requirements of
247 paragraphs (5)(b) ~~(4)(b)~~ and (c), but shall provide the best
248 available information to the excavator in order to comply with
249 the requirements of this section. An excavator is not liable for
250 any damage to an underground facility under the exemption in
251 this subsection if the excavation or demolition is performed
252 with reasonable care and detection equipment or other acceptable

253 means to locate underground facilities are used.
254 (b) A member operator may not exercise the exemption
255 provided by this subsection if the member operator has
256 underground facilities that have not been taken out of service
257 and that are locatable using available designating technologies
258 to locate underground facilities.
259 (8)(a) ~~(7)(a)~~ If extraordinary circumstances exist, a
260 member operator shall notify the system of the member operator's
261 inability to comply with this section. For the purposes of this
262 section, the term "extraordinary circumstances" means
263 circumstances other than normal operating conditions that ~~which~~
264 exist and make it impractical for a member operator to comply
265 with ~~the provisions of~~ this act. After the system has received
266 notification of a member operator's inability to comply, the
267 system shall make that information known to excavators who
268 subsequently notify the system of an intent to excavate. The
269 member operator is relieved of responsibility for compliance
270 under the law during the period that the extraordinary
271 circumstances exist and shall promptly notify the system when
272 the extraordinary circumstances cease to exist.
273 (b) During the period when extraordinary circumstances
274 exist, the system shall remain available during business hours
275 to provide information to governmental agencies, member
276 operators affected by the extraordinary circumstances, and
277 member operators who can provide relief to the affected parties,
278 unless the system itself has been adversely affected by
279 extraordinary circumstances.
280 (9)(a) After receiving notification from the system, a

281 member operator shall provide a positive response to the system
282 within 2 full business days, or 10 such days for an underwater
283 excavation, indicating the status of operations to protect the
284 facility.
285 ~~(8)(a) If a member operator determines that the excavation~~
286 ~~or demolition is not near an existing underground facility of~~
287 ~~the member operator, the member operator shall notify the~~
288 ~~excavator within 2 full business days after the time of the~~
289 ~~notification to the system that no conflict exists and that the~~
290 ~~excavation or demolition area is clear. An excavator who has~~
291 ~~knowledge of the existence of an underground facility of a~~
292 ~~member operator in the area is responsible for contacting the~~
293 ~~member operator if a facility is not marked.~~
294 (b) The system shall establish and maintain a process to
295 facilitate a positive-response communication between member
296 operators and excavators. The system is exempt from any
297 requirement to initiate a positive response to an excavator when
298 an excavator does not provide a valid electronic address to
299 facilitate a positive response by the system.
300 (c) An excavator shall verify the system's positive
301 responses before beginning excavation. If an excavator knows
302 that an existing underground facility of a member operator is in
303 the area, the excavator must contact the member operator if the
304 facility is not marked and a positive response has not been
305 received by the system. ~~The system shall implement procedures~~
306 ~~for positive response by January 1, 2004.~~
307 (10) ~~(9)~~ A member operator shall use the ~~recommended~~
308 ~~guidelines for uniform temporary marking of underground~~

309 ~~facilities as approved by the Utility Location and Coordinating~~
310 ~~Council~~ "Uniform Color Code for Utilities" of the American
311 Public Works Association when marking the horizontal route of
312 any underground facility of the operator.
313 (11) ~~(10)~~ Before ~~Prior to~~ or during excavation or
314 demolition, if the marking of the horizontal route of any
315 facility is removed or is no longer visible, the excavator shall
316 stop excavation or demolition activities in the vicinity of the
317 facility and shall notify the system to have the route remarked.
318 (12) ~~(11)~~ If any contact with or damage to any pipe, cable,
319 or its protective covering, or any other underground facility
320 occurs, the excavator causing the contact or damage shall
321 immediately notify the member operator. Upon receiving notice,
322 the member operator shall send personnel to the location as soon
323 as possible to effect temporary or permanent repair of the
324 contact or damage. Until such time as the contact or damage has
325 been repaired, the excavator shall cease excavation or
326 demolition activities that may cause further damage to such
327 underground facility.
328 Section 6. Subsection (2) of section 556.106, Florida
329 Statutes, is amended, present subsection (6) is redesignated as
330 subsection (7) and amended, and a new subsection (6) is added to
331 that section, to read:
332 556.106 Liability of the member operator, excavator, and
333 system.--
334 (2)(a) If a ~~In the event any~~ person violates s. 556.105(1)
335 or (6) ~~(5)~~, and subsequently, whether by himself or herself or
336 through the person's employees, contractors, subcontractors, or

337 agents, performs an excavation or demolition that ~~which~~ damages
338 an underground facility of a member operator, it is ~~shall be~~
339 rebuttably presumed that the ~~such~~ person was negligent. The ~~Such~~
340 person, if found liable, is ~~shall be~~ liable for the total sum of
341 the losses to all member operators involved as those costs are
342 normally computed. Any damage for loss of revenue and loss of
343 use may ~~shall~~ not exceed $500,000 per affected underground
344 facility, except that revenues lost by a governmental member
345 operator whose~~, which~~ revenues are used to support payments on
346 principal and interest on bonds may~~, shall~~ not be limited. Any
347 liability of the state and its agencies and its subdivisions
348 which arises out of this chapter is ~~shall be~~ subject to the
349 provisions of s. 768.28.
350 (b) If any excavator fails to discharge a duty imposed by
351 the provisions of this act, the ~~such~~ excavator, if found liable,
352 is ~~shall be~~ liable for the total sum of the losses to all
353 parties involved as those costs are normally computed. Any
354 damage for loss of revenue and loss of use may ~~shall~~ not exceed
355 $500,000 per affected underground facility, except that revenues
356 lost by a governmental member operator whose~~, which~~ revenues are
357 used to support payments on principal and interest on bonds may~~,~~
358 ~~shall~~ not be limited.
359 (c) Any liability of the state, its agencies, or its
360 subdivisions which arises out of this act is ~~shall be~~ subject to
361 the provisions of s. 768.28.
362 (d) Obtaining information as to the location of an
363 underground facility from the member operator as required by
364 this act does not excuse any excavator from performing an

365 excavation or demolition in a careful and prudent manner, based
366 on accepted engineering and construction practices, and it ~~nor~~
367 does not ~~it~~ excuse the ~~such~~ excavator from liability for any
368 damage or injury resulting from any excavation or demolition.
369 ~~(e) When an excavator knows or should know of the presence~~
370 ~~of an underground facility of a nonmember small city as defined~~
371 ~~in s. 120.52, he or she shall make reasonable efforts to contact~~
372 ~~the small city that owns or operates that facility prior to~~
373 ~~commencing an excavation or demolition.~~
374 (6) The system does not have a duty to mark or locate
375 underground facilities and may not do so, and a right of
376 recovery does not exist against the system for failing to mark
377 or locate underground facilities. The system is not liable for
378 the failure of a member operator to comply with the requirements
379 of this act.
380 (7) ~~(6)~~ An excavator who performs any excavation with hand
381 tools under ~~pursuant to~~ s. 556.108(5) is liable for any damage
382 to any operator's underground facilities damaged during such
383 excavation.
384 Section 7. Section 556.107, Florida Statutes, is amended
385 to read:
386 556.107 Violations.--
387 (1) NONCRIMINAL INFRACTIONS.--
388 (a) Violations of the following provisions are noncriminal
389 infractions:
390 1. Section 556.105(1), relating to providing required
391 information.
392 2. Section 556.105(6) ~~556.105(5)~~, relating to the

393 avoidance of excavation.
394 3. Section 556.105(11) ~~556.105(10)~~, relating to the need
395 to stop excavation or demolition.
396 4. Section 556.105(12) ~~556.105(11)~~, relating to the need
397 to cease excavation or demolition activities.
398 5. Section 556.105(5)(b) ~~556.105(4)(b)~~ and (c) relating to
399 identification of underground facilities, if a member operator
400 does not mark an underground facility, but not if a member
401 operator marks an underground facility incorrectly.
402 (b) Any excavator or member operator who commits a
403 noncriminal infraction under paragraph (a) may be issued a
404 citation by any local or state law enforcement officer,
405 government code inspector, or code enforcement officer
406 ~~permitting agency inspector~~, and the issuer of a citation may
407 require an ~~any~~ excavator to cease work on any excavation or not
408 start a proposed excavation until there has been compliance with
409 the provisions of this act. Citations may be issued to any
410 employee of the excavator or member operator who is directly
411 involved in the noncriminal infraction.
412 (c) Any excavator or member operator who commits a
413 noncriminal infraction under paragraph (a) may be required to
414 appear before the county court. The civil penalty for any such
415 infraction is $250, plus fees and court costs except as
416 otherwise provided in this section. If a citation is issued by a
417 local law enforcement officer, a local government code
418 inspector, or a code enforcement officer, 80 percent of the
419 civil penalty collected by the clerk of the court shall be
420 distributed to the local governmental entity whose employee

421 issued the citation and 20 percent of the penalty shall be
422 retained by the clerk to cover administrative costs, in addition
423 to other fees or court costs. If a citation is issued by a state
424 law enforcement officer, the civil penalty collected by the
425 clerk shall be retained by the clerk for distribution to the
426 county in which the citation was issued. Any person who fails to
427 appear or otherwise properly respond to a citation issued
428 pursuant to paragraph (d) shall, in addition to the citation, be
429 charged with the offense of failing to respond to such citation
430 and, upon conviction, commits ~~be guilty of~~ a misdemeanor of the
431 second degree, punishable as provided in s. 775.082 or s.
432 775.083. A written warning to this effect shall be provided at
433 the time any citation is issued pursuant to paragraph (b).
434 (d) Any person cited for an infraction under paragraph
435 (a), unless required to appear before the county court, may:
436 1. Post a bond, which shall be equal in amount to the
437 applicable civil penalty, plus fees or court costs; or
438 2. Sign and accept a citation indicating a promise to
439 appear before the county court.
440
441 The person issuing the citation ~~officer~~ may indicate on the
442 citation the time and location of the scheduled hearing and
443 shall indicate the applicable civil penalty.
444 (e) Any person charged with a noncriminal infraction under
445 paragraph (a), unless required to appear before the county
446 court, may:
447 1. Pay the civil penalty plus fees and court costs, in
448 lieu of appearance, either by mail or in person, within 10 days

449 after the date of receiving the citation; or
450 2. Forfeit bond, if a bond has been posted, by not
451 appearing at the designated time and location.
452
453 If the person cited follows either of the above procedures, she
454 or he is ~~shall be~~ deemed to have admitted to committing the
455 infraction and to have waived the right to a hearing on the
456 issue of commission of the infraction. The ~~Such~~ admission may be
457 used as evidence in any other proceeding under this act.
458 (f) Any person electing to appear before the county court
459 or who is required to appear shall be deemed to have waived the
460 limitations on the civil penalty specified in paragraph (c). The
461 court, after a hearing, shall make a determination as to whether
462 an infraction has been committed. If the commission of an
463 infraction has been proven, the court may impose a civil penalty
464 not to exceed $5,000, plus court costs. In determining the
465 amount of the civil penalty, the court may consider previous
466 noncriminal infractions committed.
467 (g) At a hearing under this chapter, the commission of a
468 charged infraction must be proven by a preponderance of the
469 evidence.
470 (h) If a person is found by the hearing official to have
471 committed an infraction, the ~~such~~ person may appeal that finding
472 to the circuit court.
473 (i) Sunshine State One-Call of Florida, Inc., may, at its
474 own cost, retain an attorney to assist in the presentation of
475 relevant facts and law in the county court proceeding pertaining
476 to the citation issued under this section. The corporation may

477 also appear in any case appealed to the circuit court if a
478 county court finds that an infraction of the chapter was
479 committed. An appellant in the circuit court proceeding shall
480 timely notify the corporation of any appeal under this section.
481 (2) MISDEMEANORS.--Any person who knowingly and willfully
482 removes or otherwise destroys the valid stakes or other valid
483 physical markings described in s. 556.105(5)(b) ~~s. 556.105(4)(b)~~
484 and (c) used to mark the horizontal route of an underground
485 facility commits a misdemeanor of the second degree, punishable
486 as provided in s. 775.082 or s. 775.083. For purposes of this
487 subsection, stakes or other nonpermanent physical markings are
488 considered valid for 30 ~~20~~ calendar days after information is
489 provided to the system under s. 556.105(1)(c).
490 Section 8. Subsection (4) of section 556.108, Florida
491 Statutes, is amended to read:
492 556.108 Exemptions.--The notification requirements
493 provided in s. 556.105(1) do not apply to:
494 (4) Any excavation of 18 inches or less for:
495 (a) Surveying public or private property by surveyors or
496 mappers as defined in chapter 472, excluding marked rights-of-
497 way, marked easements, or permitted uses where marked, if
498 ~~provided~~ mechanized equipment is not used in the process of such
499 surveying and the surveying is performed in accordance with the
500 practice rules established under s. 472.027; ~~or~~
501 (b) Maintenance activities performed by a state agency and
502 its employees when such activities are within the right-of-way
503 of a public road; however, ~~provided,~~ if a member operator has
504 permanently marked facilities on such right-of-way, ~~no~~

505 mechanized equipment may not be used without first providing
506 notification; or
507 (c) Locating, repairing, connecting, adjusting, or routine
508 maintenance of a private or public utility facility by an
509 excavator, if mechanized equipment is not used.
510 Section 9. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 789 Damage Prevention and Safety of Underground Facilities
SPONSOR(S): Murzin
TIED BILLS: **IDEN./SIM. BILLS:** SB 1394

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee		Holt	Holt
2) Civil Justice Committee			
3) Finance & Tax Committee			
4) Commerce Council			
5)			

SUMMARY ANALYSIS

Chapter 93-240, Laws of Florida, created the Underground Facility Damage Prevention and Safety Act (Act). The act is codified at chapter 556, F.S. It establishes a statewide, one-call notification system (system). The purpose of the act is to prevent injury "to persons and property and the interruption of services resulting from damage to an underground facility caused by excavation or demolition operations." Creation of a not-for-profit corporation was established pursuant to section 556.101(3)(c), F.S., comprised of Florida underground facilities operators (member operators) to administer the chapter's provisions. As a result, Sunshine State One-Call of Florida, Inc., (SSOCOF), has been incorporated since February 1, 1993.

Summarily, HB 798 amends the Underground Facility Damage Prevention and Safety Act as follows:

- The bill amends legislative intent, to clarify the role of SSOCOF as the administrator of the statewide, one-call notification system, and as such, it is not required or permitted to locate or mark underground facilities, and the bill creates a liability exemption for SSOCOF due to the failure of member operators to comply the act. Specificity for the act's enforcement is also provided in the bill.
- The bill removes obsolete language related to small municipalities deferred participation in the one-call notification system and to the formation of a not-for-profit corporation to administer the provisions of chapter 556, F.S.
- Current procedures for notification of excavation or demolition are amended and also include a timeframe exception for underwater excavation. The validity duration for notification information is increased from 20 calendar days to 30.
- Florida's one-call notification system is clarified in the bill as the methodology for the facilitation of positive response communications, between excavators and member operators, relating to the status of operations to protect facilities. However, the responsibility is on the excavator to check the system for these responses and under certain circumstances to contact member operators.
- Changes are made in the bill to the non-criminal infraction section and provide:
  - for fees and cost to be added to the civil penalty;
  - for a sharing formula for penalties collected;
  - for SSOCOF under certain circumstances to obtain legal representation
- The bill further provides a hand digging exemption for excavators.

The fiscal impact of the bill is indeterminate at this time due to the unknown number of citations local or state law enforcement may issue.

This act shall take effect October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility-The bill adds fees and court costs to the civil penalty for violating provisions of the Underground Facility Damage Prevention and Safety Act.

B. EFFECT OF PROPOSED CHANGES:

Background

Chapter 93-240, L.O.F., created the "Underground Facility Damage Prevention and Safety Act" (Act). The act is codified at ch. 556, F.S. It establishes a statewide, one-call notification system. A single toll-free number is provided for persons to give notification of and intent to engage in excavation or demolition. Section 556.101, F.S., states that the purpose of the Act is to prevent injury "to persons and property and the interruption of services resulting from damage to an underground facility caused by excavation or demolition operations."

Creation of a not-for-profit corporation was established pursuant to section 556.101(3)(c), F.S., comprised of Florida underground facilities operators (member operators) to administer the chapter provisions. As a result, Sunshine State One-Call of Florida, Inc., (SSOCOF), has been incorporated since February 1, 1993. The cost of the system is funded "entirely and exclusively" by assessed contribution from the member operators.

Proposed Changes

The bill amends several sections of the Act.

Section 1
The bill amends s. 556.101(2), legislative intent, to clarify that the SSOCOF is only the system administrator, and that SSOCOF is not required or permitted to locate or mark any underground facilities. Also, the term "permitting agency inspector" is deleted in s. 556.102(3)(e) and the bill clarifies that at the local level any law enforcement officer, local government code inspector, or code enforcement officer is permitted to enforce the provision of the Act without the need to incorporate these changes into any local code or ordinance.

Section 2
Obsolete language is removed from s. 556.102(8) of the bill related to small municipalities deferred participation in the one-call notification system. Membership for such municipalities became mandatory on January 1, 2003, and these entities are included in the definition of "member operators."

Section 3
Additional obsolete language is removed from this section related to small municipalities deferred participation in the one-call notification system. Moreover, language is removed that refers to the formation of a not-for-profit corporation to administer the provisions of chapter 556, F.S. Sunshine State One-Call of Florida, Inc. has been incorporated since February 1, 1993 to fulfill this provision. (s. 556.103)

Section 4
Obsolete language is removed from s. 556.104 of the bill related to small municipalities deferred participation in the one-call notification system.

Section 5
Procedures for the SSOCOF notification system are outlined in s. 556.105. The bill amends several subsections as follows:

A. Section 556.105(1)(a) narrows the system notification window that is required prior to beginning any excavation or demolition from not less than "2 nor more than 5" full business to not less than "2" full business days, except for an underwater excavation. Also, if available, a valid electronic address should also be provided to the system to facilitate positive responses. The duration for the validity of the information provided to the system by an excavator about a proposed excavation or demolition site is increased from 20 calendar days to 30 days, excluding the date information is provided to the system, Saturday, Sunday, or legal holidays.

B. Section 556.105(2) provides that the records of each notification "may not" in lieu of "shall not," be transferred from the system except under subpoena.

C. Section 556.105(3) makes clear that the system shall provided the person making notification with the names of the member operators in the affected area along with a notification number (ticket) specifying the date and time of the project notification.

D. Section 556.105(4) is created to inform excavators that upon request the notification number will be provided to any law enforcement officer, government code inspector, or code enforcement officer.

E. Also, presently numbered ss. 556.105(4) through 556.105(11) are renumbered and cross-references corrected.

F. Section 556.105(6)(b) provides that an excavator "may not" in lieu of "shall not," demolish in a noticed area until all member operator underground facilities have been marked, located, or removed. This provision gives excavator discretion to demolish or not demolish in areas not marked at the noticed site.

G. Presently designated s. 556.105(8)(a) is deleted. This change removes the provision related to specific circumstances for direct communication between a member operator and excavator. Also, obsolete language is deleted in 556.105(8)(b) related to the positive response system being implemented by January 1, 2004.

H. Section 556.105(9) is created to outline member operator responsibilities after receiving notification from the system. A member operator of underground facilities has 2 full business days to provide the system a positive response, indicating the status of operations to protect the facility, or 10 days for an underwater excavation. Further the bill establishes the one-call system as a central communication hub between excavators and member operators. However, the system is exempt from any requirement to initiate a positive response to an excavator when an excavator has not provided the system with a valid electronic address. The bill places the excavator responsible for verifying the system's positive response before beginning excavation. Moreover, the excavator becomes responsible for contacting a member operator, if it knows a member operator has an existing underground facility in the area, yet the facility is unmarked, and no positive response has been received by the system.

I. Section 556.105(10) is amended to cite that when an operator marks the horizontal route of any underground facility it shall be according to the Uniform Color Code for Utilities of the American Public Works Association.

Section 6
Liability of the member operator, excavator, and system is outlined in s. 556.106. The bill amends s. 556.106(2)(a) to correct a cross reference. Further, in s. 556.106(2)(a)-(b), the term "shall" is deleted and replaced with "may" as it relates to: a person who violates s. 556.105(1) or (6) and subsequently performs an excavation or demolition that damages a member operator's underground facility it shall be

rebuttably presumed that such person was negligent. Such person, if found liable, shall be liable for the total sum of the losses to all member operators involved as those costs are normally computed. Any damage for loss of revenue and loss of use "may" not exceed $500,000 per affected underground facility, except that revenues lost by a governmental member operator, which revenues are used to support payments on principal and interest on bonds, "may" not be limited.

The bill deletes s. 556.106(2)(e) to remove obsolete language related to nonmember small cities. The bill adds 556.106(6) to provide that the system (SSOCOF) has no duty to mark or locate underground facilities and nor does a right of recovery exist against the system for failing to do so. Clarification is added that the system (SSOCOF) is not liable for the failure of a member operator to comply with the requirements of this act.

Section 7

Section 556.107 outlines violations. The bill amends this section to correct cross references. It further deletes the term "permitting agency inspector" and replaces it with "government code inspector" and "code enforcement officer." These two new terms, along with the language local or state law enforcement officer, specify the enforcement for this chapter.

Section 556.107(1) reads in part:

> (1) NONCRIMINAL INFRACTIONS.—
>
> (a) Violations of the following provisions are noncriminal infractions:
> 1. Section 556.105(1), relating to providing required information.
> 2. Section 556.105(5), relating to the avoidance of excavation.
> 3. Section 556.105(10), relating to the need to stop excavation or demolition.
> 4. Section 556.105(11), relating to the need to cease excavation or demolition activities.
> 5. Section 556.105(4)(b) and (c) relating to identification of underground facilities, if a member operator does not mark an underground facility, but not if a member operator marks an underground facility incorrectly.

Paragraph (c) of s. 556.107(1) reads in part:

> Any excavator or member operator who commits a noncriminal infraction under paragraph (a) may be required to appear before the county court. The civil penalty for any such infraction is $250, except as otherwise provided in this section.

The bill amends paragraph (c) to add fees and court cost to the civil penalty. Further, if the citation is issued by a local law enforcement officer, local government code inspector, or code enforcement officer, an 80/20 split of the collected penalty occurs. Eighty percent goes to the local government that employs the local citing officer and 20% is retained by the clerk of court for administrative costs. If the citation is issued by a state law enforcement officer, the amount collected by the clerk goes to the county in which the citation is issued.

Paragraph (d) of s. 556.107(1) reads in part:

> (d) Any person cited for an infraction under paragraph (a), unless required to appear before the county court, may:
>
> 1. Post a bond, which shall be equal in amount to the applicable civil penalty;

The bill amends paragraph (d) to add fees and court cost to the bond amount.

Paragraph (e) of s. 556.107(1) reads in part:

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

1. Pay the civil penalty, in lieu of appearance, either by mail or in person, within 10 days after the date of receiving the citation;

The bill amends paragraph (e) to add fees and court cost to the civil penalty.

Paragraph (f) of s. 556.107(1) reads:

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

The bill amends paragraph (f) to add court cost to the civil penalty.

The bill creates paragraph (i) in s. 556.107(1) to provide that the SSOCOF may, at its own expense retain legal representation as assistance in county court proceedings pertaining to citations issued under this section. SSOCOF may appear in infraction cases appealed to the circuit court, and the appellant in such appeals shall timely notify SSOCOF of appeals under this section.

Section 556.107(2) reads in part:

(2) MISDEMEANORS.—Any person who knowingly and willfully removes or otherwise destroys the valid stakes or other valid physical markings described in s. 556.105(4)(b) and (c) used to mark the horizontal route of an underground facility commits a misdemeanor. . . For purposes of this subsection, stakes or other nonpermanent physical markings are considered valid for 20 calendar days. . .

The bill amends this section to extend information validity from 20 days to 30 days.

Section 8
Exemptions to the notification requirements are in s. 556.108. The bill amends s. 556.108(4)(b) to clarify that maintenance activities performed by a state agency and its employees when such activities are within the right-of-way of a public road are exempt from notification requirements if no mechanized equipment is used. Section 108(4)(c) is created to provide a hand digging exemption for excavators.

Section 9
This act shall take effect October 1, 2006.

C. SECTION DIRECTORY:

Section 1 Amends s. 556.101, F.S., relating to legislative intent.

Section 2 Amends s. 556.102(8), F.S, relating to obsolete language for small municipalities and amends the definition of "member operator."

Section 3 Amends s. 556.103(1), F.S., relating to obsolete language and the creation of a not-for-profit the corporation.

Section 4 Amends s. 556.104, F.S., relating to obsolete language.

Section 5 Amends s. 115.105, F.S., relating to procedures.

Section 6 Amends s. 556.106, F.S., relating to the liability of the member operator, excavator, and system.

Section 7 Amends s. 556.107, F.S., relating to violations.

Section 8 Amends s. 556.108(4), F.S., relating to exemptions.

Section 9 This act shall take effect October 1, 2006.

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:

   The fiscal impact to local government is indeterminate at this time due to the unknown number of citations law enforcement may issue.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill clarifies SSOCOF as the administering entity for the statewide one-call system. As such, the bill recognizes that SSOCOF is not required or permitted to locate or mark any underground facilities, and SSOCOF is not liable for the failure of any member operator to comply with the requirements of this Act Moreover, the bill exempts the one-call system from any requirement to initiate a positive response to an excavator when an excavator has not provided the system with a valid electronic address. The bill places the excavator responsible for verifying the system's positive response before beginning excavation. The excavator is also responsible for contacting a member operator, if it knows a member operator has an existing underground facility in the area, yet the facility is unmarked, and no positive response has been received by the system.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **0789**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Utilities & Telecommunications
2 Committee
3 Representative(s) Murzin offered the following:
4
5 **Amendment (with title amendment)**
6 Remove line(s) 425-500 and insert:
7 clerk shall be retained by the clerk for deposit into the fine
8 and forfeiture fund established pursuant to s. 142.01. Any
9 person who fails to appear or otherwise properly respond to a
10 citation issued pursuant to paragraph (d) shall, in addition to
11 the citation, be charged with the offense of failing to respond
12 to such citation and, upon conviction, commits ~~be guilty of~~ a
13 misdemeanor of the second degree, punishable as provided in s.
14 775.082 or s. 775.083. A written warning to this effect shall be
15 provided at the time any citation is issued pursuant to
16 paragraph (b).
17 (d) Any person cited for an infraction under paragraph
18 (a), unless required to appear before the county court, may:
19 1. Post a bond, which shall be equal in amount to the
20 applicable civil penalty, plus fees or court costs; or

21 2. Sign and accept a citation indicating a promise to
22 appear before the county court.
23
24 The person issuing the citation ~~officer~~ may indicate on the
25 citation the time and location of the scheduled hearing and
26 shall indicate the applicable civil penalty.
27 (e) Any person charged with a noncriminal infraction under
28 paragraph (a), unless required to appear before the county
29 court, may:
30 1. Pay the civil penalty plus fees and court costs, in
31 lieu of appearance, either by mail or in person, within 30 ~~10~~
32 days after the date of receiving the citation; or
33 2. Forfeit bond, if a bond has been posted, by not
34 appearing at the designated time and location.
35
36 If the person cited follows either of the above procedures, she
37 or he is ~~shall be~~ deemed to have admitted to committing the
38 infraction and to have waived the right to a hearing on the
39 issue of commission of the infraction. The ~~Such~~ admission may be
40 used as evidence in any other proceeding under this act.
41 (f) Any person electing to appear before the county court
42 or who is required to appear shall be deemed to have waived the
43 limitations on the civil penalty specified in paragraph (c). The
44 court, after a hearing, shall make a determination as to whether
45 an infraction has been committed. If the commission of an
46 infraction has been proven, the court may impose a civil penalty
47 not to exceed $5,000, plus court costs. In determining the
48 amount of the civil penalty, the court may consider previous
49 noncriminal infractions committed.

50 (g) At a hearing under this chapter, the commission of a
51 charged infraction must be proven by a preponderance of the
52 evidence.
53 (h) If a person is found by the hearing official to have
54 committed an infraction, the ~~such~~ person may appeal that finding
55 to the circuit court.
56 (i) Sunshine State One-Call of Florida, Inc., may, at its
57 own cost, retain an attorney to assist in the presentation of
58 relevant facts and law in the county court proceeding pertaining
59 to the citation issued under this section. The corporation may
60 also appear in any case appealed to the circuit court if a
61 county court finds that an infraction of the chapter was
62 committed. An appellant in the circuit court proceeding shall
63 timely notify the corporation of any appeal under this section.
64 (2) MISDEMEANORS.--Any person who knowingly and willfully
65 removes or otherwise destroys the valid stakes or other valid
66 physical markings described in s. 556.105(5)(b) ~~s. 556.105(4)(b)~~
67 and (c) used to mark the horizontal route of an underground
68 facility commits a misdemeanor of the second degree, punishable
69 as provided in s. 775.082 or s. 775.083. For purposes of this
70 subsection, stakes or other nonpermanent physical markings are
71 considered valid for 30 ~~20~~ calendar days after information is
72 provided to the system under s. 556.105(1)(c).
73 Section 8. Subsection (4) of section 556.108, Florida
74 Statutes, is amended to read:
75 556.108 Exemptions.--The notification requirements
76 provided in s. 556.105(1) do not apply to:
77 (4) Any excavation of 18 inches or less for:
78 (a) Surveying public or private property by surveyors or
79 mappers as defined in chapter 472 and services performed by a

80 pest control licensee under chapter 482, excluding marked
81 rights-of-way, marked easements, or permitted uses where marked,
82 if ~~provided~~ mechanized equipment is not used in the process of
83 such surveying or pest control services and the surveying or
84 pest control services are ~~is~~ performed in accordance with the
85 practice rules established under s. 472.027 or s. 482.051,
86 respectively; ~~or~~
87
88
89 ========== T I T L E A M E N D M E N T ==========
90 On line 40, after the semicolon, insert:
91 exempting pest control services under certain
92 circumstances;