

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 911

(Senator Astle, *et al.*)

Finance

Economic Matters

Underground Facilities - Damage Prevention

This bill alters provisions of State law regulating the protection of underground facilities. 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 penalties and establishes a special fund to cover the costs of public education and outreach programs and to develop safety procedures. Certain units of State government that are underground facilities owners may charge marking fees.

Fiscal Summary

State Effect: 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. Transportation Trust Fund (TTF) revenues increase by at least \$105,000 in FY 2011 and by \$140,000 annually thereafter, as the State Highway Administration (SHA) is allowed to charge marking fees; TTF revenues increase further from marking fees charged by the Maryland Transit Administration (MTA), and nonbudgeted revenues increase from marking fees charged by the Maryland Transportation Authority (MDTA). TTF expenditures from administrative fees paid by SHA increase by \$7,100 in FY 2011, and TTF and nonbudgeted expenditures increase for such fees paid by MTA and MDTA, respectively. Future year TTF expenditures reflect annualization.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
GF Revenue	(-)	(-)	(-)	(-)	(-)
SF Revenue	\$105,000	\$140,000	\$140,000	\$140,000	\$140,000
NonBud Rev.	-	-	-	-	-
GF Expenditure	-	-	-	-	-
SF Expenditure	\$7,100	\$8,800	\$8,800	\$8,800	\$8,800
NonBud Exp.	-	-	-	-	-
Net Effect	\$97,900	\$131,200	\$131,200	\$131,200	\$131,200

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

Local Effect: Minimal.

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 Maryland Department of Transportation (MDOT), its administrations, and MDTA must become members of the one-call system through a separate agreement.

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 an owner-member. The bill establishes procedures for situations where an owner-member is unable to mark an underground facility within the required time period under current law (two business days); the bill allows an owner-member and a person seeking to excavate to determine a mutually agreeable arrangement for having the facilities marked in those cases.

An individual that submits a ticket to the one-call system must indicate if the planned excavation is within rights-of-way of MDOT, its administrations, or MDTA and provide a permit or authorization number granted from that entity. The one-call system must send ticket requests that are within such rights-of-way to MDOT, its administrations, or MDTA so the facilities may be marked. MDOT, its administrations, or MDTA may charge up to \$35 for an initial marking and \$15 for a remarking for reimbursement for expenses incurred.

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, professional engineer, professional land surveyor, or licensed landscape architect 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 ticket request made by a designer may not be used for excavation or demolition. An owner-member 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. An owner-member 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 \$2,000 for a first offense and from \$1,000 to \$4,000 for each subsequent offense. For other violations, a civil penalty may not exceed \$2,000. 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, except under specified conditions.

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. Upon recommendation by the authority, the Governor may remove a member for

misconduct. The authority may employ a staff, 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. Employees and officials of the authority are State personnel under the Maryland Tort Claims Act.

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 for complaints heard by the authority, and any other source. The authority may exempt an individual from paying any complaint filing fee or administrative fee if the individual cannot afford to pay a fee. The authority may not impose a charge or assessment against any person other than for complaints filed, directly or indirectly, to obtain funding for its operational expenses.

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 and 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 owner-members of the one-call system include the Department of Natural Resources (DNR), Maryland Environmental Service, and certain State universities. SHA, MTA, and MDTA are not currently owner-members. 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.

Under the bill, SHA, MTA, and MDTA are all authorized to charge marking fees for reimbursement of expenses incurred in marking their underground facilities. Accordingly, TTF and nonbudgeted revenues increase from marking fees. Although the number of utility locates performed by MTA and MDTA are unknown, SHA advises that it performs approximately 4,000 utility locates annually. As a result, special fund revenues to TTF increase by at least \$105,000 in fiscal 2011, taking into account the bill's October 1, 2010 effective date. Future year revenues increase by at least \$140,000 annually. Because owner-members have to pay a \$1.19 fee for each ticket request received through the one-call system, assuming SHA receives twice as many ticket requests as it is required to locate, TTF expenditures increase by an estimated \$7,140 in fiscal 2011 and by \$9,520 annually thereafter. TTF expenditures increase further, as do nonbudgeted expenditures for corresponding impacts to MTA and MDTA, respectively.

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 expenses 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.

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. The bill also provides a meaningful benefit to architects, engineers, surveyors, and landscape architects by allowing them to have existing underground facilities marked during design.

Additional Information

Prior Introductions: None.

Cross File: Although HB 1290 (Delegate Davis) - Economic Matters 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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