



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 539 (as reported without amendment)
Senate Bill 540 (Substitute S-1 as reported)
Sponsor: Senator Mike Nofs
Committee: Energy and Technology

CONTENT

Senate Bill 540 (S-1) would repeal Public Act 53 of 1974 (which governs the protection of public utility underground facilities), and create the "MISS DIG Underground Facility Damage Prevention and Safety Act" to do the following:

- Require owners and operators of utility underground facilities to continue to operate and be members of MISS DIG (the "notification system"), and pay any applicable fees.
- Require an excavator to provide a dig notice to the notification system before any blasting or excavation.
- Exempt from the proposed Act's requirements excavation performed in the replacement of a fencepost, sign post, or guardrail; at a grave site in a cemetery; within a landfill unit; and, under certain circumstances, in the course of normal farming operations.
- Require an excavator to notify the notification system and request additional assistance, under certain circumstances.
- Require an excavator to notify the owner or operator immediately after damaging a facility, and take certain actions if the damage endangered life, health, or property.
- Require an excavator to notify the notification system promptly for any proposed excavation or blasting in an emergency.
- Require the notification system to receive dig notices and transmit tickets to facility owners and operators notifying them of the proposed activity.
- Require a facility owner or operator to respond to a ticket by marking the location of its facilities in the area before a proposed excavation or blasting.
- Require an owner or operator to respond to a request for additional assistance or an emergency notice within three hours, and dispatch personnel upon notice that a facility had been damaged.
- Require the notification system to establish procedures for notification to facility owners and operators of requests for project design or planning services during the planning and design stage of a construction or demolition project.
- Allow farm operation property owners to becoming nonvoting members of the notification system for free in order to receive notice of proposed excavation and blasting activities.
- Require the notification system to administer a positive response system and maintain records of its notification activity for six years.
- Require new facilities to be constructed in a way that allowed their detection when in use.
- Provide that the proposed Act would not limit a person's right to seek legal relief and recovery of damages in a civil action.
- Provide immunity to the notification system and its officers, agents, or employees.
- Provide that an excavator or farmer who complied with the Act would not be responsible for damage to facilities that were not marked as required or determined to be within a safe zone.

- Provide immunity to a farm owner who complied with the Act with regard to facilities damaged outside the public right-of-way, unless the owner intentionally damaged the facility or acted with wanton disregard or recklessness.
- Make it a misdemeanor to damage an underground facility and act to conceal the damage; or fail to notify the owner or operator or willfully remove or destroy the markings indicating the location of an underground facility.
- Authorize the Public Service Commission (PSC) to impose a civil fine of up to \$5,000 on a person who violated the Act.
- Authorize the PSC to impose a civil fine of up to \$15,000 on a governmental agency that violated the Act, depending on the agency's history of violations, and order that the agency's personnel undergo additional training.
- Require an individual engaged in a farming operation on a farm to comply with the Act beginning May 1, 2014.
- By October 1, 2014, require the PSC to establish requirements for reporting incidents involving damage to underground facilities.

Senate Bill 539 would amend the governmental immunity law to provide that immunity would not apply to a governmental agency acting under the proposed MISS DIG Underground Facility Damage Prevention and Safety Act.

MCL 691.1407 (S.B. 539)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Senate Bill 540 (S-1): The proposed misdemeanor would apply more broadly than the misdemeanor under Public Act 53 of 1974, which would be repealed, although the penalty would be the same. There are no data to indicate how many people would be convicted of the proposed misdemeanor. To the extent that people were charged and convicted, local units of government would see increased incarceration costs and/or increased costs of community supervision. Penal fine revenue of up to \$5,000 per violation would benefit public libraries.

The bill also would result in additional costs and revenue for the Public Service Commission, which would have to develop forms, rules for processing complaints, and requirements for reporting incidents, and would be responsible for processing and investigating complaints made under the bill. These additional responsibilities would result in indeterminate costs for the PSC, which would be borne by existing resources. New revenue would come from civil fines levied against those found to be in violation of the bill. These fines would range from \$5,000 to \$15,000 and would be paid to the PSC and used for underground facility safety education and training. It is unknown how much the PSC would collect in fines each year, nor is it known how much the new requirements would cost to implement, so the fiscal impact on the PSC is indeterminate.

Senate Bill 539: The bill would have little or no impact on State finances. On the local level, the bill would expose a municipality to liability for any damage to underground facilities it caused. It is not known how many instances of a municipality damaging underground facilities occur during a year, or what the average cost of each instance is. For these reasons, the fiscal impact of the bill on local governments is indeterminate, but would be negative to the extent that the potential liabilities of municipalities increased.

Date Completed: 10-3-13

Fiscal Analyst: Dan O'Connor/Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.