



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

## BILL ANALYSIS



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

Senate Bill 1083 (Substitute S-3 as reported by the Committee of the Whole)  
Senate Bill 1084 (Substitute S-1 as reported)  
Sponsor: Senator Mike Nofs  
Committee: Energy and Technology

**CONTENT**

Senate Bill 1083 (S-2) 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 "call system"), and pay any applicable fees.
- Require an excavator to provide a dig notice to the call 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; at a solid waste disposal site that had planned for underground facilities; and, under certain circumstances, in the course of normal farming operations.
- Require an excavator to notify the call system and request additional assistance, in certain situations.
- 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 call system promptly for any proposed excavation or blasting in an emergency.
- Require the call system to receive dig notices and transmit tickets to facility owners and operators notifying them of the proposed activity.
- Require the call system to administer a positive response system and maintain records of its notification activity for six years.
- 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 new facilities to be constructed in a manner 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 call system and its officers, agents, or employees.
- Require excavators performing excavation in the course of normal farming operations to comply with the Act beginning May 1, 2014.
- Make it a misdemeanor to damage an underground facility and fail to notify the owner or operator or act to conceal the damage, or willfully remove or destroy the markings indicating the location of an underground facility.

- Authorize the Public Service Commission (PSC), upon a complaint or its own motion, to impose on a person other than a governmental agency a civil fine of up to \$5,000 for a violation of the Act.
- Prohibit a PSC determination of a violation by a person other than a governmental agency from being used against a party before any court.
- Allow a facility owner or operator to file a complaint with the PSC seeking a civil fine and damages from a governmental agency for a violation of the Act.

After notice and a hearing on a complaint filed by a facility owner or operator against a governmental agency, the PSC could order the following, as applicable:

- If the PSC had not issued an order against the governmental agency for a violation within the preceding 12 months, a maximum civil fine of \$5,000.
- If the PSC had issued an order against the governmental agency within the preceding 12 months, a maximum civil fine of \$10,000, and that the governmental agency provide safety training to all personnel involved in underground utility work or excavating.
- If an order had been issued within the preceding 12 months, a maximum civil fine of \$15,000, and that the governmental agency pay to the owner or operator the lesser of the fair market value of damaged facilities or the cost of repair.

A fine imposed on a governmental agency would have to be paid to the PSC and used for underground facilities safety training. A Commission finding of a violation by a governmental agency would not be admissible in any other proceeding or action.

Senate Bill 1084 (S-1) would amend the governmental immunity law to provide that immunity would not apply to liability of a governmental agency acting under the proposed MISS DIG Underground Facility Damage Prevention and Safety Act.

The bills are tie-barred to each other.

MCL 691.1413 (S.B. 1084)

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

Senate Bill 1083 (S-3): 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. Revenue from civil fines of up to \$15,000 levied against a governmental agency found in violation of the Act would be used to fund underground facilities safety training.

Senate Bill 1084 (S-1): 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 caused by the municipality. 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 negative to the extent that the potential liabilities of municipalities would be increased.

Date Completed: 11-29-12

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.