

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1146
Economic Matters

(Delegate Barve)

Judicial Proceedings

Vehicle Laws - Utility Emergencies - Incidental Drivers

This bill specifies that maximum hours-of-service (HOS) regulations do not apply to incidental drivers during a utility emergency if the utility company has pre-filed a utility emergency response notification plan and an incidental driver safety plan. The bill authorizes a utility company to reply to a utility emergency prior to the declaration of an emergency by the Secretary of Transportation.

Fiscal Summary

State Effect: None. The bill would not directly affect governmental operations or finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: A utility company is defined as an electric, gas, telephone, or cable company or a water or sewer facility. An incidental driver is an individual:

- who is employed by, contracts with, or is employed by a person who contracts with a utility company;
- whose primary employment is not as a driver of a motor vehicle; and

- who drives a motor vehicle only as an incidental part of the employment or contractual agreement with the utility company.

The emergency response notification plan must include the utility company's procedures for notifying the Secretary or Secretary's designee within four hours after the utility company responds to the emergency. The incidental driver safety plan must include procedures to ensure that an incidental driver will not drive during a utility emergency unless the driver has had sufficient rest to drive safely.

Upon notification by a utility company that it is responding to a utility emergency, the utility company must indicate the cause, nature, and area of the emergency and the duration of its expected response. The Secretary or Secretary's designee reviews the submission to determine whether a utility emergency existed at the time of the utility company's response, and if so, declares that a utility emergency existed starting at that time. Otherwise, the utility company is notified that it may not waive HOS regulations for incidental drivers.

A utility emergency to which a utility company responds may last for up to five days after the utility company provides notice and may be renewed.

The bill extends the period of time a transportation emergency can be in effect before requiring renewal from three days to five days.

Current Law: The State Highway Administration (SHA) may adopt rules and regulations as necessary for the safe operation of vehicles that:

- exceed a gross vehicle weight rating of 10,000 pounds;
- are required to be marked or placarded for the transportation of hazardous materials; or
- are designed to transport 16 or more passengers including the driver over State highways.

These only apply to intrastate motor carrier transportation. Any rule or regulation must duplicate or be consistent with the Federal Motor Carrier Safety Regulations contained in the Code of Federal Regulations, Parts 390 through 399. These regulations cannot limit a driver's time or hours on duty if:

- the driver operates only within a 150-air-mile radius of the driver's normal work reporting location;
- the driver returns to the driver's normal work reporting location;

- the driver is released from work within a period of 16 consecutive hours, not more than 12 of which are dedicated to driving, and is given at least 8 consecutive hours off duty; and
- regardless of the number of employers using the driver's services, the driver:
 - has been on duty no more than 70 hours in 7 consecutive days if the employing motor carrier does not operate motor vehicles every day; or
 - has been on duty no more than 80 hours in 8 consecutive days if the employing motor carrier does operate motor vehicles every day.

A utility emergency is an emergency that disrupts, severs, or has the potential to disrupt or sever gas, electric, telephone, water, sewer, or other utility service to: (1) any large number of residential or commercial customers in an area or areas of the State; or (2) any public or private institutions in an area or areas of the State so that the public health, welfare, or safety is or may be threatened as a result. A transportation or utility emergency declared by the Secretary cannot last more than three days unless renewed by the Governor.

During a utility emergency, the Secretary of Transportation must waive the specified maximum HOS time limits for all interstate and intrastate drivers providing direct assistance in restoring utility services affected by a utility emergency. This waiver must include the hours-of-duty status accrued by drivers providing direct assistance in restoring utility service or to drivers of emergency vehicles providing direct assistance, under the direction of State and local governments, to clear and open State highways and local streets and roads.

Background: HOS regulations for interstate transportation are promulgated by the Federal Motor Carrier Safety Administration (FMCSA) to ensure that commercial vehicle drivers are able to safely continue to work. Driving is a fatiguing activity, and unsafe commercial drivers pose a grave danger to themselves and other motor vehicles. Time limits are imposed so that owners of hauling companies and individuals shipping goods by truck do not have drivers work past the ability to be able to properly operate the vehicle.

The current federal HOS rules (under Part 395) allow utility service drivers to drive 11 hours after 10 consecutive hours off-duty. Also, drivers may not drive beyond the fourteenth hour after coming on duty, following 10 hours off duty. Drivers may not drive after 60 hours on duty within a consecutive 7-day period or 70 hours on duty in a consecutive 8-day period. However, drivers may restart a 7 or 8 consecutive day period after taking 24 or more consecutive hours off duty. The federal HOS rules will remain in

effect until September 30, 2005, or until FMCSA revises them, which it intends to do this year.

Although events such as Hurricane Isabel certainly qualify as utility emergencies, utility emergencies usually are events such as a severe cold front that forces utility companies to bring in items such as propane or gas from an extended distance away, such as Illinois or Louisiana or a local incident that causes a utility to fall behind in delivery due to local conditions, requiring the utility to work past the HOS requirements to restore service. During that time, the utility asks the Maryland Department of Transportation (MDOT) to declare a utility emergency to waive the HOS requirements for its drivers as the drivers must drive numerous hours. MDOT advises that this occurs approximately 30 times a year.

Additional Information

Prior Introductions: None.

Cross File: SB 754 (Senator Garagiola) – Judicial Proceedings.

Information Source(s): Public Service Commission, Maryland Energy Administration, Maryland Department of Transportation, Department of Legislative Services

Fiscal Note History: First Reader - February 28, 2005
nm/ljm Revised - House Third Reader - March 29, 2005

Analysis by: Nora C. McArdle

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