

Department of Legislative Services
Maryland General Assembly
2001 Session

FISCAL NOTE
Revised

Senate Bill 564 (Senator Colburn)
Finance

Public Utilities - Underground Facilities - Liability for Excavation or Demolition
Damages

This bill provides that if an underground facility is damaged by a person that fails to comply with statutory requirements regarding excavation or demolition near underground facilities, the person is deemed negligent and is liable to the owner for the total cost of repair of the underground facility, unless the owner has failed to become an “owner-member” pursuant to statute.

The bill also provides that if an underground facility is damaged by a person who is in compliance with statutory requirements and the owner has failed to become an owner-member, the person is not liable to the owner for the cost of repair of the underground facility, and the owner is liable for any repairs or restoration of property damaged by the excavation or demolition. This provision may not be construed to interfere with the right of a third party to recover damages arising out of the excavation or demolition.

The bill may not be applied to any cause of action for damages to an underground facility arising before the bill’s June 1, 2001 effective date.

Fiscal Summary

State Effect: It is expected that the bill would not significantly impact governmental operations or finances.

Local Effect: It is expected that the bill would not significantly impact governmental operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Current Law: A person that follows statutory requirements regarding excavation or demolition near underground facilities is not excused from performing an excavation or demolition in a careful and prudent manner, and is not excused from liability for damages or injury that results from the excavation or demolition. If an underground facility is damaged by a person that fails to comply with statutory requirements regarding underground facilities, the person is deemed negligent and is liable to the owner for the total cost of repair of the underground facility.

Background: A one-call system is a communications network in the State that allows a person to telephone a one-number utility protection system. An owner is an entity that owns or operates an underground facility and has the right to bury an underground utility. The bill defines “owner-member” as an owner that participates as a member in a one-call system.

A person that intends to perform an excavation or demolition must notify, either directly or through the one-call system, each owner in advance. An owner must timely notify the excavator if the proposed excavation or demolition is within a certain proximity to an underground facility and mark the location of the underground facility.

State Fiscal Effect: The bill would limit the liability of a person that damages underground facilities due to excavation or demolition under certain circumstances. To the extent that the State is involved in such a situation as an excavator or owner, State finances could be affected by the bill. The precise fiscal effect of the bill on the State cannot be reliably estimated, but it is believed that any impact would not be significant.

Local Fiscal Effect: To the extent that local governments are involved in situations where underground facilities are damaged due to excavation or demolition, local government finances could be affected by the bill. The precise fiscal effect of the bill on local governments cannot be reliably estimated, but it is believed that any impact would not be significant.

Small Business Effect: To the extent that small businesses are involved in situations where underground facilities are damaged due to excavation or demolition, small business finances could be affected by the bill. The precise fiscal effect of the bill on small businesses cannot be reliably estimated.

Additional Information

Prior Introductions: A similar bill, SB 480, was passed by the 2000 General Assembly but was vetoed by the Governor for policy reasons. In his veto message, the Governor stated that the bill may have unintended consequences in that it arguably shields a negligent contractor for property damages caused to third parties such as homeowners and businesses.

Cross File: None.

Information Source(s): Public Service Commission, Department of Legislative Services

Fiscal Note History: First Reader – March 12, 2001
jm/jr Revised – Senate Third Reader – March 23, 2001

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