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**By: Senator Bromwell**Constitutional Requirements Complied with for Introduction in the last 35 Days of  
Session

Introduced and read first time: March 6, 1997

Rule 32(a) suspended

Assigned to: Rules

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## 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 and have certain staff, funding, and authority;  
10 prohibiting certain political subdivisions or municipalities from charging, assessing,  
11 or 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.

2

1 (b) As used in this subtitle:

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

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

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

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

15 (4) "NOTIFICATION CENTER" MEANS A 24-HOUR, 7-DAY-A-WEEK  
16 COMMUNICATIONS SYSTEM, ESTABLISHED BY THE ONE-CALL SYSTEM, TO PROVIDE  
17 A SINGLE TOLL-FREE TELEPHONE NUMBER FOR CONTRACTORS OR ANY OTHER  
18 PERSON COVERED BY THIS ACT TO CALL FACILITY OWNERS AND NOTIFY THEM OF  
19 THEIR INTENT TO PERFORM EXCAVATION, DEMOLITION, OR SIMILAR WORK AND  
20 WHICH MAINTAINS A DATABASE, PROVIDED BY THE ONE-CALL SYSTEM MEMBERS,  
21 THAT INCLUDES THE GEOGRAPHIC AREAS IN WHICH ITS MEMBER FACILITY  
22 OWNERS DESIRE TRANSMISSIONS OF PROPOSED EXCAVATION, AND WHICH HAS THE  
23 CAPABILITY TO TRANSMIT, WITHIN ONE HOUR OF RECEIPT, NOTICES OF PROPOSED  
24 EXCAVATION TO MEMBER FACILITY OWNERS BY TELETYPE, TELECOPY, PERSONAL  
25 COMPUTER, OR TELEPHONE.

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

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

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

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

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

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

3

1 OR ASPHALT, IT MEANS THE USE OF MECHANICAL EQUIPMENT TO BREAK THROUGH  
2 THE PAVED SURFACE OR UP TO 12 INCHES WHICHEVER IS LESS AND THEN HAND  
3 DIGGING TO THE DEPTH OF THE PROPOSED EXCAVATION PLUS 12 INCHES.

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

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

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

24                    (2) Each owner shall:

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

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

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

39                    (iii) After receipt of a notice from a contractor of an intent to excavate  
40 at a specific location, determine within 48 hours (excluding Saturdays, Sundays, and legal  
41 holidays) whether a proposed excavation is planned within 5 feet of the horizontal plane

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1 of an underground facility, or whether a proposed excavation, by blasting, is planned in  
 2 such proximity to an underground facility that the facility may be disturbed or damaged;

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

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

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

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

14 <Tr01 >UTILITY TYPE AND PRODUCT

15 <Tc02 >SPECIFIC GROUP

16 <Tc02 >IDENTIFYING COLOR

17 <Tr01 >

18 <Tc02 >

19 <Tr01 >Electric power distribution

20 <Tr01 > and transmission

21 <Tc02 >Safety red

22 <Tr01 >Municipal electric systems

23 <Tc02 >Safety red

24 <Tr01 >Gas distribution and

25 <Tr01 > transmission

26 <Tc02 >High visibility safety

27 <Tc02 > yellow

28 <Tr01 >Oil distribution and

29 <Tr01 > transmission

30 <Tc02 >High visibility safety

31 <Tc02 > yellow

32 <Tr01 >Dangerous materials,

33 <Tr01 > product lines, and

34 <Tr01 > steam lines

35 <Tc02 >High visibility safety

36 <Tc02 > yellow

37 <Tr01 >Telephone and

38 <Tr01 > telecommunications

39 <Tc02 >Safety alert orange

40 <Tr01 >Cable television

41 <Tc02 >Safety alert orange

42 <Tr01 >Water systems

43 <Tc02 >Safety precaution blue

44 <Tr01 >Sewer lines

45 <Tc02 >Safety green;

46 END-TABLE

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

50 (viii) Excavate around an underground facility in a timely manner if the  
 51 owner elects to perform a proposed excavation itself; [and]

52 (ix) Notify the contractor within 48 hours (excluding Saturdays,

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53 Sundays, and legal holidays) of notification required by subsection (e) of this section that  
54 marking is unnecessary if:

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

5

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

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

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

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

14                               (D) THE NOTIFICATION CENTER SHALL:

15                               (1) RECEIVE AND RECORD THE NOTICE OF INTENT TO EXCAVATE  
16 PROVIDED BY CONTRACTORS PURSUANT TO SUBSECTION (E) OF THIS SECTION.

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

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

25                               (4) MAINTAIN A RECORD OF EACH NOTICE OF INTENT RECEIVED  
26 PURSUANT TO THIS SECTION FOR A PERIOD OF FOUR YEARS FROM THE DATE OF  
27 NOTICE.

28                               (5) PROVIDE THE CONTRACTOR THE NAMES OF THE OWNERS WHO  
29 WILL BE NOTIFIED BY THE NOTIFICATION CENTER OF THE INTENDED EXCAVATION.

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

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

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

6

1 (2) UPON NOTIFYING THE NOTIFICATION CENTER, PROVIDE THE  
2 FOLLOWING INFORMATION:

3 (I) THE NAME AND TELEPHONE NUMBER OF THE PERSON  
4 NOTIFYING THE SYSTEM;

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

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

9 (IV) THE SPECIFIED SITE LOCATION, STARTING DATE, STARTING  
10 TIME, AND DESCRIPTION OF THE INTENDED EXCAVATION OR DEMOLITION;

11 [(2)] (3) Repeat the notification required in paragraph (1) of this  
12 subsection if:

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

15 (ii) The excavation will be expanded beyond its original location,  
16 SCOPE, OR DURATION; OR

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

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

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

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1 IF, UPON ARRIVAL AT THE SITE OF A PROPOSED EXCAVATION, THE PERSON OR  
2 CONTRACTOR OBSERVES CLEAR EVIDENCE OF THE PRESENCE OF AN  
3 UNDERGROUND FACILITY IN THE AREA OF THE PROPOSED EXCAVATION, THAT IS  
4 NOT MARKED, THE PERSON OR CONTRACTOR MAY NOT BEGIN EXCAVATING UNTIL  
5 AFTER AN ADDITIONAL CALL IS MADE TO THE NOTIFICATION CENTER AND THE  
6 FACILITY IS MARKED. THE OWNER OF THE UNDERGROUND FACILITY SHALL  
7 RESPOND WITHIN 3 HOURS (EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL  
8 HOLIDAYS) OF THE PERSON'S OR CONTRACTOR'S CALL TO THE NOTIFICATION  
9 CENTER.

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

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

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

33 (g) In the event of any damage to or dislocation or disturbance of any  
34 underground facility in connection with any excavation, the person or contractor  
35 responsible for the excavation operations shall immediately notify the owner of the  
36 facility.

37 (H) NO PERSON, INCLUDING CONTRACTORS, SHALL REQUEST MARKING OF A  
38 SITE THROUGH A ONE-CALL SYSTEM UNLESS EXCAVATION IS SCHEDULED TO  
39 COMMENCE; NOR MAKE REPEATED REQUESTS FOR REMARKING, UNLESS THE  
40 REPEATED REQUEST IS DUE TO CIRCUMSTANCES NOT REASONABLY WITHIN THE  
41 CONTROL OF SUCH PERSON. ANY PERSON WHO WILLFULLY FAILS TO COMPLY WITH  
42 THIS SECTION SHALL BE LIABLE TO THE OWNER FOR THREE TIMES THE COST OF  
43 MARKING ITS UNDERGROUND FACILITY, NOT TO EXCEED \$1,000.

44 [(h)] (I) If any underground facility is damaged by any person or contractor who  
45 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) OF THIS SECTION. SUCH ADMINISTRATIVE FINES  
14 SHALL BE \$2,000 FOR THE FIRST OFFENSE IN A CALENDAR YEAR, AND \$5,000 FOR  
15 EACH ADDITIONAL OFFENSE IN THE SAME CALENDAR YEAR. UPON THE THIRD  
16 OFFENSE IN THE SAME CALENDAR YEAR, THE PUBLIC SERVICE COMMISSION SHALL  
17 RECOMMEND TO THE APPROPRIATE LICENSING AGENCY THAT THE PERSON'S OR  
18 CONTRACTOR'S LICENSE NOT BE RENEWED. ALL FINES RECOVERED BY THE  
19 COMMISSION SHALL BE RETAINED AND USED BY THE COMMISSION TO OFFSET THE  
20 COSTS OF ADMINISTERING THIS ACT AND A DAMAGE PREVENTION EDUCATION  
21 PROGRAM.

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

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

37 [(j)] (L) If any person or contractor is engaging in excavation in a negligent or  
38 unsafe manner which has resulted in or is likely to result in damage to an underground  
39 facility or if any person or contractor is proposing to use procedures for excavation which  
40 are likely to result in damage to an underground facility, the owner of such facility or the  
41 Attorney General may commence an action in a court of competent jurisdiction in  
42 Baltimore City or the county in which the excavation is occurring or is to occur, or in  
43 which the person or contractor complained of has his or its principal place of business or  
44 resides, for the purpose of having such negligent or unsafe excavation stopped and  
45 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.