

Chapter 635

(Senate Bill 911)

AN ACT concerning

Underground Facilities – Damage Prevention

FOR the purpose of repealing certain provisions of Maryland's underground facilities damage prevention laws; expanding the scope of the underground facilities damage prevention laws to apply to an owner or lessee of a private residence who performs an excavation or demolition on the land of the private residence; establishing the Maryland Underground Facilities Damage Prevention Authority; declaring the intent of the General Assembly that the Authority not be funded through State budget appropriations; providing for the appointment and terms of the members of the Authority; providing for the selection of a chair of the Authority in a certain manner; establishing quorum requirements for the Authority, and requiring the Authority to meet at a certain frequency; providing that a member of the Authority may not receive compensation and is not entitled to reimbursement for expenses; authorizing the Authority to perform certain acts; requiring the Authority to adopt a code of conduct for its members; authorizing the Authority to obtain funding for its operational expenses from certain sources; prohibiting the Authority from imposing a certain charge or assessment against a person for certain purposes under certain circumstances; authorizing the Authority to enforce the underground facilities damage prevention laws by hearing complaints, assessing certain penalties, and reaching a settlement instead of certain penalties; authorizing the Authority to establish certain fees and use the services of a third party to collect certain civil penalties; requiring that a certain hearing before the Authority be conducted in a certain manner; authorizing a person aggrieved by a decision of the Authority to request judicial review of the decision in a certain manner; providing that a record of a hearing conducted by the Authority is not admissible in certain administrative or civil proceedings; requiring the Authority to submit a certain report to the Governor and General Assembly each year; establishing the Maryland Underground Facilities Damage Prevention Education and Outreach Fund as a special, nonlapsing fund to be used for certain purposes; providing for the use and administration of the Fund; requiring a person performing a certain emergency excavation or demolition immediately to notify a certain one-call system to inform certain ~~owners~~ owner-members of underground facilities of the excavation or demolition; providing that a person that abuses the emergency demolition procedures in this Act is subject to certain penalties; requiring an owner of underground facilities to be a member of a one-call system by registering with the one-call system; requiring certain owners to become members of a one-call system and to submit to the one-call system and keep current certain information; requiring a person that intends to perform an

excavation or demolition in the State to initiate a certain ticket request with a certain one-call system; requiring the one-call system to promptly transmit a copy of a certain ticket to certain owner-members under certain circumstances; providing that a ticket is valid for a certain period; requiring a person that intends to perform an excavation or demolition to repeat a certain notice to the one-call system under certain circumstances; requiring an ~~owner~~ owner-member of underground facilities to mark the underground facilities in a certain manner under certain circumstances; requiring an ~~owner~~ owner-member to report certain information to an underground facilities information exchange system within a certain period after a certain event; requiring an ~~owner~~ owner-member to take certain actions if the ~~owner~~ owner-member, for certain reasons, is unable to mark the underground facilities within a certain period; authorizing an ~~owner~~ owner-member and person conducting an excavation or demolition to reach a working agreement regarding the schedule for marking an underground facility; providing that a person may begin excavation or demolition only after receiving a certain notice; providing that a person performing an excavation or demolition is responsible for the maintenance of underground facility markings and shall perform the excavation or demolition in a certain manner; requiring a certain person to provide certain notice of certain damage to, or disturbance of, an underground facility; requiring a person to take certain measures if the person knows or has reason to know of an unmarked underground facility in the area of an excavation or demolition; authorizing the Department of Transportation, the Department's administrations, and the Maryland Transportation Authority to collect certain fees; ~~repealing the authority of a political subdivision or municipal corporation to charge a marking or re-marking fee for the reimbursement of expenses incurred by the political subdivision or municipal corporation in complying with the State's underground facilities damage prevention laws~~; authorizing a designer to initiate a ticket request with a certain one-call system under certain circumstances; requiring an ~~owner~~ owner-member to respond to a ticket requested by a designer in a certain manner within a certain period after receiving a certain notice; providing that an ~~owner~~ owner-member or agent of an ~~owner~~ owner-member is not liable for inaccurate information provided to a designer in response to a ticket request; increasing certain civil penalties under the underground facilities damage prevention laws; authorizing the Authority to impose certain measures instead of or in addition to certain civil penalties; providing that certain civil penalties may be assessed only by the Authority; providing that a court may assess certain civil penalties and award certain attorney's fees under certain circumstances; providing that the Authority may not assess a certain penalty if a certain action has been brought in a certain venue; altering a provision regarding the disposition of civil penalties and requiring that civil penalties recovered under the underground facilities damage prevention laws be paid into the Fund; providing that employees and officials of the Authority are State personnel under the Maryland Tort Claims Act; ~~altering the definition of underground facility to include stormwater drains after a certain date~~;

~~requiring an owner of stormwater drains to make a good faith effort to identify the location of the stormwater drains by a certain date; holding an owner harmless under this Act with respect to any stormwater drain the owner could not locate and identify after a good faith effort; providing for a delayed effective date for a certain provision of this Act; defining certain terms and altering certain definitions; making stylistic changes; and generally relating to excavation or demolition near underground facilities and underground facilities damage prevention.~~

BY repealing

Article – Public Utility Companies

Section 12–107 through 12–110; and 12–201 through 12–203 and the subtitle
“Subtitle 2. Excavation Near Underground Lines and Structures in
Montgomery County”

Annotated Code of Maryland

(2008 Replacement Volume and 2009 Supplement)

BY renumbering

Article – Public Utility Companies

Section 12–104, 12–105, 12–106, 12–111, 12–112, and 12–113, respectively
to be Section 12–120, 12–121, 12–122, 12–128, 12–134, and 12–135, respectively
Annotated Code of Maryland

(2008 Replacement Volume and 2009 Supplement)

BY repealing and reenacting, with amendments,

Article – Public Utility Companies

Section 12–101 and 12–103 to be under the new part “Part I. Definitions;
General Provisions”

Annotated Code of Maryland

(2008 Replacement Volume and 2009 Supplement)

BY repealing and reenacting, without amendments,

Article – Public Utility Companies

Section 12–102

Annotated Code of Maryland

(2008 Replacement Volume and 2009 Supplement)

BY adding to

Article – Public Utility Companies

Section 12–106 through 12–114 to be under the new part “Part II. Maryland
Underground Facilities Damage Prevention Authority”; 12–117 to be
under the new part “Part III. Maryland Underground Facilities Damage
Prevention Education and Outreach Fund”; 12–123 through 12–127; and
12–131 to be under the new part “Part V. Designer Requests”

Annotated Code of Maryland

(2008 Replacement Volume and 2009 Supplement)

BY repealing and reenacting, with amendments,
 Article – Public Utility Companies
 Section 12–120, 12–121, ~~12–122, and 12–128~~ and 12–122 to be under the new
 part “Part IV. Excavation and Demolition”; and 12–135
 Annotated Code of Maryland
 (2008 Replacement Volume and 2009 Supplement)
 (As enacted by Section 2 of this Act)

BY repealing and reenacting, without amendments,
Article – Public Utility Companies
Section 12–128 to be under the new part “Part IV. Excavation and Demolition”
Annotated Code of Maryland
(2008 Replacement Volume and 2009 Supplement)
(As enacted by Section 2 of this Act)

BY repealing and reenacting, without amendments,
 Article – Public Utility Companies
 Section 12–134 to be under the new part “Part VI. Enforcement and Penalties”
 Annotated Code of Maryland
 (2008 Replacement Volume and 2009 Supplement)
 (As enacted by Section 2 of this Act)

BY repealing and reenacting, with amendments,
 Article – State Government
 Section 12–101(a)(2)
 Annotated Code of Maryland
 (2009 Replacement Volume)

~~BY repealing and reenacting, without amendments,~~
~~Article – Public Utility Companies~~
~~Section 12–101(a)~~
~~Annotated Code of Maryland~~
~~(2008 Replacement Volume and 2009 Supplement)~~
~~(As enacted by Section 3 of this Act)~~

~~BY repealing and reenacting, with amendments,~~
~~Article – Public Utility Companies~~
~~Section 12–101(e)~~
~~Annotated Code of Maryland~~
~~(2008 Replacement Volume and 2009 Supplement)~~
~~(As enacted by Section 3 of this Act)~~

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 12–107 through 12–110; and 12–201 through 12–203 and the subtitle “Subtitle 2. Excavation Near Underground Lines and Structures in

Montgomery County” of Article – Public Utility Companies of the Annotated Code of Maryland be repealed.

SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 12–104, 12–105, 12–106, 12–111, 12–112, and 12–113, respectively, of Article – Public Utility Companies of the Annotated Code of Maryland be renumbered to be Section(s) 12–120, 12–121, 12–122, 12–128, 12–134, and 12–135, respectively.

SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Public Utility Companies

PART I. DEFINITIONS; GENERAL PROVISIONS.

12–101.

(a) In this subtitle the following words have the meanings indicated.

[(b) (1) “Contractor” means a person that performs excavations or demolitions.

(2) “Contractor” includes a person that performs excavations or demolitions under a contract or subcontract.]

(B) “AUTHORITY” MEANS THE MARYLAND UNDERGROUND FACILITIES DAMAGE PREVENTION AUTHORITY.

(C) “BUSINESS DAY” MEANS A CALENDAR DAY OTHER THAN A SATURDAY, SUNDAY, OR LEGAL HOLIDAY.

[(c) (D) “Demolition” means an operation in which a structure or mass of material is wrecked, razed, rended, moved, or removed using any tool, equipment, or explosive.

(E) “DESIGNER” MEANS A LICENSED ARCHITECT ~~OR ENGINEER,~~ PROFESSIONAL ENGINEER, PROFESSIONAL LAND SURVEYOR, OR LICENSED LANDSCAPE ARCHITECT, AS THOSE TERMS ARE DEFINED IN THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE, WHO PREPARES A DRAWING FOR A PROJECT THAT MAY REQUIRE EXCAVATION OR DEMOLITION.

[(d) (F) (1) “Excavation” means an operation in which earth, rock, or other material in or on the ground is moved, removed, or otherwise displaced by using any tool, equipment, or explosive.

(2) “Excavation” includes grading, trenching, digging, ditching, DREDGING, drilling, BORING, augering, tunnelling, scraping, cable or pipe plowing and driving a mass of material.

(G) “FUND” MEANS THE MARYLAND UNDERGROUND FACILITIES DAMAGE PREVENTION EDUCATION AND OUTREACH FUND.

(H) “LEGAL HOLIDAY” MEANS:

(1) THE DAY ON WHICH A LEGAL HOLIDAY, AS DEFINED IN ARTICLE 1, § 27 OF THE CODE, IS OBSERVED; OR

(2) A FEDERAL LEGAL HOLIDAY.

[(e)] (I) “One–call system” means a communications [network] **SYSTEM** in the State that:

(1) allows a person to [telephone a one–number utility protection system;

(2) provides a toll–free number for persons to call and] notify owner–members of planned excavation or demolition **BY:**

(I) CALLING A TOLL–FREE NUMBER OR ABBREVIATED DIALING CODE; OR

(II) INITIATING AN INTERACTIVE INTERNET TICKET REQUEST; and

[(3)] (2) maintains an [owner–contractor] **UNDERGROUND FACILITIES** information exchange system.

[(f)] (J) (1) “Owner” means a person that:

(i) owns or operates an underground facility; and

(ii) has the right to bury an underground facility.

(2) “Owner” includes:

(i) a public utility;

(ii) a telecommunications corporation;

(iii) a cable television corporation;

- (iv) a political subdivision;
- (v) a municipal corporation;
- (vi) a steam heating company; [and]
- (vii) an authority; AND

(VIII) A UNIT OF THE STATE.

[(g) “Owner–contractor information exchange system” means an automated voice response unit maintained as a part of a one–call system.]

[(h)] **(K)** “Owner–member” means an owner that participates as a member in a one–call system.

[(i)] **(L)** (1) “Person” has the meaning stated in § 1–101 of this article.

(2) “Person” includes:

(i) ~~‡~~ a municipal corporation‡;

(II) THE STATE;

~~**(III)**~~ **(III) A POLITICAL SUBDIVISION OF THE STATE;** and

[(ii)] ~~**(IV)**~~ **(IV) [a] ANY governmental unit, department, or agency.**

(M) “TICKET” MEANS A NUMBERED DOCUMENT ISSUED BY A ONE–CALL SYSTEM TO NOTIFY OWNER–MEMBERS THAT:

(1) A PERSON INTENDS TO PERFORM AN EXCAVATION OR DEMOLITION; OR

(2) A DESIGNER HAS REQUESTED INFORMATION ON THE LOCATION OF UNDERGROUND FACILITIES UNDER § 12–131 OF THIS SUBTITLE.

(N) “UNDERGROUND FACILITIES INFORMATION EXCHANGE SYSTEM” MEANS AN AUTOMATED VOICE RESPONSE UNIT OR INTERACTIVE INTERNET ACCESS SYSTEM THAT IS MAINTAINED AS PART OF A ONE–CALL SYSTEM.

[(j)] **(O)** (1) “Underground facility” means personal property that is ~~to be~~ buried or submerged for:

(i) use in connection with the storage or conveyance of water, sewage, oil, gas, or other substances; or

(ii) transmission or conveyance of electronic, telephonic, or telegraphic communications or electricity.

(2) “Underground facility” includes pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those portions of poles below ground.

(3) “Underground facility” does not include a stormwater drain.

12-102.

It is the intent of the General Assembly to protect underground facilities of owners from destruction, damage, or dislocation to prevent:

(1) death or injury to individuals;

(2) property damage to private and public property; and

(3) the loss of services provided to the general public.

12-103.

This subtitle does not apply to an excavation or demolition performed or to be performed by an owner **OR LESSEE** of a private residence when the excavation or demolition is performed or to be performed:

(1) entirely on the land on which the private residence of the owner OR LESSEE is located; AND

(2) WITHOUT THE USE OF MACHINERY.

12-104. RESERVED.

12-105. RESERVED.

**PART II. MARYLAND UNDERGROUND FACILITIES DAMAGE PREVENTION
AUTHORITY.**

12-106.

(A) THERE IS A MARYLAND UNDERGROUND FACILITIES DAMAGE PREVENTION AUTHORITY.

(B) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE AUTHORITY NOT BE FUNDED BY APPROPRIATIONS FROM THE STATE BUDGET.

12-107.

(A) THE AUTHORITY CONSISTS OF NINE MEMBERS APPOINTED BY THE GOVERNOR.

(B) OF THE NINE MEMBERS:

(1) ONE MEMBER FROM A LIST SUBMITTED TO THE GOVERNOR BY THE ASSOCIATED UTILITY CONTRACTORS OF MARYLAND;

(2) ONE MEMBER FROM A LIST SUBMITTED TO THE GOVERNOR BY THE PUBLIC WORKS CONTRACTORS ASSOCIATION OF MARYLAND;

(3) TWO UNDERGROUND FACILITY OWNERS THAT ARE MEMBERS OF A ONE-CALL SYSTEM FROM A LIST SUBMITTED TO THE GOVERNOR BY THE MARYLAND MEMBERS OF THE MARYLAND/DC SUBSCRIBERS COMMITTEE;

(4) ONE MEMBER FROM A LIST SUBMITTED TO THE GOVERNOR BY THE ONE-CALL CENTERS OPERATING IN THE STATE;

(5) ONE MEMBER WHO REPRESENTS THE STATE'S UNDERGROUND UTILITY LOCATOR COMMUNITY FROM A LIST SUBMITTED TO THE GOVERNOR BY THE MARYLAND MEMBERS OF THE MARYLAND/DC DAMAGE PREVENTION COMMITTEE;

(6) ONE MEMBER WHO HAS EXPERIENCE IN THE FIELD OF UNDERGROUND UTILITIES FROM A LIST SUBMITTED TO THE GOVERNOR BY THE MARYLAND ASSOCIATION OF COUNTIES;

(7) ONE MEMBER WHO HAS EXPERIENCE IN THE FIELD OF UNDERGROUND UTILITIES FROM A LIST SUBMITTED TO THE GOVERNOR BY THE MARYLAND MUNICIPAL LEAGUE; AND

(8) ONE MEMBER OF THE GENERAL PUBLIC FROM A LIST SUBMITTED TO THE GOVERNOR BY THE OTHER APPOINTED AND QUALIFIED MEMBERS OF THE AUTHORITY.

(C) TO THE EXTENT PRACTICABLE, MEMBERS APPOINTED TO THE AUTHORITY SHALL REASONABLY REFLECT THE GEOGRAPHIC, RACIAL, AND GENDER DIVERSITY OF THE STATE.

~~(C)~~ **(D)** (1) THE TERM OF A MEMBER IS 2 YEARS.

(2) THE TERMS OF MEMBERS ARE STAGGERED AS REQUIRED BY THE TERMS PROVIDED FOR MEMBERS OF THE AUTHORITY ON OCTOBER 1, 2010.

(3) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(4) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(5) A MEMBER MAY NOT BE APPOINTED FOR MORE THAN TWO CONSECUTIVE FULL TERMS.

(6) TO THE EXTENT PRACTICABLE, THE GOVERNOR SHALL FILL ANY VACANCY IN THE MEMBERSHIP OF THE AUTHORITY WITHIN 60 DAYS AFTER THE VACANCY.

~~(D)~~ **(E)** ON THE RECOMMENDATION OF THE AUTHORITY, THE GOVERNOR MAY REMOVE A MEMBER FOR INCOMPETENCE OR MISCONDUCT.

12-108.

(A) FROM AMONG ITS MEMBERS, EACH YEAR THE AUTHORITY SHALL SELECT A CHAIR.

(B) SUBJECT TO SUBSECTION (C) OF THIS SECTION, THE MANNER OF SELECTION OF THE CHAIR AND THE CHAIR'S TERM OF OFFICE SHALL BE AS THE AUTHORITY DETERMINES.

(C) A MEMBER MAY NOT SERVE MORE THAN 2 CONSECUTIVE YEARS AS CHAIR OF THE AUTHORITY.

12-109.

(A) FIVE MEMBERS OF THE AUTHORITY ARE A QUORUM.

(B) THE AUTHORITY SHALL MEET AT LEAST ONCE EVERY 3 MONTHS AT THE TIMES AND PLACES IT DETERMINES.

(C) A MEMBER OF THE AUTHORITY:

(1) MAY NOT RECEIVE COMPENSATION AS A MEMBER OF THE AUTHORITY; AND

(2) IS NOT ENTITLED TO REIMBURSEMENT FOR EXPENSES.

12-110.

(A) THE AUTHORITY MAY:

(1) ADOPT BYLAWS FOR THE CONDUCT OF ITS BUSINESS;

(2) ADOPT A SEAL;

(3) MAINTAIN AN OFFICE AT A PLACE IT DESIGNATES;

(4) MAINTAIN FACILITIES FOR THE PURPOSE OF HOLDING HEARINGS UNDER THIS SUBTITLE;

(5) EMPLOY A STAFF;

(6) ACCEPT A GRANT, A LOAN, OR ANY OTHER ASSISTANCE IN ANY FORM FROM ANY PUBLIC OR PRIVATE SOURCE, SUBJECT TO THE PROVISIONS OF THIS SUBTITLE;

(7) ENTER INTO CONTRACTS AND EXECUTE THE INSTRUMENTS NECESSARY OR CONVENIENT TO CARRY OUT THIS SUBTITLE TO ACCOMPLISH ITS PURPOSES; AND

(8) DO ALL THINGS NECESSARY OR CONVENIENT TO CARRY OUT THE POWERS EXPRESSLY GRANTED BY THIS SUBTITLE.

(B) THE AUTHORITY SHALL ADOPT A CODE OF CONDUCT FOR ITS MEMBERS.

12-111.

(A) THE AUTHORITY MAY OBTAIN FUNDING FOR ITS OPERATIONAL EXPENSES FROM:

(1) A FEDERAL OR STATE GRANT;

(2) FILING FEES AND ADMINISTRATIVE FEES FOR COMPLAINTS HEARD BY THE AUTHORITY AS AUTHORIZED UNDER ~~§ 12-112~~ § 12-112(B)(1) OF THIS SUBTITLE; AND

(3) ANY OTHER SOURCE.

(B) EXCEPT AS PROVIDED IN SUBSECTION (A)(2) OF THIS SECTION, THE AUTHORITY MAY NOT IMPOSE A CHARGE OR ASSESSMENT AGAINST ANY PERSON, DIRECTLY OR INDIRECTLY, TO OBTAIN FUNDING FOR ITS OPERATIONAL EXPENSES.

12-112.

(A) TO ENFORCE THIS SUBTITLE, THE AUTHORITY MAY:

(1) HEAR COMPLAINTS FOR VIOLATIONS OF THIS SUBTITLE;

(2) AFTER A HEARING, ASSESS A CIVIL PENALTY UNDER § 12-135 OF THIS SUBTITLE; AND

(3) REACH A SETTLEMENT INSTEAD OF ASSESSING A CIVIL PENALTY.

(B) (1) THE AUTHORITY MAY:

~~(1)~~ (I) ESTABLISH REASONABLE COMPLAINT FILING FEES AND ADMINISTRATIVE FEES FOR COMPLAINTS HEARD BY THE AUTHORITY; AND

~~(2)~~ (II) USE THE SERVICES OF A THIRD PARTY TO COLLECT CIVIL PENALTIES.

(2) IF THE AUTHORITY DETERMINES THAT AN INDIVIDUAL CANNOT AFFORD TO PAY A FEE ESTABLISHED UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION, THE AUTHORITY MAY EXEMPT THE INDIVIDUAL WHOLLY OR PARTLY FROM THE FEE.

(C) THE AUTHORITY MAY NOT ASSESS A CIVIL PENALTY AGAINST A PERSON UNLESS THE PERSON:

(1) RECEIVES REASONABLE PRIOR NOTICE OF THE COMPLAINT;
AND

(2) HAS AN OPPORTUNITY TO BE HEARD UNDER § 12-113 OF THIS SUBTITLE.

12-113.

(A) IN A HEARING BEFORE THE AUTHORITY FOR AN ALLEGED VIOLATION OF THIS SUBTITLE:

- (1) ALL TESTIMONY SHALL BE GIVEN UNDER OATH; AND
- (2) THE PROCEEDINGS SHALL BE RECORDED.

(B) THE CHAIR OR A MEMBER OF THE AUTHORITY MAY ADMINISTER THE OATH.

(C) THE AUTHORITY MAY COMPEL THE ATTENDANCE OF A WITNESS BY SUBPOENA.

(D) (1) THE AUTHORITY SHALL ISSUE ITS DECISION IN WRITING, STATING THE REASON FOR ITS DECISION.

(2) A COPY OF THE DECISION SHALL BE DELIVERED OR MAILED TO ~~THE PERSON AGAINST WHOM THE COMPLAINT WAS MADE~~ ALL PARTIES TO THE COMPLAINT PROCEEDINGS.

(E) (1) A PERSON AGGRIEVED BY A DECISION OF THE AUTHORITY MAY, WITHIN 30 DAYS AFTER RECEIVING THE DECISION, REQUEST JUDICIAL REVIEW OF THE DECISION BY THE CIRCUIT COURT.

(2) IN ACCORDANCE WITH THE JUDICIAL REVIEW AND APPEALS PROCESS UNDER THE ADMINISTRATIVE PROCEDURE ACT, THE CIRCUIT COURT SHALL HEAR AND DETERMINE ALL MATTERS CONNECTED WITH THE DECISION OF THE AUTHORITY FOR WHICH JUDICIAL REVIEW IS REQUESTED.

(3) (I) ~~THE~~ EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE COSTS OF THE JUDICIAL REVIEW, INCLUDING THE COSTS OF PREPARING A RECORD AND TRANSCRIPT, SHALL BE PAID BY THE PARTY FILING THE REQUEST FOR JUDICIAL REVIEW.

(II) IF THE PARTY FILING THE REQUEST FOR JUDICIAL REVIEW PREVAILS, THE CIRCUIT COURT MAY REQUIRE THAT THE COSTS OF THE JUDICIAL REVIEW, INCLUDING THE COSTS OF PREPARING A RECORD AND TRANSCRIPT, BE PAID BY THE AUTHORITY.

(4) IF THE REQUEST FOR JUDICIAL REVIEW IS DISMISSED, THE CIRCUIT COURT SHALL AWARD ATTORNEY'S FEES TO THE AUTHORITY UNLESS THE AUTHORITY WAIVES THE AWARD OF ATTORNEY'S FEES.

(F) (1) THE RECORD OF A HEARING CONDUCTED UNDER THIS SECTION, INCLUDING ANY RECORD OF TESTIMONY OR EVIDENCE OFFERED AT THE HEARING, IS NOT ADMISSIBLE IN ANY ADMINISTRATIVE OR CIVIL PROCEEDING INVOLVING THE SAME SUBJECT MATTER OR THE SAME PARTIES.

(2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY TO JUDICIAL REVIEW OF THE AUTHORITY'S DECISION.

12-114.

BEGINNING JANUARY 1, 2012, THE AUTHORITY SHALL REPORT EACH YEAR TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY ON THE ACTIVITIES OF THE AUTHORITY AND ANY RECOMMENDATIONS OF THE AUTHORITY.

12-115. RESERVED.

12-116. RESERVED.

**PART III. MARYLAND UNDERGROUND FACILITIES DAMAGE PREVENTION
EDUCATION AND OUTREACH FUND.**

12-117.

(A) THERE IS A MARYLAND UNDERGROUND FACILITIES DAMAGE PREVENTION EDUCATION AND OUTREACH FUND.

(B) THE PURPOSE OF THE FUND IS TO COVER THE COSTS OF:

(1) PUBLIC EDUCATION AND OUTREACH PROGRAMS; AND

(2) THE DEVELOPMENT OF SAFETY PROCEDURES TO PREVENT DAMAGE TO UNDERGROUND FACILITIES.

(C) THE AUTHORITY SHALL HOLD AND ADMINISTER THE FUND.

(D) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(E) THE FUND CONSISTS OF:

(1) CIVIL PENALTIES PAID INTO THE FUND UNDER § 12-135 OF THIS SUBTITLE;

(2) INVESTMENT EARNINGS OF THE FUND; AND

(3) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR THE BENEFIT OF THE FUND.

(F) (1) THE FUND MAY BE USED ONLY FOR:

(I) PUBLIC EDUCATION AND OUTREACH PROGRAMS FOR THE PREVENTION OF DAMAGE TO UNDERGROUND FACILITIES; AND

(II) THE DEVELOPMENT OF SAFETY PROCEDURES FOR EXCAVATION AND DEMOLITION PROJECTS CONDUCTED IN THE AREA OF UNDERGROUND FACILITIES.

(2) THE AUTHORITY MAY MAKE GRANTS TO LOCAL GOVERNMENTS OR PRIVATE ENTITIES CONSISTENT WITH THE PURPOSES OF THE FUND.

12-118. RESERVED.

12-119. RESERVED.

PART IV. EXCAVATION AND DEMOLITION.

12-120.

(a) Except as provided in subsections (b) and (c) of this section, a person that obtains the information required under this subtitle is not excused from:

(1) performing an excavation or demolition in a careful and prudent manner; and

(2) liability for damages or injury that results from the excavation or demolition.

(b) If an underground facility is damaged by a person that fails to comply with this subtitle, the person is deemed negligent and is liable to the owner for the total cost of repair of the underground facility, unless the owner has failed to become an owner-member in accordance with § [12-109(b)] ~~12-123(A)~~ 12-123 of this subtitle.

(c) If an underground facility is damaged by a person who is in compliance with this subtitle and the owner has failed to become an owner–member in accordance with § [12–109(b)] ~~12–123(A)~~ 12–123 of this subtitle:

(1) the person is not liable to the owner for the cost of repair of the underground facility; and

(2) the owner is liable for any repairs or restoration of property damaged by the excavation or demolition.

(d) Subsection (c) of this section may not be construed to interfere with the right of:

(1) a third party to recover damages arising out of the excavation or demolition from the person or from the owner; or

(2) the person to seek contribution from an owner for damages sought by a third party under paragraph (1) of this subsection.

12–121.

(a) Subject to § [12–104(b)] **12–120(B)** of this subtitle, if all reasonable precautions have been taken to protect underground facilities, § [12–104(a)] **12–120(A)** of this subtitle and §§ [12–106 through 12–113] **12–122 THROUGH 12–135** of this subtitle do not apply to an emergency excavation or demolition being performed to prevent danger to life, health, or property.

(b) A person performing an emergency excavation or demolition to prevent danger to life, health, or property shall:

(1) take all reasonable precautions to protect underground facilities in and near the excavation or demolition area; and

(2) [promptly notify each owner of an underground facility in and near the excavation or demolition area] **IMMEDIATELY NOTIFY THE ONE–CALL SYSTEM SERVING THE GEOGRAPHIC AREA WHERE THE EMERGENCY EXCAVATION OR DEMOLITION IS PERFORMED TO INFORM THE APPROPRIATE OWNER–MEMBERS OF THE EXCAVATION OR DEMOLITION AREA.**

(C) A PERSON THAT ABUSES THE EMERGENCY EXCAVATION AND DEMOLITION PROCEDURE SET FORTH IN THIS SECTION IS SUBJECT TO PENALTIES UNDER § 12–135 OF THIS SUBTITLE.

12–122.

(a) Except as provided in subsection (b) of this section, a person that operates a one-call system in the State shall register with and obtain certification to operate from the Commission.

(b) A person operating a one-call system on or before July 1, 1990, is automatically registered with and certified by the Commission to continue to operate.

(c) (1) The operator of a one-call system shall install and make available an [owner-contractor] UNDERGROUND FACILITIES information exchange system in its one-call center in the State.

(2) The [owner-contractor] UNDERGROUND FACILITIES information exchange system shall be available to any caller at all times.

(d) The Commission may grant, amend, or revoke the certification of a person operating a one-call system.

12-123.

(A) (1) AN OWNER SHALL BE A MEMBER OF A ONE-CALL SYSTEM.

(2) ~~AN~~ EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, AN OWNER BECOMES A MEMBER OF A ONE-CALL SYSTEM BY REGISTERING WITH THE ONE-CALL SYSTEM.

(3) THE DEPARTMENT OF TRANSPORTATION, ITS ADMINISTRATIONS, AND THE MARYLAND TRANSPORTATION AUTHORITY SHALL BECOME MEMBERS OF THE ONE-CALL SYSTEM THROUGH A SEPARATE AGREEMENT AND USING THE INFORMATION COLLECTED UNDER § 12-124(B)(2) OF THIS SUBTITLE.

(B) (1) AN OWNER-MEMBER OF A ONE-CALL SYSTEM SHALL SUBMIT TO THE ONE-CALL SYSTEM, IN WRITING, THE TELEPHONE NUMBER OF THE PERSON TO WHICH CALLS CONCERNING PROPOSED EXCAVATIONS OR DEMOLITIONS SHALL BE DIRECTED.

(2) AN OWNER-MEMBER SHALL ENSURE THAT ALL CONTACT INFORMATION PROVIDED TO THE ONE-CALL SYSTEM REMAINS CURRENT.

12-124.

(A) A PERSON THAT INTENDS TO PERFORM AN EXCAVATION OR DEMOLITION IN THE STATE SHALL INITIATE A TICKET REQUEST BY NOTIFYING THE ONE-CALL SYSTEM SERVING THE GEOGRAPHIC AREA WHERE THE

EXCAVATION OR DEMOLITION IS TO BE PERFORMED OF THE PERSON'S INTENT TO PERFORM THE EXCAVATION OR DEMOLITION.

(B) NOTICE PROVIDED TO A ONE-CALL SYSTEM UNDER SUBSECTION (A) OF THIS SECTION SHALL INDICATE:

(1) THE LOCATION OF THE PROPOSED EXCAVATION OR DEMOLITION; ~~AND~~

(2) WHETHER THE PROPOSED EXCAVATION OR DEMOLITION IS WITHIN RIGHTS-OF-WAY OWNED OR CONTROLLED BY THE DEPARTMENT OF TRANSPORTATION, AN ADMINISTRATION OF THE DEPARTMENT OF TRANSPORTATION, OR THE MARYLAND TRANSPORTATION AUTHORITY AND, IF SO, THE ENTITY AND THE PERMIT NUMBER OR AUTHORIZATION NUMBER OBTAINED FROM THAT ENTITY; AND

~~(2)~~ (3) THE TYPE OF WORK TO BE PERFORMED IN CONNECTION WITH THE PROPOSED EXCAVATION OR DEMOLITION.

(C) (1) ~~ON~~ EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, ON RECEIVING NOTICE, THE ONE-CALL SYSTEM SHALL PROMPTLY TRANSMIT A COPY OF THE TICKET TO ALL OWNER-MEMBERS IN THE GEOGRAPHIC AREA INDICATED FOR THAT TICKET.

(2) BASED ON INFORMATION COLLECTED UNDER § 12-124(B)(2) OF THIS SUBTITLE, THE ONE-CALL SYSTEM SHALL PROMPTLY TRANSMIT A COPY OF THE TICKET TO THE DEPARTMENT OF TRANSPORTATION, AN ADMINISTRATION OF THE DEPARTMENT OF TRANSPORTATION, OR THE MARYLAND TRANSPORTATION AUTHORITY, AS APPLICABLE.

(3) A TICKET IS VALID FOR 12 BUSINESS DAYS AFTER THE DAY ON WHICH THE TICKET IS TRANSMITTED BY THE ONE-CALL SYSTEM TO AN ~~OWNER~~ OWNER-MEMBER.

12-125.

(A) A PERSON SHALL REPEAT THE NOTIFICATION REQUIRED UNDER § 12-124~~(A)~~ OF THIS SUBTITLE IF THE PERSON:

(1) HAS NOT COMPLETED OR WILL NOT COMPLETE THE EXCAVATION OR DEMOLITION WITHIN THE TIME PERIOD AUTHORIZED BY THE TICKET; OR

(2) INTENDS TO EXPAND THE EXCAVATION OR DEMOLITION BEYOND THE LOCATION INDICATED IN THE NOTICE UNDER § 12-124(B) OF THIS SUBTITLE.

(B) A PERSON SHALL REPEAT THE NOTIFICATION REGARDLESS OF:

(1) ANY DELAYS BY AN ~~OWNER~~ OWNER-MEMBER IN MARKING ITS UNDERGROUND FACILITIES; OR

(2) AN AGREEMENT BETWEEN THE PERSON AND AN ~~OWNER~~ OWNER-MEMBER REGARDING THE TIME FOR MARKING UNDERGROUND FACILITIES.

12-126.

(A) AN ~~OWNER~~ OWNER-MEMBER SHALL MARK ITS UNDERGROUND FACILITY IF THE ~~OWNER~~ OWNER-MEMBER HAS DETERMINED THAT A PROPOSED EXCAVATION OR DEMOLITION:

(1) IS WITHIN 5 FEET OF THE HORIZONTAL PLANE OF THE UNDERGROUND FACILITY; OR

(2) BECAUSE OF PLANNED BLASTING, IS SO NEAR TO THE UNDERGROUND FACILITY THAT THE UNDERGROUND FACILITY MAY BE DAMAGED OR DISTURBED.

(B) (1) AN ~~OWNER~~ OWNER-MEMBER SHALL MARK THE LOCATION OF ITS UNDERGROUND FACILITY BY MARKING ON THE GROUND WITHIN 18 INCHES ON A HORIZONTAL PLANE ON EITHER SIDE OF THE UNDERGROUND FACILITY.

(2) (I) WHEN MARKING THE LOCATION OF AN UNDERGROUND FACILITY, AN ~~OWNER~~ OWNER-MEMBER SHALL USE THE CURRENT COLOR CODES ESTABLISHED BY THE AMERICAN PUBLIC WORKS ASSOCIATION FOR MARKING UNDERGROUND FACILITIES.

(II) IF TWO OR MORE ~~OWNERS~~ OWNER-MEMBERS SHARE THE SAME COLOR CODE, EACH ~~OWNER~~ OWNER-MEMBER SHALL INCLUDE INFORMATION WITH THE MARKING THAT INDICATES THE ~~OWNER~~ OWNER-MEMBER OF THE MARKED UNDERGROUND FACILITY.

(C) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, WITHIN 2 BUSINESS DAYS AFTER THE DAY ON WHICH A TICKET IS TRANSFERRED TO AN ~~OWNER~~ OWNER-MEMBER, THE ~~OWNER~~ OWNER-MEMBER SHALL:

(1) MARK THE LOCATION OF THE ~~OWNER'S~~ OWNER-MEMBER'S UNDERGROUND FACILITY AND REPORT TO THE UNDERGROUND FACILITIES INFORMATION EXCHANGE SYSTEM THAT THE UNDERGROUND FACILITY HAS BEEN MARKED; OR

(2) REPORT TO THE UNDERGROUND FACILITIES INFORMATION EXCHANGE SYSTEM THAT THE ~~OWNER~~ OWNER-MEMBER HAS NO UNDERGROUND FACILITIES IN THE VICINITY OF THE PLANNED EXCAVATION OR DEMOLITION.

(D) (1) IF AN ~~OWNER~~ OWNER-MEMBER IS UNABLE TO MARK THE LOCATION OF THE ~~OWNER'S~~ OWNER-MEMBER'S UNDERGROUND FACILITY WITHIN THE TIME PERIOD PRESCRIBED IN SUBSECTION (C) OF THIS SECTION BECAUSE OF THE SCOPE OF THE PROPOSED EXCAVATION OR DEMOLITION, THE ~~OWNER~~ OWNER-MEMBER SHALL:

(I) PROMPTLY NOTIFY THE UNDERGROUND FACILITIES INFORMATION EXCHANGE SYSTEM AND THE PERSON THAT INTENDS TO PERFORM THE EXCAVATION OR DEMOLITION; AND

(II) WORK WITH THE PERSON THAT INTENDS TO PERFORM THE EXCAVATION OR DEMOLITION TO DEVELOP A MUTUALLY AGREEABLE SCHEDULE FOR MARKING THE UNDERGROUND FACILITY.

(2) IF THE ~~OWNER~~ OWNER-MEMBER AND PERSON THAT INTENDS TO PERFORM THE EXCAVATION OR DEMOLITION CANNOT REACH A MUTUALLY AGREEABLE SCHEDULE FOR MARKING UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE ~~OWNER~~ OWNER-MEMBER SHALL MARK THAT PORTION OF THE SITE WHERE EXCAVATION OR DEMOLITION WILL FIRST OCCUR, AND THE ~~OWNER~~ OWNER-MEMBER SHALL MARK THE REMAINDER OF THE SITE WITHIN A REASONABLE TIME.

(3) IF, DUE TO CIRCUMSTANCES BEYOND AN ~~OWNER'S~~ OWNER-MEMBER'S CONTROL AND FOR REASONS OTHER THAN THOSE SPECIFIED IN PARAGRAPH (1) OF THIS SUBSECTION, AN ~~OWNER~~ OWNER-MEMBER IS UNABLE TO MARK THE LOCATION OF THE ~~OWNER'S~~ OWNER-MEMBER'S UNDERGROUND FACILITY WITHIN THE TIME PERIOD PRESCRIBED IN SUBSECTION (C) OF THIS SECTION, THE ~~OWNER~~ OWNER-MEMBER SHALL REPORT TO THE UNDERGROUND FACILITIES INFORMATION EXCHANGE SYSTEM THAT AN EXTENSION IS REQUIRED.

(4) IN CONNECTION WITH EXTENSIVE OR CONTIGUOUS EXCAVATION OR DEMOLITION PROJECTS, THE PERSON PERFORMING THE EXCAVATION OR DEMOLITION AND THE ~~OWNER~~ OWNER-MEMBER MAY

ESTABLISH A WORKING AGREEMENT REGARDING THE TIME PERIODS FOR MARKING THE UNDERGROUND FACILITY.

12-127.

(A) A PERSON MAY BEGIN EXCAVATION OR DEMOLITION ONLY AFTER THE PERSON RECEIVES NOTIFICATION FROM THE UNDERGROUND FACILITIES INFORMATION EXCHANGE SYSTEM OF THE ONE-CALL SYSTEM CONFIRMING THAT ALL APPLICABLE ~~OWNERS~~ OWNER-MEMBERS HAVE:

(1) MARKED THEIR UNDERGROUND FACILITIES IN ACCORDANCE WITH § 12-126(C) OF THIS SUBTITLE;

(2) MARKED THE APPLICABLE PORTION OF THEIR UNDERGROUND FACILITIES IN ACCORDANCE WITH § 12-126(D) OF THIS SUBTITLE; OR

(3) REPORTED THAT THEY HAVE NO UNDERGROUND FACILITIES IN THE VICINITY OF THE EXCAVATION OR DEMOLITION.

(B) (1) AFTER AN ~~OWNER~~ OWNER-MEMBER HAS MARKED THE LOCATION OF AN UNDERGROUND FACILITY IN ACCORDANCE WITH § 12-126 OF THIS SUBTITLE, THE PERSON PERFORMING THE EXCAVATION OR DEMOLITION IS RESPONSIBLE FOR THE MAINTENANCE OF THE DESIGNATED MARKER.

(2) IF THE MARKER IS OBLITERATED, DESTROYED, OR REMOVED, THE PERSON SHALL REPEAT THE NOTIFICATION REQUIRED UNDER § 12-124(A) OF THIS SUBTITLE.

(C) (1) A PERSON PERFORMING AN EXCAVATION OR DEMOLITION SHALL EXERCISE DUE CARE TO AVOID INTERFERENCE WITH OR DAMAGE TO AN UNDERGROUND FACILITY THAT AN ~~OWNER~~ OWNER-MEMBER HAS MARKED IN ACCORDANCE WITH § 12-126 OF THIS SUBTITLE.

~~(2) IF EXCAVATION OR DEMOLITION IS PERFORMED WITHIN 18 INCHES OF AN UNDERGROUND FACILITY MARKING, THE EXCAVATION OR DEMOLITION SHALL BE PERFORMED BY HAND OR OTHER NONDESTRUCTIVE TECHNIQUES.~~

(2) BEFORE USING MECHANIZED EQUIPMENT FOR EXCAVATION OR DEMOLITION WITHIN 18 INCHES OF AN UNDERGROUND FACILITY MARKING, A PERSON SHALL EXPOSE THE UNDERGROUND FACILITY TO ITS OUTERMOST SURFACES BY HAND OR OTHER NONDESTRUCTIVE TECHNIQUES.

(3) A PERSON MAY NOT USE MECHANIZED EQUIPMENT TO EXCAVATE WITHIN 18 INCHES OF THE OUTERMOST SURFACE OF AN EXPOSED UNDERGROUND FACILITY.

~~(4) IF A PERSON IS PERFORMING AN EXCAVATION OR DEMOLITION THAT RUNS PARALLEL TO AN UNDERGROUND FACILITY AND IS WITHIN 18 INCHES OF AN UNDERGROUND FACILITY MARKING, THE PERSON SHALL:~~

~~(I) MAKE TEST HOLES AT THE MIDPOINT AND AT EACH END OF THE EXCAVATION OR DEMOLITION AREA; AND~~

~~(II) IF APPLICABLE, MAKE TEST HOLES AT INTERVALS OF NOT MORE THAN 100 FEET.~~

(D) (1) THE PERSON PERFORMING AN EXCAVATION OR DEMOLITION IMMEDIATELY SHALL NOTIFY THE ~~OWNER~~ OWNER-MEMBER OF THE FACILITY IF THE PERSON DISCOVERS OR CAUSES ANY DAMAGE TO OR DISLOCATION OR DISTURBANCE OF AN UNDERGROUND FACILITY IN CONNECTION WITH THE EXCAVATION OR DEMOLITION.

(2) IF THE DAMAGE, DISLOCATION, OR DISTURBANCE RESULTS IN THE ESCAPE OF A FLAMMABLE, TOXIC, OR CORROSIVE GAS OR LIQUID, THE PERSON PERFORMING THE EXCAVATION OR DEMOLITION IMMEDIATELY SHALL REPORT THE DAMAGE TO THE 9-1-1 EMERGENCY SYSTEM.

(E) (1) IF A PERSON KNOWS OR HAS REASON TO KNOW THAT AN UNDERGROUND FACILITY IN THE AREA OF A PLANNED OR ONGOING EXCAVATION OR DEMOLITION IS NOT MARKED AS REQUIRED BY THIS SUBTITLE, THE PERSON MAY NOT BEGIN OR CONTINUE THE EXCAVATION OR DEMOLITION UNLESS THE PERSON:

(I) HAS REPEATED THE NOTIFICATION REQUIRED UNDER § 12-124(A) OF THIS SUBTITLE; AND

(II) RECEIVES NOTIFICATION FROM THE UNDERGROUND FACILITIES INFORMATION EXCHANGE SYSTEM OF THE ONE-CALL SYSTEM CONFIRMING THAT ALL APPLICABLE ~~OWNERS~~ OWNER-MEMBERS THAT HAVE UNDERGROUND FACILITIES IN THE VICINITY OF THE EXCAVATION OR DEMOLITION HAVE MARKED:

1. THE UNDERGROUND FACILITIES IN ACCORDANCE WITH § 12-126(C) OF THIS SUBTITLE; OR

2. THE APPLICABLE PORTION OF THE UNDERGROUND FACILITIES IN ACCORDANCE WITH 12-126(D) OF THIS SUBTITLE.

(2) IF THE UNDERGROUND FACILITY IS NOT MARKED AS REQUIRED BY THIS SUBTITLE AFTER THE PERSON RECEIVES NOTIFICATION FROM THE UNDERGROUND FACILITIES INFORMATION EXCHANGE SYSTEM UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE PERSON MAY PROCEED WITH THE EXCAVATION OR DEMOLITION.

12-128.

~~[(a)]~~ A political subdivision ~~[or,]~~ ~~A~~ municipal corporation, THE DEPARTMENT OF TRANSPORTATION, AN ADMINISTRATION OF THE DEPARTMENT OF TRANSPORTATION, OR THE MARYLAND TRANSPORTATION AUTHORITY, OR AN OWNER may ~~NOT~~ charge, assess, or collect from a person ~~fa~~ one-time initial marking fee not exceeding \$35 ~~A FEE~~ for reimbursement of expenses that the political subdivision ~~[or,]~~ municipal corporation, THE DEPARTMENT OF TRANSPORTATION, AN ADMINISTRATION OF THE DEPARTMENT OF TRANSPORTATION, OR THE MARYLAND TRANSPORTATION AUTHORITY, OR ~~OWNER~~ incurs to comply with this subtitle.

~~[(b)]~~ If re-marking is requested, or is required after renotification under § 12-108(b) of this subtitle, a political subdivision ~~or,~~ municipal corporation, OR ANY OF THE TRANSPORTATION ENTITIES SPECIFIED IN SUBSECTION (A) OF THIS SECTION may charge, assess, or collect from a person a re-marking fee not exceeding \$15 for reimbursement of expenses that the political subdivision ~~or,~~ municipal corporation, OR ANY OF THE TRANSPORTATION ENTITIES SPECIFIED IN SUBSECTION (A) OF THIS SECTION incurs to comply with this subtitle.

12-129. RESERVED.

12-130. RESERVED.

PART V. DESIGNER REQUESTS.

12-131.

(A) IN CONNECTION WITH A PROJECT THAT MAY REQUIRE EXCAVATION OR DEMOLITION, A DESIGNER MAY INITIATE A TICKET REQUEST BY NOTIFYING THE ONE-CALL SYSTEM SERVING THE GEOGRAPHIC AREA COVERING THE PLANNED PROJECT.

(B) A DESIGNER INITIATING A TICKET REQUEST UNDER THIS SECTION:

(1) MAY INITIATE ONLY ONE TICKET REQUEST FOR A SINGLE PROJECT; AND

(2) SHALL, IN CONNECTION WITH A TICKET REQUEST:

(I) INDICATE THAT THE REQUEST IS FOR DESIGN PURPOSES ONLY AND MAY NOT BE USED FOR THE PURPOSE OF EXCAVATION OR DEMOLITION;

(II) NOTIFY THE ONE-CALL SYSTEM OF ANY ~~OWNERS~~ OWNER-MEMBERS FROM WHICH THE DESIGNER DOES NOT REQUIRE UNDERGROUND FACILITIES INFORMATION; AND

(III) ON THE REQUEST OF AN ~~OWNER~~ OWNER-MEMBER, PROVIDE THE ~~OWNER~~ OWNER-MEMBER WITH A PRELIMINARY DRAWING THAT INDICATES THE SCOPE OF THE PROJECT.

(C) (1) WITHIN 15 BUSINESS DAYS AFTER RECEIVING NOTICE FROM A ONE-CALL SYSTEM THAT A DESIGNER HAS MADE A REQUEST UNDER THIS SECTION, AN ~~OWNER~~ OWNER-MEMBER OF AN UNDERGROUND FACILITY IN THE AREA OF THE PROJECT SHALL NOTIFY THE DESIGNER OF THE TYPE AND APPROXIMATE LOCATION OF THE UNDERGROUND FACILITY.

(2) AN ~~OWNER~~ OWNER-MEMBER MAY PROVIDE NOTICE OF THE APPROXIMATE LOCATION OF AN UNDERGROUND FACILITY THROUGH THE USE OF:

(I) FIELD LOCATES;

(II) MAPS;

(III) SURVEYS;

(IV) INSTALLATION RECORDS; OR

(V) OTHER SIMILAR MEANS.

(D) (1) INFORMATION PROVIDED TO A DESIGNER UNDER THIS SECTION IS FOR INFORMATIONAL PURPOSES ONLY.

(2) AN ~~OWNER~~ OWNER-MEMBER OR AGENT OF AN ~~OWNER~~ OWNER-MEMBER MAY NOT BE HELD LIABLE FOR ANY INACCURATE INFORMATION PROVIDED TO A DESIGNER UNDER THIS SECTION.

12-132. RESERVED.

12-133. RESERVED.

PART VI. ENFORCEMENT AND PENALTIES.

12-134.

(a) To stop or prevent a negligent or unsafe excavation or demolition, an owner or the Attorney General may file an action for a writ of mandamus or injunction in a court of competent jurisdiction in Baltimore City or the county in which the excavation or demolition is being performed or is to be performed or in which the person resides or has its principal place of business, if the person:

(1) is performing an excavation or demolition in a negligent or unsafe manner that has resulted in or is likely to result in damage to an underground facility; or

(2) is intending to use procedures to carry out the excavation or demolition that are likely to result in damage to an underground facility.

(b) (1) To make its judgment or processes effective, the court may join as parties any persons necessary or proper.

(2) If appropriate, the court shall issue a final order granting the injunction or writ of mandamus.

12-135.

(a) **(1)** A person that performs an excavation or demolition without first providing the notice required under § [12-108] **12-124(A)** of this subtitle and damages, dislocates, or disturbs an underground facility is deemed negligent and is subject to a civil penalty **ASSESSED BY THE AUTHORITY** not exceeding:

(I) [\$1,000] ~~\$2,500~~ **\$2,000** for the first offense; and

(II) [\$1,000] **SUBJECT TO SUBSECTION (C) OF THIS SECTION,** ~~\$5,000~~ **\$4,000** for each subsequent offense [or ten times the cost of repairs to the underground facility caused by the damage, dislocation, or disturbance].

(2) INSTEAD OF OR IN ADDITION TO A CIVIL PENALTY ASSESSED UNDER THIS SUBSECTION, THE AUTHORITY MAY:

(I) REQUIRE THAT A PERSON:

- 1. PARTICIPATE IN DAMAGE PREVENTION TRAINING;**
OR
2. IMPLEMENT PROCEDURES TO MITIGATE THE LIKELIHOOD OF DAMAGE TO UNDERGROUND FACILITIES; OR

(II) IMPOSE OTHER SIMILAR MEASURES.

(3) A PERSON THAT VIOLATES ANY ~~OTHER~~ PROVISION OF PART IV ~~OR PART V~~ OF THIS SUBTITLE IS SUBJECT TO A CIVIL PENALTY ASSESSED BY THE AUTHORITY NOT EXCEEDING ~~\$2,500~~ \$2,000.

(b) (1) THIS SUBSECTION APPLIES IF A PROCEEDING HAS NOT BEEN INITIATED BEFORE THE AUTHORITY.

(2) A COURT OF COMPETENT JURISDICTION MAY ASSESS A CIVIL PENALTY OF UP TO 10 TIMES THE COST OF REPAIRS TO THE UNDERGROUND FACILITY CAUSED BY THE DAMAGE, DISLOCATION, OR DISTURBANCE AGAINST A PERSON THAT HAS COMMITTED A SUBSEQUENT OFFENSE UNDER SUBSECTION (A)(1) OF THIS SECTION.

(3) An action to recover a civil penalty under this [section] SUBSECTION shall be brought by an owner of a damaged, dislocated, or disturbed underground facility or the Attorney General in a court of competent jurisdiction in Baltimore City or the county in which the damage, dislocation, or disturbance occurred.

(4) THE PARTY BRINGING AN ACTION UNDER THIS SUBSECTION MAY RECOVER REASONABLE ATTORNEY'S FEES.

(C) THE AUTHORITY MAY NOT ASSESS A CIVIL PENALTY UNDER SUBSECTION (A)(1)(II) OF THIS SECTION IF AN ACTION TO RECOVER A CIVIL PENALTY HAS BEEN BROUGHT UNDER SUBSECTION (B) OF THIS SECTION.

[(c)] (D) All civil penalties recovered [in an action] under this section[, including reasonable attorney's fees,] shall be paid into the [General Fund of the State] FUND.

12-101.

(a) In this subtitle, unless the context clearly requires otherwise, "State personnel" means:

- (2) an employee or official of the:
 - (i) Maryland Transportation Authority;
 - (ii) Injured Workers' Insurance Fund;
 - (iii) Maryland Stadium Authority;
 - (iv) Maryland Environmental Service;
 - (v) overseas programs of the University College of the University System of Maryland;
 - (vi) Maryland Economic Development Corporation;
 - (vii) Maryland Technology Development Corporation;
 - (viii) Maryland African American Museum Corporation;
 - (ix) Maryland Automobile Insurance Fund;
 - (x) Maryland Health and Higher Educational Facilities Authority;
 - (xi) Maryland Agricultural and Resource-Based Industry Development Corporation;
 - (xii) Somers Cove Marina Commission; [and]
 - (xiii) Maryland Workforce Corporation; AND

(XIV) MARYLAND UNDERGROUND FACILITIES DAMAGE PREVENTION AUTHORITY;

~~SECTION 4. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:~~

~~**Article — Public Utility Companies**~~

~~12-101.~~

~~(a) In this subtitle the following words have the meanings indicated.~~

~~(e) (1) "Underground facility" means personal property that is to be buried or submerged for:~~

~~(i) use in connection with the storage or conveyance of water, sewage, oil, gas, or other substances; or~~

~~(ii) transmission or conveyance of electronic, telephonic, or telegraphic communications or electricity.~~

~~(2) "Underground facility" includes **STORMWATER DRAINS**, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those portions of poles below ground.~~

~~[(3) "Underground facility" does not include a stormwater drain.]~~

SECTION ~~5~~ 4. AND BE IT FURTHER ENACTED, That the terms of the initial members of the Maryland Underground Facilities Damage Prevention Authority shall expire as follows:

(1) in 2011:

(i) the member appointed from a list submitted by the Public Works Contractors Association of Maryland;

(ii) one of the underground facility owners appointed from a list submitted by the Maryland members of the Maryland/DC Subscribers Committee as identified by the Governor on the initial appointment of that member to the Authority;

(iii) the member who represents Maryland's underground utility locator community appointed from a list submitted by the Maryland members of the Maryland/DC Damage Prevention Committee;

(iv) the member appointed from a list submitted by the Maryland Association of Counties; and

(v) the member of the general public; and

(2) in 2012:

(i) the member appointed from a list submitted by the Associated Utility Contractors of Maryland;

(ii) one of the underground facility owners appointed from a list submitted by the Maryland members of the Maryland/DC Subscribers Committee as identified by the Governor on the initial appointment of that member to the Authority;

(iii) the member appointed from a list submitted by the one-call centers operating in the State; and

(iv) the member appointed from a list submitted by the Maryland Municipal League.

~~SECTION 6. AND BE IT FURTHER ENACTED, That a person that owns stormwater drains in the State shall make a good faith effort to identify the location of the stormwater drains before January 1, 2012. A person that owns stormwater drains constructed before January 1, 2012, shall be held harmless under this Act with respect to any such stormwater drains that the owner could not identify and locate after making a good faith effort.~~

~~SECTION 7. AND BE IT FURTHER ENACTED, That Section 4 of this Act shall take effect January 1, 2012.~~

~~SECTION 8. 5. AND BE IT FURTHER ENACTED, That, except as provided in Section 7 of this Act, this Act shall take effect October 1, 2010.~~

Approved by the Governor, May 20, 2010.