

State Corporation Commission 2023 Fiscal Impact Statement

1. Bill Number: SB1145

House of Origin ☐ Introduced ☒ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: McPike

3. Committee: Commerce and Labor

4. Title: Underground Utility Damage Prevention Act.

5. Summary: Makes various changes to the Underground Utility Damage Prevention Act. The bill (i) requires excavators to review updates in the 811 positive response system and conduct additional safety verifications before digging, (ii) allows an excavator to schedule a locate request up to 12 days in advance, (iii) grants stop work authority to State Corporation Commission representatives if they encounter a threat to public safety or property, (iv) creates a criminal penalty for any person who knowingly excavates in violation of the Act and fails or refuses to stop work after being requested to do so, (v) increases the maximum civil penalty from \$2,500 to \$5,000; and up to \$10,000 for failure to call 811 prior to excavation, and (vi) updates notification requirements.

6. Budget Amendment Necessary: Yes, Item 404.

7. Fiscal Impact Estimates: Preliminary. See Item 8.

8. Fiscal Implications: There is no anticipated fiscal impact on the State Corporation Commission.

There is a mandatory minimum fiscal impact statement from the Virginia Criminal Sentencing Commission (VCSC) about the potential for a Class 6 felony for any person to knowingly excavate in violation of the Act, and who fails or refuses to stop work when requested to do so under the proposed § 56-265.24:1.

According to information provided by the VCSC, there is insufficient data to identify the number of additional individuals who, if the proposal were enacted, would be convicted of a Class 6 felony. However, offenders convicted of the proposed felony may be sentenced similarly to those convicted of a Class 6 felony under existing provisions of § 18.2-137(B,ii) for vandalism of property with a value of \$1,000 or more.

For FY 2021 and FY 2022, 448 offenders were convicted of a Class 6 felony under § 18.2-137(B,ii) for vandalism of property with a value of \$1,000 or more. In 207 cases, this offense

was the primary (most serious) offense. Of these, 83 offenders (40.1%) did not receive an active term of incarceration to serve after sentencing. Another 86 offenders (41.5%) were sentenced to local-responsible (jail) terms with a median sentence of five months. The remaining offenders (18.4%) were given state-responsible (prison) terms with a median sentence of 1.3 years.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2022, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

9. Specific Agency or Political Subdivisions Affected: State Corporation Commission, Courts, law enforcement agencies, Commonwealth's Attorney's, Public Defender Offices, Department of Corrections, and local and regional jails.

10. Technical Amendment Necessary: No.

11. Other Comments: The patron introduced the bill at the request of the Commission. The bill is similar to the substitute version of HB 2132.