

Session 56

Ken Weldon

FL. Dept. of Transportation RDO

Impact of One Call Bill On Utility Locate Requirements

Topic Description

This is the second part of a two part presentation. It will be interactive between the speaker and audience.

Designers will learn about the impact that One Call Legislation (SS 556) has upon their design and RFP functions and in particular utility locate requirements. Other related discussion will be entertained as time permits.

Speaker Biography

Kenneth Weldon is a Registered Professional Engineer with over 35 years experience in public works. He served as a consultant and has been employed by city, county and state government. Responsibilities included major residential, commercial site, and transportation corridor design, including utilities, roadways, right of way, rail, traffic operations, signalization, bridge opening, scour, revetment, and drainage. Other duties performed have included land surveys, construction inspection, and serving as a Hillsborough County Engineer. He currently serves in the capacity of the Florida Department of Transportation State Utilities Engineer and has since 1996.

Welcome to One Call Issues!

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Internet:
Kenneth.Weldon@dot.state.fl.us

Kenneth E. Weldon, P.E.
State Utilities Engineer
Roadway Design Office

STATE OF FLORIDA
Florida Department Of Transportation
Haydon Burns Building
605 Suwannee Street, MS 32
Tallahassee, FL 32399-0450

TELEPHONE:
OFFICE: (850) 414-4364
SUNCOM: 994-4364
FAX: (850) 414-5261
SUNCOM FAX 994-5261

Three Issues To Be Addressed!

- 1. Is the FDOT required to comply with Statute 556 - The Underground Facility Damage Prevention and Safety Act?**
- 2. Is a Utility required to provide locates separate from Statute 556 and design services and without charge?**
- 3. What were the recent legislative changes and what are key scheduling issues in the law?**

**The answers to the first two
requirement questions are!**

IT DEPENDS!

**Because there are two scenarios to apply
the applicable laws to!**

- 1. When the FDOT has exclusive property rights!**
- 2. When the Utility has real property rights!**

Harmonizing Individual Rights

Two scenarios need to be addressed!

- **When Utilities Are Located Within FDOT R/W Limits By Permit Only.**
- **When The FDOT R/W Crosses Utility R/W Or Easements.**

NOTE: Subordination is a property use agreement and not a right to disregard a safety statute!

OBJECTIVE!

Damage Prevention With Minimal Schedule Impact Is Achieved Through Avoidance And Cooperation!

Utility responsibilities and FDOT commitments are contained in Rule 14-46.001, Utility Accommodation Manual & Permit.

Policy – Utility Avoidance when and where practical !

If avoidance can not be achieved and the FDOT incurs additional costs (I.E. construction of conflict structures), the cost is to be paid for by the Utility.

Issue 1 - One Call Compliance

1. Is the FDOT required to comply with Statute 556 - The Underground Facility Damage Prevention and Safety Act?

Issue 1 – One Call Compliance



Gov. Jeb Bush signed House Bill 789 (Chapter 556) into law, June 9, 2006, making revisions to the Underground Facility Damage Prevention and Safety Act, Chapter 556, effective October 1, 2006

Issue 1 – One Call Compliance

556.108 Exemptions

Are restricted to:

- 1. Limited depth**
- 2. Type and method of work, and**
- 3. Utility markings being available.**



Issue 1 – One Call Compliance

556.111 Applicability to existing law

**Limits application to Rule (FAC)
and property rights!**

If You Don't Have One Of These You Need To Get One:

Statute 556
The
Underground
Facility
Damage
Prevention &
Safety Act



COLOR CODE FOR MARKING UNDERGROUND UTILITY LINES	
	WHITE - Proposed excavation
	PINK - Temporary survey markings
	RED - Electric power lines, cables, conduit and lighting cables
	YELLOW - Gas, oil, steam, petroleum or gaseous materials
	ORANGE - Communication, alarm or signal lines, cables or conduit
	BLUE - Potable water
	PURPLE - Reclaimed water, irrigation and storm lines
	GREEN - Sewers and drain lines

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ONE CALL
o f f l o r i d a



The FDOT is Partnering with
SSSOC and requiring compliance
with SS 556 to the greatest extent
practical!

Issue 1 – One Call Compliance

**FDOT IMPLEMENTATION OF THE UNDERGROUND FACILITIES
DAMAGE PREVENTION AND SAFETY ACT, CHAPTER 556, FLORIDA STATUTES**

**“CLARIFICATION” FDOT IMPLEMENTATION OF THE UNDERGROUND FACILITIES
DAMAGE PREVENTION AND SAFETY ACT - CHAPTER 556, FLORIDA STATUTES**

APPROVED FOR DISTRIBUTION:

This direction is effective immediately and should be conveyed to all affected parties within or under contract to the FDOT.

Signature: Freddie Simmons, PE
Title: State Highway Engineer

Date: January 31, 2003
March 18, 2003

**OFFICERS TARGET UNLAWFUL DIGGING IN FLORIDA
PRESS RELEASE ----- FOR IMMEDIATE RELEASE**

For More Information, Contact:
Cheryl Ritter, Damage Prevention Manager
Sunshine State One Call of Florida, Inc.
(954) 389-7328 cheryl.ritter@mail.callsunshine.com

June 16, 2004

Issue 1 – One Call Compliance

- **Rule 14-46.001 (UAM)**
- **Policy (000-575-002 Utility
Accommodation When Utilities
Occupy Their Own Easements or
Property**

**The FDOT is not exempt compliance!
Certain FDOT activities and conditions may
preclude notification requirements but do
not diminish its responsibility or liability in
performing due diligence!**

Issue 1 – One Call Compliance

1. SS 556 will be complied with in its entirety on Non - 5 Year Work Program work activities and where the Utility has property interests.

2. On 5 Year Work Program Construction Projects every effort will be made to consider the normal SSOC business process identified in SS 556 and accommodate it to the greatest extent practical. BUT! The project schedule negotiations prevail!

Issue 2 – Locates & Design Services

What and when is the Utility obligated to provide utility locates and design services without charge?

The answer requires harmonizing two basic statute areas, regulatory and real property law!

Issue 2 – Locates & Design Services

The legal responsibilities as well as processes, criteria and standards are contained in:

FDOT Permit Law (Presumption of FDOT Ownership):

Statute 337.401, Use of right-of-way for utilities subject to regulation; permit; fees.

Statute 337.402, Damage to public road caused by utility

Statute 337.403, Relocation of utility; expenses

Statute 337.404, Removal or relocation of utility facilities, notice and order; court review

Real Estate Law:

Statute 337.273 (5), ...eminent domain..may include expected utility needs

Issue 2 – Locates & Design Services

CHAPTER 556 UNDERGROUND FACILITY DAMAGE PREVENTION AND SAFETY

556.102 Definitions.

556.105 Procedures.

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

556.107 Violations.

556.108 Exemptions.

556.111 Applicability to existing law

Issue 2 – Locates & Design Services

Utility Accommodation Manual - 11.2 Responsibility

The FDOT regards the determination of the location of existing utilities on FDOT R/W as a cooperative effort between the FDOT and the Utility.....

The FDOT may at its option initiate an actual survey using its own forces or under a design / surveying contract to accomplish the locates as a matter of expediency.....

It is the responsibility of the utility owner to provide up through a Quality Level “B” locate on request....

Issue 2 – Locates & Design Services

DIFFERENCES THAT MUST BE RECOGNIZED

Statute 337.401, Use of right-of-way for utilities subject to regulation; permit; - Utilities are required to comply with the following permit requirements exclusive of Statute 556:

9. It is agreed that in the event the relocation of said utilities are scheduled to be done simultaneously with the FDOT’s construction work, the Permittee will coordinate with the FDOT before proceeding and shall comply with all provisions of the law and the FDOT’s current UAM....

Issue 2 – Locates & Design Services

DIFFERENCES THAT MUST BE RECOGNIZED

Statute 337.401, Use of right-of-way for utilities subject to regulation; permit; - Utilities are required to comply with the following permit requirements exclusive of Statute 556:

15. For any excavation, construction, maintenance, or support activities performed by or on behalf of the FDOT, within its R/W, the Permittee may be required by the FDOT or its agents to perform the following activities physically expose or direct the exposure of underground facilities, provide any necessary support to facilities and/or cover aerial facilities as deemed necessary.

Issue 2 – Locates & Design Services

The FDOT by policy, permit provision number 15, and in concert with Section 556.112 (5) Design Services , has taken the following position:

Until a Consultant has been selected by the FDOT for providing services, the Utility may charge Consultants for Design Services.

Once a Consultant has been selected to provide services to the FDOT as an agent, then the Utility is obligated to provide Design Services to the same Consultant only for that project pursuant to the Utility's permit requirements.

Issue 2 – Locates & Design Services



FDOT Chapter 337 supersedes Chapter 556

As a service to its member utility operators and the FDOT, SSOCOF reminds utilities that the design service provisions of Chapter 556, Florida Statutes, the Underground Facility Damage Prevention and Safety Act do not supersede FDOT authority to regulate utility use of state road rights-of-way per Chapter 337, Florida Statutes.

Section 556.112 Design services - (5) states that: "This section shall not apply to any state agency, municipality, or county, or contractors, consultants, agents, or persons or firms acting under their authority, in the planning, preparing, or performance of work in their right-of-way. This section shall not limit or expand any existing law governing the process a state agency, municipality, or county uses to request design services from member operators or the responsibility for providing or paying for such services." SSOCOF requests that utility member operators direct any questions regarding FDOT regulatory authority to their own legal counsel.

Issue 3 – Changes & Key Issues



There are several significant changes including extending the life of a ticket to 30 days, eliminating the 5-day start work requirement and an increased ability for local code inspectors and code enforcement officers to enforce Chapter 556. It also is clarified that SSOCOF is not required or permitted to locate or mark any underground facilities.

Issue 3 – Changes & Key Issues

556.102 Definitions.--As used in this act:

NO CHANGE!

(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.

Issue 3 – Changes & Key Issues

556.105 Procedures.– CHANGE!

(1)(a) Not less than 2 full business days

(4)(c) beneath the waters of the state, the member operator shall identify the estimated horizontal route of the underground facility, within 10 business days,...

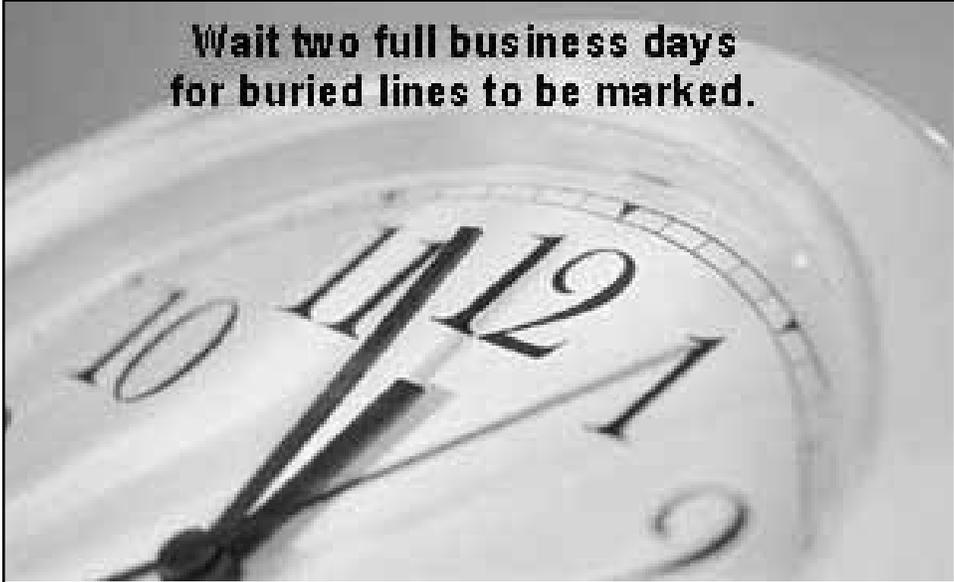
556.105 Procedures.– NO CHANGE! – BUT!

(4) state highway ownersare under no obligation to mark or locate their facilities.

Issue 3 – Changes & Key Issues

The FDOT is presently exploring the process of supplying locate information about its utilities such as water, sewer, and communications to prevent damage. This is a new and ongoing process. If you have a need for locates, contact the District Design Office.

**Wait two full business days
for buried lines to be marked.**



As more and more of Florida's counties are patrolled by officers, excavators are learning the hard way how to calculate two full business days.

Issue 3 – Changes & Key Issues

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

(2)(a) In the event any person violates s. 556.105(1) or (5), and subsequently, whether by himself or herself or through the person's employees, contractors, subcontractors, or agents, performs an excavation or demolition which damages an underground facility of a member operator, it shall be rebuttably presumed that such person was negligent. Such person, if found liable, shall be liable for the total sum of the losses to all member operators involved as those costs are normally computed. Any damage for loss of revenue and loss of use shall not exceed \$500,000 per affected underground facility, except that revenues lost by a governmental member operator, which revenues are used to support payments on principal and interest on bonds, shall not be limited.

Issue 3 – Changes & Key Issues

556.107 Violations.--

(1) NONCRIMINAL INFRACTIONS.–

(c) Any excavator or member operator who commits a noncriminal infraction under paragraph (a) may be required to appear before the county court. The civil penalty for any such infraction is \$250,

556.107 Violations.--

(1) NONCRIMINAL INFRACTIONS.–

(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.....

FINAL QUESTIONS?