

SB0911/113696/1

BY: Economic Matters Committee

AMENDMENTS TO SENATE BILL 911
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 15, after “members;” insert “prohibiting a member of the Authority from participating in certain matters;”.

On page 3, in line 21, after “changes;” insert “providing for a certain contingency;”; and in line 34, strike “12-120, 12-121, 12-122, 12-128, 12-134, and 12-135” and substitute “12-106, 12-107, 12-108, 12-114, 12-120, and 12-121”.

On page 4, in line 5, strike “adding to” and substitute “repealing and reenacting, with amendments;”; in line 7, after “through” insert “12-108 and”; strike beginning with “Maryland” in line 7 down through “Requests” in line 11 and substitute “Excavation and Demolition”; and 12-121”; after line 13, insert:

“(As enacted by Section 2 of this Act)”

BY repealing and reenacting, without amendments,

Article – Public Utility Companies

Section 12-120 to be under the new part “Part IV. Enforcement and Penalties”

Annotated Code of Maryland

(2008 Replacement Volume and 2009 Supplement)

(As enacted by Section 2 of this Act)

BY adding to

Article - Public Utility Companies

Section 12-109 through 12-113; and 12-117 to be under the new part “Part III.

Designer Request”

Annotated Code of Maryland

(2008 Replacement Volume and 2009 Supplement)

(Over)

BY renumbering

Article - Public Utility Companies

Section 12-106 through 12-114 and the part “Part II. Excavation and Demolition”; 12-117 and the part “Part III. Designer Requests”; and 12-120 and 12-121 and the part “Part IV. Enforcement and Penalties”, respectively

to be Section 12-120 through 12-128 and the part “Part IV. Excavation and Demolition”; 12-131 and the part “Part V. Designer Requests”; and 12-134 and 12-135 and the part “Part VI. Enforcement and Penalties”, respectively

Annotated Code of Maryland

(2008 Replacement Volume and 2009 Supplement)

(As enacted by Sections 2 and 3 of this Act)”;

strike beginning with “12-120” in line 16 down through “12-135” in line 17 and substitute “12-101”; in line 20, strike “2” and substitute “3”; after line 20, insert:

“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”; and 12-117 to be under the new part “Part III. Maryland Underground Facilities Damage Prevention Education and Outreach Fund”

Annotated Code of Maryland

(2008 Replacement Volume and 2009 Supplement)”;

strike in their entirety lines 21 through 26, inclusive; in line 27, strike “without” and substitute “with”; strike in its entirety line 29 and substitute “Section 12-120, 12-121, 12-123, 12-125, 12-127, 12-128, and 12-135”; in line 32, strike “Section 2” and substitute “Sections 2, 3, and 4”; and after line 32, insert:

“BY repealing and reenacting, without amendments,
Article – Public Utility Companies
Section 12-122, 12-124, and 12-126
Annotated Code of Maryland
(2008 Replacement Volume and 2009 Supplement)
(As enacted by Sections 2, 3, and 4 of this Act)”.

AMENDMENT NO. 2

On page 5, strike beginning with “12-120,” in line 16 down through “12-135” in line 17 and substitute “12-106, 12-107, 12-108, 12-114, 12-120, and 12-121”; strike in their entirety lines 28 and 29; in line 30, strike “(C)” and substitute “(B)”; in line 32, strike both brackets; and in the same line, strike “(D)”.

On page 6, in lines 1, 6, 14, 18, and 30, strike “(E)”, “(F)”, “(H)”, “(I)”, and “(J)”, respectively, and substitute “(D)”, “(E)”, “(F)”, “(G)”, and “(H)”, respectively; and strike in their entirety lines 12 and 13.

On page 7, in lines 14, 16, and 23, strike “(K)”, “(L)”, and “(M)”, respectively, and substitute “(I)”, “(J)”, and “(K)”, respectively.

On page 8, in line 2, strike “12-131” and substitute “12-117”; and in lines 3 and 6, strike “(N)” and “(O)”, respectively, and substitute “(L)” and “(M)”, respectively.

On page 9, after line 1, insert:

“PART II. EXCAVATION AND DEMOLITION.

12-106.

(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:

(Over)

(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)] **12–109** 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)] **12–109** 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.

(a) Subject to § [12-104(b)] 12-106(B) of this subtitle, if all reasonable precautions have been taken to protect underground facilities, § [12-104(a)] 12-106(A) of this subtitle and §§ [12-106 through 12-113] 12-108 THROUGH 12-121 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 § 12-121 OF THIS SUBTITLE.

12-108.

(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.

(Over)

(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.

12-109.

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

(2) 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 § 12-110(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.

12-110.

(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;

(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

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

(C) (1) 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.

(Over)

(2) BASED ON INFORMATION COLLECTED UNDER SUBSECTION (B)(2) OF THIS SECTION, 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-MEMBER.

12-111.

(A) A PERSON SHALL REPEAT THE NOTIFICATION REQUIRED UNDER § 12-110 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 § 12-110(B) OF THIS SUBTITLE.

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

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

(2) AN AGREEMENT BETWEEN THE PERSON AND AN OWNER-

MEMBER REGARDING THE TIME FOR MARKING UNDERGROUND FACILITIES.

12-112.

(A) AN OWNER-MEMBER SHALL MARK ITS UNDERGROUND FACILITY IF THE 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-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-MEMBER SHALL USE THE CURRENT COLOR CODES ESTABLISHED BY THE AMERICAN PUBLIC WORKS ASSOCIATION FOR MARKING UNDERGROUND FACILITIES.

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

(C) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, WITHIN

(Over)

2 BUSINESS DAYS AFTER THE DAY ON WHICH A TICKET IS TRANSFERRED TO AN OWNER-MEMBER, THE OWNER-MEMBER SHALL:

(1) MARK THE LOCATION OF THE 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-MEMBER HAS NO UNDERGROUND FACILITIES IN THE VICINITY OF THE PLANNED EXCAVATION OR DEMOLITION.

(D) (1) IF AN OWNER-MEMBER IS UNABLE TO MARK THE LOCATION OF THE 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-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-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-MEMBER SHALL MARK THAT PORTION OF THE SITE WHERE EXCAVATION OR DEMOLITION WILL FIRST OCCUR, AND THE OWNER-

MEMBER SHALL MARK THE REMAINDER OF THE SITE WITHIN A REASONABLE TIME.

(3) IF, DUE TO CIRCUMSTANCES BEYOND AN OWNER-MEMBER'S CONTROL AND FOR REASONS OTHER THAN THOSE SPECIFIED IN PARAGRAPH (1) OF THIS SUBSECTION, AN OWNER-MEMBER IS UNABLE TO MARK THE LOCATION OF THE OWNER-MEMBER'S UNDERGROUND FACILITY WITHIN THE TIME PERIOD PRESCRIBED IN SUBSECTION (C) OF THIS SECTION, THE 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-MEMBER MAY ESTABLISH A WORKING AGREEMENT REGARDING THE TIME PERIODS FOR MARKING THE UNDERGROUND FACILITY.

12-113.

(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 OWNER-MEMBERS HAVE:

(1) MARKED THEIR UNDERGROUND FACILITIES IN ACCORDANCE WITH § 12-112(C) OF THIS SUBTITLE;

(2) MARKED THE APPLICABLE PORTION OF THEIR UNDERGROUND FACILITIES IN ACCORDANCE WITH § 12-112(D) OF THIS SUBTITLE; OR

(Over)

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

(B) (1) AFTER AN OWNER-MEMBER HAS MARKED THE LOCATION OF AN UNDERGROUND FACILITY IN ACCORDANCE WITH § 12-112 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 § 12-110 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-MEMBER HAS MARKED IN ACCORDANCE WITH § 12-112 OF THIS SUBTITLE.

(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.

(D) (1) THE PERSON PERFORMING AN EXCAVATION OR DEMOLITION IMMEDIATELY SHALL NOTIFY THE 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 § 12-110 OF THIS SUBTITLE; AND

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

1. THE UNDERGROUND FACILITIES IN ACCORDANCE WITH § 12-112(C) OF THIS SUBTITLE; OR

2. THE APPLICABLE PORTION OF THE UNDERGROUND FACILITIES IN ACCORDANCE WITH § 12-112(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.

12-114.

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

(b) If re-marking is requested, or is required after renotification under § [12-108(b)] 12-111(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.

12-115. RESERVED.

12-116. RESERVED.

PART III. DESIGNER REQUESTS.

12-117.

(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 OWNER-MEMBERS FROM WHICH THE DESIGNER DOES NOT REQUIRE UNDERGROUND FACILITIES INFORMATION; AND

(III) ON THE REQUEST OF AN OWNER-MEMBER, PROVIDE THE 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

(Over)

SECTION, AN 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–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–MEMBER OR AGENT OF AN OWNER–MEMBER MAY NOT BE HELD LIABLE FOR ANY INACCURATE INFORMATION PROVIDED TO A DESIGNER UNDER THIS SECTION.

12–118. RESERVED.

12–119. RESERVED.

PART IV. ENFORCEMENT AND PENALTIES.

12-120.

(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.

12-121.

(a) A person that performs an excavation or demolition without first providing the notice required under § [12-108] 12-110 of this subtitle and damages, dislocates, or disturbs an underground facility is deemed negligent and is subject to a civil penalty not exceeding \$1,000 for the first offense and \$1,000 for each subsequent offense or ten times the cost of repairs to the underground facility caused by the damage, dislocation, or disturbance.

(b) An action to recover a civil penalty under this section 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.

(c) 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.

SECTION 4. AND BE IT FURTHER ENACTED, That Section(s) 12-106 through 12-114 and the part "Part II. Excavation and Demolition"; 12-117 and the part "Part III. Designer Requests"; and 12-120 and 12-121 and the part "Part IV. Enforcement and Penalties", respectively, of Article – Public Utility Companies of the Annotated Code of Maryland, as enacted by Sections 2 and 3 of this Act, be renumbered to be Section(s) 12-120 through 12-128 and the part "Part IV. Excavation and Demolition"; 12-131 and the part "Part V. Designer Requests"; and 12-134 and 12-135 and the part "Part VI. Enforcement and Penalties", respectively.

SECTION 5. 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.

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

[(b)] (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.

[(d)] (E) “Designer” means a licensed architect, 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.

[(e)] (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.

[(f)] (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.

[(g)] (I) “One-call system” means a communications system in the State that:

(1) allows a person to 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

(2) maintains an underground facilities information exchange system.

[h] (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;

(vii) an authority; and

(viii) a unit of the State.

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

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

(2) “Person” includes:

(i) a municipal corporation;

(ii) the State;

(iii) a political subdivision of the State; and

(iv) any governmental unit, department, or agency.

[(k)] (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 § [12-117] 12-131 of this subtitle.

[(l)] (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.

[(m)] (O) (1) “Underground facility” means personal property that is 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.”.

On pages 15 through 25, strike in their entirety the lines beginning with line 18 on page 15 through line 17 on page 25, inclusive, and substitute:

“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] 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] 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 § [12-106(b)] **12-120(B)** of this subtitle, if all reasonable precautions have been taken to protect underground facilities, § [12-106(a)] **12-120(A)** of this subtitle and §§ [12-108 through 12-121] **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) immediately notify the one-call system serving the geographic area where the emergency excavation or demolition is performed to inform the

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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 § [12-121] 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 underground facilities information exchange system in its one-call center in the State.

(2) The 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) 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 § [12-110(b)(2)] 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;

(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

(3) the type of work to be performed in connection with the proposed excavation or demolition.

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(c) (1) 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 subsection (b)(2) of this section, 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-member.

12-125.

(a) A person shall repeat the notification required under § [12-110] **12-124** 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 § [12-110(b)] **12-124(B)** of this subtitle.

(b) A person shall repeat the notification regardless of:

(1) any delays by an owner-member in marking its underground facilities; or

(2) an agreement between the person and an owner-member regarding the time for marking underground facilities.

12-126.

(a) An owner–member shall mark its underground facility if the 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–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–member shall use the current color codes established by the American Public Works Association for marking underground facilities.

(ii) If two or more owner–members share the same color code, each owner–member shall include information with the marking that indicates the 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–member, the owner–member shall:

(1) mark the location of the 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–member has no underground facilities in the vicinity of the planned

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excavation or demolition.

(d) (1) If an owner–member is unable to mark the location of the 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–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–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–member shall mark that portion of the site where excavation or demolition will first occur, and the owner–member shall mark the remainder of the site within a reasonable time.

(3) If, due to circumstances beyond an owner–member’s control and for reasons other than those specified in paragraph (1) of this subsection, an owner–member is unable to mark the location of the owner–member’s underground facility within the time period prescribed in subsection (c) of this section, the 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–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 owner-members have:

(1) marked their underground facilities in accordance with § [12-112(c)] 12-126(C) of this subtitle;

(2) marked the applicable portion of their underground facilities in accordance with § [12-112(d)] 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-member has marked the location of an underground facility in accordance with § [12-112] 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 § [12-110] 12-124 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-member has marked in accordance with § [12-112] 12-126 of this subtitle.

(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

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techniques.

(3) A person may not use mechanized equipment to excavate within 18 inches of the outermost surface of an exposed underground facility.

(d) (1) The person performing an excavation or demolition immediately shall notify the 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 § [12-110] 12-124 of this subtitle; and

(ii) receives notification from the underground facilities information exchange system of the one-call system confirming that all applicable owner-members that have underground facilities in the vicinity of the excavation or demolition have marked:

1. the underground facilities in accordance with § [12-112(c)] 12-126(C) of this subtitle; or

2. the applicable portion of the underground facilities in accordance with § [12-112(d)] 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, municipal corporation, the Department of Transportation, an administration of the Department of Transportation, or the Maryland Transportation Authority may charge, assess, or collect from a person a one-time initial marking fee not exceeding \$35 for reimbursement of expenses that the political subdivision, municipal corporation, the Department of Transportation, an administration of the Department of Transportation, or the Maryland Transportation Authority incurs to comply with this subtitle.

(b) If re-marking is requested, or is required after renotification under § [12-111(b)] 12-125 of this subtitle, a political subdivision, 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, 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.

12-132. RESERVED.

12-133. RESERVED.”.

On page 25, in line 20, strike “12-108” and substitute “12-110”.

AMENDMENT NO. 3

On page 9, in line 10, strike “NINE” and substitute “THE FOLLOWING 11”; in line 10, after “MEMBERS” insert “:

(1) NINE MEMBERS”;

in line 11, after “GOVERNOR” insert “;AND

(2) TWO EX OFFICIO VOTING MEMBERS APPOINTED AS FOLLOWS:

(I) ONE REPRESENTATIVE OF THE DEPARTMENT OF TRANSPORTATION APPOINTED BY THE SECRETARY OF TRANSPORTATION; AND

(II) ONE REPRESENTATIVE OF THE STAFF OF THE COMMISSION APPOINTED BY THE CHAIRMAN OF THE COMMISSION”;

in line 12, strike “OF THE” and substitute “THE”; and in the same line, after “MEMBERS” insert “APPOINTED BY THE GOVERNOR SHALL BE APPOINTED AS FOLLOWS”.

On page 11, after line 25, insert:

“(C) (1) A MEMBER OF THE AUTHORITY MAY NOT PARTICIPATE IN A MATTER BEFORE THE AUTHORITY IN WHICH THE MEMBER HAS A DIRECT OR INDIRECT INTEREST.

(2) THE STATUS OF THE COMMISSION OR THE DEPARTMENT OF TRANSPORTATION OR ANY OF THEIR OFFICERS OR EMPLOYEES AS A PARTY TO A COMPLAINT MAY NOT CONSTITUTE A DIRECT OR INDIRECT INTEREST AS TO AN EX OFFICIO MEMBER.”.

AMENDMENT NO. 4

On page 11, in line 11, after “**(2)**” insert “**SUE AND BE SUED;**

(3)”;

and in lines 12, 13, 15, 16, 19, and 22, strike “**(3)**”, “**(4)**”, “**(5)**”, “**(6)**”, “**(7)**”, and “**(8)**”, respectively, and substitute “**(4)**”, “**(5)**”, “**(6)**”, “**(7)**”, “**(8)**”, and “**(9)**”, respectively.

On page 14, strike in their entirety lines 6 through 11, inclusive; in line 28, strike “**HOLD AND**”; in line 29, after “**(D)**” insert “**(1)**”; and after line 30, insert:

“(2) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY, AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.”

On page 15, after line 15, insert:

“(G) (1) THE STATE TREASURER SHALL INVEST THE MONEY OF THE FUND IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.

(2) ANY INVESTMENT EARNINGS OF THE FUND SHALL BE CREDITED TO THE FUND.”

AMENDMENT NO. 5

On page 28, in line 7, strike “**4.**” and substitute “**6.**”; and after line 31, insert:

“SECTION 7. AND BE IT FURTHER ENACTED, That the Public Service Commission and the Maryland Department of Transportation shall jointly:

(1) determine whether there is a permanent funding source available that may be used to fund the activities of the Maryland Underground Facilities Damage Prevention Authority to be established under Section 5 of this Act;

(2) take all steps necessary to secure that permanent funding for the Authority; and

(3) notify the Department of Legislative Services in writing of the successful securing of the funding, if any, identified and secured under items (1) and (2) of this section.

SECTION 8. AND BE IT FURTHER ENACTED, That Sections 4, 5, and 6 of this Act shall take effect October 1, 2010, contingent on the receipt by the Department of Legislative Services of notification of the successful securing of funding under Section 7(3) of this Act. If the Department of Legislative Services receives the notification that funding has been secured under Section 7(3) of this Act, Sections 4, 5, and 6 of this Act shall take effect on the receipt of the notification. If the Department of Legislative Services does not receive that notification before the end of September 30, 2013, Sections 4, 5, and 6 of this Act shall be null and void without the necessity of further action by the General Assembly.”.

On page 29, in line 9, strike “5.” and substitute “9.”; and in the same line, after “That” insert “, except as provided in Section 8 of this Act,”.