

# SENATE BILL 877

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CF HB 1330

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By: **Senators Feldman and Hershey**

Introduced and read first time: February 3, 2020

Assigned to: Finance

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Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 9, 2020

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Underground Facilities Damage Prevention – Revision**

3 FOR the purpose of revising provisions relating to the Maryland Underground Facilities  
4 Damage Prevention Authority; altering the application and scope of certain  
5 provisions relating to underground facilities and damage prevention; requiring  
6 certain newly installed underground facilities to be detectable or locatable after a  
7 certain date; requiring certain previously detectable or locatable facilities to be  
8 restored to a certain status after a certain date; altering the qualifications of certain  
9 members of the Authority; establishing certain limitations on the appointment of  
10 certain members and represented entities; establishing certain procedures for filling  
11 certain vacancies on the Authority in certain manners; ~~authorizing the Authority to~~  
12 ~~obtain funding from certain fees for certain purposes;~~ requiring the Authority to  
13 accept and review certain complaints; authorizing the Authority to hear certain  
14 complaints, make certain recommendations, and take certain actions; authorizing  
15 the Maryland Underground Facilities Damage Prevention Education and Outreach  
16 Fund to be used for certain purposes; altering the scope of exclusion from liability for  
17 certain actions; altering the construction of certain provisions regarding certain  
18 rights to recovery and contribution; altering certain provisions and procedures  
19 regarding emergency actions and notifications; requiring certain persons to identify  
20 certain information and extent of work in certain circumstances; requiring certain  
21 persons to provide notice of certain excavation or demolition under certain  
22 circumstances and to take certain actions; requiring an owner–member or its  
23 contract locator to respond to an emergency notice in a certain manner; requiring a  
24 person that performs excavation or demolition in the State to initiate a certain ticket  
25 request in a certain manner and to include certain information; authorizing a certain

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 person to add a temporary excavator to an existing ticket; requiring certain  
 2 notification to be repeated under certain circumstances; requiring certain  
 3 re-marking to comply with certain requirements; requiring an owner-operator or its  
 4 contract locator to mark certain underground facilities in a certain manner under  
 5 certain circumstances; authorizing an owner-member to enter into a documented  
 6 agreement for certain marking; requiring a person performing excavation or  
 7 demolition to have a copy of a certain ticket available on the site of the activity;  
 8 requiring certain persons to exercise due care to avoid certain interference or damage  
 9 where clear evidence of an unmarked underground facility exists; requiring the use  
 10 of certain techniques when utilizing a trenchless technology method for certain work;  
 11 requiring the use of certain equipment to make certain piping and facilities  
 12 detectable or locatable in a certain manner; requiring a primary contractor to provide  
 13 certain notice and directly supervise a temporary excavator under certain  
 14 circumstances; limiting the use of certain temporary excavators; requiring a  
 15 designated temporary excavator to notify the one-call system under certain  
 16 circumstances; establishing certain procedures and requirements for initiating a  
 17 nonexcavation designer ticket request; requiring the one-call system to provide  
 18 certain information to certain persons for certain nonexcavation tickets; altering  
 19 certain provisions on the assessment and calculation of civil penalties by the  
 20 Authority for certain offenses; providing that certain prior offenses may be subject  
 21 to certain enhanced penalties under certain circumstances; establishing certain fines  
 22 and penalties for certain violations; defining certain terms and altering certain  
 23 definitions; making stylistic changes; updating a certain cross-reference; providing  
 24 for the construction of this Act; and generally relating to underground facilities and  
 25 damage prevention.

26 BY repealing and reenacting, without amendments,  
 27 Article – General Provisions  
 28 Section 1-101 and 1-110  
 29 Annotated Code of Maryland  
 30 (2019 Replacement Volume)

31 BY repealing and reenacting, with amendments,  
 32 Article – Public Utilities  
 33 Section 12-101, 12-103, 12-107, 12-111, 12-112, 12-113, 12-117, 12-120, 12-121,  
 34 and 12-124 through 12-129; 12-131 to be under the amended part “Part V.  
 35 ~~Other Requests~~ Nonexcavation Tickets”; and 12-135  
 36 Annotated Code of Maryland  
 37 (2010 Replacement Volume and 2019 Supplement)

38 ~~BY repealing~~  
 39 ~~Article – Public Utilities~~  
 40 ~~Section 12-103~~  
 41 ~~Annotated Code of Maryland~~  
 42 ~~(2010 Replacement Volume and 2019 Supplement)~~

43 BY adding to

1 Article – Public Utilities  
2 Section ~~12-103~~ 12-104 and 12-130  
3 Annotated Code of Maryland  
4 (2010 Replacement Volume and 2019 Supplement)

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

7 **Article – General Provisions**

8 1-101.

9 Except as otherwise provided in this Code, in this Code the following words have the  
10 meanings indicated.

11 1-110.

12 “Includes” or “including” means includes or including by way of illustration and not  
13 by way of limitation.

14 **Article – Public Utilities**

15 12-101.

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

17 (b) “Authority” means the Maryland Underground Facilities Damage Prevention  
18 Authority.

19 (c) “Business day” means a calendar day other than a Saturday, Sunday, or legal  
20 holiday.

21 **(D) “CLEAR EVIDENCE” ~~INCLUDES~~ MEANS A VISIBLE INDICATION THAT A AN**  
22 **UNDERGROUND FACILITY OR STRUCTURE IS NOT MARKED AS REQUIRED IN § 12-126**  
23 **OF THIS SUBTITLE.**

24 **(E) “CONTRACT LOCATOR” MEANS A PERSON CONTRACTED BY AN OWNER**  
25 **SPECIFICALLY TO DETERMINE THE APPROXIMATE HORIZONTAL LOCATION OF THE**  
26 **OWNER’S UNDERGROUND FACILITIES AS SPECIFIED IN THE TICKET ISSUED BY THE**  
27 **ONE-CALL CENTER.**

28 **(F) “CROSS-BORE” MEANS AN INTERSECTION OF AN EXISTING**  
29 **UNDERGROUND FACILITY BY A SECOND UNDERGROUND FACILITY RESULTING IN**  
30 **CONTACT BETWEEN THE TWO FACILITIES THAT RESULTS IN THE ORIGINAL FACILITY**  
31 **BEING DAMAGED, DISLOCATED, OR DISTURBED.**

1           **(G) “DAMAGE” MEANS ANY EXCAVATION ACTIVITY THAT RESULTS IN THE**  
2 **NEED TO REPAIR AN UNDERGROUND FACILITY DUE TO A WEAKENING OR THE**  
3 **PARTIAL OR COMPLETE DESTRUCTION OF THE FACILITY, INCLUDING THE**  
4 **PROTECTIVE COATING, LATERAL SUPPORT, CATHODIC PROTECTION, OR HOUSING**  
5 **FOR THE UNDERGROUND FACILITY.**

6           **[(d)] (H) “Demolition” means an operation in which a structure or mass of**  
7 **material is wrecked, razed, rended, moved, or removed using any tool, equipment, or**  
8 **explosive.**

9           **[(e)] (I) “Designer” means a licensed architect, professional engineer,**  
10 **professional land surveyor, or licensed landscape architect, as those terms are defined in**  
11 **the Business Occupations and Professions Article, who prepares a drawing for a project**  
12 **that may require excavation or demolition.**

13           **(J) “DETECTABLE UNDERGROUND FACILITY” MEANS AN UNDERGROUND**  
14 **FACILITY THAT UTILIZES A LOCATION DEVICE THAT IS INSTALLED UNDERGROUND,**  
15 **SUCH AS AN ELECTRONIC MARKER OR A TRACEABLE WIRE THAT MAY BE DETECTED**  
16 **ABOVE GROUND WITH AN ELECTRONIC LOCATING DEVICE.**

17           **(K) “EMERGENCY” MEANS A SUDDEN OR UNEXPECTED OCCURRENCE**  
18 **INVOLVING A CLEAR AND IMMINENT DANGER DEMANDING IMMEDIATE ACTION TO**  
19 **PREVENT OR MITIGATE LOSS OF, OR INJURY TO, LIFE, HEALTH, PROPERTY, OR AN**  
20 **ESSENTIAL PUBLIC SERVICE.**

21           **[(f)] (L) (1) “Excavation” means an operation in which earth, rock, or other**  
22 **material in or on the ground is moved, removed, or otherwise displaced by using any tool,**  
23 **equipment, or explosive.**

24                   **(2) “Excavation” includes grading, trenching, digging, ditching, dredging,**  
25 **drilling, boring, augering, tunnelling, scraping, cable or pipe plowing, PIPE BURSTING,**  
26 **and driving a mass of material.**

27           **(M) “EXCAVATOR” MEANS A PERSON THAT PERFORMS AN EXCAVATION OR A**  
28 **DEMOLITION.**

29           **(N) “EXTENT OF WORK” MEANS A CLEAR AND CONCISE DESCRIPTION OF**  
30 **WORK TO BE DONE AT A PROPERTY, INCLUDING THE PROPERTY ADDRESS OR**  
31 **SPECIFIC DISTANCE AND DIRECTION FROM A SPECIFIED POINT, NOT TO EXCEED**  
32 **1,320 FEET, THAT COMPLETELY DEPICTS THE SCOPE OF WORK AND THAT THE**  
33 **EXCAVATOR CAN COMPLETE WITHIN THE DESIGNATED LIFE OF THE TICKET.**

34           **[(g)] (O) “Fund” means the Maryland Underground Facilities Damage**  
35 **Prevention Education and Outreach Fund.**

1           **[(h)] (P)**     “Legal holiday” means:

2                   (1)    the day on which a legal holiday, as defined in § 1–111 of the General  
3 Provisions Article, is observed; or

4                   (2)    a federal legal holiday.

5           **(Q)    “LOCATABLE UNDERGROUND FACILITY” MEANS AN UNDERGROUND**  
6 **FACILITY THAT CAN BE IDENTIFIED OR DISCOVERED BY METHODS INCLUDING**  
7 **INSTALLATION RECORDS, FACILITY MARKERS OR RISERS, LOCATOR TAPE, MANUAL**  
8 **LOCATION TECHNIQUES, SURFACE EXTENSIONS OF UNDERGROUND FACILITIES, OR**  
9 **ANY VISIBLE INDICATORS THAT A FACILITY OR STRUCTURE IS BURIED**  
10 **UNDERGROUND IN THE IMMEDIATE VICINITY.**

11           **(R)    “MARK” MEANS A LINE, AN ARROW, A CURVE, A WHISKER, A FLAG, A**  
12 **STAKE, OR ANY OTHER SYMBOL, PLACED OR MADE TO IDENTIFY AN UNDERGROUND**  
13 **FACILITY.**

14           **[(i)] (S)**     “One–call system” means a communications system in the State that:

15                   (1)    allows a person to notify owner–members of planned excavation or  
16 demolition by:

17                           (i)    calling a toll–free number or abbreviated dialing code; or

18                           (ii)   initiating an interactive Internet ticket request; and

19                   (2)    maintains an underground facilities information exchange system.

20           **[(j)] (T)**     (1)    “Owner” means a person that:

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

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

23                   (2)    “Owner” includes:

24                           (i)    a public utility;

25                           (ii)   a telecommunications corporation;

26                           (iii)  a cable television corporation;

27                           (iv)   a political subdivision;

28                           (v)   a municipal corporation;

1 (vi) a steam heating company;

2 (vii) an authority; and

3 (viii) a unit of the State.

4 **[(k)] (U)** “Owner–member” means an owner that participates as a member in a  
5 one–call system.

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

7 (2) “Person” includes:

8 (i) a municipal corporation;

9 (ii) the State;

10 (iii) a political subdivision of the State; and

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

12 **(W) “PRIMARY CONTRACTOR” MEANS THE PERSON THAT:**

13 **(1) INITIATES THE NOTIFICATION TO THE ONE–CALL SYSTEM TO**  
14 **ESTABLISH A TICKET;**

15 **(2) PERFORMS EXCAVATION DUTIES FOR THE DURATION OF THE**  
16 **TICKET; AND**

17 **(3) IS ON SITE TO SUPERVISE ALL ACTIVITIES, EMPLOYEES, AND ANY**  
18 **TEMPORARY EXCAVATOR ADDED TO THE VALID TICKET AS REQUIRED IN § 12–130(B)**  
19 **OF THIS SUBTITLE.**

20 **(X) “TEMPORARY EXCAVATOR” MEANS A PERSON THAT THE PRIMARY**  
21 **CONTRACTOR MAY IDENTIFY AND ADD AS A SUBCONTRACTING EXCAVATOR TO AN**  
22 **EXISTING TICKET UNDER § 12–130(C) OF THIS SUBTITLE.**

23 **[(m)] (Y)** “Ticket” means a numbered document issued by a one–call system to  
24 notify owner–members that:

25 (1) a person intends to perform an excavation or demolition; or

26 (2) a designer has requested information on the location of underground  
27 facilities under § 12–131 of this subtitle.

1           **(Z) (1) “TRENCHLESS TECHNOLOGY” MEANS A FAMILY OF METHODS,**  
2 **MATERIALS, AND EQUIPMENT CAPABLE OF BEING USED FOR THE INSTALLATION OF**  
3 **NEW OR REPLACEMENT, OR REHABILITATION OF EXISTING, UNDERGROUND**  
4 **INFRASTRUCTURE THAT REQUIRES EXCAVATION WITH MINIMAL DISRUPTION TO**  
5 **SURFACE TRAFFIC BUSINESS AND OTHER ACTIVITIES.**

6           **(2) “TRENCHLESS TECHNOLOGY” INCLUDES:**

7                   **(I) TUNNELLING;**

8                   **(II) MICROTUNNELLING;**

9                   **(III) HORIZONTAL DIRECTIONAL DRILLING OR DIRECTIONAL**  
10 **BORING;**

11                   **(IV) PIPE RAMMING;**

12                   **(V) PIPE JACKING;**

13                   **(VI) MOLING;**

14                   **(VII) HORIZONTAL AUGER BORING; AND**

15                   **(VIII) ANY OTHER METHOD FOR THE INSTALLATION OF PIPELINES**  
16 **AND CABLES BELOW GROUND WITH MINIMAL EXCAVATION.**

17           **[(n)] (AA) “Underground facilities information exchange system” means an**  
18 **automated voice response unit or interactive Internet access system that is maintained as**  
19 **part of a one-call system.**

20           **[(o)] (BB) (1) “Underground facility” means [personal property] AN ITEM that**  
21 **is buried, PLACED BELOW GROUND, or submerged for USE IN CONNECTION WITH THE:**

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

24                   **(ii) transmission or conveyance of [electronic, telephonic, or**  
25 **telegraphic communications] TELECOMMUNICATIONS, CABLE TELEVISION, or**  
26 **electricity.**

27           **(2) “Underground facility” includes pipes, sewers, COMBINATION**  
28 **STORM/SANITARY SEWER SYSTEMS, GEOTHERMAL SYSTEMS, conduits, cables, valves,**  
29 **lines, wires, manholes, AND attachments[, and those portions of poles below ground].**

30           **(3) “Underground facility” does not include a ~~stormwater~~ STORM drain.**

1 ~~¶~~12-103.

2 This subtitle does not apply to an excavation **NOT MORE THAN 6 INCHES IN DEPTH**  
 3 or demolition performed or to be performed by an owner or lessee of a private residence  
 4 when the excavation or demolition is performed or to be performed:

5 (1) entirely on the land on which the private residence of the owner or  
 6 lessee is located; and

7 (2) without the use of machinery.~~¶~~

8 ~~12-103.~~ **12-104.**

9 (A) **THIS SECTION APPLIES TO:**

10 (1) **COMPLETE REPLACEMENT OF AN EXISTING UNDERGROUND**  
 11 **FACILITY;**

12 (2) **UNDERGROUND STORM DRAIN SYSTEMS AND APPLICABLE**  
 13 **DEVICES; AND**

14 (3) **AN EXISTING PREVIOUSLY DETECTABLE UNDERGROUND FACILITY**  
 15 **OR LOCATABLE UNDERGROUND FACILITY.**

16 (B) **EXCEPT AS OTHERWISE PROVIDED IN § 12-129 OF THIS SUBTITLE, ON**  
 17 **OR AFTER OCTOBER 1, 2021, ALL NEWLY INSTALLED UNDERGROUND FACILITIES**  
 18 **SHALL BE DETECTABLE OR LOCATABLE.**

19 (C) **NOT LATER THAN OCTOBER 1, 2021, ANY PREVIOUSLY DETECTABLE**  
 20 **UNDERGROUND FACILITY OR ~~LOCATABLE~~ UNDERGROUND FACILITY LOCATABLE**  
 21 **DURING PLANNED OR EMERGENCY WORK MUST BE RESTORED TO BE DETECTABLE**  
 22 **OR LOCATABLE.**

23 12-107.

24 (a) The Authority consists of nine members appointed by the Governor.

25 (b) The nine members shall be appointed as follows:

26 (1) one member from a list submitted to the Governor by the Associated  
 27 Utility Contractors of Maryland;

28 (2) one member from a list submitted to the Governor by the Public Works  
 29 Contractors Association of Maryland;



1 (3) two underground facility owners that are members of a one-call system  
2 from a list submitted to the Governor by the Maryland members of the Maryland/DC  
3 Subscribers Committee;

4 (4) one member from a list submitted to the Governor by the one-call  
5 centers operating in the State;

6 (5) one member who represents the State's underground [utility]  
7 FACILITY CONTRACT locator community from a list submitted to the Governor by the  
8 Maryland members of the Maryland/DC Damage Prevention Committee;

9 (6) one member who has experience in the field of underground [utilities]  
10 FACILITIES from a list submitted to the Governor by the Maryland Association of Counties;

11 (7) one member who has experience in the field of underground [utilities]  
12 FACILITIES from a list submitted to the Governor by the Maryland Municipal League; and

13 (8) one member of the general public from a list submitted to the Governor  
14 by the other appointed and qualified members of the Authority.

15 (c) (1) To the extent practicable, members appointed to the Authority shall  
16 reasonably reflect the geographic, racial, and gender diversity of the State.

17 (2) A MEMBER SHALL RESIDE IN THE STATE MORE THAN 6 MONTHS  
18 EACH YEAR.

19 (3) FOR THE STAKEHOLDER MEMBERS APPOINTED UNDER  
20 SUBSECTION (B)(1) THROUGH (7) OF THIS SECTION:

21 (I) THE MEMBER'S PRIMARY BUSINESS, EMPLOYMENT, OR  
22 MEMBERSHIP DETERMINES THE ENTITY THAT THE MEMBER IS APPOINTED TO  
23 REPRESENT; AND

24 (II) AN ORGANIZATION, A FACILITY OWNER, OR ANY OTHER  
25 ENTITY MAY NOT HOLD MORE THAN ONE SEAT ON THE AUTHORITY.

26 (d) (1) The term of a member is 2 years.

27 (2) The terms of members are staggered as required by the terms provided  
28 for members of the Authority on October 1, 2010.

29 (3) At the end of a term, a member continues to serve until a successor is  
30 appointed and qualifies.

1 (4) A member who is appointed after a term has begun serves only for the  
2 rest of the term and until a successor is appointed and qualifies.

3 (5) A member may not be appointed for more than two consecutive full  
4 terms.

5 (6) To the extent practicable, the Governor shall fill any vacancy in the  
6 membership of the Authority within 60 days after the vacancy.

7 (e) On the recommendation of the Authority, the Governor may remove a member  
8 for incompetence or misconduct.

9 **(F) (1) ANY ORGANIZATION, FACILITY OWNER, OR ENTITY POSSESSING A**  
10 **SEAT ON THE AUTHORITY WHOSE TERM IS DUE TO EXPIRE OR BE VACATED SHALL:**

11 **(I) DESIGNATE A REPLACEMENT FOR ITS REPRESENTATIVE;**  
12 **AND**

13 **(II) IF REASONABLE, INITIATE THE NOMINATION PROCESS WITH**  
14 **THE GOVERNOR'S APPOINTMENTS OFFICE AT LEAST 60 DAYS BEFORE THE KNOWN**  
15 **EXPIRATION, REMOVAL, OR RESIGNATION OF ITS REPRESENTATIVE.**

16 **(2) IF THE ORGANIZATION, FACILITY OWNER, OR ENTITY FAILS TO**  
17 **COMPLY WITH THE REPLACEMENT PROCESS UNDER PARAGRAPH (1) OF THIS**  
18 **SUBSECTION, THE AUTHORITY SHALL:**

19 **(I) CONDUCT A SEARCH FOR A REPLACEMENT NOMINEE FROM**  
20 **THE ORGANIZATION, FACILITY OWNER, OR ENTITY HAVING THE VACANCY ON THE**  
21 **AUTHORITY; AND**

22 **(II) FOLLOW THE NOMINATION PROCESS PROVIDED BY THE**  
23 **GOVERNOR'S APPOINTMENTS OFFICE.**

24 **(3) IF THE ORGANIZATION, FACILITY OWNER, OR ENTITY HAVING THE**  
25 **VACANCY SUBSEQUENTLY FAILS TO PROVIDE A NOMINEE WITHIN THE REQUIRED**  
26 **TIME FOR A SECOND TIME, THE AUTHORITY MAY:**

27 **(I) REMOVE THE ORGANIZATION, FACILITY OWNER, OR ENTITY**  
28 **REPRESENTATION FROM THE AUTHORITY; AND**

29 **(II) REPLACE THE ORGANIZATION, FACILITY OWNER, OR ENTITY**  
30 **HAVING A VACANCY ON THE AUTHORITY WITH A COMPARABLE ORGANIZATION,**  
31 **FACILITY OWNER, OR ENTITY.**

1           **(4) IN THE CASE OF A SUDDEN OR UNEXPECTED VACANCY, THE**  
2 **ORGANIZATION, FACILITY OWNER, OR ENTITY SHALL PROVIDE A NOMINATION TO**  
3 **THE GOVERNOR'S APPOINTMENTS OFFICE WITHIN 60 DAYS AFTER THE VACANCY**  
4 **OCCURS.**

5 12-111.

6           (a) The Authority may obtain funding for its operational expenses from:

7           (1) a federal or State grant;

8           (2) filing fees and administrative fees for complaints heard by the  
9 Authority as authorized under [§ 12-112(b)(1)] **§ 12-112(C)(1)** of this subtitle,  
10 **INCLUDING:**

11                   **(I) MAILING COSTS;**

12                   **(II) FEES FOR DELIVERY OR SERVICE OF PROCESS;**

13                   **(III) REPRODUCTION COSTS; AND**

14                   **(IV) ~~LABOR~~ STAFF COSTS ASSOCIATED WITH THE COMPLAINT;**

15           (3) an additional assessment or charge per ticket as authorized under  
16 subsection (b) of this section; and

17           (4) any other source.

18           (b) The Authority may collect an assessment or a charge not exceeding 5 cents  
19 per ticket from an owner-member if the assessment or charge:

20           (1) is not imposed on a county or a municipal corporation; and

21           (2) is approved by a two-thirds vote of all members of the Authority.

22           ~~¶~~(c) Except as provided in subsections (a)(2) and (b) of this section, the Authority  
23 may not impose a charge or assessment against any person, directly or indirectly, to obtain  
24 funding for its operational expenses.†

25 12-112.

26           (a) To enforce this subtitle, the Authority [may]:

27                   **(1) SHALL ACCEPT AND REVIEW COMPLAINTS FOR VIOLATIONS OF**  
28 **THIS SUBTITLE; AND**

1           **(2) MAY RECOMMEND NECESSARY ENFORCEMENT ACTIONS.**

2           **(B) (1) THE AUTHORITY SHALL:**

3           **[(1)] (I)** hear complaints for violations of this subtitle:

4                           **1. AT THE REQUEST OF A PROBABLE VIOLATOR; OR**

5                           **2. AFTER NOTIFYING A PROBABLE VIOLATOR THAT THE**  
6 **AUTHORITY HAS SCHEDULED A HEARING ON ITS OWN MOTION; AND**

7           **[(2)] (II)** after a hearing, assess a civil penalty under § 12–135 of this  
8 subtitle[; and].

9           **[(3)] (2) THE AUTHORITY MAY** reach a settlement instead of assessing  
10 a civil penalty.

11           **(3) IF A PROBABLE VIOLATOR FAILS TO APPEAR AT A SCHEDULED**  
12 **HEARING, THE AUTHORITY MAY VOTE TO PROCEED TO HEAR THE COMPLAINT**  
13 **AGAINST THE PROBABLE VIOLATOR IN THE ABSENCE OF THE PROBABLE VIOLATOR.**

14           **[(b)] (C) (1)** The Authority may:

15                           (i) establish reasonable complaint filing fees and administrative  
16 fees for complaints heard by the Authority; and

17                           (ii) use the services of a third party to collect civil penalties.

18           (2) If the Authority determines that an individual cannot afford to pay a  
19 fee established under paragraph (1)(i) of this subsection, the Authority may exempt the  
20 individual wholly or partly from the fee.

21           **[(c)] (D)** The Authority may not assess a civil penalty against a person unless  
22 the person:

23                           (1) receives reasonable prior notice of the complaint; and

24                           (2) has an opportunity to be heard under § 12–113 of this subtitle.

25 12–113.

26           (a) In a hearing before the Authority for an alleged violation of this subtitle:

27                           (1) all testimony shall be given under oath **ADMINISTERED BY THE**  
28 **CHAIR OR ANOTHER MEMBER OF THE AUTHORITY;** and

1 (2) the proceedings shall be recorded.

2 (b) [The chair or a member of the Authority may administer the oath.

3 (c)] The Authority may compel the attendance of a witness by subpoena.

4 [(d)] (C) (1) The Authority shall issue its decision in writing, stating the  
5 reason for its decision.

6 (2) A copy of the decision shall be delivered or mailed to all parties to the  
7 complaint proceedings.

8 [(e)] (D) (1) A person aggrieved by a decision of the Authority may, within 30  
9 days after receiving the decision, request judicial review of the decision by the circuit court.

10 (2) In accordance with the judicial review and appeals process under the  
11 Administrative Procedure Act, the circuit court shall hear and determine all matters  
12 connected with the decision of the Authority for which judicial review is requested.

13 (3) (i) Except as provided in subparagraph (ii) of this paragraph, the  
14 costs of the judicial review, including the costs of preparing a record and transcript, shall  
15 be paid by the party filing the request for judicial review.

16 (ii) If the party filing the request for judicial review prevails, the  
17 circuit court may require that the costs of the judicial review, including the costs of  
18 preparing a record and transcript, be paid by the Authority.

19 (4) If the request for judicial review is dismissed, the circuit court shall  
20 award attorney's fees to the Authority unless the Authority waives the award of attorney's  
21 fees.

22 [(f)] (E) (1) The record of a hearing conducted under this section, including  
23 any record of testimony or evidence offered at the hearing, is not admissible in any  
24 administrative or civil proceeding involving the same subject matter or the same parties.

25 (2) Paragraph (1) of this subsection does not apply to judicial review of the  
26 Authority's decision.

27 12-117.

28 (a) There is a Maryland Underground Facilities Damage Prevention Education  
29 and Outreach Fund.

30 (b) The purpose of the Fund is to cover the costs of:

31 (1) public education and outreach programs; and

1 (2) the development of safety procedures to prevent damage to  
2 underground facilities.

3 (c) The Authority shall hold and administer the Fund.

4 (d) The Fund is a special, nonlapsing fund that is not subject to § 7–302 of the  
5 State Finance and Procurement Article.

6 (e) The Fund consists of:

7 (1) civil penalties paid into the Fund under § 12–135 of this subtitle;

8 (2) investment earnings of the Fund; and

9 (3) any other money from any other source accepted for the benefit of the  
10 Fund.

11 (f) (1) The Fund may be used ~~only~~ for:

12 (i) public education and outreach programs for the prevention of  
13 damage to underground facilities; **[and]**

14 (ii) the development of safety procedures for excavation and  
15 demolition projects conducted in the area of underground facilities; **AND**

16 **(III) WITH THE CONSENT OF THE AUTHORITY MEMBERS,**  
17 **COVERING AN UNEXPECTED SHORTFALL IN THE OPERATIONAL ACCOUNT OF THE**  
18 **AUTHORITY.**

19 (2) The Authority may make grants to local governments or private entities  
20 consistent with the purposes of the Fund.

21 12–120.

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

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

26 (2) liability for **FINANCIAL** damages or injury that results from the  
27 excavation or demolition.

28 (b) If an underground facility is damaged by a person that fails to comply with  
29 this subtitle, the person is deemed negligent and is liable to the owner for the total cost of

1 repair of the underground facility, unless the owner has failed to become an owner–member  
2 in accordance with § 12–123 of this subtitle.

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

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

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

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

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

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

16 12–121.

17 (a) **(1) THIS SECTION APPLIES TO ANY ACTION TAKEN TO ADDRESS AN**  
18 **EMERGENCY FROM THE TIME THE EMERGENCY ARISES UNTIL A STANDARD TICKET**  
19 **IS INITIATED AND VALID UNDER § 12–124 OF THIS SUBTITLE, INCLUDING ANY WORK**  
20 **ASSOCIATED WITH STOPPING OR MITIGATING THE EMERGENCY.**

21 **(2) [Subject to § 12–120(b) of this subtitle, if all reasonable precautions**  
22 **have been taken to protect underground facilities, § 12–120(a) of this subtitle and §§**  
23 **12–122 through 12–135 of this subtitle do not apply to an emergency excavation or**  
24 **demolition being performed to prevent danger to life, health, or property.] THIS SECTION**  
25 **APPLIES TO ANY ACTION TAKEN TO ADDRESS AN EMERGENCY FROM THE TIME THE**  
26 **EMERGENCY ARISES UNTIL A STANDARD TICKET IS INITIATED AND VALID UNDER §**  
27 **12–124 OF THIS SUBTITLE, INCLUDING ANY WORK ASSOCIATED WITH STOPPING OR**  
28 **MITIGATING THE EMERGENCY.**

29 (b) **A PRIMARY CONTRACTOR OR A** person performing an emergency excavation  
30 or demolition to prevent [danger] **OR MITIGATE LOSS OF OR INJURY** to life, health, [or]  
31 property, **OR AN ESSENTIAL PUBLIC SERVICE** shall:

32 (1) **IDENTIFY THE LOCATION AND EXTENT OF WORK, AS STATED IN §**  
33 **12–124(B)(1) OF THIS SUBTITLE, IN A CLEAR AND CONCISE MANNER;**

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

3           ~~[(2)]~~ **(3)** immediately notify the one-call system serving the geographic  
4 area where the emergency excavation or demolition is performed to inform the appropriate  
5 owner-members of the excavation or demolition area.

6           (c) **(1) THE OWNER-MEMBER OR ITS CONTRACT LOCATOR SHALL:**

7                   **(I) RESPOND TO AN EMERGENCY NOTICE AS SOON AS POSSIBLE**  
8 **BUT NOT LATER THAN ~~2~~ 2 HOURS FROM THE TRANSMISSION OF THE TICKET FROM**  
9 **THE ONE-CALL CENTER; AND**

10                   **(II) EXCEPT FOR CIRCUMSTANCES BEYOND AN**  
11 **OWNER-MEMBER'S OR CONTRACT LOCATOR'S CONTROL AND FOR MUNICIPAL**  
12 **CORPORATIONS, CONSIDERING THE HOURS OF OPERATION AND AVAILABILITY OF**  
13 **EMPLOYEES:**

14                           **1. BEGIN THE LOCATING PROCESS TO MARK THEIR**  
15 **RESPECTIVE UNDERGROUND FACILITY OR FACILITIES WITHIN ~~2~~ 3 HOURS AFTER**  
16 **THE TRANSMISSION OF THE TICKET; OR**

17                           **2. IF THE FACILITY OWNER HAS NO UNDERGROUND**  
18 **FACILITIES WITHIN THE DELINEATED EXCAVATION AREA, CLEAR THE TICKET**  
19 **WITHIN 3 HOURS AFTER THE TRANSMISSION OF THE TICKET.**

20           **(2) THE PERSON RESPONSIBLE FOR THE EXCAVATION SHALL:**

21                   ~~(A)~~ **BE ON SITE OR IN COMMUNICATION WITH THE**  
22 **OWNER-MEMBER, THEIR CONTRACT LOCATOR, OR THEIR REPRESENTATIVE WITHIN**  
23 **3 HOURS AFTER THE TRANSMISSION OF THE TICKET BY THE ONE-CALL CENTER, OR**  
24 **A MUTUALLY AGREED RESPONSE TIME; AND**

25                   ~~(B)~~ **~~BE REGISTERED WITH THE UNDERGROUND FACILITIES~~**  
26 **~~INFORMATION EXCHANGE SYSTEM BY THE OWNER OF THE UNDERGROUND~~**  
27 **~~FACILITY.~~**

28           **(3) THE OWNER-MEMBER OR ITS CONTRACT LOCATOR SHALL**  
29 **RESPOND TO THE UNDERGROUND FACILITIES INFORMATION EXCHANGE SYSTEM AS**  
30 **SOON AS:**

31                   **(I) THE EXTENT OF WORK IS MARKED; OR**



1                   **(II) IT IS DETERMINED THAT NO UNDERGROUND FACILITIES**  
2 **ARE IN THE DELINEATED AREA.**

3           **(D)** A person that abuses the emergency excavation and demolition procedure set  
4 forth in this section is subject to penalties under § 12–135 of this subtitle.

5 12–124.

6           **(a) [A] BEFORE PERFORMING EXCAVATION OR DEMOLITION IN THE STATE,**  
7 **A person [that intends to perform an excavation or demolition in the State]:**

8                   **(1)** shall initiate a ticket request by notifying the one–call system serving  
9 the geographic area where the excavation or demolition is to be performed [of the person’s  
10 intent to perform the excavation or demolition]; **AND**

11                   **(2) MAY ADD A TEMPORARY EXCAVATOR TO AN EXISTING TICKET.**

12           **(b)** Notice provided to a one–call system under subsection (a) of this section shall  
13 indicate:

14                   **(1)** the location of the proposed excavation or demolition;

15                   **(2)** whether the proposed excavation or demolition is within rights–of–way  
16 owned or controlled by the Department of Transportation, an administration of the  
17 Department of Transportation, or the Maryland Transportation Authority and, if so, the  
18 entity and the permit number or authorization number obtained from that entity; **[and]**

19                   **(3)** the type of work to be performed in connection with the proposed  
20 excavation or demolition; **AND**

21                   **(4) THE CORRECT NAME OF AND CONTACT INFORMATION FOR THE**  
22 **TEMPORARY EXCAVATOR, IF ANY, PERFORMING WORK UNDER THE TICKET.**

23           **(c)** **(1)** Except as provided in paragraph (2) of this subsection, on receiving  
24 notice, the one–call system shall promptly transmit a copy of the ticket to all  
25 owner–members in the geographic area indicated for that ticket.

26                   **(2)** Based on information collected under § 12–124(b)(2) of this subtitle, the  
27 one–call system shall promptly transmit a copy of the ticket to the Department of  
28 Transportation, an administration of the Department of Transportation, or the Maryland  
29 Transportation Authority, as applicable.

30                   **(3)** A ticket is valid for 12 business days after the day on which the ticket  
31 is transmitted by the one–call system to an owner–member.

32 12–125.

1 (a) A person shall repeat the notification required under § 12–124 of this subtitle  
2 if the person:

3 (1) has not completed or will not complete the excavation or demolition  
4 within the time period authorized by the ticket; [or]

5 (2) [intends to expand] **EXPANDS** the excavation or demolition beyond the  
6 location indicated in the notice under § 12–124(b) of this subtitle; **OR**

7 **(3) ADDS A TEMPORARY EXCAVATOR TO THE TICKET.**

8 (b) **IF A PERSON DISCOVERS THAT A MARK IS OBLITERATED, DESTROYED,**  
9 **OR REMOVED, OR OBSERVES A VISIBLE INDICATION THAT AN UNDERGROUND**  
10 **FACILITY OR STRUCTURE IS NOT MARKED AS REQUIRED UNDER § 12–126 OF THIS**  
11 **SUBTITLE, THE PERSON SHALL NOTIFY THE CALL CENTER TO REQUEST THAT ALL OR**  
12 **PART OF THE CURRENT SCOPE OF WORK OF A VALID TICKET BE RE-MARKED.**

13 (c) A person shall repeat the notification regardless of:

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

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

18 (d) **ANY RE-MARKING MADE AFTER A NOTIFICATION PROVIDED UNDER**  
19 **THIS SECTION SHALL COMPLY WITH THE REQUIREMENTS OF § 12–126 OF THIS**  
20 **SUBTITLE.**

21 12–126.

22 (a) An owner–member **OR ITS CONTRACT LOCATOR** shall mark its underground  
23 facility if [the owner–member has determined that] a proposed excavation or demolition  
24 **THAT IS SPECIFIED IN THE EXTENT OF WORK CONTAINED IN THE TICKET:**

25 (1) is within 5 feet of the horizontal plane of the underground facility; or

26 (2) because of planned blasting, is so near to the underground facility that  
27 the underground facility may be damaged or disturbed.

28 (b) (1) An owner–member **OR ITS CONTRACT LOCATOR** shall mark the  
29 location of its underground facility **AS SPECIFIED UNDER SUBSECTION (A) OF THIS**  
30 **SECTION** by marking on the ground within 18 inches on a horizontal plane on either side  
31 of the underground facility.

1           (2)   (i)   When marking the location of an underground facility, an  
2 owner–member **OR ITS CONTRACT LOCATOR** shall use the [current] color codes  
3 established by the American Public Works Association for marking underground facilities  
4 **IN EFFECT AT THE TIME OF MARKING.**

5           (ii)   If two or more owner–members share the same color code, each  
6 owner–member **OR ITS CONTRACT LOCATOR** shall include information with the marking  
7 that indicates the owner–member of the marked underground facility.

8           (c)   Except as provided in subsection (d) of this section, within 2 business days  
9 after the day on which a ticket is transferred to an owner–member, the owner–member **OR**  
10 **ITS CONTRACT LOCATOR** shall:

11           (1)   mark the location of the owner–member’s underground facility and  
12 report to the underground facilities information exchange system that the underground  
13 facility has been marked; or

14           (2)   report to the underground facilities information exchange system that  
15 the owner–member has no underground facilities in the vicinity of the planned excavation  
16 or demolition.

17           (d)   (1)   If an owner–member **OR ITS CONTRACT LOCATOR** is unable to mark  
18 the location of the owner–member’s underground facility within the time period prescribed  
19 in subsection (c) of this section because of the scope of the proposed excavation or  
20 demolition, the owner–member shall:

21           (i)   promptly notify the underground facilities information exchange  
22 system and the person that intends to perform the excavation or demolition; and

23           (ii)   work with the person that intends to perform the excavation or  
24 demolition to develop a [mutually agreeable schedule] **DOCUMENTED AGREEMENT** for  
25 marking the underground facility.

26           (2)   If the owner–member **OR ITS CONTRACT LOCATOR** and person that  
27 intends to perform the excavation or demolition cannot reach a mutually [agreeable  
28 schedule] **DOCUMENTED AGREEMENT** for marking under paragraph (1) of this  
29 subsection, the owner–member **OR ITS CONTRACT LOCATOR** shall mark that portion of  
30 the site where excavation or demolition will first occur, and the owner–member **OR ITS**  
31 **CONTRACT LOCATOR** shall mark the remainder of the site within a reasonable time.

32           (3)   If, due to circumstances beyond **THE CONTROL OF** an  
33 [owner–member’s control] **OWNER–MEMBER OR ITS CONTRACT LOCATOR** and for  
34 reasons other than those specified in paragraph (1) of this subsection, an owner–member  
35 **OR ITS CONTRACT LOCATOR** is unable to mark the location of the owner–member’s  
36 underground facility within the time period prescribed in subsection (c) of this section, the

1 owner–member **OR ITS CONTRACT LOCATOR** shall report to the underground facilities  
2 information exchange system that an extension is required.

3 (4) In connection with extensive or contiguous excavation or demolition  
4 projects, the person performing the excavation or demolition and the owner–member **OR**  
5 **ITS CONTRACT LOCATOR** may establish a working agreement regarding the time periods  
6 for marking the underground facility.

7 12–127.

8 (a) A person **THAT INTENDS TO PERFORM EXCAVATION OR DEMOLITION** may  
9 begin excavation or demolition **ACTIVITY** only after the person receives notification from  
10 the underground facilities information exchange system of the one–call system confirming  
11 that all applicable owner–members **OR THEIR CONTRACT LOCATORS** have:

12 (1) marked their underground facilities in accordance with § 12–126(c) of  
13 this subtitle;

14 (2) marked the applicable portion of their underground facilities in  
15 accordance with § 12–126(d) of this subtitle; or

16 (3) reported that they have no underground facilities in the vicinity of the  
17 excavation or demolition.

18 (b) (1) After an owner–member **OR ITS CONTRACT LOCATOR** has marked the  
19 location of an underground facility in accordance with § 12–126 of this subtitle, the person  
20 performing the excavation or demolition is responsible for the maintenance of the  
21 designated [marker] **MARK**.

22 (2) If the [marker] **MARK** is obliterated, destroyed, or removed, the person:

23 (I) shall repeat the notification required under ~~§ 12–124~~ **§ 12–125**  
24 of this subtitle; **BUT**

25 (II) **MAY NOT IN ANY MANNER REPLACE OR REPAIR THE MARK.**

26 (c) (1) **A PERSON PERFORMING EXCAVATION OR DEMOLITION OR**  
27 **SUPERVISING A TEMPORARY EXCAVATOR SHALL HAVE A COPY OF THE TICKET**  
28 **ISSUED BY A ONE–CALL SYSTEM AVAILABLE, BY ANY MEANS, ON THE SITE OF THE**  
29 **ACTIVITY FOR THE DURATION OF THE TICKET.**

30 (2) A person performing an excavation or demolition shall exercise due care  
31 to avoid interference with or damage to an underground facility:

1 (I) that an owner–member OR ITS CONTRACT LOCATOR has  
2 marked in accordance with § 12–126 of this subtitle; OR

3 (II) WHERE CLEAR EVIDENCE OF AN UNMARKED  
4 UNDERGROUND FACILITY EXISTS.

5 [(2)] (3) Before using mechanized equipment for excavation or demolition  
6 within 18 inches of an underground facility marking, a person shall expose the  
7 underground facility to its outermost surfaces by hand or other nondestructive techniques.

8 (4) WHEN UTILIZING A TRENCHLESS TECHNOLOGY METHOD, TO  
9 PREVENT THE OCCURRENCE OF A CROSS–BORE, A PERSON SHALL EXPOSE BY  
10 NONDESTRUCTIVE TECHNIQUES INTERSECTING UNDERGROUND FACILITIES TO THE  
11 DEPTH OF THE EXCAVATION PLUS 18 INCHES IN THE PATH OF THE TRENCHLESS  
12 TECHNOLOGY OPERATION DURING THE ENTIRE TRENCHLESS INSTALLATION  
13 OPERATION.

14 [(3)] (5) A person may not use mechanized equipment to excavate within  
15 18 inches of the outermost surface of an exposed underground facility.

16 (d) (1) The person performing an excavation or demolition [immediately] shall  
17 [notify] PROMPTLY REPORT TO the owner–member of the facility if the person discovers  
18 or causes any damage to or dislocation or disturbance of an underground facility in  
19 connection with the excavation or demolition.

20 (2) If the damage, dislocation, or disturbance results in the escape of a  
21 flammable, toxic, or corrosive gas or liquid, the person performing the excavation or  
22 demolition immediately shall report the damage to the 9–1–1 emergency system.

23 (e) (1) If a person knows or has reason to know that an underground facility  
24 in the area of a planned or ongoing excavation or demolition is not marked as required by  
25 this subtitle, the person may not begin or continue the excavation or demolition unless the  
26 person:

27 (i) has repeated the notification AS required under [§ 12–124] §  
28 12–125 of this subtitle; and

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

32 1. the underground facilities in accordance with § 12–126(c)  
33 of this subtitle; or

34 2. the applicable portion of the underground facilities in  
35 accordance with 12–126(d) of this subtitle.

1 (2) If the underground facility is not marked as required by this subtitle  
2 after the person receives notification from the underground facilities information exchange  
3 system under paragraph (1) of this subsection, the person may proceed with the excavation  
4 or demolition.

5 12–128.

6 (a) A political subdivision, municipal corporation, the Department of  
7 Transportation, an administration of the Department of Transportation, or the Maryland  
8 Transportation Authority may charge, assess, or collect from a person a one–time initial  
9 marking fee not exceeding \$35 for reimbursement of expenses that the political subdivision,  
10 municipal corporation, the Department of Transportation, an administration of the  
11 Department of Transportation, or the Maryland Transportation Authority incurs to comply  
12 with this subtitle.

13 (b) If re–marking is requested, or is required after renotification under [§  
14 12–108(b)] **§ 12–125** of this subtitle, a political subdivision, municipal corporation, or any  
15 of the transportation entities specified in subsection (a) of this section may charge, assess,  
16 or collect from a person a re–marking fee not exceeding \$15 for reimbursement of expenses  
17 that the political subdivision, municipal corporation, or any of the transportation entities  
18 specified in subsection (a) of this section incurs to comply with this subtitle.

19 12–129.

20 (a) Subject to subsection (c) of this section, any new or replacement piping that is  
21 buried or installed for the [purpose] **PURPOSES** of connecting a building to a water supply  
22 system [or], a sewerage system, **AN UNDERGROUND STORM DRAIN SYSTEM, OR ANY**  
23 **OTHER APPLICABLE DEVICE** shall be buried or installed with a wire **OR AN EQUIVALENT**  
24 **PRODUCT OR TECHNOLOGY** that makes the piping detectable **OR LOCATABLE**.

25 (b) [The] **ANY** wire [required under] **USED TO COMPLY WITH** subsection (a) of  
26 this section shall:

27 (1) be an insulated copper tracer wire that is suitable for direct burial and  
28 has an American wire gauge (AWG) of at least 10, or an equivalent product;

29 (2) be installed:

30 (i) in the same trench as the piping that connects the building to the  
31 water supply system or the sewerage system;

32 (ii) within 12 inches of the piping that connects the building to the  
33 water supply system or the sewerage system; and

1 (iii) with at least one end of the wire terminating above grade in a  
2 location that is accessible and resistant to physical damage, such as in a cleanout or next  
3 to an external wall of the building; and

4 (3) run from within 5 feet of an external wall of the building to:

5 (i) the point where the piping intersects with the water supply  
6 system or the sewerage system; or

7 (ii) the point where the sewerage system disposes of or processes the  
8 sewage.

9 (c) The requirement of subsection (a) of this section with regard to replacement  
10 piping connecting a building to a water supply system or a sewerage system:

11 (1) applies only to a complete replacement of the piping; and

12 (2) does not apply to a repair or a partial replacement of the piping.

13 **12-130.**

14 (A) (1) **THIS SECTION APPLIES TO A PRIMARY CONTRACTOR THAT:**

15 (I) **PERFORMS THE EXCAVATION DUTIES FOR THE DURATION**  
16 **OF A TICKET;**

17 (II) **INITIATES THE NOTIFICATION TO THE ONE-CALL SYSTEM**  
18 **TO ESTABLISH A TICKET;**

19 (III) **IS ON SITE TO SUPERVISE ALL ACTIVITIES AND EMPLOYEES;**  
20 **AND**

21 (IV) **INTENDS TO UTILIZE SERVICES OR EQUIPMENT OF A**  
22 **TEMPORARY EXCAVATOR.**

23 (2) **FOR PURPOSES OF THIS SECTION, A PRIMARY CONTRACTOR DOES**  
24 **NOT INCLUDE A PRIVATE HOMEOWNER THAT INTENDS TO HIRE A TEMPORARY**  
25 **EXCAVATOR.**

26 (B) **A PRIMARY CONTRACTOR:**

27 (1) **SHALL:**

28 (I) **NOTIFY THE ONE-CALL SYSTEM WHEN A TEMPORARY**  
29 **EXCAVATOR IS TO BEGIN WORK UNDER THE TICKET;**

1 (II) INFORM THE TEMPORARY EXCAVATOR OF THE EXACT  
2 SCOPE OF WORK AS DETAILED ON THE EXISTING TICKET;

3 (III) DIRECTLY SUPERVISE THE ON-SITE ACTIVITIES OF THE  
4 TEMPORARY EXCAVATOR; AND

5 (IV) ASSUME ALL LIABILITY IF DAMAGE SHOULD OCCUR TO AN  
6 UNDERGROUND FACILITY BY ANY PERSON NAMED AS A TEMPORARY EXCAVATOR ON  
7 THE EXISTING TICKET; AND

8 (2) MAY NAME ONLY ONE TEMPORARY EXCAVATOR FOR THE  
9 DURATION OF THE TICKET.

10 (C) (1) A TEMPORARY EXCAVATOR MAY BE:

11 (I) A PIECE OF RENTAL EQUIPMENT AND ITS OPERATOR;

12 (II) AN EXCAVATION CONTRACTOR THAT IS NOT AN EMPLOYEE  
13 OF THE PRIMARY CONTACTOR; OR

14 (III) AN EQUIPMENT OPERATOR THAT IS NOT A DIRECT  
15 EMPLOYEE OF THE PRIMARY CONTRACTOR.

16 (2) THE DESIGNATED TEMPORARY EXCAVATOR SHALL NOTIFY THE  
17 ONE-CALL SYSTEM WITH THE ASSOCIATED TICKET NUMBER TO VERIFY THAT THE  
18 EXCAVATOR HAS BEEN HIRED TO WORK FOR THE PRIMARY CONTRACTOR.

19 ~~Part V. [Designer] OTHER Requests.~~

20 ~~12-131.~~

21 (a) ~~[In connection with a project that may require excavation or demolition, a~~  
22 ~~designer] A PERSON may initiate a NONEXCAVATION ticket request by notifying the~~  
23 ~~one-call system [serving the geographic area covering the planned project] IN~~  
24 ~~ACCORDANCE WITH THIS SECTION.~~

25 (b) (1) ~~[A] IN CONNECTION WITH A PROJECT THAT MAY REQUIRE~~  
26 ~~EXCAVATION OR DEMOLITION, A designer initiating a ticket request under this section:~~

27 ~~[(1)] (I) may initiate [only] one ticket request for a single project BY~~  
28 ~~NOTIFYING THE ONE-CALL SYSTEM SERVING THE GEOGRAPHIC AREA COVERING~~  
29 ~~THE PLANNED PROJECT; and~~

30 ~~[(2)] (II) shall, in connection with a NONEXCAVATION ticket request:~~



~~[(i)] 1. indicate that the request is for design purposes only and may not be used for the purpose of excavation or demolition;~~

~~[(ii)] 2. notify the one call system of any owner members from which the designer does not require underground facilities information; and~~

~~[(iii)] 3. on the request of an owner member, provide the owner member with a preliminary drawing that indicates the scope of the project.~~

~~(2) THE ONE CALL SYSTEM SHALL PROVIDE THE PERSON REQUESTING A NONEXCAVATION TICKET AN ACCURATE MEANS OF CONTACT FOR EACH UNDERGROUND FACILITY WITHIN 2 BUSINESS DAYS.~~

~~(3) EACH UNDERGROUND FACILITY OWNER SHALL MAINTAIN CURRENT VALID CONTACT INFORMATION WITH THE ONE CALL SYSTEM FOR DESIGNERS TO CONTACT.~~

~~[(e)] (1) Within 15 business days after receiving notice from a one call system that a designer has made a request under this section, an owner 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:~~

Part V. [Designer Requests] NONEXCAVATION TICKETS.

12-131.

(a) In connection with a project that may require excavation or demolition, a [designer] PERSON may initiate a NONEXCAVATION DESIGNER ticket request by notifying the one-call system serving the geographic area covering the planned project IN ACCORDANCE WITH THIS SECTION.

(b) (1) [A designer] IN CONNECTION WITH A PROJECT THAT MAY REQUIRE EXCAVATION OR DEMOLITION, A PERSON initiating a NONEXCAVATION DESIGNER ticket request under this section:

[(1)] (I) may initiate only one ticket request for a single project BY NOTIFYING THE ONE-CALL SYSTEM SERVING THE GEOGRAPHIC AREA COVERING THE PLANNED PROJECT; and

[(2)] (II) shall, in connection with a NONEXCAVATION DESIGNER ticket request:

1 [(i)] 1. indicate that the request is for design purposes only and  
 2 may not be used for the purpose of excavation or demolition;

3 [(ii)] 2. notify the one-call system of any owner-members from  
 4 which the [designer] PERSON does not require underground facilities information; and

5 [(iii)] 3. on the request of an owner-member, provide the  
 6 owner-member with a preliminary drawing that indicates the scope of the project.

7 **(2) THE ONE-CALL SYSTEM SHALL PROVIDE THE PERSON**  
 8 **REQUESTING A NONEXCAVATION DESIGNER TICKET AN ACCURATE MEANS OF**  
 9 **CONTACT FOR EACH UNDERGROUND FACILITY WITHIN 2 BUSINESS DAYS.**

10 **(3) EACH UNDERGROUND FACILITY OWNER SHALL MAINTAIN**  
 11 **CURRENT VALID CONTACT INFORMATION WITH THE ONE-CALL SYSTEM FOR**  
 12 **PERSONS TO CONTACT.**

13 (c) (1) Within 15 business days after receiving notice from a one-call system  
 14 that a [designer] PERSON has made a request under this section, an owner-member of an  
 15 underground facility in the area of the project shall notify the [designer] PERSON of the  
 16 type and approximate location of the underground facility.

17 (2) An owner-member may provide notice of the approximate location of  
 18 an underground facility through the use of:

- 19 (i) field locates;
- 20 (ii) maps;
- 21 (iii) surveys;
- 22 (iv) installation records; or
- 23 (v) other similar means.†

24 ~~(c)~~ **(D) IN THE CASE OF AN OBSTRUCTION CAUSED BY A SUSPECTED**  
 25 **CROSS-BORE:**

26 **(1) THE PERSON INTENDING TO REMOVE THE OBSTRUCTION SHALL**  
 27 **NOTIFY THE ONE-CALL CENTER AND REQUEST A NONEXCAVATION TICKET FOR A**  
 28 **SUSPECTED CROSS-BORE WHICH WILL BE TRANSMITTED TO ALL PERTINENT**  
 29 **OWNER-MEMBERS IN THE GEOGRAPHIC AREA INDICATED FOR THAT TICKET; AND**

30 **(2) EACH OWNER-MEMBER SHALL TAKE WHATEVER ACTION IT**  
 31 **CONSIDERS NECESSARY TO RESPOND TO THIS NOTIFICATION.**

1        ~~(d)~~ **(E)**        (1) Information provided to a [designer] **PERSON REQUESTING**  
2 **MARKING** under this section is for informational purposes only.

3                    (2) An owner–member or agent of an owner–member may not be held liable  
4 for any inaccurate information provided to a [designer] **PERSON** under this section.

5 12–135.

6        (a)        (1) A person that performs an excavation or demolition without first  
7 providing the notice required under § 12–124(a) of this subtitle [and damages, dislocates,  
8 or disturbs an underground facility] is deemed negligent and is subject to a civil penalty  
9 assessed by the Authority.

10                    **(2) THE AUTHORITY SHALL CALCULATE THE CIVIL PENALTY**  
11 **CONSIDERING:**

12                    **(I) THE ~~SERIOUSNESS~~ SEVERITY OF THE VIOLATION;**

13                    **(II) THE INTENT AND GOOD FAITH OF THE VIOLATOR; AND**

14                    **(III) THE PAST HISTORY OF VIOLATIONS.**

15                    **(3) THE CIVIL PENALTY MAY not [exceeding] EXCEED:**

16                    (i) \$2,000 for the first offense; and

17                    (ii) [subject to subsection (c) of this section,] \$4,000 for each  
18 subsequent offense.

19                    **[(2) Instead of or in addition to a civil penalty assessed under this**  
20 **subsection, the Authority may:**

21                    (i) require that a person:

22                            1. participate in damage prevention training; or

23                            2. implement procedures to mitigate the likelihood of  
24 damage to underground facilities; or

25                    (ii) impose other similar measures.]

26                    **[(3)] (4) A person that violates any OTHER provision of Part IV of this**  
27 **subtitle is subject to a civil penalty assessed by the Authority not exceeding:**

1                   **(I)     \$2,000 FOR THE FIRST OFFENSE; AND**

2                   **(II)    \$4,000 FOR EACH SUBSEQUENT OFFENSE.**

3                   **(5)    (I)     FOR PURPOSES OF PARAGRAPHS (3)(II) AND (4)(II) OF THIS**  
4 **SUBSECTION, THE AUTHORITY MAY NOT CONSIDER AN OFFENSE TO BE A**  
5 **SUBSEQUENT OFFENSE IF THE OFFENSE OCCURRED AT LEAST 3 YEARS AFTER THE**  
6 **EARLIER OFFENSE UNLESS:**

7                               **1.     THE EARLIER OFFENSE IS UNRESOLVED,**  
8 **REGARDLESS OF THE AGE OF THE EARLIER OFFENSE; OR**

9                               **2.     THE PERSON HAS NOT MET THE CONDITIONS OF AN**  
10 **ASSESSED PENALTY WITHIN THE TIME PERIOD PRESCRIBED.**

11                               **(II)   IN THE CASE OF AN UNRESOLVED EARLIER OFFENSE OR A**  
12 **FAILURE TO MEET THE CONDITIONS UNDER SUBPARAGRAPH (I) OF THIS**  
13 **PARAGRAPH, THE AUTHORITY MAY ASSESS UP TO DOUBLE THE MAXIMUM CIVIL**  
14 **PENALTY FOR EACH VIOLATION.**

15                   **(6)    A PERSON THAT FAILS TO APPEAR BEFORE THE AUTHORITY**  
16 **WITHOUT CAUSE, AFTER PROPER NOTIFICATION OF A SCHEDULED HEARING, MAY**  
17 **BE SUBJECT TO A \$200 FINE IN ADDITION TO ANY CIVIL PENALTY ASSESSED BY THE**  
18 **AUTHORITY.**

19                   **(7)    A PERSON THAT FILES AN EMERGENCY TICKET THAT DOES NOT**  
20 **MEET THE DEFINITION OF EMERGENCY UNDER § 12-101 OF THIS SUBTITLE MAY BE**  
21 **SUBJECT TO THE MAXIMUM PENALTIES AVAILABLE UNDER THIS SUBSECTION.**

22                   (b)    (1)    This subsection applies if a proceeding has not been initiated before the  
23 Authority.

24                               (2)    A court of competent jurisdiction may assess a civil penalty of up to 10  
25 times the cost of repairs to the underground facility caused by the damage, dislocation, or  
26 disturbance against a person that has committed a subsequent offense under subsection  
27 (a)(1) of this section.

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

32                               (4)    The party bringing an action under this subsection may recover  
33 reasonable attorney's fees.

1 (c) The Authority may not assess a civil penalty under subsection [(a)(1)(ii)]  
2 **(A)(3)(II)** of this section if an action to recover a civil penalty has been brought under  
3 subsection (b) of this section.

4 (d) All civil penalties recovered under this section shall be paid into the Fund.

5 SECTION 2. AND BE IT FURTHER ENACTED, That nothing in this Act may be  
6 construed to abrogate, modify, or infringe on the permitting requirements or any  
7 requirement of any permit issued by any governmental agency or entity.

8 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
9 October 1, 2020.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.