

HB 101

Department of Legislative Services

Maryland General Assembly

2024 Session

FISCAL AND POLICY NOTE

First Reader

House Bill 101 (Delegate Charkoudian)

Economic Matters and Environment and Transportation

State Highway Projects - Removal, Relocation, and Adjustment of Utility Facilities - Notification, Work Plans, and Compliance

This bill establishes a formalized statutory process for the State Highway Administration (SHA) and utilities in the State when SHA determines it is necessary to remove, relocate, or adjust a utility facility for a State highway project. SHA must adopt regulations to implement the bill, as specified.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) expenditures decrease beginning as early as FY 2025 to the extent that the bill results in fewer SHA project delays, and TTF revenues increase to the extent that delays continue to occur, and SHA receives payments from at-fault utilities. However, the overall impact on TTF finances cannot be reliably estimated at this time. Nonbudgeted revenues and expenditures for the Maryland Environmental Service (MES) may increase, as discussed below. The potential effect on State expenditures (all/multiple funds) due to an increase in utility costs is discussed in the Additional Comments section below.

Local Effect: As owners and operators of utilities, local government expenditures may increase, as discussed below. The potential effect on local expenditures due to an increase in utility costs is discussed in the Additional Comments section below. Revenues are not affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary: “Utility facility” includes poles, wires, lines, pipes, sewers, conduits, cables, valves, manholes, attachments, and any other infrastructure used by a utility.

Process Established

If SHA determines that it is necessary to remove, relocate, or adjust a utility facility for a State highway project, SHA must send the owner or operator of the facility a letter regarding the plans for the project, including the location of the facility at issue. The letter must specify a date, not to exceed 120 days after the date of the letter, by which the owner or operator of the facility must submit a work plan to SHA.

After receiving a letter from SHA, the owner or operator of a utility facility must submit to SHA, by the date specified in the letter, (1) written confirmation acknowledging receipt of the letter and (2) a work plan that includes a depiction of the existing and proposed locations of the affected utility facilities and a timeframe for completing the removal, relocation, or adjustment.

SHA must review the work plan to ensure it meets the needs of the State highway project. On approval of a work plan, SHA must notify the owner or operator of the utility to begin the required work on the utility facility within 60 days after receipt of the notice. If the work does not begin within 60 days, SHA may provide a final notice to the owner or operator directing that work must begin within 10 days after receipt of the final notice. If the owner or operator fails to begin the work within 10 days of such a notice or fails to complete the work within the timeframe specified in the work plan, SHA may seek injunctive relief.

Additional Work Required

If additional utility facility work is found to be necessary after SHA has secured a contractor for an affected State highway project, SHA must provide written notice to the owner or operator of the utility facility describing the additional work necessary and requesting a revised work plan. An owner or operator must submit the revised work plan to SHA within 30 days after becoming aware of the additional work or on receipt of SHA’s notice. SHA must review the revised work plan to ensure it meets the needs of the additional work described in the notice.

Potential Liabilities

If the owner or operator of the utility facility fails to submit a work plan by the date specified in the letter, the owner or operator is responsible for the cost of removing,

relocating, or adjusting the utility facility. Additionally, if the owner or operator fails to submit a work plan or fails to complete the work in accordance with the work plan, the owner or operator may be liable to (1) the contractor of the State highway project for specified costs incurred and (2) SHA for damages resulting solely from the owner or operator's failure to provide the work plan or complete the work in accordance with the work plan.

If SHA determines that an owner or operator is liable in either of those circumstances, SHA must provide notice of liability to the owner or operator. Within 45 days after receipt of the notice, the owner or operator must pay the costs or damages specified in the notice or request mediation.

Rate-regulated Utilities

An affected utility that is subject to rate regulation by the Public Service Commission (PSC) may not recover the following costs through rate adjustments:

- the costs incurred for the removal, relocation, or adjustment of a utility facility required by SHA pursuant to the bill's requirements;
- the costs incurred by a contractor for which the owner or operator of a utility facility is liable;
- damages owed to SHA under the bill; or
- any fines assessed against the utility for the work performed under the bill.

Regulations

SHA must adopt regulations to implement the bill, including regulations establishing (1) a process for SHA to review submitted work plans and (2) a mediation process to handle requests for mediation made pursuant to the bill.

Current Law:

State Highway Administration

SHA is responsible for more than 5,200 miles or approximately 16,800 lane miles of road, 2,500 bridges, 3,500 small stream crossing structures, and 80 miles of sound/noise barriers in the State. It also has responsibility for planning, designing, constructing, and maintaining these roads and bridges to safety and performance standards while considering sociological, ecological, and economic concerns.

As State highway projects are implemented and completed, SHA occasionally requires utilities to move, relocate or adjust their existing utility infrastructure if it interferes with the project. SHA is generally required to pay for the cost of any relocation required, with specified exceptions. For example, for a publicly owned utility, such as those owned by local governments, SHA is only required to pay relocation costs if specified federal funding is available and SHA would have otherwise been required to pay if the facility had been owned by a private entity.

Public Service Commission – Generally

PSC must supervise and regulate public service companies subject its jurisdiction to (1) ensure their operation in the interest of the public and (2) promote adequate, economical, and efficient delivery of utility services in the State without unjust discrimination. In doing so, PSC must consider the public safety, the economy of the State, the maintenance of fair and stable labor standards and for affected workers, the conservation of natural resources, the preservation of environmental quality, and the achievement of the State's climate commitments for reducing greenhouse gas emissions. PSC must also enforce compliance with legal requirements by public service companies, including requirements with respect to financial condition, capitalization, franchises, equipment, manner of operation, rates, and service.

“Public service company” means a common carrier company, electric company, gas company, sewage disposal company, telegraph company, telephone company, water company, or any combination of public service companies.

Maryland Environmental Service

MES is an instrumentality of the State and a self-supporting, not-for-profit public corporation that serves State, local, and federal agencies and the private sector through designing, planning, financing, constructing, operating, and monitoring projects for water and wastewater treatment, solid waste management, composting, recycling, dredged material management, hazardous materials cleanup, stormwater services, and renewable energy. The service operates more than 200 water and wastewater treatment facilities as well as solid waste transfer stations, material recycling facilities, and various other facilities. MES operates on a fee-for-service basis under contract.

State Fiscal Effect:

State Highway Administration

SHA advises that its current process for working with utilities when adjustments are needed for a highway project is similar to the process established by the bill. Specifically, under

its current process, SHA provides its highway plans to affected utilities and asks them to provide plans, specifications, and estimates for necessary adjustments. SHA advises that this correspondence and sharing of information is required by federal law. After approval of the plan, SHA sends the utility a notice to proceed with the adjustment. SHA advises that under the current process, utilities are slow to respond and frequently do not meet the relocation and adjustment timeframes, resulting in project delays, which leads to increased costs.

The bill's primary changes, relative to the current process, are to (1) formalize the timeframes by which SHA and affected utilities must provide the required information and confirmations to each other and (2) require utilities to pay damages to SHA or its contractors when delays occur. Through the formalized process established by the bill, SHA anticipates fewer overall project delays, resulting in a decrease in TTF expenditures beginning as early as fiscal 2025. Additionally, if project delays continue to occur under the bill, TTF revenues increase as SHA is made whole for any costs incurred due to the delay. The overall impact on TTF finances, however, cannot be reliably predicted or estimated without actual experience under the bill.

Maryland Environmental Service

As mentioned above, MES operates more than 200 water and wastewater treatment facilities as well as various other facilities, all of which are or could be considered utilities under the bill. As a result, MES may incur increased costs to (1) meet the timeframes required by the bill and (2) pay SHA and/or its contractors to the extent that delays still occur. However, any such impact cannot be reliably estimated without actual experience under the bill.

Since MES is a fee-for-service entity, any costs incurred by MES resulting from the bill are ultimately borne by the entities that contract for MES services through an increase in fees. As a result, MES nonbudgeted revenues increase correspondingly for any costs incurred.

Local Expenditures: Local governments own and operate many utilities that are likely affected by the bill, including municipal electric utilities and water and sewer systems. These utilities may incur increased costs to (1) meet the timeframes required by the bill and (2) pay SHA and/or its contractors to the extent that delays still occur. However, any such impact cannot be reliably estimated without actual experience under the bill.

Small Business Effect: In the execution of its duties, SHA engages many small business contractors to complete construction work. The more efficient process required by the bill may affect those small businesses in a similar way as described above for SHA, reducing costs resulting from delays and increasing revenues if delays continue to occur.

Some utilities in the State that are affected by the bill, including water and sewer companies, are considered small businesses and are affected in the same manner discussed above for MES and local government utilities, potentially incurring increased costs to meet the bill's requirements.

Additional Comments: PSC advises that utilities may seek to increase rates proactively in response to the bill due to the bill's prohibition against cost recovery related to delayed projects; however, any such impact cannot be reliably predicted without actual experience under the bill. Any increase in utility rates affects all utility customers, including the State, local governments, and small businesses.

Since MES is a fee-for-service entity, any costs incurred by MES to implement the bill are passed on to the various State agencies, local governments, and private sector entities (which could include small businesses), that contract for MES services. Therefore, expenditures may increase for multiple State agencies (all fund types), local governments, and any small businesses that contract with MES.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Maryland Department of Transportation; Public Service Commission; Department of General Services; Maryland Environmental Service; University System of Maryland; Allegany, Harford, and Montgomery counties; City of College Park; Department of Legislative Services

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rh/lgc

Analysis by: Richard L. Duncan

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