



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: S.B. 152 of the 128th G.A. **Date:** February 9, 2010
Status: As Introduced **Sponsor:** Sen. Buehrer

Local Impact Statement Procedure Required: No — Possible indirect local effects

Contents: Modifies the "Call Before You Dig" notification system and creates the Underground Protection Commission of Ohio and the State Underground Protection Advisory Committee

State Fiscal Highlights

STATE FUND FY 2010 – FUTURE YEARS

State Underground Protection Fund (New Fund) – Department of Commerce

Revenues	Gain of \$50,000 per year or more from protection service fees and civil penalties
Expenditures	Increase for administrative and enforcement costs, up to available revenue

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- The bill creates two new committees under the Ohio Department of Commerce to handle complaints and enforcement issues surrounding underground utility protection services notification. As a result, the bill creates new administrative and enforcement costs for the Department.
- These costs would be paid from the State Underground Protection Fund created by the bill. The source of funding would be protection service membership fees and revenues from civil penalties. However, the bill caps the amount that may be received to \$50,000 per year plus any revenue accruing from civil penalties deposited into the new fund.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2010	FY 2011	FUTURE YEARS
Counties			
Revenues		- 0 -	
Expenditures	- 0 -	Potential increase	Potential increase
Other Local Governments			
Revenues		- 0 -	
Expenditures	- 0 -	Potential increase	Potential increase

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- There will be minimal fiscal effects on local governments due to the potential increase in fees charged by the protection services.

Detailed Fiscal Analysis

Overview

The bill modifies underground utility protection (i.e., "call before you dig") requirements by applying certain provisions of the underground utility facility Protection Service Law (R.C. 3781.25 to 3781.32) to public improvements conducted by a public authority, which are covered under a different law (R.C. 153.64). As part of these changes, the bill makes definitions between the two laws more uniform. The bill would require utilities to fully participate in a protection service within four years of the bill's effective date (utilities can currently participate on a limited basis) and to be liable for damages or injuries resulting from an excavation accident due to the utilities' failure to provide adequate notification or markings. The bill also creates two new committees related to underground protection systems, both of which would be affiliated with the Ohio Department of Commerce. The bill appears to have no new fiscal effect on the Public Utilities Commission of Ohio (PUCO). Provisions with direct fiscal implications are discussed in greater detail below.

Generally, once a person notifies a protection service about a project, the protection service informs its member companies that own and operate underground utilities in the project area. The member companies ensure that utility lines are properly marked to prevent damage to utility lines from occurring. Currently, there are two protection services and each requires a separate call to ensure that all companies owning or operating underground utility lines are made aware of a digging project. One of the protection services, the Ohio Underground Protection Service (OUPS), covers underground utility facilities that are subject to regulation by PUCO, including cable television, electrical, water, sewer, and telecommunications company facilities. The other one, the Oil & Gas Producers Underground Protection Service (OGPUPS) covers underground utility facilities for companies that are engaged in the transportation of natural gas by pipeline, which are not subject to regulation by PUCO.

State fiscal effects

Costs related to new committees

The bill creates two new state committees related to underground utility protection service notification and requires the Department of Commerce to provide these committees with administrative and technical support, as well as reimburse members of both committees for their expenses incurred in attending meetings. The first of these two committees is the State Underground Protection Advisory Committee (SUPAC), consisting of nine members appointed by the Governor. The bill requires SUPAC to meet at least four times per year and charges the Committee with providing enforcement recommendations in cases where a complaint under the Underground Utilities Protection Services Law has been filed against utilities, commercial excavators,

or others. SUPAC would also be required to recommend resolutions of complaints regarding discriminatory or unfair rates or fees charged by a protection service.

The bill requires underground utility protection services to forward all complaints received to SUPAC, which then investigates and conducts review hearings concerning the issues brought forward. If the results of its inquiries show that the party being complained about is a habitual or willful noncomplier, the bill requires SUPAC to provide its findings and recommend corrective action to the Underground Protection Commission of Ohio (UPCO), discussed below, with a recommended civil penalty of up to \$10,000 per violation.

In turn, UPCO, created by the bill, is responsible for reviewing and assessing (and investigating, if necessary) SUPAC enforcement recommendations and reviewing, assessing, and mediating complaints against protection services. UPCO is to consist of three members, appointed by the Governor with the advice and consent of the Senate. UPCO may meet at any time it considers necessary and may seek administrative and technical support from the Department of Commerce.

Technical and staff support from the Department of Commerce

As appropriate, each underground utility protection service and, as mentioned previously, the Department of Commerce, are required to provide support to these two committees. For SUPAC, this includes providing meeting space, staff services, and other technical assistance within their respective areas of expertise, including data, research, statistics, and analysis, as well as investigators and hearing examiners. Similarly, UPCO may request and receive meeting space, staff services, and other technical assistance from the Department of Commerce. Based on information provided to LSC by the Department of Commerce, it does not appear that the Department has the ability to accommodate the workload and offer the expertise needed to carry out these functions. In all likelihood, the Department would be required to hire additional staff to do so.

The new costs that the Department of Commerce are likely to incur for providing technical support could vary widely, depending on the number of complaint investigations and hearings arising from the bill. A current figure on total complaints received by protection services is unavailable. According to a representative of OUPS, that protection service does not have a complaint tracking mechanism to assess the volume of complaints it receives on an annual basis. OGPUPS indicated that it has not received formal complaints or disputes requiring any official action on their part. Indeed, the only complaints it receives are verbal complaints about the notification process (i.e., having to call two numbers for notification instead of just one). Finally, as mentioned above, the Department of Commerce would be responsible for covering reimbursement expenses for members of both committees. While the actual number of meetings that will be held is uncertain, reimbursements could be several hundred dollars per member per meeting, depending on where the meeting is held, where the members reside, and so forth.

State Underground Protection Fund

The bill creates the State Underground Protection Fund to pay the administration and enforcement costs incurred specifically by UPCO. The new fund is to consist of a portion of each protection services' revenue from membership fees, but the total amount deposited from this source is limited to \$50,000 annually. The fund would be supplemented by civil penalty revenue. While not specifically stated in the bill, LSC assumes that the fund would also be used to cover the expenses of SUPAC. In short, the annual funding limit of \$50,000 would appear to significantly constrain the Department of Commerce's ability to provide these two committees with the range of support outlined in the bill.

After the administrative and enforcement costs described above have been covered, the bill allows UPCO to use the remaining moneys for activities to improve the state's underground utility facilities protection and to provide grants to organizations to fund public education and awareness programs that promote the mission and operations of underground utility protection services.

Local fiscal effects

Under current law, public authorities, including local governments, are required to register with (or be a member of) a utilities protection service. However, the bill requires any utility, including a public authority that is fully participating in a protection service to participate in its affiliated positive response system. In addition, the bill specifies that any utility, including a public authority that elects to participate on a limited basis must fully participate in and register the location of its underground utility facilities with the appropriate protection service within four years after the effective date of the bill. As a result, there will be minimal fiscal effects on local governments due to the potential increase in fees charged by the protection services.

In addition, the provisions that incorporate a portion of the Protection Service Law into the Public Improvements Protection Service Law and make changes to the definitions of the two laws appear as though they may make any state agency or local government that owns an underground utility facility liable for damages or injuries that are a result of excavation accidents if any such entity failed to provide notification or mark underground utility facilities. This could mean that, indirectly, the state and local governments could incur costs for damages and injuries or for their failure to comply with the bill's requirements.