

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1330
Economic Matters

(Delegate D.E. Davis, *et al.*)

Underground Facilities Damage Prevention - Revision

This bill makes various changes to the Maryland Underground Facilities Damage Prevention Authority, its composition and powers, and specifies related procedures for the ongoing protection of underground facilities. By October 1, 2021, any previously detectable or locatable specified underground facility must be restored to be detectable or locatable, and beginning on that date, except as otherwise provided, any newly installed specified underground facility must be detectable or locatable. Nothing in the bill may be construed to abrogate, modify, or infringe on the permitting requirements or any requirement of any permit issued by any governmental agency or entity.

Fiscal Summary

State Effect: Nonbudgeted revenues and expenditures for the authority may increase minimally beginning in FY 2021. Special fund expenditures for the authority may increase in any year beginning in FY 2021 to the extent that additional operating support is needed, as discussed below. Transportation Trust Fund (TTF) expenditures may increase beginning in FY 2021 for overtime costs. As discussed below, the bill's remaining effects on State finances is unclear.

Local Effect: Local expenditures may increase, as discussed below. Revenues are not affected.

Small Business Effect: Minimal. Small contractors must comply with the bill's additional operational requirements; the overall effect on most contractors is likely minimal.

Analysis

Bill Summary: Changes to the authority and related procedures for the protection of underground facilities include:

- defining new terms, such as contractor locator, detectable underground facility, emergency, locatable underground facility, mark, primary contractor, temporary excavator, and trenchless technology;
- adjusting eligibility requirements for membership on the authority and establishing procedures for filling vacancies;
- specifying the fees which the authority may collect;
- clarifying the authority's process for handling complaints;
- allowing the authority to use the Maryland Underground Facilities Damage Prevention Education and Outreach Fund (an existing special fund) to cover an unexpected shortfall in its operational (nonbudgeted) funds;
- changing the process and procedures for handling and following up on an emergency, as specified;
- specifying the procedures for adding a temporary excavator to a ticket;
- authorizing a contractor locator to perform marking procedures in place of the owner-member;
- adding specified on-site work requirements, such as prohibiting repair or replacement of a mark without following specified procedures and directing persons using trenchless technology to prevent the occurrence of a cross-bore;
- requiring a primary contractor to notify the one-call system (Miss Utility) of specified work and to supervise temporary excavators; and
- requiring the authority to calculate civil penalties by considering the seriousness of the violation, the intent and good faith of the violator, and the past history of violations, and increasing the maximum civil penalty for specified subsequent violations from \$2,000 to \$4,000, as specified.

Current Law/Background: To protect underground facilities, such as natural gas, telephone, cable, television, water, and sewer lines, Chapter 635 of 2010 established the Maryland Underground Facilities Damage Prevention Authority. The authority hears complaints and assesses civil penalties for violations of the laws protecting underground facilities. 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 authority may also employ a staff, maintain an office at a place it designates, and maintain facilities for the purpose of holding hearings. The authority is

largely funded through a 5¢ fee on marking tickets, paid by owner-members such as the State and local governments and utilities.

The authority and related stakeholders have been formally considering the changes in the bill for several years. Of particular concern are the safety issues that can arise from cross-bores into undetectable facilities, which occur when one underground facility (for example, a gas line) is run through another underground facility (for example, a water or sewer line). Trenchless technology makes this situation more common. Related information can be found in the authority's [annual reports](#) published on its website.

One-call System

Persons planning an excavation or demolition project must notify the owners of nearby facilities so that the locations can be clearly marked. Notification is accomplished through the one-call system. The 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.

State/Local Effect: Nonbudgeted revenues and expenditures for the authority may increase minimally beginning in fiscal 2021 from additional fees and administrative processes under the bill. Special fund expenditures for the Maryland Underground Facilities Damage Prevention Education and Outreach Fund may increase beginning in fiscal 2021 to the extent that additional operating support is needed and those funds would not have otherwise been spent.

Currently, State Highway Administration (SHA) personnel are not available after normal working hours to mark underground facilities; TTF expenditures may increase for additional SHA staff overtime costs to meet the bill's enhanced emergency response times.

The bill's enhanced penalty provisions are not anticipated to materially affect State revenues.

Underground Facilities Location and Detection

Specific to the bill's requirements for existing and new detectable/locatable underground facilities, the overall effect on State finances is unclear. The authority advises that the bill does not have a substantive effect on project costs, and that the detectable/locatable provisions are meant to apply in the following two situations:

- *Situation 1:* If a contractor in the course of a project that requires an excavation anywhere in the State accidentally damages an underground facility or that underground facility's detectability, that contractor is liable, at the contractor's

expense, to make the necessary repairs to the underground facility to bring it back to its original condition, including its detectability.

- *Situation 2:* If a facility owner is repairing or replacing all of or a portion of its underground facility and that underground facility is detectable, that underground facility must be repaired or replaced back to its original condition, including its detectability. Those costs are part of the contract or subcontract for the repair or replacement.

However, the Maryland Department of Transportation (MDOT) advises that its costs related to marking previously detectable or locatable underground facilities for restoration prior to the bill's October 1, 2021 deadline are up to \$3.1 million, with additional costs of \$5,000 per new project going forward. In the context of MDOT's overall capital expenditures, these could potentially be considered modest costs.

Local Expenditures: Similar to the potential effect on State expenditures, local expenditures may increase for local governments for (1) costs related to marking previously detectable or locatable underground facilities for restoration; (2) costs associated with new detectable/locatable projects; and/or (3) enhanced emergency response times.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 877 (Senators Feldman and Hershey) - Finance.

Information Source(s): Maryland Underground Facilities Damage Prevention Authority; Maryland Department of Transportation; University System of Maryland; Department of Natural Resources; Office of Administrative Hearings; Public Service Commission; Judiciary (Administrative Office of the Courts); Baltimore City; Harford County; Maryland Association of Counties; Maryland Municipal League; Department of Legislative Services

Fiscal Note History: First Reader - February 21, 2020
rh/lgc

Analysis by: Stephen M. Ross

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