

Department of Legislative Services
 Maryland General Assembly
 2010 Session

FISCAL AND POLICY NOTE

House Bill 1290 (Delegate Davis)
 Economic Matters

Underground Facilities - Damage Prevention

This bill alters provisions of State law regulating the protection of underground facilities. The definition of “underground” facilities is expanded to include stormwater drains beginning on January 1, 2012, and the definition of “owner” is expanded to include a unit of the State. The bill establishes a Maryland Underground Facilities Damage Prevention Authority to hear complaints and assess civil penalties for violations of State law protecting underground facilities. The bill increases specified civil penalties and establishes a special fund to cover the costs of public education and outreach programs and to develop safety procedures. Local governments are no longer allowed to charge a fee to recover the cost of marking underground facilities.

Fiscal Summary

State Effect: Special fund expenditures increase by \$1.6 million in FY 2011 for the State Highway Administration (SHA) to begin marking underground facilities. Future year expenditures reflect hiring of additional employees, inflation, and annualization. Expenditures (all funds) may also increase for other State agencies to mark underground facilities. Nonbudgeted revenues increase from fees and grants and nonbudgeted expenditures increase to cover administrative costs of the authority. General fund expenditures may increase if nonbudgeted revenues are insufficient to cover such costs. General fund revenues from civil penalties may decrease minimally, while special fund revenues as a result of civil penalties assessed by the authority increase.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
GF Revenue	(-)	(-)	(-)	(-)	(-)
SF Revenue	-	-	-	-	-
NonBud Rev.	-	-	-	-	-
GF Expenditure	-	-	-	-	-
SF Expenditure	\$1,568,600	\$2,679,200	\$2,775,100	\$2,912,900	\$3,057,900
GF/SF/FF Exp.	-	-	-	-	-
NonBud Exp.	-	-	-	-	-
Net Effect	(\$1,568,600)	(\$2,679,200)	(\$2,775,100)	(\$2,912,900)	(\$3,057,900)

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

Local Effect: Potential significant reduction in revenues for certain local governments that currently collect fees for marking underground facilities. Potential significant increase in expenditures for local governments to determine the locations of existing storm drains and to provide marking services for these underground facilities. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Underground Facilities Safety and Marking Procedures

Owners of underground facilities, which includes units of the State under the bill, must become members of the one-call system and upon notice of a planned excavation or demolition, must provide for the marking of its underground facilities. The bill prohibits an owner of an underground facility from charging a fee for marking facilities.

Beginning on January 1, 2012, the definition of “underground facility” is expanded to include stormwater drains. A person that owns stormwater drains in the State must make a good faith effort to identify the location of its stormwater drains prior to that date.

A person that intends to perform an excavation or demolition in the State must initiate a ticket request by notifying the one-call system via telephone or through initiating an interactive Internet ticket. A ticket is valid for 12 business days after the day the ticket is transmitted to a member-owner. The bill establishes procedures for situations where a facilities owner is unable to mark an underground facility within the required time period under current law (two business days); the bill allows a facilities owner and a person seeking to excavate to determine a mutually agreeable arrangement for having the facilities marked in those cases.

The bill alters the specific practices and procedures used in marking underground facility locations, specifying that colors used in marking must adhere to certain national standards. Additionally, marking practices specific to Montgomery County under current law are made to equal the statewide requirements. The bill adds the requirement that the owner of a private residence notify the one-call system if the use of machinery is required for the excavation or demolition and further clarifies that a person performing an emergency excavation or demolition must notify the one-call system so that owner-members can be informed of the emergency excavation. A person that abuses the

emergency excavation and demolition procedures is subject to civil penalties specified in the bill.

A designer, which includes an architect or engineer who prepares a drawing for a project that may require excavation or demolition, may initiate a ticket request to the one-call system. A designer may make only one ticket request for a single project and must indicate that the request is for design purposes only. A facilities owner must provide a designer of the type and approximate location of underground facilities through the use of field locates, maps, surveys, installation records, or other similar means. A facilities owner cannot be held liable for inaccurate information provided to a designer.

Creation of a Damage Prevention Authority

The Maryland Underground Facilities Damage Prevention Authority is established to hear complaints stemming from violations of laws protecting underground facilities. The authority may administer a hearing, compel attendance of a witness, and may assess a civil penalty or reach a settlement. The authority is authorized to establish reasonable complaint filing fees and administrative fees for complaints heard.

The bill increases the amount of a civil penalty that may be imposed for violating the requirement to provide notice prior to excavation or demolition from \$1,000 to \$2,500 for a first offense and from \$1,000 to \$5,000 for each subsequent offense. For other violations, a civil penalty may not exceed \$2,500. These civil penalties are assessed by the authority. The bill establishes various limitations and requirements relating to assessing civil penalties, however. Instead of or in addition to civil penalties, the authority is authorized to take other actions to limit damages to underground facilities.

A person aggrieved by a decision may request judicial review by the circuit court. The bill establishes various provisions relating to hearings and judicial review, including that the cost of judicial review must be paid by the requesting party.

If a proceeding has not been initiated before the authority, a court may still assess a civil penalty of up to 10 times the cost of repairs, as provided under current law.

The authority has nine members which are selected by the Governor from lists submitted by various industry participants. The terms of members are staggered and members may not receive compensation for serving as a member or reimbursement for expenses. The authority may adopt bylaws and is required to adopt a code of conduct for its members. The Governor may remove a member for misconduct. The authority may employ a staff, sue and be sued, maintain an office at a place it designates, maintain facilities for the purpose of holding hearings, and accept a grant, loan, or any other assistance from any public or private source. It is the intent of the General Assembly that the authority not be

funded by appropriations from the State budget. However, the authority may obtain funding for its operational expenses from a federal or State grant; any filing and administrative fees, and any other source.

The bill establishes a Maryland Underground Facilities Damage Prevention Education and Outreach Fund to cover the costs of public education and outreach programs and the development of safety procedures to prevent damage to underground facilities. The special fund is administered by the authority, held by the Treasurer, and accounted for by the Comptroller. It consists of civil penalties, investment earnings, and any other monies paid into the fund. The fund may be used to make grants to local governments or private entities consistent with the purposes of the fund.

Beginning January 1, 2012, the authority must report annually to the Governor and the General Assembly on its activities and recommendations.

Current Law: There is a one-call system in the State. The owners of all underground facilities in the State must become owner-members of the one-call system. This requirement applies to public utilities, a telecommunications corporation, a cable television corporation, a political subdivision, a municipal corporation, a steam heating company, and an authority. Underground facilities include pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those portions of holes below ground. Underground facilities do not include stormwater drains.

To prevent negligent damage of underground facilities a person may not begin an excavation or demolition unless all underground facilities in the vicinity of the planned excavation or demolition have been marked or the person has received notice from each owner or the one-call system that marking is unnecessary. A person must notify the one-call system, by telephone, of a planned excavation or demolition at least 48 hours, but not more than 10 working days before starting an excavation or demolition. If the excavation or demolition did not begin within 10 working days or the work is expanded beyond its original location, a person must provide a second notification to the one-call system.

A person who does not comply with required one-call system notification may be subject to a civil penalty of up to \$1,000 or 10 times the cost of repairs. The requirement to notify the one-call system prior to excavation or demolition does not apply when the planned work is performed by an owner of a private residence entirely on land on which the private residence of the owner is located. Penalties imposed for violation of underground facilities safety laws are paid to the general fund.

A political subdivision or a municipal corporation may charge, assess, or collect from a person a one-time initial marking fee in an amount not exceeding \$35 for reimbursement of expenses incurred. If a re-marking is requested, the fee may not exceed \$15.

Background: A one-call system is a communications network in the State that allows a person who intends to commence an excavation or demolition to provide notice to underground facilities owners who may have underground pipes, wires, or other facilities located in the vicinity of the planned excavation. A one-call system takes a request and creates a ticket which is forwarded to owners of underground facilities that may be affected. The owners of these facilities review the request and determine if they have facilities in the vicinity of the planned excavation. If they do have facilities in the area, they must mark the approximate location of the underground facilities.

The only one-call system currently operating in Maryland is Miss Utility. Miss Utility operates call centers that coordinate the marking of underground facilities for Delaware, the District of Columbia, and Maryland. The operating costs of Miss Utility are paid by member-owners through a fee on each ticket request. Miss Utility also administers a \$0.10 surcharge per ticket request which is dedicated to public awareness campaigns for underground facilities safety. Miss Utility, the one-call system operator, sent over 3.7 million tickets to member-owners in 2009.

The Federal Pipeline Inspection, Protection, Enforcement, Safety (PIPES) Act established nine elements of pipeline safety. These elements include:

- participation of stakeholders in the development and implementation of methods for establishing effective communications from receipt of an excavation notification until successful completion of the excavation;
- a process for fostering and ensuring support and partnership of all stakeholders in safely locating underground facilities;
- a process for reviewing the adequacy of a pipeline operator's internal performance measures regarding locating services and quality assurance programs;
- ensuring that all stakeholders, including a one-call system operator and the enforcing agency, have implemented training programs for employees;
- a process for fostering and ensuring active participation by all stakeholders in public education for damage prevention activities;
- a process for resolving disputes that defines the state authority's role as a partner and facilitator;

- enforcement of state damage prevention laws and regulations;
- a process of fostering and promoting the use of technologies that may enhance communications, underground facilities locating capacity, and gathering and analyzing information about the accuracy and effectiveness of locating programs; and
- a process for review and analysis of the effectiveness of each program element.

State Fiscal Effect:

Fiscal Impact on Existing Units of State Government

Units of State government that are currently member-owners of the one-call system include the Department of Natural Resources (DNR), Maryland Environmental Service, and certain State universities. SHA, the Maryland Transportation Authority (MDTA), and the Maryland Transit Administration (MTA) are not currently member-owners. If an individual seeks to perform an excavation or demolition in State highway rights-of-way, the individual must be issued a permit by SHA.

Assuming that SHA will be required to become a member-owner of the one-call system, Special fund expenditures from the Transportation Trust Fund increase by \$1.6 million in fiscal 2011, which accounts for the bill’s October 1, 2010 effective date. This estimate reflects the cost of hiring 3 call center managers, 15 telephone operators, and 15 location technicians to respond to requests to mark underground facilities, determine if facilities are in the vicinity of a planned excavation, and mark underground facilities within SHA rights-of-way when required. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	33
Salaries and Fringe Benefits	\$1,452,400
Equipment	105,000
Operating Expenses	<u>11,200</u>
SHA FY 2011 State Expenditures	\$1,568,600

However, the Department of Legislative Services advises that a significant portion of the costs associated with this bill will be incurred in later fiscal years, as stormwater drains will not be required to be marked until January 1, 2012. In fiscal 2012, expenditures will further increase for hiring an additional call center manager, five telephone operators, and five location technicians. Annual out-year expenditures may average \$2.7 million

beginning in fiscal 2012. Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover; and 1% annual increases in ongoing operating expenses.

MDTA and MTA own a considerable amount of underground infrastructure throughout the State. If they are required to mark underground facilities under the bill, expenditures may increase significantly.

Other State agencies may also become subject to these laws as a result of the bill and, therefore, incur potentially significant expenditures to mark underground facilities.

Creation of an Underground Facilities Damage Prevention Authority

The bill states that it is the intent of the General Assembly that the authority created under the bill not be funded by appropriations from the State budget. Members of the authority are prohibited from receiving compensation or reimbursement of expenses, so any additional staffing expenses necessary for the authority would be dependent on the number of complaints filed and the number of hearings held to resolve complaints. The bill allows operating expenses of the authority to be paid from filing and administrative fees assessed on complaints filed, federal grants, State grants, or other sources. Since the bill specifies that the intent is for the authority not to receive State appropriations, and because the special fund created under the bill can only be used for promotion of underground facilities safety, it is assumed that any operational expense of the authority cannot be paid with special funds and are treated as nonbudgeted.

Minimum annual operating expenses of the authority will total approximately \$75,000 annually to hire one administrative officer to receive complaints and coordinate hearings, and to rent facilities for hearings. Although Legislative Services assumes that the operating expenses of the authority are treated as nonbudgeted, the bill does not specifically authorize the authority to impose fees other than on complaints filed, so although these fees may partially offset the administrative costs, additional funds will be required. To the extent other sources are not sufficient to cover administrative expenses, it is assumed general funds would be required. The amount of State funding that may be required to support the authority will depend not only on the availability of other funds, but also the amount of administrative duties performed by members of the authority and whether or not facilities for hearings are made available by State agencies or from other sources, all of which is unclear.

Civil penalties, fees, and revenues from other sources are paid into the special fund under the bill. As a result, special fund revenues increase, and special fund expenditures increase for promoting underground facilities safety awareness. Overall finances of the special fund are unknown.

Civil Penalties

As noted above, under the bill, civil penalties paid for violations of the underground facilities safety law are paid to the newly created special fund instead of the general fund, as required under current law. Thus, general fund revenues from civil penalties decrease in fiscal 2011 and thereafter. The current level of civil penalties assessed is minimal; however, the creation of an authority may result in a significant increase in penalties assessed.

Local Expenditures: All counties and most municipalities in the State own stormwater drains. Local governments will be required to make an effort to determine the locations of these drains prior to January 1, 2012, and will be required to participate in the one-call system and upon notice of a planned excavation or demolition determine if stormwater drains are in the vicinity. If stormwater drains are in the vicinity of a planned excavation, the local government must physically mark the approximate location of stormwater drains at the site of the planned excavation.

Local Expenditures – Counties

The fiscal impact of the bill will vary greatly for each county. Some counties have indicated the bill will not significantly increase costs. Counties with well established public works programs that currently mark underground facilities may see an increase in workload that can be handled with existing resources; however, some counties have indicated that determining the location of all stormwater drains in each county cannot be completed at current staffing levels and will require a significant increase in expenditures. Additionally, the requirement that counties mark stormwater drains upon notice of the one-call system may increase the number of markings to a level where locates cannot be completed by existing staff in the required timeframe. As a result, many counties may require additional staff on an ongoing basis.

For example, Baltimore City advises that 10 additional customer service representatives will be needed to handle the volume of calls for obtaining the necessary information to create tickets and determine if a facility must be marked. Nine additional employees will be needed to mark stormwater drains.

Local Expenditures – Municipalities

Much like counties, the impact on municipal expenditures will vary greatly by jurisdiction. Maryland municipalities vary greatly in size, infrastructure, and the amount of staff employed to maintain facilities. Public works is generally the largest category of expenditures for municipal governments, and 58 of the 156 municipalities in the State are currently members of the one-call system. For those municipalities with established

procedures to provide for the marking of underground facilities, the requirement that stormwater drains be marked may increase workload and in some cases require additional staffing. Expenditures for municipalities that do not have full-time public works employees may increase significantly, as smaller municipalities may not have staff to receive notices from the one-call system, determine if a planned excavation or demolition will affect a stormwater drain, and mark stormwater drains when required.

Local Revenues: Under the bill, counties and municipalities are prohibited from charging a fee for reimbursement of expenses incurred by the local government to mark underground facilities. Marking fees are not currently widely charged by local governments that are underground facilities owners. However, Baltimore City estimates that it will receive at least \$4.6 million in local revenues from marking fees in fiscal 2010. Harford County estimates that revenues from marking fees may be reduced by \$119,000 under the bill. Baltimore County imposes marking fees in limited circumstances and estimates a loss of only \$10,000 in revenues annually.

Small Business Effect: Standardizing marking procedures statewide, creating an authority to assess penalties for violations, and increasing overall safety of underground facilities will benefit small businesses that perform excavations and demolitions. These businesses also benefit from prohibiting underground facilities owners from charging a marking fee. The bill also provides a meaningful benefit to architects and engineers by allowing them to have existing underground facilities marked during design.

Additional Information

Prior Introductions: None.

Cross File: Although SB 911 (Senator Astle) – Finance is identified as a cross file, it is different.

Information Source(s): Baltimore, Harford, Kent, Montgomery, and Worcester counties; Baltimore City; Maryland Department of Planning; Maryland Department of the Environment; Department of Natural Resources; Judiciary (Administrative Office of the Courts); Maryland Association of Counties; Maryland Miss Utility; Maryland Municipal League; Maryland Department of Transportation; Public Service Commission; Washington Suburban Sanitary Commission; Department of Legislative Services

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