SB 986

Department of Legislative Services

Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 986 (Senator Zirkin)
Judicial Proceedings

Courts and Judicial Proceedings - Cases of Gas Explosion or Gas Leak - Damages, Fees, and Costs

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This bill establishes that in an action for damages resulting from a gas explosion or gas leak, the person bringing the action may be awarded (1) compensatory damages equal to three times the amount of actual damages; (2) punitive damages; (3) reasonable attorney's fees and expert fees; and (4) court costs.

The bill applies prospectively to causes of action arising on or after the bill's October 1, 2013 effective date.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances, as discussed below.

Local Effect: None. The bill is not likely to materially affect circuit court caseloads.

Small Business Effect: None.

Analysis

Current Law: Compensatory damages are damages awarded to indemnify an injured person for the losses he/she suffered. Punitive damages are damages awarded in addition to actual damages that are meant to penalize the defendant for his/her recklessness, malice, or deceit.

In general, a party to a lawsuit is responsible for his/her legal fees, regardless of the outcome of the case. However, there are over 80 exceptions to this general rule in State law, including wage and hour cases, worker's compensation cases, and consumer protection cases. The conditions under which an individual is eligible for an award of attorney's fees and the extent of these awards is inconsistent among the cases eligible for attorney's fees awards under State law. Most of the applicable statutes do not provide guidance on the calculation of attorney's fees.

Background:

Gas Pipeline Safety

The Federal Natural Gas Pipeline Safety Act of 1968 requires the Secretary of the U.S. Department of Transportation to establish minimum federal safety standards for the transportation of gas and for pipeline facilities.

The Secretary's authority to prescribe and enforce gas pipeline safety standards does not apply to *intra*state pipeline transportation if a state agency regulates the safety standards and practices applicable to *intra*state pipeline transportation and submits certification to the Secretary each year meeting specified criteria. The Public Service Commission (PSC) has adopted the applicable federal safety standards established under the Act and has established the required inspection, documentation, and enforcement program outlined in the Act.

The Act requires the establishment of minimum federal safety standards and provides that any state agency may adopt additional or more stringent regulations that are not incompatible with the minimum federal standards.

PSC, under certification from U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA), assumes safety responsibility with respect to *intra*state gas facilities, and has statutory authority to establish and enforce safety standards for *intra*state gas facilities. PSC regulations regarding gas safety require each gas company to exercise reasonable care to reduce the hazards of gas distribution and transmission.

Each gas company must adopt and execute a safety program, odorize the gas, and bury pipe according to specified standards. The gas company must also respond promptly to all reports of gas leaks and investigate the reports in accordance with the Gas Piping and Technology Committee standards.

Interstate Natural Gas Regulation

The Natural Gas Act (NGA) of 1938 gives the Federal Energy Regulatory Commission (FERC) exclusive jurisdiction over the transportation of natural gas in interstate commerce, the sale in interstate commerce of natural gas for resale, and natural gas companies engaged in that transportation or sale. It also gives FERC the authority to grant certificates allowing construction and operation of facilities used in interstate gas transmission and authorizing the provision of services. A "certificate of public convenience and necessity" issued under NGA permits pipeline companies to charge customers for some of the expenses incurred in pipeline construction and operation. NGA also requires FERC approval prior to abandonment of any pipeline facility or services. NGA does not apply to the production, gathering, or local distribution of natural gas.

Pipeline Regulation and Safety, Generally

In general, natural gas is brought into the State through the interstate transmission system and then allocated as needed through the *intra*state natural gas distribution systems of the State's gas companies for customer use. These interstate natural gas transmission pipelines are under the regulatory authority of PHMSA. However, three gas companies operate *intra*state gas transmission systems that transport natural gas from the interstate transmission system to their franchised distribution systems: Baltimore Gas and Electric Company, Washington Gas Light Company, and Columbia Gas of Maryland.

PSC currently manages two pipeline safety programs, one for natural gas and the other for hazardous liquids pipelines. The natural gas pipeline safety program includes the inspection of 77 jurisdictional natural gas and propane pipeline operators. The hazardous liquids pipeline safety program includes the inspection of one jurisdictional hazardous liquids pipeline operator.

According to PHMSA, pipelines are by far the safest method for transporting energy products. However, when pipeline incidents occur, they can present significant risks to the public and the environment. There were 30 "significant incidents" in Maryland from 2002 through 2011, totaling $12 million in property damage and causing one fatality and 16 injuries.

State Expenditures: Although the bill may impact damages awarded in cases where PSC is being sued for negligence regarding pipeline safety/inspections, given the amount of *actual* damages (damages to repay actual losses) sought in the types of cases affected by the bill and the liability caps under the Maryland Tort Claims Act (MTCA), the bill is not expected to materially affect State Insurance Trust (SITF) expenditures for MTCA or SITF premiums.

Under the Maryland Tort Claims Act (MTCA), State personnel are immune from liability for acts or omissions performed in the course of their official duties, so long as the acts or omissions are made without malice or gross negligence. Under MTCA, the State essentially waives its own common law immunity. However, MTCA limits State liability to $200,000 to a single claimant for injuries arising from a single incident. MTCA covers a multitude of personnel, including some local officials and nonprofit organizations. In actions involving malice or gross negligence or actions outside of the scope of the public duties of the State employee, the State employee is not shielded by the State's color of authority or sovereign immunity and may be held personally liable. Attorney's fees are included in the liability cap under MTCA. Under MTCA, attorneys may not charge or receive a fee that exceeds 20% of a settlement or 25% of a judgment.

MTCA claims are paid out of SITF, which is a special fund administered by the Treasurer's Office. Agencies pay premiums to SITF that are comprised of an assessment for each employee covered and SITF payments for torts committed by the agency's employees. The portion of the assessment attributable to losses is allocated over five years. The costs associated with the awards for attorney's fees under the bill were not anticipated as a component in the Treasurer's actuarial calculation of the recommended SITF balance. The Treasurer is charged with setting premiums "so as to produce funds that approximate the payments from the fund." (*See* Md. State Fin. & Proc. Code Ann. § 9-106(b).) The actuary assesses SITF's reserves and each agency's loss experience for the various risk categories, which include tort claims and constitutional claims. An agency's loss history, consisting of settlements and judgments incurred since the last budget cycle, comprises part of the agency's annual premium. That amount is electronically transferred to SITF from the appropriations in an agency's budget.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Public Service Commission, *Black's Law Dictionary*, Department of Legislative Services

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mc/kdm

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