

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 100

(Senator Zirkin)

Judicial Proceedings

Civil Actions - Interstate Pipeline Liability Act

This bill establishes that the operation of an “interstate pipeline facility” is an ultrahazardous and abnormally dangerous activity. With the exception of an act of terrorism, an act of war, or deliberate sabotage by a person other than the “pipeline operator,” a pipeline operator is strictly liable for damages for any injury, death, or loss to person or property resulting from or occurring in connection with the operation of an interstate pipeline facility in the State. The bill has prospective application and does not apply to any cause of action arising before the bill’s October 1, 2019 effective date.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues if the State recovers damages it would be unable to recover absent the bill. The bill can be implemented with existing budgeted resources.

Local Effect: Potential significant increase in local revenues from recovered damages. The bill is not expected to materially affect local expenditures.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A provision in any contract or agreement that attempts or purports to waive the right to bring an action under the bill or reduce any liability for injury, death, or loss to person or property resulting from or occurring in connection with the operation of an interstate pipeline facility in the State is void as against public policy.

“Interstate pipeline” means a pipeline, or part of a pipeline, regulated under 49 U.S.C. Chapter 601 that is used in the transportation of oil or gas in interstate or foreign commerce. “Interstate pipeline facility” means new and existing pipe, rights-of-way, and any equipment, facility, or building used in the transportation of oil or gas in interstate or foreign commerce. “Pipeline operator” means a person who owns or operates an interstate pipeline facility. “Oil” means oil of any kind or in any form, including specified substances and products. “Gas” means any natural gas or other fluid hydrocarbon that is produced from a natural reservoir, including carbon dioxide and hydrogen sulfide.

The bill also exempts a judgment in an action for damages brought under the bill’s provisions from the limits on the amount of a supersedeas bond required to stay enforcement of a judgment during the appellate or discretionary review process under § 12-301.1 of the Courts and Judicial Proceedings Article.

Current Law:

Strict Liability – Abnormally Dangerous Activities

Strict liability is liability imposed on an individual based on the commission of a particular act, regardless of the individual’s negligence or intent to do harm. Abnormally dangerous activity and ultrahazardous activity, which are interchangeable terms, are types of activities to which strict liability applies. Abnormally dangerous activities are uncommon acts that carry a significant risk of serious harm to persons or property, even if the actor used reasonable care.

According to the *Restatement (Second) of Torts*, determining whether an activity is abnormally dangerous involves the following analysis: (1) whether the activity involves a high degree of risk of harm; (2) whether the harm associated with the activity is substantial; (3) the ability of the exercise of reasonable care to eliminate the risk of harm; (4) whether the activity is a common one; (5) whether the activity is appropriate to the location in which it occurs; and (6) whether the value of the activity to society outweighs the danger it presents. Dynamiting/blasting is an often-cited example of an abnormally dangerous activity.

Chapter 626 of 2018 established that an “offshore drilling activity” is an ultrahazardous and abnormally dangerous activity and that a person who causes a spill of oil or gas while engaged in an offshore drilling activity is strictly liable for damages for any injury, death, or loss to person or property that is caused by the spill.

Supersedeas Bonds

In general, an appellant may stay the enforcement of a civil judgment from which an appeal is taken by filing a supersedeas bond or alternative security with the clerk of the court. The bond or security may be filed at any time before satisfaction of the judgment, but the enforcement is stayed from the time the security is filed.

Supersedeas bonds are typically filed with and approved by the clerk of the court and must contain a surety, unless otherwise expressly provided. If a clerk refuses to approve a bond, or an adverse party objects in writing to the bond, the court may approve the bond after notice and a hearing, if necessary. Under Rule 1-402(d), a court may require an increase or decrease in the face amount of a bond for good cause shown. This rule reserves to the trial court the discretion to increase or decrease the face amount of the bond in an extraordinary case. *O'Donnell v. McGann*, 310 Md. 342 (1987).

However, pursuant to § 12-301.1 of the Courts and Judicial Proceedings Article (Chapter 225 of 2015), in a civil action filed on or after October 1, 2015, the amount of a supersedeas bond that must be posted in a civil action to stay enforcement of a judgment granting any type of relief during the entire course of all appeals or discretionary reviews may not exceed the lesser of \$100 million or the amount of the judgment for each appellant, regardless of the amount of the judgment appealed. These limits on the amount of a supersedeas bond apply notwithstanding any other law or court rule, except for situations involving dissipation or diversion of assets. A party seeking a stay of execution of a judgment may file a motion to reduce the amount of a supersedeas bond required to obtain the stay. Upon this motion or on its own motion, a court may reduce the amount of the supersedeas bond or may set other conditions to obtain the stay, with or without a bond, in the interest of justice or for good cause shown. Maryland Rule 8-423 contains procedural provisions pertaining to these bonds.

Regulation of Interstate Pipelines

In general, natural gas is brought into the State through the interstate transmission system and then allocated as needed through the *intrastate* natural gas distribution systems of the State's gas companies for customer use. The regulation of pipeline safety occurs at both the federal and state levels. Interstate natural gas transmission pipelines are under the regulatory authority of the Pipeline and Hazardous Materials Safety Administration (PHMSA) within the U.S. Department of Transportation. The State's Public Service Commission regulates *intrastate* pipeline safety.

The federal Natural Gas Pipeline Safety Act of 1968 requires the Secretary of the U.S. Department of Transportation to establish minimum federal safety standards for the transportation of gas and for pipeline facilities. It authorizes any state agency to adopt

additional or more stringent regulations that are not incompatible with the minimum federal standards. Those standards may affect the design, installation, inspection, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities. Standards affecting the design, installation, construction, initial inspection, and initial testing do not apply to preexisting pipeline facilities.

Background: In March 2017, the Maryland Department of the Environment (MDE) received an application for a wetlands and waterways permit from Columbia Gas, which is owned by TransCanada, to construct an eight-inch pipeline to carry fracked natural gas from Fulton County, Pennsylvania, to Morgan County, West Virginia, including a three-mile span underneath the Potomac River in Western Maryland. The request met with opposition from environmental groups and the public, due to the potential environmental impact of the project on drinking water and groundwater. One year later, MDE approved the permit, conditioned on requirements more stringent than federal standards, including additional precautions and safety measures.

In January 2019, the Board of Public Works voted unanimously to disapprove a necessary easement for the pipeline, despite a recommendation by the Department of Natural Resources that the easement be approved. The decision followed extensive public testimony, including a letter in opposition to the project signed by 65 members of the General Assembly. The letter noted that approval of the pipeline contradicts the spirit and reasoning behind Maryland's ban on fracking in 2017 and that supporting fossil fuel production is not aligned with the State's goal of increasing renewable energy production.

Federal Statistics

PHMSA is the primary federal agency responsible for ensuring that pipelines are safe, reliable, and environmentally sound. PHMSA oversees the development and implementation of regulations concerning pipeline construction, maintenance and operation, and shares these responsibilities with state regulators.

According to PHMSA, pipelines are one of the safest methods for transporting energy products. However, when pipeline incidents occur, they can present significant risks to the public and the environment. There were 29 "significant incidents" in Maryland from 2003 through 2014, totaling \$12.4 million in property damage and causing one fatality and 10 injuries.

State Revenues: General fund revenues may increase significantly if the bill allows the State to recover damages it would not be able to recover absent the bill. The bill imposes a strict liability standard in civil lawsuits for damages from the operation of an interstate pipeline facility. However, the extent to which this occurs cannot be reliably determined at this time and depends on whether (1) the State accrues damages from such activity; (2) the

State successfully litigates for damages under the bill's provisions; and (3) absent the bill, the State would not have been able to recover these damages or would have recovered a lower amount in damages.

Local Revenues: For the reasons stated above, local revenues may increase significantly for damages recovered as a result of the bill.

Small Business Effect: The bill has a meaningful impact on any small businesses that are able to recover damages as a result of the bill or any small businesses sued for damages as a result of the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of People's Counsel; Public Service Commission; U.S. Department of Transportation; *The Baltimore Sun*; *Chesapeake Bay Magazine*; *Black's Law Dictionary*; *Restatement (Second) of Torts*; Department of General Services; Department of Legislative Services

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