
By: Delegates Klausmeier and Redmer

Rules suspended

Introduced and read first time: March 7, 1997

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Public Service Commission - Safety and Damage Prevention of Underground Facilities**

3 FOR the purpose of requiring a certain one-call system communications network to
4 maintain a certain notification center; requiring the Public Service Commission to
5 register and certify a certain person as a one-call system operator; increasing a
6 certain period of time for providing notice of excavation; requiring certain persons
7 to confirm the marking of certain underground facilities; requiring certain persons
8 to call a certain one-call system notification center; authorizing the Commission to
9 impose certain fines and penalties, have certain staff, funding and authority;
10 prohibiting certain political subdivision or municipalities from charging, assessing or
11 collecting marking fees; authorizing the award of attorney's fees; and generally
12 relating to underground facilities.

13 BY repealing and reenacting, with amendments,
14 Article 78 - Public Service Commission Law
15 Section 28A
16 Annotated Code of Maryland
17 (1995 Replacement Volume and 1996 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article 78 - Public Service Commission Law**

21 28A.

22 (a) It is the intent of the legislature to protect underground facilities [of public
23 service companies] from destruction, damage or dislocation in order to prevent:

24 (1) Death or injury to persons;

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

26 (3) Loss of services of [public service companies] UNDERGROUND
27 FACILITIES to the general public.

28 (b) As used in this subtitle:

2

1 (1) (i) "Contractor" means a person who performs excavation or demolition
2 work.

3 (ii) "Contractor" includes a person who performs work under a
4 contract or subcontract.

5 (2) "Excavation" means any operation in which earth, rock or other material
6 in or on the ground is moved, removed or otherwise displaced by means of any tools,
7 equipment or explosives and includes, without limitation, grading, trenching, digging,
8 ditching, drilling, augering, tunnelling, scraping, cable or pipe plowing and driving,
9 demolition, wrecking, razing, rending, moving or removing any structure or mass of
10 material.

11 (3) "EXCAVATOR-OPERATOR INFORMATION EXCHANGE SYSTEM" IS AN
12 AUTOMATED VOICE RESPONSE UNIT THAT IS MAINTAINED AS PART OF THE
13 ONE-CALL SYSTEM'S NOTIFICATION CENTER.

14 (4) "NOTIFICATION CENTER" MEANS A 24-HOUR, SEVEN-DAY-A-WEEK
15 COMMUNICATIONS SYSTEM, ESTABLISHED BY THE ONE-CALL SYSTEM, TO PROVIDE
16 A SINGLE TOLL-FREE TELEPHONE NUMBER FOR CONTRACTORS OR ANY OTHER
17 PERSON COVERED BY THIS ACT TO CALL FACILITY OWNERS AND NOTIFY THEM OF
18 THEIR INTENT TO PERFORM EXCAVATION, DEMOLITION OR SIMILAR WORK AND
19 WHICH MAINTAINS A DATABASE, PROVIDED BY THE ONE-CALL SYSTEM MEMBERS,
20 THAT INCLUDES THE GEOGRAPHIC AREAS IN WHICH ITS MEMBER FACILITY
21 OWNERS DESIRE TRANSMISSIONS OF PROPOSED EXCAVATION, AND WHICH HAS THE
22 CAPABILITY TO TRANSMIT, WITHIN ONE HOUR OF RECEIPT, NOTICES OF PROPOSED
23 EXCAVATION TO MEMBER FACILITY OWNERS BY TELETYPE, TELECOPY, PERSONAL
24 COMPUTER, OR TELEPHONE.

25 [(3)] (5) "One-call system" means a communications network in the State
26 that allows a person to call the telephone number of a one-number utility protection
27 system AND WHICH MAINTAINS A NOTIFICATION CENTER.

28 [(4)] (6) "Owner" means a public utility, telecommunications or cable
29 television corporation, political subdivision, municipality, authority, or other person that:

30 (i) Owns or operates an underground facility; and

31 (ii) Has the right to bury an underground facility.

32 [(5)] (7) "Person" means any individual, firm, joint venture, partnership,
33 corporation, association, municipality, governmental unit, department or agency and shall
34 include any trustee, receiver, assignee or personal representative thereof, provided,
35 however, that nothing in this section shall apply to any excavation done by the owner of a
36 private residence when said excavation is made entirely on the land on which the private
37 residence is situated.

38 (8) "TEST PITTING" MEANS HAND DIG WITH SHOVEL OR VACUUM
39 EXCAVATION EQUIPMENT TO EXPOSE MARKED FACILITIES OR TO THE DEPTH OF
40 THE PROPOSED EXCAVATION PLUS 12 INCHES. IN PAVED AREAS OF STONE, CEMENT,
41 OR ASPHALT, IT MEANS THE USE OF MECHANICAL EQUIPMENT TO BREAK THROUGH

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1 THE PAVED SURFACE OR UP TO 12 INCHES WHICHEVER IS LESS AND THEN HAND
2 DIGGING TO THE DEPTH OF THE PROPOSED EXCAVATION PLUS 12 INCHES.

3 [(6)] (9) (i) "Underground facility" means any item of personal property
4 which shall be buried or placed below ground or submerged for use in connection with the
5 storage or conveyance of water, sewage, electronic, telephonic, or telegraphic
6 communications, electric energy, oil, gas or other substances, and shall include but not be
7 limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments and
8 those portions of poles below ground.

9 (ii) "Underground facility" does not mean or include any stormwater
10 drains.

11 (c) (1) [Any person operating a one-call system in the State shall register with
12 and be certified by the Public Service Commission.] THE PUBLIC SERVICE COMMISSION
13 SHALL REGISTER AND CERTIFY ONLY ONE PERSON AS THE ONE-CALL SYSTEM'S
14 NOTIFICATION CENTER OPERATOR FOR A GEOGRAPHIC REGION COMPRISED OF
15 ALL COUNTIES AND MUNICIPALITIES LOCATED WEST OF THE CHESAPEAKE BAY AND
16 ONE PERSON AS THE ONE-CALL SYSTEM'S NOTIFICATION CENTER OPERATOR FOR A
17 GEOGRAPHIC REGION COMPRISED OF ALL COUNTIES AND MUNICIPALITIES
18 LOCATED EAST AND NORTH OF THE CHESAPEAKE BAY. The Commission shall have
19 the authority to grant, amend, or revoke certificates of any [such] ONE-CALL system
20 OPERATOR. Any one-call system OPERATOR engaged in business on or before July 1,
21 1990 shall be automatically registered and certified, and authorized to continue its
22 business operations.

23 (2) Each owner shall:

24 (i) [File written notice with the Public Service Commission and give
25 the telephone number of the person in each county of the State to whom calls concerning
26 proposed excavation should be directed;] GIVE WRITTEN NOTICE TO THE
27 NOTIFICATION CENTER. SUCH NOTICE SHALL BE IN A FORM ACCEPTABLE TO THE
28 NOTIFICATION CENTER AND INCLUDE:

- 29 1. THE LEGAL NAME OF THE FACILITY OWNER;
- 30 2. THE NAMES OF THE COUNTIES AND MUNICIPALITIES IN
31 WHICH UNDERGROUND FACILITIES ARE LOCATED;
- 32 3. THE FACILITY OWNER'S ADDRESS, TELEPHONE NUMBER
33 AND FACSIMILE NUMBER, IF AVAILABLE, TO WHICH INQUIRIES MAY BE DIRECTED
34 AS TO THE LOCATION OF SUCH UNDERGROUND FACILITIES;

35 (ii) Be a member of [a] THE one-call system [that has a] WHICH
36 SHALL HAVE THE NOTIFICATION CENTERS' telephone number filed with the Public
37 Service Commission on behalf of all the owners;

38 (iii) After receipt of a notice from a contractor of an intent to excavate
39 at a specific location, determine within 48 hours (excluding Saturdays, Sundays, and legal
40 holidays) whether a proposed excavation is planned within 5 feet of the horizontal plane
41 of an underground facility, or whether a proposed excavation, by blasting, is planned in
42 such proximity to an underground facility that the facility may be disturbed or damaged;

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1 (iv) Notify the contractor within 48 hours (excluding Saturdays,
2 Sundays, and legal holidays) after receipt of a notice if an underground facility might be
3 disturbed or damaged;

4 (v) Mark the location of an underground facility within 18 inches on a
5 horizontal plane on either side of the facility if the owner determines that a proposed
6 excavation is planned within 5 feet of the horizontal underground facility, or if a proposed
7 excavation, by blasting, is planned in such proximity to the underground facility that the
8 facility may be disturbed or damaged;

9 (vi) Use the following color code when marking the location of an
10 underground facility:

11 BEGIN-TABLE;c=02:004:044

12 <Tr01 >UTILITY TYPE AND PRODUCT

13 <Tc02 >SPECIFIC GROUP

14 <Tc02 >IDENTIFYING COLOR

15 <Tr01 >

16 <Tc02 >

17 <Tr01 >Electric power distribution

18 <Tr01 > and transmission

19 <Tc02 >Safety red

20 <Tr01 >Municipal electric systems

21 <Tc02 >Safety red

22 <Tr01 >Gas distribution and

23 <Tr01 > transmission

24 <Tc02 >High visibility safety

25 <Tc02 > yellow

26 <Tr01 >Oil distribution and

27 <Tr01 > transmission

28 <Tc02 >High visibility safety

29 <Tc02 > yellow

30 <Tr01 >Dangerous materials,

31 <Tr01 > product lines, and

32 <Tr01 > steam lines

33 <Tc02 >High visibility safety

34 <Tc02 > yellow

35 <Tr01 >Telephone and

36 <Tr01 > telecommunications

37 <Tc02 >Safety alert orange

38 <Tr01 >Cable television

39 <Tc02 >Safety alert orange

40 <Tr01 >Water systems

41 <Tc02 >Safety precaution blue

42 <Tr01 >Sewer lines

43 <Tc02 >Safety green;

44 END-TABLE

45 (vii) Notify the contractor of the date and time when a location will be
46 marked if the marking cannot be completed within 48 hours (excluding Saturdays,
47 Sundays, and legal holidays);

48 (viii) Excavate around an underground facility in a timely manner if the
49 owner elects to perform a proposed excavation itself; and

50 (ix) Notify the contractor within 48 hours (excluding Saturdays,
51 Sundays, and legal holidays) of notification required by subsection (e) of this section that
52 marking is unnecessary if:

53 1. The owner does not have an underground facility at the
54 location stated in the notice;

55 2. The proposed excavation is not planned within 5 feet of the
56 horizontal plane of an underground facility; or

5

1 3. The proposed excavation, by blasting, is not planned in such
2 proximity to the underground facility that the facility may be disturbed or damaged.

3 (X) INSTALL UNDERGROUND FACILITIES IN ACCORDANCE WITH
4 APPLICABLE STANDARDS AND SPECIFICATIONS, INCLUDING STANDARDS AS TO
5 DEPT BELOW SURFACES. CHANGES IN DEPTH AFTER INSTALLATION MAY NOT
6 EXCUSE ANY PERSON FROM LIABILITY FOR DAMAGES.

7 (XI) WHERE TECHNOLOGY PERMITS, PLACE MARKING TAPE OR
8 LOCATOR WIRE OVER ALL NEWLY INSTALLED OR REPLACED NONCONDUCTING
9 UNDERGROUND FACILITIES, EXCEPT THAT MARKING TAPE OR LOCATOR WIRE WILL
10 NOT BE REQUIRED FOR SANITARY SEWER LINES INSTALLED AT A DEPTH OF
11 GREATER THAN SIX (6) FEET.

12 (D) THE NOTIFICATION CENTER SHALL:

13 (I) RECEIVE AND RECORD THE NOTICE OF INTENT TO EXCAVATE
14 PROVIDED BY CONTRACTORS PURSUANT TO SECTION (E) OF THIS ACT.

15 (II) ASSIGN A TICKET NUMBER TO EACH NOTICE OF INTENT TO ENGAGE
16 IN AN EXCAVATION, INFORM THE CONTRACTOR OF THE TICKET NUMBER, AND
17 MAINTAIN A REGISTER SHOWING THE NAME, ADDRESS, AND TELEPHONE NUMBER
18 OF THE CONTRACTOR, THE SITE TO WHICH THE NOTICE PERTAINS, AND THE
19 ASSIGNED TICKET NUMBER.

20 (III) PROMPTLY TRANSMIT TO THE APPROPRIATE OWNERS THE
21 INFORMATION RECEIVED FROM A CONTRACTOR REGARDING ANY INTENDED
22 EXCAVATION IN AREAS WHERE THE OWNERS HAVE UNDERGROUND FACILITIES.

23 (IV) MAINTAIN A RECORD OF EACH NOTICE OF INTENT RECEIVED
24 PURSUANT TO THIS SECTION FOR A PERIOD OF FOUR YEARS FROM THE DATE OF
25 NOTICE.

26 (V) PROVIDE THE CONTRACTOR THE NAMES OF THE OWNERS WHO
27 WILL BE NOTIFIED BY THE NOTIFICATION CENTER OF THE INTENDED EXCAVATION.

28 [(d)] (E) Obtaining information as required by this section does not excuse any
29 person or contractor making any excavation from doing so in a careful and prudent
30 manner, nor shall it excuse any person or contractor from liability for any damage or
31 injury resulting from the excavation.

32 [(e)] (F) Each person or contractor who intends to perform excavation work in
33 the State shall:

34 (1) [Telephone] NOTIFY the [person identified in subsection (c) of this
35 section,] ONE-CALL SYSTEM NOTIFICATION CENTER [and notify that person] of the
36 intent to perform the proposed excavation at least 48 hours (excluding Saturdays,
37 Sundays, and legal holidays) but not more than [10] 15 working days before starting
38 excavation;

39 (2) UPON NOTIFYING THE NOTIFICATION CENTER, A CONTRACTOR
40 SHALL PROVIDE THE FOLLOWING INFORMATION:

6

1 (I) THE NAME AND TELEPHONE NUMBER OF THE PERSON
2 NOTIFYING THE SYSTEM;

3 (II) THE NAME, ADDRESS, AND OFFICE AND FIELD TELEPHONE
4 NUMBERS AND FACSIMILE NUMBERS OF THE CONTRACTOR;

5 (III) THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE
6 PERSON FOR WHOM THE EXCAVATION WORK IS TO BE PERFORMED; AND

7 (IV) THE SPECIFIED SITE LOCATION, STARTING DATE, STARTING
8 TIME AND DESCRIPTION OF THE INTENDED EXCAVATION OR DEMOLITION.

9 [(2)] (3) Repeat the notification required in paragraph (1) of this
10 subsection if:

11 (i) The excavation has not commenced within [10] 15 working days;
12 or

13 (ii) The excavation will be expanded beyond its original location[;],
14 SCOPE, OR DURATION; OR

15 (III) THE CONTRACTOR REMOVES ITS EQUIPMENT AND VACATES A
16 WORKSITE FOR MORE THAN TWO WORKING DAYS.

17 (4) THE PERSON OR CONTRACTOR MAY COMMENCE EXCAVATION 48
18 HOURS AFTER THE REQUEST FOR MARKING UNDER THIS SUBSECTION (EXCLUDING
19 SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS) ONLY IF THE PERSON OR
20 CONTRACTOR CONTACTS THE NOTIFICATION CENTER AND CONFIRMS, THROUGH
21 THE NOTIFICATION CENTER'S OPERATOR'S EXCAVATOR-OPERATOR INFORMATION
22 EXCHANGE SYSTEM, THAT ALL APPLICABLE OWNERS HAVE EITHER MARKED THEIR
23 UNDERGROUND FACILITIES OR REPORTED THAT NO UNDERGROUND FACILITIES
24 ARE PRESENT IN THE VICINITY OF THE EXCAVATION PURSUANT TO SUBSECTION (C)
25 AND CONFIRM THE MARKING OR THE ABSENCE OF FACILITIES TO THE
26 NOTIFICATION CENTER WITHIN TWENTY-FOUR HOURS OF NOTIFICATION.

27 IF ANY OWNER FAILS TO RESPOND TO THE EXCAVATOR-OPERATOR
28 INFORMATION EXCHANGE INFORMATION SYSTEM BY THE END OF THE 48 HOURS
29 AFTER THE CONTRACTOR'S NOTIFICATION, THE CONTRACTOR SHALL WAIT AN
30 ADDITIONAL 24 HOURS (EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS)
31 BEFORE COMMENCING WORK. IN ADDITION, THE NOTIFICATION CENTER SHALL
32 RENOTIFY ANY OWNER WHO HAS FAILED TO RESPOND TO THE
33 EXCAVATOR-OPERATOR INFORMATION EXCHANGE SYSTEM WITHIN 48 HOURS
34 FROM THE ORIGINAL NOTIFICATION. OWNERS SO NOTIFIED SHALL MARK ALL
35 APPLICABLE UTILITY LINES OR REPORT THAT NO LINES ARE PRESENT AND
36 CONFIRM THE MARKING OR THE ABSENCE OF LINES TO THE
37 EXCAVATOR-OPERATOR INFORMATION EXCHANGE SYSTEM WITHIN 24 HOURS OF
38 RENOTIFICATION.

39 IF, UPON ARRIVAL AT THE SITE OF A PROPOSED EXCAVATION, THE PERSON OR
40 CONTRACTOR OBSERVES CLEAR EVIDENCE OF THE PRESENCE OF AN
41 UNDERGROUND FACILITY IN THE AREA OF THE PROPOSED EXCAVATION, THAT IS
42 NOT MARKED, THE PERSON OR CONTRACTOR MAY NOT BEGIN EXCAVATING UNTIL

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1 AFTER AN ADDITIONAL CALL IS MADE TO THE NOTIFICATION CENTER AND THE
2 FACILITY IS MARKED. THE OWNER OF THE UNDERGROUND FACILITY SHALL
3 RESPOND WITHIN 3 HOURS (EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL
4 HOLIDAYS) OF THE PERSON'S OR CONTRACTOR'S CALL TO THE NOTIFICATION
5 CENTER.

6 [(3)] (5) [Exercise due care to avoid interference with or damage to an
7 underground facility that an owner has marked in accordance with subsection (c) of this
8 section;] ANY PERSON EXCAVATING WITHIN 18 INCHES OF EITHER SIDE OF THE
9 STAKED OR MARKED LOCATION OF AN OWNER'S UNDERGROUND FACILITY OR
10 DEMOLISHING BY BLASTING IN SUCH PROXIMITY TO THE UNDERGROUND FACILITY
11 THAT THE FACILITY MAY BE DESTROYED, DAMAGED, DISLOCATED, OR DISTURBED,
12 SHALL TAKE ALL REASONABLE STEPS NECESSARY TO PROPERLY PROTECT,
13 SUPPORT, AND BACKFILL UNDERGROUND FACILITIES. THIS PROTECTION SHALL
14 INCLUDE BUT MAY NOT BE LIMITED TO TEST PITTING, WITHIN THE LIMITS OF THE
15 PLANNED EXCAVATION OR DEMOLITION AND AT REASONABLE DISTANCES ALONG
16 THE LINE OF EXCAVATION FOR PARALLEL EXCAVATION; and

17 [(4)] (6) [Immediately notify the owner of an underground facility if the
18 PERSON OR contractor discovers or causes any disturbance or damage to that
19 underground facility.] IF THE PERSON OR CONTRACTOR DISCOVERS OR CAUSES ANY
20 DISTURBANCE OR DAMAGE TO THAT UNDERGROUND FACILITY, THE PERSON OR
21 CONTRACTOR SHALL IMMEDIATELY NOTIFY THE OWNER OF THAT UNDERGROUND
22 FACILITY AND THE NOTIFICATION CENTER, SHALL IMMEDIATELY CEASE ANY
23 ADDITIONAL EXCAVATION AT OR NEAR THAT FACILITY, AND SHALL LEAVE THAT
24 FACILITY, AND SHALL LEAVE THAT FACILITY UNCOVERED FOR INSPECTION BY THE
25 OWNER.

26 [(f) A person or contractor may not begin excavation prior to the marking
27 required by this section or notification by each owner, or by the one-call system, that
28 marking is unnecessary.]

29 (g) In the event of any damage to or dislocation or disturbance of any
30 underground facility in connection with any excavation, the person or contractor
31 responsible for the excavation operations shall immediately notify the owner of the
32 facility.

33 (H) NO PERSON, INCLUDING CONTRACTORS, SHALL REQUEST MARKING OF A
34 SITE THROUGH A ONE-CALL SYSTEM UNLESS EXCAVATION IS SCHEDULED TO
35 COMMENCE; NOR MAKE REPEATED REQUESTS FOR REMARKING, UNLESS THE
36 REPEATED REQUEST IS DUE TO CIRCUMSTANCES NOT REASONABLY WITHIN THE
37 CONTROL OF SUCH PERSON. ANY PERSON WHO WILLFULLY FAILS TO COMPLY WITH
38 THIS SECTION SHALL BE LIABLE TO THE OWNER FOR THREE TIMES THE COST OF
39 MARKING ITS UNDERGROUND FACILITY, NOT TO EXCEED ONE THOUSAND
40 DOLLARS.

41 NOT TO EXCEED ONE THOUSAND DOLLARS.

42 [(h)] (I) If any underground facility is damaged by any person or contractor who
43 has failed to comply with any provision of this section, that person or contractor shall be

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1 deemed negligent and shall be liable to the owner of the underground facility for the total
2 cost of the repair.

3 (J) IF AN UNDERGROUND FACILITY IS DAMAGED AS A PROXIMATE RESULT
4 OF A PERSON'S FAILURE TO COMPLY WITH ANY PROVISIONS OF THIS ACT, PROOF OF
5 SUCH DAMAGE SHALL BE THE TOTAL COST TO REPAIR THE DAMAGED FACILITIES
6 AS THAT COST IS COMPUTED BY THE COST AND ACCOUNTING METHODOLOGY
7 NORMALLY USED BY THE OWNER PROVIDED THE OWNER IS A MEMBER OF THE
8 ONE-CALL SYSTEM COVERING THE AREA IN WHICH THE DAMAGE TO THE
9 UNDERGROUND UTILITIES TAKES PLACE.

10 [(i)] (K) (1) THE PUBLIC SERVICE COMMISSION OR ITS STAFF SHALL
11 IMPOSE AN ADMINISTRATIVE FINE FOR FAILURE BY A CONTRACTOR, OWNER, OR
12 PERSON TO COMPLY WITH ANY OF THE PROVISIONS SET FORTH IN SUBSECTIONS
13 (C)(1) THROUGH (2)(II), (F) AND (H). SUCH ADMINISTRATIVE FINES SHALL BE \$2,000
14 FOR THE FIRST OFFENSE IN A CALENDAR YEAR, AND \$5,000 FOR EACH ADDITIONAL
15 OFFENSE IN THE SAME CALENDAR YEAR. UPON THE THIRD OFFENSE IN THE SAME
16 CALENDAR YEAR, THE PUBLIC SERVICE COMMISSION SHALL RECOMMEND TO THE
17 APPROPRIATE LICENSING AGENCY THAT THE PERSON'S OR CONTRACTOR'S LICENSE
18 NOT BE RENEWED. ALL FINES RECOVERED BY THE COMMISSION SHALL BE
19 RETAINED AND USED BY THE COMMISSION TO OFFSET THE COSTS OF
20 ADMINISTERING THIS ACT AND A DAMAGE PREVENTION EDUCATION PROGRAM.

21 (2) THE PUBLIC SERVICE COMMISSION SHALL HEREBY BE AUTHORIZED
22 TO RECEIVE APPROPRIATE FUNDING AND EMPLOY ADEQUATE STAFFING IN ORDER
23 TO IMPLEMENT THE RESPONSIBILITIES SET FORTH IN THIS SUBSECTION.

24 (3) [Any] IN ADDITION TO THE ADMINISTRATIVE FINES AND
25 PENALTIES PRESCRIBED IN SUBSECTION (1), ANY person or contractor who excavates
26 without first giving the notice required in subsection [(e)] (F) of this section, and who
27 damages, dislocates or disturbs an underground facility, shall be deemed negligent and
28 shall be subject to a civil penalty up to \$1,000 for the first offense and \$1,000 for each
29 subsequent offense, or ten times the cost of repairing the damage to the underground
30 facility. Actions to recover the civil penalties provided for in this section shall be brought
31 either by the owner whose underground facilities were damaged or by the Attorney
32 General in the name of the people in this State, in a court of competent jurisdiction in
33 Baltimore City or the county in which the damage occurred. All penalties recovered from
34 such action, including reasonable attorney's fees, shall be paid into the General Fund of
35 the State Treasury.

36 [(j)] (L) If any person or contractor is engaging in excavation in a negligent or
37 unsafe manner which has resulted in or is likely to result in damage to an underground
38 facility or if any person or contractor is proposing to use procedures for excavation which
39 are likely to result in damage to an underground facility, the owner of such facility or the
40 Attorney General may commence an action in a court of competent jurisdiction in
41 Baltimore City or the county in which the excavation is occurring or is to occur, or in
42 which the person or contractor complained of has his or its principal place of business or
43 resides, for the purpose of having such negligent or unsafe excavation stopped and
44 prevented, either by mandamus or injunction. The court may join as parties any persons

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1 necessary or proper to make its judgment or processes effective and shall make a final
2 order, granting such relief, if appropriate.

3 [(k)] (M) (1) After an owner has marked its underground facility in accordance
4 with the provisions of subsection (c) of this section, the person or contractor is solely
5 responsible for the maintenance of a designated marker.

6 (2) If a marker is obliterated, destroyed, or removed, the owner shall remark
7 the location of its facility not more than 48 hours (excluding Saturdays, Sundays, and legal
8 holidays) after receipt of a request to remark the location.

9 [(l)] (N) A political subdivision or municipality may NOT charge, assess, or collect
10 from a contractor a one time initial marking fee [not to exceed \$35 for reimbursement of
11 any expense which the political subdivision or municipality incurs] by reason of
12 compliance with the provisions of this section. If remarking is requested, or is required
13 under subsection (e)(2) of this section, a political subdivision or municipality may NOT
14 charge, assess, or collect from a contractor a remarking fee [not to exceed \$15 for
15 reimbursement of any expense which the political subdivision or municipality incurs by
16 reason of the remarking in compliance with the provisions of this section].

17 [(m)] (O) (1) A person or contractor who performs an emergency excavation
18 involving danger to life, health, or property shall:

19 (i) Take all reasonable precautions to protect underground facilities
20 in and near the excavation area; and

21 (ii) Notify the owner of the underground facility promptly.

22 (2) In case of an emergency excavation involving danger to life, health, or
23 property, except for subsection [(h)] (I) of this section, the provisions of subsections (c)
24 through [(l)] (N) of this section shall not apply provided all reasonable precautions have
25 been taken to protect underground facilities.

26 (P) ANY PERSON WHO BRINGS AN ACTION IN A COURT OF COMPETENT
27 JURISDICTION TO RECOVER DAMAGES OR LOSS UNDER THIS SECTION, AND WHO IS
28 AWARDED DAMAGES OR LOSSES, MAY ALSO SEEK, AND THE COURT MAY AWARD,
29 REASONABLE ATTORNEY'S FEES.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 July 1, 1997.