

SENATE BILL 911

C5, P1, L6

0lr1103
CF 0lr3357

By: **Senator Astle**

Introduced and read first time: February 17, 2010

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Underground Facilities – Damage Prevention**

3 FOR the purpose of repealing certain provisions of Maryland’s underground facilities
4 damage prevention laws; expanding the scope of the underground facilities
5 damage prevention laws to apply to an owner or lessee of a private residence
6 who performs an excavation or demolition on the land of the private residence;
7 establishing the Maryland Underground Facilities Damage Prevention
8 Authority; declaring the intent of the General Assembly that the Authority not
9 be funded through State budget appropriations; providing for the appointment
10 and terms of the members of the Authority; providing for the selection of a chair
11 of the Authority in a certain manner; establishing quorum requirements for the
12 Authority, and requiring the Authority to meet at a certain frequency; providing
13 that a member of the Authority may not receive compensation and is not
14 entitled to reimbursement for expenses; authorizing the Authority to perform
15 certain acts; requiring the Authority to adopt a code of conduct for its members;
16 authorizing the Authority to obtain funding for its operational expenses from
17 certain sources; authorizing the Authority to enforce the underground facilities
18 damage prevention laws by hearing complaints, assessing certain penalties, and
19 reaching a settlement instead of certain penalties; authorizing the Authority to
20 establish certain fees and use the services of a third party to collect certain civil
21 penalties; requiring that a certain hearing before the Authority be conducted in
22 a certain manner; authorizing a person aggrieved by a decision of the Authority
23 to request judicial review of the decision in a certain manner; providing that a
24 record of a hearing conducted by the Authority is not admissible in certain
25 administrative or civil proceedings; requiring the Authority to submit a certain
26 report to the Governor and General Assembly each year; establishing the
27 Maryland Underground Facilities Damage Prevention Education and Outreach
28 Fund as a special, nonlapsing fund to be used for certain purposes; providing for
29 the use and administration of the Fund; requiring a person performing a certain
30 emergency excavation or demolition immediately to notify a certain one-call
31 system to inform certain owners of underground facilities of the excavation or

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 demolition; providing that a person that abuses the emergency demolition
2 procedures in this Act is subject to certain penalties; requiring an owner of
3 underground facilities to be a member of a one-call system and to submit to the
4 one-call system and keep current certain information; requiring a person that
5 intends to perform an excavation or demolition in the State to initiate a certain
6 ticket request with a certain one-call system; providing that a ticket is valid for
7 a certain period; requiring a person that intends to perform an excavation or
8 demolition to repeat a certain notice to the one-call system under certain
9 circumstances; requiring an owner of underground facilities to mark the
10 underground facilities in a certain manner under certain circumstances;
11 requiring an owner to report certain information to an underground facilities
12 information exchange system within a certain period after a certain event;
13 requiring an owner to take certain actions if the owner, for certain reasons, is
14 unable to mark the underground facilities within a certain period; authorizing
15 an owner and person conducting an excavation or demolition to reach a working
16 agreement regarding the schedule for marking an underground facility;
17 providing that a person may begin excavation or demolition only after receiving
18 a certain notice; providing that a person performing an excavation or demolition
19 is responsible for the maintenance of underground facility markings and shall
20 perform the excavation or demolition in a certain manner; requiring a certain
21 person to provide certain notice of certain damage to, or disturbance of, an
22 underground facility; requiring a person to take certain measures if the person
23 knows or has reason to know of an unmarked underground facility in the area of
24 an excavation or demolition; repealing the authority of a political subdivision or
25 municipal corporation to charge a marking or re-marking fee for the
26 reimbursement of expenses incurred by the political subdivision or municipal
27 corporation in complying with the State's underground facilities damage
28 prevention laws; authorizing a designer to initiate a ticket request with a
29 certain one-call system under certain circumstances; requiring an owner to
30 respond to a ticket requested by a designer in a certain manner within a certain
31 period after receiving a certain notice; providing that an owner or agent of an
32 owner is not liable for inaccurate information provided to a designer in response
33 to a ticket request; increasing certain civil penalties under the underground
34 facilities damage prevention laws; authorizing the Authority to impose certain
35 measures instead of or in addition to certain civil penalties; providing that
36 certain civil penalties may be assessed only by the Authority; providing that a
37 court may assess certain civil penalties and award certain attorney's fees under
38 certain circumstances; providing that the Authority may not assess a certain
39 penalty if a certain action has been brought in a certain venue; altering a
40 provision regarding the disposition of civil penalties and requiring that civil
41 penalties recovered under the underground facilities damage prevention laws be
42 paid into the Fund; providing that employees and officials of the Authority are
43 State personnel under the Maryland Tort Claims Act; altering the definition of
44 underground facility to include stormwater drains after a certain date;
45 requiring an owner of stormwater drains to make a good faith effort to identify
46 the location of the stormwater drains by a certain date; holding an owner
47 harmless under this Act with respect to any stormwater drain the owner could
48 not locate and identify after a good faith effort; providing for a delayed effective

1 date for a certain provision of this Act; defining certain terms and altering
2 certain definitions; making stylistic changes; and generally relating to
3 excavation or demolition near underground facilities and underground facilities
4 damage prevention.

5 BY repealing

6 Article – Public Utility Companies

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

10 Annotated Code of Maryland

11 (2008 Replacement Volume and 2009 Supplement)

12 BY renumbering

13 Article – Public Utility Companies

14 Section 12–104, 12–105, 12–106, 12–111, 12–112, and 12–113, respectively
15 to be Section 12–120, 12–121, 12–122, 12–128, 12–134, and 12–135, respectively

16 Annotated Code of Maryland

17 (2008 Replacement Volume and 2009 Supplement)

18 BY repealing and reenacting, with amendments,

19 Article – Public Utility Companies

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

22 Annotated Code of Maryland

23 (2008 Replacement Volume and 2009 Supplement)

24 BY repealing and reenacting, without amendments,

25 Article – Public Utility Companies

26 Section 12–102

27 Annotated Code of Maryland

28 (2008 Replacement Volume and 2009 Supplement)

29 BY adding to

30 Article – Public Utility Companies

31 Section 12–106 through 12–114 to be under the new part “Part II. Maryland
32 Underground Facilities Damage Prevention Authority”; 12–117 to be
33 under the new part “Part III. Maryland Underground Facilities Damage
34 Prevention Education and Outreach Fund”; 12–123 through 12–127; and
35 12–131 to be under the new part “Part V. Designer Requests”

36 Annotated Code of Maryland

37 (2008 Replacement Volume and 2009 Supplement)

38 BY repealing and reenacting, with amendments,

39 Article – Public Utility Companies

40 Section 12–120, 12–121, 12–122, and 12–128 to be under the new part “Part IV.
41 Excavation and Demolition”; and 12–135

42 Annotated Code of Maryland

1 (2008 Replacement Volume and 2009 Supplement)
 2 (As enacted by Section 2 of this Act)

3 BY repealing and reenacting, without amendments,
 4 Article – Public Utility Companies
 5 Section 12–134 to be under the new part “Part VI. Enforcement and Penalties”
 6 Annotated Code of Maryland
 7 (2008 Replacement Volume and 2009 Supplement)
 8 (As enacted by Section 2 of this Act)

9 BY repealing and reenacting, with amendments,
 10 Article – State Government
 11 Section 12–101(a)(2)
 12 Annotated Code of Maryland
 13 (2009 Replacement Volume)

14 BY repealing and reenacting, without amendments,
 15 Article – Public Utility Companies
 16 Section 12–101(a)
 17 Annotated Code of Maryland
 18 (2008 Replacement Volume and 2009 Supplement)
 19 (As enacted by Section 3 of this Act)

20 BY repealing and reenacting, with amendments,
 21 Article – Public Utility Companies
 22 Section 12–101(o)
 23 Annotated Code of Maryland
 24 (2008 Replacement Volume and 2009 Supplement)
 25 (As enacted by Section 3 of this Act)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 27 MARYLAND, That Section(s) 12–107 through 12–110; and 12–201 through 12–203
 28 and the subtitle “Subtitle 2. Excavation Near Underground Lines and Structures in
 29 Montgomery County” of Article – Public Utility Companies of the Annotated Code of
 30 Maryland be repealed.

31 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 12–104,
 32 12–105, 12–106, 12–111, 12–112, and 12–113, respectively, of Article – Public Utility
 33 Companies of the Annotated Code of Maryland be renumbered to be Section(s) 12–120,
 34 12–121, 12–122, 12–128, 12–134, and 12–135, respectively.

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

37 **Article – Public Utility Companies**

38 **PART I. DEFINITIONS; GENERAL PROVISIONS.**

1 12-101.

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

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

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

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

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

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

14 (E) “DESIGNER” MEANS A LICENSED ARCHITECT OR ENGINEER WHO
15 PREPARES A DRAWING FOR A PROJECT THAT MAY REQUIRE EXCAVATION OR
16 DEMOLITION.

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

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

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

25 (H) “LEGAL HOLIDAY” MEANS:

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

28 (2) A FEDERAL LEGAL HOLIDAY.

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

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

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

5 (I) CALLING A TOLL-FREE NUMBER OR ABBREVIATED
6 DIALING CODE; OR

7 (II) INITIATING AN INTERACTIVE INTERNET TICKET
8 REQUEST; and

9 [(3)] (2) maintains an [owner-contractor] UNDERGROUND
10 FACILITIES information exchange system.

11 [(f)] (J) (1) "Owner" means a person that:

12 (i) owns or operates an underground facility; and

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

14 (2) "Owner" includes:

15 (i) a public utility;

16 (ii) a telecommunications corporation;

17 (iii) a cable television corporation;

18 (iv) a political subdivision;

19 (v) a municipal corporation;

20 (vi) a steam heating company; [and]

21 (vii) an authority; AND

22 (VIII) A UNIT OF THE STATE.

23 [(g)] "Owner-contractor information exchange system" means an automated
24 voice response unit maintained as a part of a one-call system.]

25 [(h)] (K) "Owner-member" means an owner that participates as a member
26 in a one-call system.

27 [(i)] (L) (1) "Person" has the meaning stated in § 1-101 of this article.

1 (2) “Person” includes:

2 (i) [a municipal corporation] **THE STATE;**

3 **(II) A POLITICAL SUBDIVISION OF THE STATE;** and

4 [(ii)] **(III) [a] ANY governmental unit, department, or agency.**

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

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

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

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

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

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

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

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

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

23 12-102.

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

26 (1) death or injury to individuals;

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

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

1 12-103.

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

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

7 (2) **WITHOUT THE USE OF MACHINERY.**

8 **12-104. RESERVED.**

9 **12-105. RESERVED.**

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

12 **12-106.**

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

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

17 **12-107.**

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

20 (B) **OF THE NINE MEMBERS:**

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

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

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

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

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

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

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

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

16 (C) (1) THE TERM OF A MEMBER IS 2 YEARS.

17 (2) THE TERMS OF MEMBERS ARE STAGGERED AS REQUIRED BY
18 THE TERMS PROVIDED FOR MEMBERS OF THE AUTHORITY ON OCTOBER 1,
19 2010.

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

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

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

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

30 (D) ON THE RECOMMENDATION OF THE AUTHORITY, THE GOVERNOR
31 MAY REMOVE A MEMBER FOR INCOMPETENCE OR MISCONDUCT.

32 12-108.

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

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

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

8 **12-109.**

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

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

12 **(C) A MEMBER OF THE AUTHORITY:**

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

15 **(2) IS NOT ENTITLED TO REIMBURSEMENT FOR EXPENSES.**

16 **12-110.**

17 **(A) THE AUTHORITY MAY:**

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

19 **(2) ADOPT A SEAL;**

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

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

23 **(5) EMPLOY A STAFF;**

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

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

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

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

8 **12-111.**

9 **THE AUTHORITY MAY OBTAIN FUNDING FOR ITS OPERATIONAL EXPENSES**
10 **FROM:**

11 **(1) A FEDERAL OR STATE GRANT;**

12 **(2) FILING FEES AND ADMINISTRATIVE FEES AUTHORIZED UNDER**
13 **§ 12-112 OF THIS SUBTITLE; AND**

14 **(3) ANY OTHER SOURCE.**

15 **12-112.**

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

17 **(1) HEAR COMPLAINTS FOR VIOLATIONS OF THIS SUBTITLE;**

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

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

22 **(B) THE AUTHORITY MAY:**

23 **(1) ESTABLISH REASONABLE COMPLAINT FILING FEES AND**
24 **ADMINISTRATIVE FEES FOR COMPLAINTS HEARD BY THE AUTHORITY; AND**

25 **(2) USE THE SERVICES OF A THIRD PARTY TO COLLECT CIVIL**
26 **PENALTIES.**

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

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

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

4 12-113.

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

7 (1) ALL TESTIMONY SHALL BE GIVEN UNDER OATH; AND

8 (2) THE PROCEEDINGS SHALL BE RECORDED.

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

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

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

15 (2) A COPY OF THE DECISION SHALL BE DELIVERED OR MAILED
16 TO THE PERSON AGAINST WHOM THE COMPLAINT WAS MADE.

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

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

24 (3) THE COSTS OF THE JUDICIAL REVIEW, INCLUDING THE COSTS
25 OF PREPARING A RECORD AND TRANSCRIPT, SHALL BE PAID BY THE PARTY
26 FILING THE REQUEST FOR JUDICIAL REVIEW.

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

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

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

7 **12-114.**

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

12 **12-115. RESERVED.**

13 **12-116. RESERVED.**

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

16 **12-117.**

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

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

20 **(1) PUBLIC EDUCATION AND OUTREACH PROGRAMS; AND**

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

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

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

26 **(E) THE FUND CONSISTS OF:**

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

1 **(2) INVESTMENT EARNINGS OF THE FUND; AND**

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

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

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

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

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

13 **12-118. RESERVED.**

14 **12-119. RESERVED.**

15 **PART IV. EXCAVATION AND DEMOLITION.**

16 12-120.

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

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

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

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

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

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

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

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

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

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

11 12-121.

12 (a) Subject to § [12-104(b)] **12-120(B)** of this subtitle, if all reasonable
13 precautions have been taken to protect underground facilities, § [12-104(a)]
14 **12-120(A)** of this subtitle and §§ [12-106 through 12-113] **12-122 THROUGH**
15 **12-135** of this subtitle do not apply to an emergency excavation or demolition being
16 performed to prevent danger to life, health, or property.

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

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

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

26 (c) **A PERSON THAT ABUSES THE EMERGENCY EXCAVATION AND**
27 **DEMOLITION PROCEDURE SET FORTH IN THIS SECTION IS SUBJECT TO**
28 **PENALTIES UNDER § 12-135 OF THIS SUBTITLE.**

29 12-122.

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

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

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

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

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

8 **12-123.**

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

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

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

16 **12-124.**

17 (A) **A PERSON THAT INTENDS TO PERFORM AN EXCAVATION OR**
18 **DEMOLITION IN THE STATE SHALL INITIATE A TICKET REQUEST BY NOTIFYING**
19 **THE ONE-CALL SYSTEM SERVING THE GEOGRAPHIC AREA WHERE THE**
20 **EXCAVATION OR DEMOLITION IS TO BE PERFORMED OF THE PERSON'S INTENT**
21 **TO PERFORM THE EXCAVATION OR DEMOLITION.**

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

24 (1) **THE LOCATION OF THE PROPOSED EXCAVATION OR**
25 **DEMOLITION; AND**

26 (2) **THE TYPE OF WORK TO BE PERFORMED IN CONNECTION WITH**
27 **THE PROPOSED EXCAVATION OR DEMOLITION.**

28 (C) **A TICKET IS VALID FOR 12 BUSINESS DAYS AFTER THE DAY ON**
29 **WHICH THE TICKET IS TRANSMITTED BY THE ONE-CALL SYSTEM TO AN OWNER.**

30 **12-125.**

1 **(A) A PERSON SHALL REPEAT THE NOTIFICATION REQUIRED UNDER §**
2 **12-124(A) OF THIS SUBTITLE IF THE PERSON:**

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

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

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

10 **(1) ANY DELAYS BY AN OWNER IN MARKING ITS UNDERGROUND**
11 **FACILITIES; OR**

12 **(2) AN AGREEMENT BETWEEN THE PERSON AND AN OWNER**
13 **REGARDING THE TIME FOR MARKING UNDERGROUND FACILITIES.**

14 **12-126.**

15 **(A) AN OWNER SHALL MARK ITS UNDERGROUND FACILITY IF THE**
16 **OWNER HAS DETERMINED THAT A PROPOSED EXCAVATION OR DEMOLITION:**

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

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

22 **(B) (1) AN OWNER SHALL MARK THE LOCATION OF ITS**
23 **UNDERGROUND FACILITY BY MARKING ON THE GROUND WITHIN 18 INCHES ON**
24 **A HORIZONTAL PLANE ON EITHER SIDE OF THE UNDERGROUND FACILITY.**

25 **(2) (I) WHEN MARKING THE LOCATION OF AN UNDERGROUND**
26 **FACILITY, AN OWNER SHALL USE THE CURRENT COLOR CODES ESTABLISHED BY**
27 **THE AMERICAN PUBLIC WORKS ASSOCIATION FOR MARKING UNDERGROUND**
28 **FACILITIES.**

29 **(II) IF TWO OR MORE OWNERS SHARE THE SAME COLOR**
30 **CODE, EACH OWNER SHALL INCLUDE INFORMATION WITH THE MARKING THAT**
31 **INDICATES THE OWNER OF THE MARKED UNDERGROUND FACILITY.**

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

4 **(1) MARK THE LOCATION OF THE OWNER'S UNDERGROUND**
5 **FACILITY AND REPORT TO THE UNDERGROUND FACILITIES INFORMATION**
6 **EXCHANGE SYSTEM THAT THE UNDERGROUND FACILITY HAS BEEN MARKED; OR**

7 **(2) REPORT TO THE UNDERGROUND FACILITIES INFORMATION**
8 **EXCHANGE SYSTEM THAT THE OWNER HAS NO UNDERGROUND FACILITIES IN**
9 **THE VICINITY OF THE PLANNED EXCAVATION OR DEMOLITION.**

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

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

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

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

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

33 **(4) IN CONNECTION WITH EXTENSIVE OR CONTIGUOUS**
34 **EXCAVATION OR DEMOLITION PROJECTS, THE PERSON PERFORMING THE**
35 **EXCAVATION OR DEMOLITION AND THE OWNER MAY ESTABLISH A WORKING**

1 AGREEMENT REGARDING THE TIME PERIODS FOR MARKING THE
2 UNDERGROUND FACILITY.

3 12-127.

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

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

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

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

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

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

22 (C) (1) A PERSON PERFORMING AN EXCAVATION OR DEMOLITION
23 SHALL EXERCISE DUE CARE TO AVOID INTERFERENCE WITH OR DAMAGE TO AN
24 UNDERGROUND FACILITY THAT AN OWNER HAS MARKED IN ACCORDANCE WITH
25 § 12-126 OF THIS SUBTITLE.

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

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

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

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

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

9 **(D) (1) THE PERSON PERFORMING AN EXCAVATION OR DEMOLITION**
10 **IMMEDIATELY SHALL NOTIFY THE OWNER OF THE FACILITY IF THE PERSON**
11 **DISCOVERS OR CAUSES ANY DAMAGE TO OR DISLOCATION OR DISTURBANCE OF**
12 **AN UNDERGROUND FACILITY IN CONNECTION WITH THE EXCAVATION OR**
13 **DEMOLITION.**

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

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

23 **(I) HAS REPEATED THE NOTIFICATION REQUIRED UNDER §**
24 **12-124(A) OF THIS SUBTITLE; AND**

25 **(II) RECEIVES NOTIFICATION FROM THE UNDERGROUND**
26 **FACILITIES INFORMATION EXCHANGE SYSTEM OF THE ONE-CALL SYSTEM**
27 **CONFIRMING THAT ALL APPLICABLE OWNERS THAT HAVE UNDERGROUND**
28 **FACILITIES IN THE VICINITY OF THE EXCAVATION OR DEMOLITION HAVE**
29 **MARKED:**

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

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

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

6 12-128.

7 **[(a) A political subdivision [or], A municipal corporation, OR AN OWNER may**
8 **NOT charge, assess, or collect from a person [a one-time initial marking fee not**
9 **exceeding \$35] A FEE for reimbursement of expenses that the political subdivision**
10 **[or], municipal corporation, OR OWNER incurs to comply with this subtitle.**

11 **[(b) If re-marking is requested, or is required after renotification under §**
12 **12-108(b) of this subtitle, a political subdivision or municipal corporation may charge,**
13 **assess, or collect from a person a re-marking fee not exceeding \$15 for reimbursement**
14 **of expenses that the political subdivision or municipal corporation incurs to comply**
15 **with this subtitle.]**

16 **12-129. RESERVED.**

17 **12-130. RESERVED.**

18 **PART V. DESIGNER REQUESTS.**

19 12-131.

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

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

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

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

28 **(I) INDICATE THAT THE REQUEST IS FOR DESIGN**
29 **PURPOSES ONLY;**

1 **(II) NOTIFY THE ONE-CALL SYSTEM OF ANY OWNERS FROM**
2 **WHICH THE DESIGNER DOES NOT REQUIRE UNDERGROUND FACILITIES**
3 **INFORMATION; AND**

4 **(III) ON THE REQUEST OF AN OWNER, PROVIDE THE OWNER**
5 **WITH A PRELIMINARY DRAWING THAT INDICATES THE SCOPE OF THE PROJECT.**

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

11 **(2) AN OWNER MAY PROVIDE NOTICE OF THE APPROXIMATE**
12 **LOCATION OF AN UNDERGROUND FACILITY THROUGH THE USE OF:**

13 **(I) FIELD LOCATES;**

14 **(II) MAPS;**

15 **(III) SURVEYS;**

16 **(IV) INSTALLATION RECORDS; OR**

17 **(V) OTHER SIMILAR MEANS.**

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

20 **(2) AN OWNER OR AGENT OF AN OWNER MAY NOT BE HELD**
21 **LIABLE FOR ANY INACCURATE INFORMATION PROVIDED TO A DESIGNER UNDER**
22 **THIS SECTION.**

23 **12-132. RESERVED.**

24 **12-133. RESERVED.**

25 **PART VI. ENFORCEMENT AND PENALTIES.**

26 **12-134.**

27 **(a) To stop or prevent a negligent or unsafe excavation or demolition, an**
28 **owner or the Attorney General may file an action for a writ of mandamus or injunction**
29 **in a court of competent jurisdiction in Baltimore City or the county in which the**

1 excavation or demolition is being performed or is to be performed or in which the
2 person resides or has its principal place of business, if the person:

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

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

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

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

12 12-135.

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

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

18 (II) **[\$1,000] SUBJECT TO SUBSECTION (C) OF THIS SECTION,**
19 **\$5,000** for each subsequent offense [or ten times the cost of repairs to the
20 underground facility caused by the damage, dislocation, or disturbance].

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

23 (I) **REQUIRE THAT A PERSON:**

24 1. **PARTICIPATE IN DAMAGE PREVENTION TRAINING;**
25 **OR**

26 2. **IMPLEMENT PROCEDURES TO MITIGATE THE**
27 **LIKELIHOOD OF DAMAGE TO UNDERGROUND FACILITIES; OR**

28 (II) **IMPOSE OTHER SIMILAR MEASURES.**

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

- 1 (vi) Maryland Economic Development Corporation;
- 2 (vii) Maryland Technology Development Corporation;
- 3 (viii) Maryland African American Museum Corporation;
- 4 (ix) Maryland Automobile Insurance Fund;
- 5 (x) Maryland Health and Higher Educational Facilities
6 Authority;
- 7 (xi) Maryland Agricultural and Resource-Based Industry
8 Development Corporation;
- 9 (xii) Somers Cove Marina Commission; [and]
- 10 (xiii) Maryland Workforce Corporation; AND

11 (XIV) MARYLAND UNDERGROUND FACILITIES DAMAGE
12 PREVENTION AUTHORITY;

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

15 **Article – Public Utility Companies**

16 12–101.

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

18 (o) (1) “Underground facility” means personal property that is to be
19 buried or submerged for:

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

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

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

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

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

4 (1) in 2011:

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

7 (ii) one of the underground facility owners appointed from a list
8 submitted by the Maryland members of the Maryland/DC Subscribers Committee;

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

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

14 (v) the member of the general public; and

15 (2) in 2012:

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

18 (ii) one of the underground facility owners appointed from a list
19 submitted by the Maryland members of the Maryland/DC Subscribers Committee;

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

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

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

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

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