

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 785

(Senator McKay)

Judicial Proceedings

Public Nuisance - Common Carriers - Damage to Public Infrastructure

This bill prohibits a “common carrier” or an employee of the common carrier from causing damage to “public infrastructure” that necessitates the closure of the public infrastructure. A violation of this prohibition is a public nuisance, and the Attorney General (Office of the Attorney General (OAG) – for State public infrastructure) or the appropriate State’s Attorney (for local government public infrastructure) may bring an action against a common carrier for a public nuisance caused by a violation. OAG or a State’s Attorney may seek injunctive relief, declaratory relief, and compensatory damages for the cost of the repair or replacement of the affected infrastructure. A common carrier that commits a violation is liable to the State or local government for civil penalties of \$1,000 per day for each day the public nuisance continues until the public infrastructure is sufficiently repaired for public use or is replaced. OAG or a State’s Attorney may file an action against a common carrier under the bill at any time following the violation giving rise to the cause of action and until the public infrastructure is sufficiently repaired for public use or is replaced.

Fiscal Summary

State Effect: As discussed below, general fund revenues may increase from penalties imposed on common carriers. Transportation Trust Fund (TTF) finances may be impacted if the State is awarded and collects damages for repair or replacement of damaged public infrastructure. General fund expenditures may increase, at least minimally, for OAG to litigate cases.

Local Effect: Local revenues may increase from penalties imposed on common carriers. Local expenditures may decrease if a local jurisdiction is awarded and collects damages for repairs or replacement of damaged public infrastructure.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “Common carrier” means a person that is engaged in the public transportation of persons for hire by land, including, among other things, a motor bus company, a railroad company, a taxicab company, and a transportation network company. “Common carrier” does not include any entity owned by the State or a local government.

“Public infrastructure” means a bridge or highway owned, controlled, or maintained by the State or a county or municipal government.

Current Law: No statutory provisions explicitly address the specific cause of action established by the bill.

Government Regulation of Nuisances

The State has the authority to abate nuisances (generally, conditions that adversely affect others, through injury, discomfort, or other means) in the exercise of its police power and has authorized local governments to similarly guard against and address nuisances. There are various provisions, of varying applicability, throughout State statute addressing nuisances and their abatement.

Public Nuisance – Torts

According to § 821B of the Restatement (Second) of Torts, a public nuisance is an unreasonable interference with a right common to the general public. The following are examples of factors in a public nuisance claim: whether the conduct involves a significant interference with the public health, public safety, or public convenience; whether the conduct is proscribed by statute or regulation; and whether the conduct is of a continuing nature or has produced a permanent or long-lasting effect, and, as the actor knows or has reason to know, has a significant effect upon the public right.

State Fiscal Effect: The circumstances under which the bill applies, which then determine the magnitude of the bill’s fiscal impact, are unpredictable and cannot be reliably estimated in advance. However, should such applicable events occur, general fund revenues may increase from penalties imposed on common carriers; TTF finances may also be impacted if the State recoups costs for repair or replacement of public infrastructure damaged by a common carrier.

Furthermore, OAG advises that its Civil Division cannot accommodate additional litigation under the bill. Thus, if applicable circumstances arise and OAG chooses to file suit, the office likely incurs litigation costs and may require additional personnel to handle these claims.

Local Fiscal Effect: Local revenues may increase from penalties imposed on common carriers. The bill may also reduce local expenditures for repairs to damaged infrastructure. For example, Charles County generally advises that currently, if the common carrier's insurance limits are not enough or have been exhausted from the incident, the county is required to subsidize the funding to rebuild the infrastructure. However, the county is unable to determine the amount of savings the bill may provide because the frequency of occurrences of damage to county infrastructure from a common carrier is unknown.

Small Business Effect: The bill may have a meaningful effect on small business common carriers that are sued by the State or a local jurisdiction under the bill and/or are subject to civil penalties.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 1126 (Delegate Buckel) - Judiciary and Economic Matters.

Information Source(s): Baltimore, Charles, Garrett, and Howard counties; Maryland Municipal League; towns of Bel Air and Leonardtown; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland Department of Transportation; Department of Legislative Services

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Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510