


Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: November 18, 2020

SUBJECT: Fiscal Impact Statement – Underground Facilities Protection
Amendment Act of 2020

REFERENCE: Bill 23-117, Draft Committee Print as provided to the Office of Revenue
Analysis on November 10, 2020

Conclusion

Funds are not sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill. The bill's implementation will cost approximately \$130,000 annually, beginning in fiscal year 2022, for a total of \$390,000 over the four-year financial plan

Background

Before beginning an excavation or demolition projection public or private space that could interact with utility operator facilities, the person in charge of the project must call the District's one-call center to report the proposed project and request that the utility operators inspect the project location. Utilities then mark any facilities within their purview or notify the person in charge of the project that no facilities exist.

The bill requires notification to the one-call center at least 96 hours prior to any project, but no more than 10 days, prior to the commencement of work. Currently, the notification period is at least 48 hours, but no more than 10 days. Upon notification from the one-call center, a utility operator, including a District agency or instrumentality, must mark the approximate horizontal location of any of its underground facilities¹ that may be impacted by a project within 72 hours of the notification.

¹ For District agencies, facilities should include underground streetlight and traffic signal infrastructure.

The Honorable Phil Mendelson

FIS: Bill 23-117, "Underground Facilities Protection Amendment Act of 2020," Draft Committee Print as provided to the Office of Revenue Analysis on November 10, 2020

For an emergency project, a utility operator must mark its facilities within two hours of being notified , when practicable. The utility operator should mark within two feet of the outermost part of the facility and the marking should conform to rules issued by the Mayor. The bill gives a utility operator 72 hours to report back to the one-call center that it has marked its underground facilities or that it does not have any potentially impacted facilities. The project cannot begin until the project team hears from the one-call center that all notices have been received from utility operators. The project also cannot proceed if the person responsible for the project knows or has reason to know that utility facilities exist but have not been marked or the project team observes a discrepancy in the markings, unless the one-call notification process is repeated and the one-call center provides the required utility operator notifications.

The bill requires that a project provide adequate protection, including supports as needed, to utility operator facilities when they enter the immediate vicinity of the facility.²

The bill allows the District Department of Transportation (DDOT), the Mayor, and utility companies to enter a Memorandum of Understanding during the design phase of a project to identify underground utility locations.

The bill requires the one-call center to provide all call records to the Department of Consumer and Regulatory Affairs (DCRA) for enforcement purposes.

Current law³ allows a utility operator to seek three times the damages resulting from a project. Current law⁴ also allows the District's Attorney General to pursue graduated civil penalties depending on whether it was a first or subsequent offense. The bill increases the civil penalty for subsequent violations from \$3,500 to \$5,000 for a second offense and \$5,000 to \$10,000 for a third or subsequent offense. As an alternative to these civil penalties, the bill authorizes the Mayor to issue civil fines and penalties under the Civil Infractions Act.⁵

The bill authorizes the Mayor to implement educational programs, collect data, and require reporting by entities subject to the bill in order to develop an effective damage prevention program.⁶ The bill also authorizes the Mayor to establish an advisory committee to advise the Mayor on the bill's implementation.

² The immediate vicinity is within 18 inches of the facility.

³ The Underground Facilities Protection Act 1980, effective March 4, 1981 (D.C. Law 3-129; D.C. Official Code § 34-2707(b)).

⁴ D.C. Official Code § 34-2707(c).

⁵ The Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Code, § 6-2701 et seq.).

⁶ As described in the Pipeline, Inspection, Protection, Enforcement, and Safety Act of 2006, approved December 29, 2006 (Pub. L. 109-468; 49 U.S.C. § 60134).

The Honorable Phil Mendelson

FIS: Bill 23-117, "Underground Facilities Protection Amendment Act of 2020," Draft Committee Print as provided to the Office of Revenue Analysis on November 10, 2020

Financial Plan Impact

Funds are not sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill. The bill's implementation will cost approximately \$130,000 annually beginning in fiscal year 2022, for a total of \$390,000 over the four-year financial plan.

The bill changes the notification, marking, and enforcement parameters around excavation and demolition projects and using the one-call center. The bill expands the requirements to include the District government and the marking of streetlight and traffic signal infrastructure. DDOT, which is responsible for the District's traffic operations infrastructure, does not presently mark its facilities. DDOT plans to contract for its one-call center participation and pavement marking efforts at a cost of approximately \$2.3 million annually. DDOT has sufficient local and federal capital funding in fiscal year 2021 to support these efforts, but it does not have sufficient local funding to continue the contract beyond one year. In order to meet the bill's requirement that the District government fully participate in the one-call center process, DDOT requires \$130,000 annually in local capital funding beginning in fiscal year 2022.

DDOT and DCRA, which respectively oversee public space and private space activities, can enforce the bill's requirements with existing budgeted resources. The Mayor can also absorb any costs associated with education, data collection, and the advisory committee within existing budgeted resources. DCRA does not require any additional resources to receive one-call center call data.