Ohio Legislative Service Commission

Russ Keller

Fiscal Note & Local Impact Statement

Bill: Am. Sub. S.B. 378 of the 130th G.A. **Date**: December 10, 2014

Status: As Passed by the House **Sponsor**: Sen. Coley

Local Impact Statement Procedure Required: No

Contents: To create an enforcement process for Ohio's underground-utility-damage-prevention law

State Fiscal Highlights

- Increase in expenditures for the Public Utilities Commission of Ohio (PUCO) to conduct inquiries into the compliance failures against an entity that did not follow certain requirements of Ohio's underground-utility-damage-prevention law.
- The bill requires that participants in the one-call notification system pay up to $50 annually to help defray such costs, and specifies the proceeds be deposited in the newly created Underground Facilities Protection Administrative Fund. Amounts in the fund must be used for the operation of the Underground Technical Committee and related expenditures incurred by PUCO.
- The bill creates the Underground Facilities Protection Fund, and all fines collected under the bill (except for those fines for failing to pay for safety registration) will be deposited into the fund and used for Underground Utility Damage Prevention grants. A fine for a first compliance failure could be up to $2,500; a fine for a "persistent noncomplier" could be up to $10,000.

Local Fiscal Highlights

- Political subdivisions may incur minimal expenditures for safety registration. The bill requires each utility, excavator, developer, and designer who participates in the one-call notification system to register with PUCO and pay a safety registration of up to $50 annually, which PUCO may lower.

Detailed Fiscal Analysis

S.B. 378 creates an enforcement process for Ohio's underground-utility-damage-prevention law. Enforcement authority is given to the Public Utilities Commission of Ohio (PUCO). The bill also creates a committee called the Underground Technical Committee (UTC) to review PUCO staff's reports regarding inquiries and recommend fines and penalties. PUCO is required to impose the UTC's recommended fines and penalties, with some exceptions. Inquiries are initiated upon request of a person who has been aggrieved by a compliance failure. A "compliance failure" is defined as a failure to comply with certain requirements of Ohio's underground-utility-damage-prevention law. The bill also defines those that qualify as an "aggrieved person."

The bill permits any person who has been aggrieved because of a compliance failure to file an inquiry with the staff of PUCO to seek punitive action against the person responsible for the alleged compliance failure.

Under the bill, PUCO staff must conduct an inquiry regarding the aggrieved person's request. The inquiry must be limited to whether there was a compliance failure. PUCO staff must examine relevant facts regarding the alleged compliance failure. PUCO staff may request records verification, informal meetings, teleconferences, photo documentation, and any other documentation or information relevant to the inquiry. Then PUCO staff must make a report of the inquiry to the UTC. The report must contain any admission made by the responsible person. The bill explicitly prohibits PUCO staff's report from containing a recommendation as to the imposition of a fine or penalty or as to whether no enforcement action should be taken. The UTC must review every report submitted by PUCO staff. The UTC is composed of 17 members, the majority of which are either excavators or representatives of underground utility industries.

The bill requires each utility, excavator, developer, and designer who participates in the one-call notification system to register with PUCO and pay a safety registration of up to $50 annually, which PUCO may lower. These amounts are to fund operations of the UTC and PUCO in their performance of duties under the bill. Registration amounts (as well as fines for those that fail to register) must be deposited into the newly created Underground Facilities Protection Administrative Fund. PUCO must administer and oversee the registration process. The bill states that failure to register results in a fine of up to $2,500.

PUCO must deposit all compliance failure fines collected under the bill into the Underground Facilities Protection Fund, which the bill creates. The fund retains its interest and is to be used solely to fund Underground Utility Damage Prevention grants. PUCO is authorized by the bill to implement this grant program to fund training, education, public awareness programs, and incentive programs that reduce the number and severity of compliance failures.

Fiscal effect

According to sponsor testimony for H.B. 659, a bill addressing the same issue, there is no reporting system to record underground utility damage incidents, but anecdotal evidence suggests there are thousands of incidents per year. PUCO staff will incur additional expenditures to conduct inquiries of an entity that did not follow certain requirements of Ohio's underground-utility-damage-prevention law. Conducting those inquiries (as required by the bill) may result in PUCO hiring additional staff. As of this writing, the agency has not yet provided LSC with an estimate of potential costs. Operational expenditures for PUCO staff and the UTC will be paid by the Underground Facilities Protection Administrative Fund, which is established by the bill.

The bill establishes the Underground Facilities Protection Fund to receive revenue from compliance failure fines levied under the bill's provisions. Revenues to the fund cannot be determined because they are dependent on the incidence and recurrence of compliance failures. Fines for the first compliance failure may be up to $2,500, while fines for subsequent compliance failures may be up to $5,000. The UTC may designate an individual to be a "persistent noncomplier" under specified conditions. The fine imposed on a persistent noncomplier may be up to $10,000. Revenue to the fund is to be used by PUCO to administer a grant program. Expenditures from the fund will be commensurate with fund receipts.

Political subdivisions may incur minimal expenditures for safety registration. Only those subdivisions that participate in the one-call notification system bill as a utility, excavator, developer, and designer would pay for safety registration. Although registration can be up to $50 annually, PUCO may lower it.

SB0378HP.docx/dp