

**Department of Legislative Services**  
Maryland General Assembly  
2011 Session

**FISCAL AND POLICY NOTE**

Senate Bill 575

(Senator Muse, *et al.*)

Finance

**Alexander L. Booker Child Protection Construction Site Safety Act**

This bill requires that signs be prominently displayed at all times at construction sites to warn people, especially children, of the dangers that exist at these locations. Construction sites adjacent to highways, schools, or areas where children are known to congregate must have illuminated barricades to prevent access to hazardous areas during nonwork hours and construction equipment when it is left unattended. The bill also establishes that motorized construction equipment must be equipped with safety features that meet certain specifications, and that such features must be activated when the machinery is not in use.

**Fiscal Summary**

**State Effect:** Special fund expenditures by the Department of Labor, Licensing, and Regulation (DLLR) increase by \$185,200 in FY 2012 to inspect construction sites in the State for compliance with the bill's provisions. The bill may increase the cost of individual State construction projects, but it does not affect total State funding for construction. However, fewer projects may receive funding due to the increase in construction costs. Potential increase in State expenditures to upgrade construction equipment owned and operated by the State. General fund revenues increase minimally due to additional fines assessed against owners of construction sites that do not comply with the bill's requirements.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
GF Revenue	-	-	-	-	\$0
SF Expenditure	\$185,200	\$228,200	\$239,400	\$251,300	\$263,900
GF/SF/FF Exp.	-	-	-	-	-
Net Effect	(\$185,200)	(\$228,200)	(\$239,400)	(\$251,300)	(\$263,900)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** Potential significant increase in local government expenditures to comply with the bill's provisions at construction sites. Local government revenues are not affected.

**Small Business Effect:** Potential meaningful.

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## Analysis

**Current Law:** The Division of Labor and Industry within DLLR administers the Maryland Occupational Safety and Health (MOSH) program. The requirements of the MOSH program are codified by the Maryland Occupational Safety and Health Act. In addition to enforcing the State MOSH law, DLLR enforces various safety standards for construction sites that are established by the federal Occupational Health and Safety Administration (OSHA). OSHA requires that construction sites (1) post red "danger" signs where an immediate hazard exists; (2) post yellow "caution" sign to warn against potential hazards; and (3) maintain safety instruction signs as necessary.

OSHA standards also state that employers must comply with the manufacturer's operating specifications and limitations for the operation of construction machinery. Rated load capacities, recommended operating speeds, and special hazard warnings or instructions must be posted conspicuously on all equipment; instructions or warnings must be visible to the operator of the machinery. All construction machinery at a site must be inspected routinely. All equipment (1) left unattended at night; (2) adjacent to a commonly used highway; or (3) adjacent to areas where construction work is in progress must be faceted with lights or reflectors, or be surrounded by barricades equipped with lights or reflectors. All construction machinery must be equipped with a parking brake; the parking brake must be engaged whenever the equipment is not in use.

The Commissioner of Labor and Industry may inspect a place of employment where work is performed and may investigate all pertinent devices, equipment, materials, and structures at the location. If the commissioner witnesses violations at a place of employment, the commissioner must issue a citation to document violations. First violations that are not considered serious typically do not carry civil penalties.

A civil penalty must be assessed against an employer when the commissioner determines that the employer has committed a serious violation. Under most circumstances, a violation is considered a serious violation when there is a substantial probability that death or serious physical harm could result from a condition that exists at a site. In general, civil penalties may not exceed \$7,000 per violation. A civil penalty of up to \$70,000 may be assessed for willful or repeated violations.

**Background:** In 2007, Alexander L. Booker, age 12, died after the motorized vehicle in which he was riding overturned at a construction site near Oxon Hill Road, in Prince George's County. Booker, and several other local youths, were able to access the vehicle on the construction site and are believed to have used a coin to start the vehicle.

**State Revenues:** DLLR advises that the agency's inspectors typically do not impose civil penalties unless they are required by law or the person has violated MOSH standards repeatedly or flagrantly. Assuming that DLLR continues to apply this standard for violations of the bill, general fund revenues increase minimally due to a limited number of violations resulting in civil penalties.

### **State Expenditures:**

#### *Enforcement of the Bill's Provisions*

DLLR advises that the bill establishes new inspection criteria for investigators within the Division of Labor and Industry. DLLR currently employs about 60 inspectors who enforce the MOSH program at various types of workplaces throughout the State. Funding for the salaries of these employees is allocated from the federal government to enforce the federal OSHA requirements. These inspectors typically work during regular business hours and do not generally conduct inspections after regular work hours or on weekends. Moreover, DLLR advises that, under federal guidelines, MOSH inspectors may only be assigned to inspect construction sites for the purpose of ensuring employee safety; because the bill does not specifically authorize the inspection of a construction site for this purpose, MOSH inspectors may not be assigned to enforce the bill. Thus, enforcement of the bill's provisions cannot be handled with existing resources.

DLLR requires four additional construction safety inspectors in order to effectively enforce the bill. Because of the bill's requirements, these individuals are required to (1) conduct construction site inspections after work hours and on weekends to ensure compliance; and (2) provide training and outreach to employers affected by the bill. Special fund expenditures increase by \$185,210 in fiscal 2012 to hire the four new safety inspectors, which reflects the bill's October 1, 2011 effective date. Legislative Services assumes that funding for the staff salaries will be appropriated through the Workers' Compensation Fund, which is a source of funding for other types of safety inspections in the State. This estimate reflects salaries, fringe benefits, and annual operating expenses for four construction site safety inspectors.

Positions	4
Salaries and Fringe Benefits	\$146,860
Other Operating Expenses	<u>38,350</u>
<b>Total FY 2012 DLLR Expenditures</b>	<b>\$185,210</b>

Future year expenditures reflect 4.4% annual salary increases, 3% employee turnover, and 1% annual increases in ongoing operating expenses.

*Effect on State Construction Projects and State-owned Construction Equipment*

It is not known how many State construction sites are affected by the bill. However, given the State's extensive involvement in construction projects, the effect on State operations and finances may be significant. The bill impacts State construction projects funded through the capital budget with bond proceeds. The total amount of bond funding available for construction projects is subject to a limit set by the Capital Debt Affordability Committee. State construction projects are typically undertaken by private contractors, and overhead costs for these contractors are expected to increase due to the bill. Thus, increases in the cost of construction projects may reduce the number of projects the State is able to undertake.

In addition, all State-owned construction equipment would need to be retrofitted with safety features in the manner specified by the bill. Thus, State expenditures increase due to equipment upgrades. The extent of such costs cannot be reliably estimated.

**Local Fiscal Effect:** Similar to the effect on the State, local government finances may increase significantly to comply with the bill's requirements for signage, barricades, and additional safety features for construction equipment. Local construction contracts may be impacted minimally or significantly, depending on the type and size of the project. Fiscal and operational impacts may be especially costly and burdensome for "linear" construction projects, such as sidewalks or bike paths, for barricades that may need to be set up around the perimeter of such sites. Increased costs for construction projects may also reduce the number of construction projects local governments are able to undertake due to the limited availability of funding for construction projects.

**Small Business Impact:** Potential meaningful increase in expenditures for small businesses that own construction machinery located on construction sites in the State. Such businesses must install safety features on their equipment and ensure that the equipment is compliant with the bill's provisions. Further, small businesses that manage construction sites in the State must ensure that the sites meet the bill's requirements.

## **Additional Information**

**Prior Introductions:** SB 985 of 2010 received a hearing in the Senate Finance Committee, but no further action was taken on the measure.

**Cross File:** None.

**Information Source(s):** Garrett and Montgomery counties; City of Baltimore; Maryland Department of Transportation; Department of General Services; Department of Labor, Licensing, and Regulation; Department of Legislative Services

**Fiscal Note History:** First Reader - March 2, 2011  
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