

## CHAPTER 555

## OUTDOOR THEATERS

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**555.01 Purpose.**—The purpose of this chapter is to promote and ensure safe ingress and egress to and from public roads of vehicular traffic by preventing the creation of hazardous conditions and locations in the construction of outdoor theaters.

**History.**—s. 1, ch. 28085, 1953; s. 1, ch. 77-260; s. 227, ch. 79-400.

**555.02 Definition and scope.**—For the purpose of this chapter, an outdoor theater is a place of outdoor assembly used for the showing of plays, operas, motion pictures, and similar forms of entertainment in which the audience views the performance from self-propelled vehicles parked within the theater enclosure. The requirements of this chapter shall not apply to existing outdoor theaters, but shall apply only to outdoor theaters which may be constructed after June 2, 1953.

**History.**—s. 2, ch. 28085, 1953.

**555.03 Entrances and exits.**—All entrances and exits for outdoor theaters shall comply with the rules of the Department of Transportation for driveways from property abutting state highways and the following additional requirements:

(1) Not more than one entrance shall be provided for each access road, but each such entrance may be divided into two roadways and channelized to properly provide for vehicles turning right or left from the highway.

(2) That portion of an entrance or exit lying within a public road right-of-way shall comply with the regulations of the authority in charge of the maintenance of the roadway or, as a minimum, it shall comply with rules prescribed by the Department of Transportation.

(3) Not more than two exits shall be provided for each access highway, but such exits may be suitably channelized to provide for right and left turns to the highway, and not more than one traffic lane shall be permitted for each traffic lane on the highway available to vehicles leaving the theater.

(4) No entrance or exit on a state road of the primary state-maintained system located outside an incorporated city or town of this state shall be located within 500 feet of its intersection with another state road on the primary state-maintained system.

(5) Enclosures surrounding the theater portion of the property shall begin not less than 200 feet from the centerline of the nearest state road.

**History.**—s. 3, ch. 28085, 1953; ss. 23, 35, ch. 69-106; s. 2, ch. 77-260.

**555.04 Vehicle storage.**—Sufficient area shall be provided between the highway and the ramp area to provide storage space for vehicles equal to not less than 15 percent of the theater capacity, and of that storage space so provided not less than 5 percent of the theater capacity shall be provided between the highway and the ticket booth. In all cases, sufficient storage space shall be provided so that vehicles will not back on the traveled way of the highway. Storage area shall be calculated on the basis of 162 square feet per vehicle.

**History.**—s. 4, ch. 28085, 1953.

**555.05 Location of tower.**—The screen shall be so oriented that the picture is not visible from any existing major road. This requirement does not apply to towers already erected. For the purpose of defining a "major road," it shall be any road functionally classified as an arterial or collector road as designated by the Department of Transportation.

**History.**—s. 5, ch. 28085, 1953; ss. 23, 35, ch. 69-106; s. 2, ch. 73-326; s. 3, ch. 77-260.

**555.07 Lighting.**—All entrance and exit driveways shall be adequately lighted and properly marked to avoid congestion and confusion and shall remain lighted throughout the performance and until the audience has left the area.

**History.**—s. 7, ch. 28085, 1953.

**555.08 Qualifying certificate.**—From and after October 1, 1977, it shall be unlawful for the tax collectors of the several counties of the state to issue state and county occupational licenses to any persons applying for the required license to operate an outdoor theater when the theater was completed after October 1, 1977, unless and until proof of compliance with the applicable provisions of this chapter and the regulations of the agency maintaining the access road is furnished by tendering and exhibiting to such tax collector at the time of making such application a qualifying certificate duly issued by the maintaining agency proving such compliance with such regulations, which shall as a minimum be those prescribed by the Department of Transportation for state-maintained roads. A new qualifying certificate for an outdoor facility shall be issued only when changes have been made relating to the above provisions. As the issuing authority deems necessary, additional inspections of an outdoor theater to determine whether such theater is continuing to meet the requirements of this law shall be made. The issuing authority shall have the authority to revoke a qualifying certificate for noncompliance.

**History.**—s. 8, ch. 28085, 1953; ss. 23, 35, ch. 69-106; s. 4, ch. 77-260; s. 228, ch. 79-400.

## CHAPTER 556

## UNDERGROUND FACILITY DAMAGE PREVENTION AND SAFETY

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**556.101 Short title; legislative intent.—**

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

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

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

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

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

(c) Fund the cost of administration entirely and exclusively by assessed contributions from the member operators.

It is not the purpose of this act to create liability for negligence on the part of any operator of an underground facility who elects to not participate in the one-call notification system created by this act.

**History.**—s. 1, ch. 93-240.

**556.102 Definitions.—**As used in this act:

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

(2) "Business hours" means the hours of a day during which the toll-free telephone number is answered by a natural person.

(3) "Damage" means any impact upon or contact with, including, without limitation, penetrating, striking, scraping, displacing, or denting, however slight, the pro-

TECTIVE coating, housing, or other protective devices of any underground facility, or the removal or weakening of any lateral or vertical support from any underground facility, or the severance, partial or complete, of any underground facility.

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

(5) "Excavate" or "excavation" means any manmade cut, cavity, trench, or depression in the earth's surface, formed by removal of earth, intended to change the grade or level of land, or intended to penetrate or disturb the surface of the earth.

(6) "Excavator" or "excavating contractor" means any person performing excavation or demolition operations.

(7) "Member operator" means any person who furnishes or transports materials or services by means of an underground facility and who elects to participate as a member of the one-call notification center for any portion of the territory served by the person.

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

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

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

**History.**—s. 2, ch. 93-240; s. 2, ch. 94-132; s. 5, ch. 95-317.

**556.103 Creation of the corporation; establishment of the board of directors; authority of the board; annual report.—**

(1) The "Sunshine State One-Call of Florida, Inc." is hereby created as a not-for-profit corporation. Any operator of an underground facility in this state may be a member of the corporation and may use and participate in the system. The corporation shall be formed by June 1, 1993. The corporation shall administer the provisions of this act. The corporation shall exercise its powers through a board of directors established pursuant to this section.

(2) The membership of the corporation shall elect a board of directors to administer the system.

(3) The corporation, through the board of directors, shall have the authority to assess the member operators to fund the system.

(4) Beginning in 1994, the board of directors shall file with the Governor, not later than 60 days before the convening of each regular session of the Legislature, an annual progress report on the operation of the system.

**History.**—s. 3, ch. 93-240.

**556.104 One-call notification system.**—The corporation shall establish a one-call toll-free telephone notification system which shall be operational by June 1, 1994. Any person who furnishes or transports materials or services by means of an underground facility in this state may elect to participate as a member operator of the system. The purpose of the system is to receive notification of planned excavation or demolition activities and to notify member operators of such planned excavation or demolition activities. The system shall provide a single toll-free telephone number within this state which excavators can use to notify member operators of planned excavation or demolition activities.

**History.**—s. 4, ch. 93-240.

**556.105 Procedures.**—

(1)(a) Not less than 2 nor more than 5 business days before beginning any excavation or demolition, an excavator shall provide the following information through the system:

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

2. The name and telephone number of the representative for the excavator.

3. The county, the city or closest city, and the street address or the closest street, road, or intersection to the location where the excavation or demolition is to be performed, and the construction limits of the excavation or demolition.

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

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

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

7. The type of work to be done.

8. The approximate depth of the excavation.

(b) The excavator shall provide such information by calling the statewide toll-free number during business hours, as determined by the corporation, or by such other method as authorized by the corporation. Any notification received by the system at any time other than

during business hours shall be considered to be received at the beginning of the next business day.

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

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

(4) All member operators within the defined area of a proposed excavation or demolition shall be promptly notified through the system.

(5) If a member operator determines that a proposed excavation or demolition is in proximity to or in conflict with an underground facility of the operator, the operator shall identify the horizontal route to within 24 inches from the outer edge of either side of the underground facility by the use of stakes, paint, flags, or other suitable means within 48 hours, excluding days other than business days, after the time the notification is received. If the member operator is unable to respond within such time, the member operator shall communicate with the person making the request and negotiate a new schedule and time that is agreeable to, and should not unreasonably delay, the excavator.

(6)(a) An excavator shall avoid excavation in the area described in the notice given pursuant to subsection (1) until each member operator underground facility has been marked and located or until the excavator has been notified that no member operator has underground facilities in the area described in the notice, or for 48 hours, excluding days other than business days, after notification under the system, whichever occurs first. If a member operator has not located and marked its underground facilities within 48 hours, excluding days other than business days, after notification under the system, the excavator may proceed with the excavation, provided the excavator does so with reasonable care, and provided, further, that detection equipment or other acceptable means to locate underground facilities are used.

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

(7) A member operator which certifies that it does not have accurate information concerning the exact location of its underground facilities is exempt from the requirements of subsection (5), but shall provide the best available information to the excavator in order to comply with the requirements of this section. An excavator is not liable for any damage to an underground facility under the exemption in this subsection if the excava-

tion or demolition is performed with reasonable care and detection equipment or other acceptable means to locate underground facilities are used.

(8)(a) If extraordinary circumstances exist, a member operator shall notify the system of the member operator's inability to comply with this section. For the purposes of this section, "extraordinary circumstances" means circumstances other than normal operating conditions which exist and make it impractical for a member operator to comply with the provisions of this act. The system shall notify only those prospective excavators who make requests for notification after the member operator reported the member operator's inability to comply. The member operator is relieved of responsibility for compliance under the law during the period that the extraordinary circumstances exist and shall promptly notify the system when the extraordinary circumstances cease to exist.

(b) During the period that extraordinary circumstances exist, the system shall remain available to provide information to governmental agencies, member operators affected by the extraordinary circumstances, and member operators who can provide relief to the affected parties.

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

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

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

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

*History.—*s. 5, ch. 93-240.

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

(1) There is no liability on the part of, and no cause of action of any nature shall arise against, the board members of the corporation in their capacity as administrators of the system.

(2)(a) In the event any person violates s. 556.105(1) or (6), and subsequently, whether by himself or through his employees, contractors, subcontractors, or agents, performs an excavation or demolition which damages an underground facility of a member operator, it shall be rebuttably presumed that such person was negligent. Such person, if found liable, shall be liable for the total sum of the losses to all member operators involved as those costs are normally computed. Any damage for loss of revenue and loss of use shall not exceed \$500,000 per affected underground facility, except that revenues lost by a governmental member operator, which revenues are used to support payments on principal and interest on bonds, shall not be limited. Any liability of the state and its agencies and its subdivisions which arises out of this chapter shall be subject to the provisions of s. 768.28.

(b) If any excavator fails to discharge a duty imposed by the provisions of this act, such excavator, if found liable, shall be liable for the total sum of the losses to all parties involved as those costs are normally computed. Any damage for loss of revenue and loss of use shall not exceed \$500,000 per affected underground facility, except that revenues lost by a governmental member operator, which revenues are used to support payments on principal and interest on bonds, shall not be limited.

(c) Any liability of the state, its agencies, or its subdivisions which arises out of this act shall be subject to the provisions of s. 768.28.

(d) Obtaining information as to the location of an underground facility from the member operator as required by this act does not excuse any excavator from performing an excavation or demolition in a careful and prudent manner, based on accepted engineering and construction practices, nor does it excuse such excavator from liability for any damage or injury resulting from any excavation or demolition.

(e) When an excavator knows or should know of the presence of an underground facility, he shall make reasonable efforts to contact the person who owns or operates that facility prior to commencing an excavation or demolition, regardless of whether that person is a member operator.

(3) If, after receiving proper notice, a member operator fails to discharge a duty imposed by the provisions of this act and an underground facility of such member operator is damaged by an excavator who has complied with the provisions of this act, as a proximate result of the member operator's failure to discharge such duty, such excavator shall not be liable for such damage and the member operator, if found liable, shall be liable to such person for the total cost of any loss or injury to any person or damage to equipment resulting from the member operator's failure to comply with this act. Any damage for loss of revenue and loss of use shall not exceed \$500,000 per affected underground facility, except that revenues lost by a governmental member operator, which revenues are used to support payments on principal and interest on bonds, shall not be limited. The liability of governmental member operators shall be subject to limitations provided in chapter 768.

(4) If, after receiving proper notification, the system fails to discharge its duties, resulting in damage to an

underground facility, the system, if found liable, shall be liable to all parties, as defined in this act. Any damage for loss of revenue and loss of use shall not exceed \$500,000 per affected underground facility, except that revenues lost by a governmental member operator, which revenues are used to support payments on principal and interest on bonds, shall not be limited.

**History.**—s. 6, ch. 93-240.

#### **556.107 Penalties.—**

(1) Any excavator who knowingly and willfully violates any provision of this act may be assessed a civil penalty of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation during a 12-month period. Such penalties are in addition to any other civil penalties that may be imposed.

(2) Any person who knowingly and willfully removes or otherwise destroys the stakes or other physical markings used to mark the horizontal route of an underground facility commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) An action may be brought by the Attorney General, the state attorney, or the local or state agency which issued the permit to excavate for the enforcement of the civil penalty pursuant to this section. If any penalty is collected as a result of a civil suit brought by a state or local agency for the collection of such civil penalties, the penalty imposed shall be paid to the general fund of the agency. If more than one agency is involved in enforcement, the penalties imposed shall be apportioned among them by the court in a manner that will fairly offset the relative costs incurred by the state or local agencies, or both, in collecting such penalties.

**History.**—s. 7, ch. 93-240.

**556.108 Exemptions.—**The notification requirements provided in s. 556.105(1) do not apply to:

(1) Any excavation or demolition performed by the owner of single-family residential property when such excavation or demolition is made entirely on such land, provided there is no encroachment on any member operator's right-of-way, easement, or permitted use.

(2) Any excavation or demolition associated with normal agricultural or railroad activities, provided such activities are not performed on any operator's marked right-of-way, easement, or permitted use.

(3) Any excavation or demolition that occurs as the result of normal industrial activities, provided such activities are confined to the immediate secured property of the facility and the activities are not performed on any operator's marked right-of-way, easement, or permitted use. For the purposes of this act, the industrial activities are limited to the following list of Standard Industrial Classifications: Industry Group Numbers 141, 206, 242, 243, and 491, and Major Group Numbers 13, 26, 28, and 29, as published by the United States Office of Management and Budget in 1987.

(4) Any excavation of 18 inches or less for:

(a) Surveying public or private property by surveyors or mappers as defined in chapter 472, excluding marked rights-of-way, marked easements, or permitted uses where marked, provided mechanized equipment is not used in the process of such surveying and the sur-

veying is performed in accordance with the practice rules established under s. 472.027;

(b) Locating or protecting underground facilities, provided no mechanized equipment is used in the process of locating or protecting such underground facilities; or

(c) Extending underground facilities from an easement, right-of-way, or area of permitted use onto the four-family, three-family, two-family, or single-family residential property of the person to be served by such facilities, provided that, in the process of such extension, no mechanized equipment is used on any operator's marked right-of-way, easement, or permitted use.

**History.**—s. 8, ch. 93-240; s. 3, ch. 94-132.

#### **556.109 Emergency excavations or demolitions attempted; exception.—**

The provisions of this act do not apply to making an excavation or demolition during an emergency, provided the system or the member operator was notified at the earliest opportunity and all reasonable precautions had been taken to protect any underground facility. For the purposes of this act, "emergency" means any condition constituting a clear and present danger to life or property caused by the escape of any material or substance transported by means of an underground facility; any interruption of vital public service or communication caused by any break or defect in a member operator's underground facility; or, in the case of the State Highway System or streets or roads maintained by a political subdivision or underground facilities owned, operated, or maintained by a political subdivision, if the use of such highways, streets, roads, or underground facilities is, in the sole judgment of the Department of Highway Safety and Motor Vehicles, the Department of Transportation, or such political subdivision, impaired by an unforeseen occurrence which necessitates repair beginning immediately after such occurrence.

**History.**—s. 9, ch. 93-240.

#### **556.110 Costs assessed among member operators.—**

Member operators shall proportionately share the cost of operating the system.

**History.**—s. 10, ch. 93-240.

#### **556.111 Applicability to existing law.—**

Nothing in this act shall be construed to:

(1) Constitute the establishment or enlargement of any rights to the use of real property or create an interest therein for the placement, construction, repair, maintenance, relocation, or excavation or demolition of any underground facility;

(2) Waive any right of a party having an interest in real property to charge any fee for the use regarding such property; or

(3) Preempt a governmental member operator from reasonable regulation of its right-of-way.

**History.**—s. 11, ch. 93-240.