

FINAL DRAFT IV
August 17, 2009

Report of the Maryland State Underground Facilities
“Miss Utility Law” Stakeholders Work Group

August 2009

In the Fall of 2006, at the request of Richard Schafer, then Chief Engineer at the Public Service Commission, two meetings were called on October 25, 2006 and November 29, 2006 to all stakeholders involved with or affected by the State's Underground Facilities Law to discuss the status of the application and enforcement of the law, and, in particular, its compliance with the Federal Pipeline Safety Act legislation then pending before the United States Congress.

Several hundred people attended these two meetings, all stakeholders of the State Underground Facilities Law such as contractors, utility companies, locators, one call miss utility system, state, county and local government officials and developers.

As a result of discussions at these two meetings, it was decided to create a stakeholders steering committee work group tasked with the following goals, that is, to review the current State underground facilities "Miss Utility Law" (1) to make substantive and non substantive revisions in light of current practices and experience since the last enactment of the law in May 1990; (2) to bring Maryland's law in harmony and compliance with the 9 damage prevention program elements and provisions of the then pending Federal Pipeline Safety Act legislation which subsequently, became Law; and (3) to review and incorporate as appropriate the best practice recommendations of the Common Ground Alliance.

The members of the stakeholders group established are:

Chairman James Barron – Ronkin Construction – Contractor Representative

Scott Brown – Washington Gas Light – Gas Representative

John Clementson – Maryland Public Service Commission – Regulator
Representative

Wayne Gilmer – Utiliquest – Locator Representative

Tom Hastings – One Call Concepts Locating Service – Locator
Representative

Vince Healy (replaced Nelson Sneed) – Verizon – Telephone Representative

Brian Holmes – Maryland Transportation, Builders and Materials
Association – Contractor Representative
(resigned August 2009)

Gary Kaufman (replaced John Eichhorn) – Comcast – CATV Representative

Matt Ruddo – One Call Concepts, Inc. – Call Center Representative

Nelson Smith – Maryland State Highway Administration – State Highway Representative

Tom Baldwin (replaced Pete Parr) – Baltimore Gas & Electric – Electric Representative

Kevin Woolbright – Washington Suburban Sanitary Commission – Water/Sewer Representative

David Wilkins – Washington Suburban Sanitary Commission – Water/Sewer Representative

Artie Bell III – Burgemeister Bell, Inc. – Contractor Representative

Zenon Sushko – Maryland Public Service Commission – Regulator Representative

Bruce C. Bereano – Associated Utility Contractors of Maryland Representative

Mark Hamrick – Verizon – Telephone Representative

The stakeholders group commenced its regular meetings on June 20, 2007 and to date there have been more than 40 working sessions - each approximately 3-4 hours, to discuss and propose revisions to the current statute.

The key goals of the steering group have been:

- Establish practices that meet the PIPES Act 9 key elements of an effective damage prevention program.
- Establish a sensible law that meets the needs of the excavating community while protecting all facilities.
- Include stronger enforcement to prevent unsafe practices utilizing training first and fines when necessary. MD presently has a very effective Damage Prevention Committee where all parties are welcome at the monthly meetings to discuss safe practices and resolve issues. The expectations are that the proposed changes to the

law will strengthen the present damage prevention goals.

- Create a sensible Locate ticket scope to include response time by facility owners, life of a ticket with a clear explanation of when a ticket expires while meeting the needs of the excavating community and allowing facility owners a reasonable amount of time to mark their facilities.

This report back to the stakeholders group for review and comment consists of the following:

- copy of current underground facilities “Miss Utility Law” in Maryland,
- copy of revisions and changes to current law shown in same bill from symbology used by Maryland legislature for legislation; and
- revisers’ notes after each section or subsection to indicate each formal or substantive change to the statutory section or subsection and why.

As you review this work product, please bear in mind that unlike the history of other state statutes, when Maryland’s underground facilities law was enacted originally, over 20 years ago, it was left to the private sector and not government regulators nor any government agency to implement and apply the statute. Generally speaking, this approach has worked very well over the years with all of the various stakeholders communicating and working well together with mutual respect and trust and commitment to the goal of public safety through training and education and compliance with the statute. The stakeholders established, over 15 years ago, the MD/DC Miss Utility Damage Prevention Committee which meets monthly to address and resolve the day-to-day practical issues and problems that occur with the statute.

In addition, the stakeholders who are owners of underground facilities established also over 15 years ago a MD/DC Miss Utility Subscribers Committee which meets regularly to work on public education and outreach programs, damage prevention programs, and advertisements concerning knowledge of and compliance with the law for the purposes of public safety and avoidance of interruption of services.

Accordingly, it is with this unique background and history of the development and implementation of the Maryland Underground Facilities Law that compliance with the 9 elements of the Federal Pipeline Safety Act are addressed and met in the revisions and changes proposed while keeping the existing approach, structure and operation of the law.

This document is being submitted to and circulated among all of the stakeholders.

While there are a number of substantive changes from current law, each of which is referenced in the reviser's notes accompanying the section or subsection as the case may be, there are in particular 5 significant substantive changes to bring to your attention.

1. Designer ticket – establish as is the case in the law relative to Montgomery County and in some other States, a ticket and procedure for licensed architects and engineers who are preparing drawings for a project to be able to obtain information as to existing underground facilities and also put on record proposed new facilities relative to such project proposal.
2. Marking fee by political subdivision or municipal corporation – The draft recommends deletion of the current law which authorizes counties and municipalities in Maryland to be able to charge a fee for the marking and remarking requirements under the law. Currently, only a very small number of local governments exercise such authority and make such changes – primarily Baltimore City; the City of Westminster which only recently has started such practice; Harford County; and St. Mary's County which started in and since has abandoned it as counter-productive. Since the legal requirement of marking and remarking is to foster location of underground utilities before excavation to avoid striking and disrupting service and possible public safety problems, placing a monetary amount on such requirement discourages some required to comply with the law to instead ignore it and go ahead and excavate without marking. Accordingly, the group strongly felt that the public safety and interest in everyone complying with and utilizing the law greatly outweighs

the monetary authorization local government can use for markings and re-markings.

3. Establishment of Maryland Underground Facilities Damage Prevention Authority – One of the important 9 elements of the Federal PIPES Act of 2006 is the existence of appropriate State Authority established to resolve disputes, enforcement of the State’s damage prevention laws, conduct public education, and have a process for civil penalties for any violations of such damage prevention laws. Accordingly, it is recommended that the State legislature establish a privately operated Maryland Underground Facilities Damage Prevention Authority for such purpose and to satisfy this element of the federal act. Such a private entity is completely consistent with the history and development of Maryland’s underground facilities law and the successful approach Maryland has taken over the past 20 years.
4. Deletion in law of color code – Current Maryland law details the color code requirement to be followed when marking the location of an underground facility prior to excavation or demolition. This provision is proposed for deletion and replaced by the requirement that such marking shall follow the latest American Public Works Association uniform color code as amended from time to time. Using such a reference in the law instead of setting forth specifically the color codes avoids having to go back to the legislature each time to change the law whenever there is a change in identity standards.
5. Deletion of separate law for Montgomery County – In an attempt to have one uniform statewide law and procedure, the current provisions of law concerning underground facilities in Montgomery County are deleted. One of the deleted current law sections establishes a procedure for a person to obtain from utilities information on the location of underground facilities within a certain time frame which has been in the law for purposes of site plans and drawings by engineers and architects. The newly created designer ticket and procedure uniform for the state covers and satisfies this and therefore such current law only applicable to Montgomery County is not necessary.

The other deletion of current law only applicable in Montgomery County is the provision which requires only marking within 3 feet (36 inches) of the center of the underground facility line before excavating. Current State law for the rest of the state is 18” and not

36". The proposal by such deletion, is for Montgomery County to follow the 18" requirement instead as does the rest of the State. Requiring a 36" marking in Montgomery County increases labor costs. Increases potential for damage to underground facilities because of requiring more digging, and the inches requirement is only for marking and not excavating. Finally, there is no data or statistics that the 18" requirement used in the rest of the State causes of has caused any increase to underground facility damage. A uniform law for all of the State is appropriate.

6. The deletion of the exemption of stormwater drains – When the original law was enacted 20 years ago, stormwater drains were excluded from the definition of “underground facility”. This exemption has been deleted. Stormwater drains are an “underground facility” and continue to be damaged by horizontal directional drilling operations, causing safety and environmental risks during maintenance operations of the storm drain systems.

Please take time as promptly as possible to carefully review the revisions and changes proposed to the current law. We ask you to submit any suggested changes, comments or concerns you have with this work product bearing in mind that we need you to refer specifically to the section or subsection and page number you are referring to so we can properly follow along and consider what you submit to the Work Group.

All comments and responses should be mailed, faxed or emailed to Work Group Chairman Jim Barron at Ronkin Construction, 1201 Paul's Lane, Joppa, Maryland 21085, fax (410) 679-4735, or email jbarron@ronkinconstruction.com or to Matt Ruddo at Miss Utility Center, 7223 Parkway Drive, Suite 100, Hanover, Maryland 21076, fax (410-712-0062, email matt@missutility.net.

All responses must be received by September 17th so that the work group has sufficient time to consider and incorporate any such comments as appropriate. Thereafter, a final document will be prepared by the Work Group and taken back to the stakeholders at a meeting sometime during the last week of October or very early November. Once the work product is finalized at the stakeholders meeting, it will be presented to key State legislators for briefing and introduced into the 2010 Legislative Session for passage.

The Work Group thanks you in advance for your prompt time and attention to this matter.

A BILL ENTITLED

AN ACT concerning

Underground Facilities – Revisions

FOR the purpose of revising the underground facilities law of the State by making substantive and formal revision changes, deletions and additions thereto; by repealing excavation near underground lines and structures in Montgomery County; and generally relating to the laws of the State concerning underground facilities.

BY repealing and reenacting, with amendments,

Article – Public Utility Companies

Sections 12-101, 12-103, 12-104, 12-105, 12-106, 12-107, 12-108, and 12-114

Annotated Code of Maryland

(2008 Replacement Volume)

BY repealing

Article – Public Utility Companies

Sections 12-109, 12-110, 12-111, and Subtitle 2, sections 12-201, 12-202 and 12-203

Annotated Code of Maryland

(2008 Replacement Volume)

BY repealing and reenacting, without amendments,

Article – Public Utility Companies

Sections 12-102 and 12-112

Annotated Code of Maryland

(2008 Replacement Volume)

BY adding

Sections 12-109, 12-110, 12-111, and 12-113

Annotated Code of Maryland

(2008 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, that the laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

PUBLIC UTILITY COMPANIES
Title 12
UNDERGROUND FACILITIES

§ 12-101. Definitions.

(a) *In general.* – In this [subtitle] TITLE the following words have the meanings indicated.

(B) *Authority.* – “AUTHORITY” MEANS THE MARYLAND UNDERGROUND FACILITIES DAMAGE PREVENTION AUTHORITY.

(C) *Business day.* – “BUSINESS DAY” IS A 24 HOUR PERIOD STARTING AT 12:00AM, EXCEPT SATURDAYS, SUNDAYS AND LEGAL STATE AND FEDERAL HOLIDAYS.

[(b) *Contractor.* –

(1) “Contractor” means a person that performs excavations or demolitions.

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

(D) *Excavator.* –

(1) “EXCAVATOR” MEANS A PERSON THAT PERFORMS EXCAVATIONS OR DEMOLITIONS.

(2) “EXCAVATOR” INCLUDES A PERSON THAT PERFORMS EXCAVATIONS OR DEMOLITIONS UNDER A CONTRACT OR SUBCONTRACT.

[(c)] (E) *Demolition.* – “Demolition” means an operation in which a structure or mass of material is wrecked, razed, rendered, moved or removed using any tool, equipment or explosive.

(F) *Designer.* – “DESIGNER” MEANS ANY LICENSED ARCHITECT OR ENGINEER WHO PREPARES A DRAWING FOR A PROJECT WHICH MAY REQUIRE EXCAVATION OR DEMOLITION.

[(d)] (G) *Excavation.* –

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

(2) “Excavation” includes BUT IS NOT LIMITED TO grading, trenching, digging, ditching, DREDGING, drilling, augering, tunneling, scraping, cable or pipe plowing and driving a mass of material.

(H) *Fund.* – “FUND” MEANS THE MARYLAND UNDERGROUND FACILITIES DAMAGE PREVENTION AUTHORITY EDUCATION AND OUTREACH FUND.

[(e) *One-call system.* – “One-call system” means a communications network in the State that:

- (1) allows a person to telephone a one-number utility protection system;
- (2) provides a toll-free number for persons to call and notify owner-members of planned excavation or demolition; and
- (3) maintains an owner-contractor information exchange system.]

(I) *One-call system.* – “ONE-CALL SYSTEM” MEANS A COMMUNICATIONS SYSTEM IN THE STATE WHICH PROVIDES A MEANS FOR PERSONS TO NOTIFY OWNER-MEMBERS OF PLANNED EXCAVATION OR DEMOLITION AND WHICH MAINTAINS AN OWNER-EXCAVATOR INFORMATION EXCHANGE SYSTEM. MEANS OF NOTIFICATION INCLUDES BUT IS NOT LIMITED TO:

1. TOLL FREE NUMBER;
2. 811 ABBREVIATED DIALING CODE;
3. AN INTERACTIVE INTERNET TICKET REQUEST.

[f] (J) *Owner.* -

(1) “Owner” means a person that:

- i. owns or operates an underground facility; and
- ii. has the right to bury an underground facility.

(2) “Owner” includes BUT IS NOT LIMITED TO:

- (i) a public utility;
- (ii) a telecommunications corporation;
- (iii) a cable television corporation;
- (iv) a political subdivision;
- (v) a municipal corporation;
- (vi) a steam heating company; [and]
- (vii) an authority[.]; AND
- (VIII) ANY STATE GOVERNMENTAL UNIT, DEPARTMENT OR AGENCY.

[(g) *Owner-contractor information exchange system.* – “Owner-contractor information exchange system” means an automated voice response unit maintained as a part of a one-call system.]

(K) *Owner-excavator information exchange system.* – “OWNER-EXCAVATOR INFORMATION EXCHANGE SYSTEM” MEANS AN AUTOMATED VOICE RESPONSE UNIT AND/OR AN INTERACTIVE INTERNET ACCESS THAT IS

MAINTAINED AS PART OF A ONE-CALL SYSTEM AND FUNCTIONS AS DESCRIBED IN § 12-106.

[(h)] (L) *Owner-member.* – “Owner-member” means an owner that participates as a member in a one-call system.

[(i)] *Person.* –

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

(2) “Person” includes:

(i) a municipal corporation; and

(ii) a governmental unit, department, or agency.]

(M) *Person.* – “PERSON” MEANS AN INDIVIDUAL, RECEIVER, TRUSTEE, GUARDIAN, PERSONAL REPRESENTATIVE, FIDUCIARY OR REPRESENTATIVE OF ANY KIND AND ANY MUNICIPAL CORPORATION, POLITICAL SUBDIVISION, STATE GOVERNMENTAL UNIT, DEPARTMENT OR AGENCY, PARTNERSHIP, FIRM, ASSOCIATION, CORPORATION OR OTHER ENTITY.

(N) TICKET - A NUMBERED DOCUMENT DEVELOPED, PURSUANT TO THIS TITLE, BY THE ONE-CALL SYSTEM TO NOTIFY OWNER-MEMBERS OF A PERSONS’ INTENT TO EXCAVATE, DEMOLISH OR DESIGN.

[(n)] (O) *Underground facility.* -

(1) “Underground facility” means personal property that is buried or submerged for:

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

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

(2) “Underground facility” includes BUT IS NOT LIMITED TO pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments and those portions of poles below ground.

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

REVISOR’S NOTE: This section adds some new subsections to current law.

Subsection (B) is new language to define the authority being created.

Subsection (C) is new language to define exactly what constitutes a business day and when it starts in terms of the life of a ticket or marking time requirements.

Subsection (D) is new language only to the extent of substituting the word excavator

for contractor. That is why current subsection (B) is deleted. The term contractor is too broad and general since not all contractors do excavation or demolition work. The term excavator is more precise.

Subsection (F) is new language to define who can request a designer ticket under the law so that engineers and architects know what the utility situation is when they do drawings and plans.

Subsection (G) formerly subsection (D) is substantially the same with only new language added to be more open and flexible as to what excavation is.

Subsection (H) is new language to define a damage prevention public education outreach fund which is created.

Subsection (I) previously subsection (E) which is repealed, modernizes the definition of the one call system technology to conform to current practices.

Subsection (J) formerly subsection (F) is substantially the same. The new language added is to reflect and conform with a 1998 Attorney General Opinion (83 Op. Att’y Gen. 180 November 9, 1998) which stated that the current law definition of “owner” includes counties, municipalities and all units of State government that own underground facilities.

Subsection (K) formerly subsection (G) which is repealed is new language to be consistent with the new definition of one call system.

Subsection (M) formerly subsection (i) is a new definition of person that stated in subtitle one of this Article.

Subsection (N) is new language to define and clarify what a ticket is in the law.

Subsection (O) formerly subsection (n) is substantially the same except for expanding the definition of underground facility to now include storm water drains and not be limited to only the items specified so that the law will cover all types of facilities placed underground.

§ 12-102. Legislative intent.

- (a) It is the intent of the General Assembly to protect underground facilities of owners from destruction, damage or dislocation to prevent:
 - (1) death or injury to individuals;
 - (2) property damage to private and public property; and
 - (3) the loss of serviced provided to the general public

REVISOR'S NOTE: This section is current law without any change.

§ 12-103. Scope of title.

This [subtitle] TITLE does not apply to a NON-MECHANIZED excavation or demolition performed or to be performed by an owner OR LESSEE of a private residence when the excavation or demolition is performed or to be performed entirely on the land on which the private residence of the owner OR LESSEE is located.

REVISOR'S NOTE: This section is substantially current law.

The term subtitle is changed to title since subtitle 2 is proposed for deletion in its entirety. The new language clarifies the law does not apply to non mechanized excavation or demolition not only by the owner but also a lessee of a private residence. In the interest of public safety, if mechanized equipment is being used by an owner or lessee for excavation or demolition then Miss Utility would have to be called.

§ 12-104. Effect of title.

- (a) *In general.* – Except as provided in subsections (b) and (c) of this section, a person that obtains the information required under this [subtitle] TITLE is not excused from:
- (1) performing an excavation or demolition in a careful and prudent manner; and
 - (2) liability for damages or injury that results from the excavation or demolition.
- (b) *Effect of failure to comply.* – If an underground facility is damaged by a person that fails to comply with this [subtitle] TITLE, the person is deemed negligent and is liable to the owner for the cost of repair of the underground facility, unless the owner has failed to become an owner-member in accordance with § [12-109(b)] 12-111 of this [subtitle] TITLE.
- (c) *Effect of failure to become an owner-member.* – If an underground facility is damaged by a person who is in compliance with this [subtitle] TITLE and the owner has failed to become an owner-member in accordance with § [12-109(b)] 12-111 of this [subtitle] TITLE:
- (1) the person is not liable to the owner for the cost of repair of the underground facility; and
 - (2) the owner is liable for any repairs or restoration of property damaged by the excavation or demolition.
- (d) *Recovery of Damages.* – Subsection (c) of this section may not be construed to interfere with the right of:

- (1) a third party to recover damages arising out of the excavation or demolition from the person or from the owner; or
- (2) the person to seek contribution from an owner for damages sought by a third party under paragraph (1) of this subsection.

REVISOR'S NOTE: This section is substantially the same and the only changes are technical references and nomenclature.

[§ 12-105. Emergency excavation or demolition.

- (a) *In general.* – Subject to § 12-104 (b) of this subtitle, if all reasonable precautions have been taken to protect underground facilities, § 12-104(a) of this subtitle and §§ 12-106 through 12-113 of this subtitle do not apply to an emergency excavation or demolition being performed to prevent danger to life, health, or property.
- (b) *Requirements.* – A person performing an emergency excavation or demolition to prevent danger to life, health, or property shall:
 - (1) take all reasonable precautions to protect underground facilities in and near the excavation or demolition area; and
 - (2) promptly notify each owner of an underground facility in and near the excavation or demolition area.]

§ 12-105. EMERGENCY EXCAVATION OR DEMOLITION.

- (A) *In general.* – THE NOTIFICATION REQUIREMENTS UNDER § 12-108 DO NOT APPLY TO AN EMERGENCY EXCAVATION OR DEMOLITION BEING PERFORMED TO PREVENT IMMEDIATE DANGER TO LIFE, HEALTH OR PROPERTY.
- (B) *Requirements.* – A PERSON PERFORMING AN EMERGENCY EXCAVATION OR DEMOLITION TO PREVENT IMMEDIATE DANGER TO LIFE, HEALTH OR PROPERTY SHALL:
 - (1) TAKE ALL RESPONSIBLE PRECAUTIONS TO PROTECT UNDERGROUND FACILITIES IN AND NEAR THE EXCAVATION OR DEMOLITION AREA AND
 - (2) IMMEDIATELY NOTIFY THE ONE-CALL SYSTEM TO INFORM EACH APPROPRIATE OWNER-MEMBER OF THE EXCAVATION OR DEMOLITION AREA.
- (C) ANY ABUSE OF THE EMERGENCY EXCAVATION OR DEMOLITION PROCESS SHALL BE SUBJECT TO THE PROVISIONS OF § 12-114.

REVISOR'S NOTE: This section is rewritten to tighten up and make the law more exacting in order to avoid abuses and taking advantage of the general nature of the current law. Because of failures to call in a ticket, non emergency situations are being called emergencies when in fact they are not. The authority is given jurisdiction to act in these circumstances.

§ 12-106. One-call system registration and certification requirements; owner-EXCAVATOR information exchange system.

- (a) *In general.* – Except as provided in subsection (b) of this section, a person that operates a one-call system in the State shall register with and obtain certification to operate from the Commission.
- (b) *Exemption.* – A person operating a one-call system on or before July 1, 1990, is automatically registered with and certified by the Commission to continue to operate.
- (c) *Owner-[contractor] EXCAVATOR information exchange system.* -
 - (1) The operator of a one-call system shall install and make available an owner-[contractor] EXCAVATOR information exchange system in its one-call center in the State.
 - (2) The owner- [contractor] EXCAVATOR information exchange system shall be available to any caller at all times.
- (d) *Authority of Commission.* – The Commission may grant, amend or revoke the certification of a person operating a one-call system.

REVISOR'S NOTE: This section is substantially the same. The only proposed changes are technical and concern nomenclature.

[§12-107. Time for beginning excavation or demolition.

- (a) A person may not begin an excavation or demolition unless the marking required under this subtitle has been completed or the person has received notice from each owner or the one-call system that marking is unnecessary.]

§ 12-107. TICKET LIFE AND TIME FOR BEGINNING EXCAVATION OR DEMOLITION.

- (a) *Start time.* – A TICKET STARTS AT THE TIME IT IS VALIDATED BY THE ONE CALL SYSTEM.
- (b) *Marking.* - A PERSON MAY NOT BEGIN AN EXCAVATION OR DEMOLITION UNLESS THE MARKING REQUIRED UNDER THIS TITLE HAS BEEN COMPLETED OR THE PERSON HAS RECEIVED NOTICE FROM EACH OWNER-MEMBER OR THE ONE-CALL SYSTEM THAT MARKING IS UNNECESSARY.
- (c) *Duration.* - A TICKET IS VALID FOR 12 FULL BUSINESS DAYS FROM THE START TIME.

REVISOR’S NOTE: this section repeals current section 12-107 and rewrites it to clarify and give greater specificity to the time period of a ticket and when to begin and end excavation or demolition.

§ 12-108. Requirements for persons performing excavation or demolition.

[(a) *Notification.* – Excluding Saturdays, Sundays, and legal holidays, at least 48 hours, but not more than 10 working days before starting an excavation or demolition, a person that intends to perform an excavation or demolition in the State shall notify by telephone, either directly or through a one-call system, each owner of the person’s intent to perform an excavation or demolition.]

(A) *Notification.* –A PERSON THAT INTENDS TO PERFORM AN EXCAVATION OR DEMOLITION IN THE STATE SHALL NOTIFY THE ONE-CALL SYSTEM SERVING THE GEOGRAPHIC AREA OF THE EXCAVATION OR DEMOLITION OF THE PERSON’S INTENT TO PERFORM AN EXCAVATION OR DEMOLITION.

(B) INFORMATION PROVIDED BY EXCAVATOR-

- (1) THE EXCAVATOR SHALL ACCURATELY DESCRIBE THE LOCATION AND TYPE OF WORK TO BE PERFORMED ON EACH INDIVIDUAL TICKET.
- (2) IF PROPOSED EXCAVATION OR DEMOLITION IS OF SUCH SIZE OR LENGTH THAT THE OWNER-MEMBER CANNOT MARK WITHIN THE REQUIRED TIME PERIOD, THE OWNER-MEMBER SHALL NOTIFY THE EXCAVATOR. THEN THE EXCAVATOR SHALL NOTIFY THE OWNER-MEMBER WHERE EXCAVATION OR DEMOLITION WILL FIRST BE MADE AND THE REMAINDER SHALL BE MARKED BY THE OWNER-MEMBER WITHIN A REASONABLE TIME THEREAFTER.
- (3) ON EXTENSIVE OR CONTIGOUS EXCAVATION OR DEMOLITION, WORKING AGREEMENTS REGARDING THE MARKING TIME PERIODS MAY BE ESTABLISHED BETWEEN THE EXCAVATOR AND THE OWNER-MEMBER.

[(b) *Re-notification.* – A person shall repeat the notification required under subsection (a) of this section if:

- (1) the excavation or demolition did not begin within 10 working days; or
- (2) the excavation or demolition is to be expanded beyond its original location.]

(C) *Re-notification.* – A PERSON SHALL REPEAT THE NOTIFICATION REQUIRED UNDER SUBSECTION (A) OF THIS SECTION IF:

- (1) THE TICKET WILL EXPIRE OR HAS EXPIRED PRIOR TO THE COMPLETION OF THE EXCAVATION OR DEMOLITION; OR
- (2) THE EXCAVATION OR DEMOLITION IS TO BE EXPANDED BEYOND ITS ORIGINAL LOCATION.

[(c)] (D) *Notification from all applicable OWNER-MEMBERS.* – A person may begin excavation or demolition only if the person contacts or receives notification from the owner-[contractor] EXCAVATOR information exchange system of the one-call system confirming that all applicable [owners] OWNER-MEMBERS have either marked their underground facilities or reported that they have no underground facilities in the vicinity of the excavation or demolition.

(E) *Evidence of unmarked or mis-marked facilities.* – PRIOR TO OR DURING AN EXCAVATION OR DEMOLITION, IF A PERSON HAS VISUAL EVIDENCE OR KNOWLEDGE OF UNMARKED OR MIS-MARKED FACILITIES IN THE AREA OF THE EXCAVATION OR DEMOLITION, THE PERSON MAY NOT BEGIN OR CONTINUE AN EXCAVATION OR DEMOLITION UNTIL THE PERSON HAS RENOTIFIED THE ONE CALL SYSTEM AND ALL OWNER-MEMBERS HAVE RESPONDED. IF THE FACILITY IS STILL UNMARKED AFTER RENOTIFICATION AND ALL OWNER-MEMBERS HAVE RESPONDED, THE EXCAVATION OR DEMOLITION MAY CONTINUE IN ACCORDANCE WITH SUBSECTION (F).

[(d) *Duty of care.* – A person shall exercise due care to avoid interference with or damage to an underground facility that an owner has marked in accordance with §12-110 of this subtitle.]

(F) *Duty of care.* – A PERSON SHALL EXERCISE DUE CARE TO AVOID INTERFERENCE WITH OR DAMAGE TO AN UNDERGROUND FACILITY THAT AN OWNER-MEMBER HAS MARKED IN ACCORDANCE WITH § 12-111 OF THIS TITLE. IF EXCAVATION OR DEMOLITION IS REQUIRED WITHIN 18 INCHES ON EITHER SIDE OF A FACILITY MARKING, IT SHALL BE PERFORMED BY HAND OR BY SOFT DIG TECHNIQUE EXCAVATION EQUIPMENT UNTIL THE MARKED FACILITIES ARE EXPOSED.

- (1) A PERSON SHALL NOT EXCAVATE UTILIZING MECHANIZED EQUIPMENT WITHIN 18 INCHES OF THE EXTREMETIES OF ALL

EXPOSED UTILITY LINES.

- (2) A PERSON SHALL EXPOSE THE UNDERGROUND UTILITY TO ITS EXTREMITIES BY HAND OR SOFT DIG TECHNIQUES.
- (3) HOWEVER, IN THE CASE OF PARALLEL EXCAVATION, TEST HOLES SHOULD BE PERFORMED AT THE BEGINNING, MIDDLE AND END OF THE PROPOSED EXCAVATION AND AT INTERVALS OF NO MORE THAN ONE HUNDRED FEET.
- (4) EXCAVATION OR DEMOLITION SHALL ONLY BE PERFORMED UNDER A VALID TICKET.

[(e) *Damage to or disturbance of underground facility.* – The person performing an excavation or demolition immediately shall notify the owner of the facility if the person discovers or causes any damage to or dislocation or disturbance of an underground facility in connection with any excavation or demolition.]

(G) *Damage to or disturbance of underground facility.* – THE PERSON PERFORMING AN EXCAVATION OR DEMOLITION SHALL IMMEDIATELY NOTIFY THE OWNER-MEMBER OF THE FACILITY IF THE PERSON DISCOVERS OR CAUSES ANY DAMAGE TO OR DISLOCATION OR DISTURBANCE OF AN UNDERGROUND FACILITY IN CONNECTION WITH EXCAVATION OR DEMOLITION.

- (1) *Emergency notification.* - IF THE DAMAGE RESULTS IN THE ESCAPE OF ANY FLAMMABLE, TOXIC OR CORROSIVE GAS OR LIQUID, THE PERSON SHALL IMMEDIATELY REPORT THE DAMAGE TO THE PROPER AUTHORITIES BY CALLING THE 911 EMERGENCY TELEPHONE NUMBER.
- (2) *Maintenance of designated marker.* - AFTER AN OWNER-MEMBER HAS MARKED THE LOCATION OF AN UNDERGROUND FACILITY IN ACCORDANCE WITH § 12-111, THE PERSON PERFORMING THE EXCAVATION OR DEMOLITION IS RESPONSIBLE FOR MAINTENANCE OF THE DESIGNATED MARKER. IF A MARKER IS OBLITERATED, DESTROYED OR REMOVED, THE PERSON SHALL REPEAT THE NOTIFICATION IN SUBSECTION (A) OF THIS SECTION.

REVISOR'S NOTE: This section is substantially rewritten. It expands and clarifies the requirements and responsibilities of an excavator in terms of notification and re-notification before excavating, what is the procedure if evidence of unmarked or mismarked facilities and the duty of care necessary, and what procedure to take if damage or disturbance of an underground facility. In addition, the rewrite of this section does as follows:

To make clear that the appropriate Maryland Call Center must be contacted for planned excavation or demolition in Maryland. Excavator call in times have been eliminated because ticket life has been established in §12-107

To establish the excavator's duty to provide accurate locations and types of planned excavation or demolition and to allow for working agreements between the excavator and owner member to mark the facilities on large locate requests.

To formalize current re-notification practice and to bring Title 12 in accordance with CGA Best Practice 5-23 (locate request updates).

Expanded mis-marked facilities to include unmarked facilities where there is clear evidence that a facility exists and to bring Title 12 in accordance with CGA Best Practice 5-10 (locate verification).

§ 12-109. NOTIFICATION AND PROCEDURES FOR DESIGNERS

(a) EACH DESIGNER WHO NOTIFIES THE ONE CALL SYSTEM SHALL:

- (1) INDICATE ON THE CONSTRUCTION DRAWINGS, THE TYPE OF UNDERGROUND FACILITY LINES, THE HORIZONTAL LOCATION OF THESE LINES AS PROVIDED BY THE OWNER-MEMBERS AND THE NAMES OF THE OWNERS OF THESE LINES;
- (2) CONSIDER, WHEN DESIGNING A PROJECT AND PREPARING DRAWINGS, THE LOCATION OF EXISTING UNDERGROUND FACILITIES SO AS TO MINIMIZE DAMAGE OR INTERFERENCE WITH THE EXISTING FACILITIES;
- (3) REQUEST ONLY ONE DESIGNER TICKET PER PROJECT THROUGH THE OWNER-MEMBER. NOTIFY THE ONE CALL SYSTEM IF NO INFORMATION IS NEEDED FROM A PARTICULAR OWNER-MEMBER.
- (4) THIS REQUEST IS FOR DESIGN PURPOSES ONLY AND SHALL NOT BE USED FOR THE PURPOSE OF EXCAVATION OR DEMOLITION.
- (5) UPON REQUEST FROM AN OWNER-MEMBER, PROVIDE A PRELIMINARY DRAWING OF THE PROJECT SCOPE FOR WHICH AN OWNER-MEMBER WILL RETURN TO INCLUDE APPROXIMATE LOCATIONS OF THE OWNER-MEMBER'S UNDERGROUND FACILITIES.
- (6) ANY CONCERNS ABOUT THE TIMELINESS OF THE RESPONSE OR THE ACCURACY OF THE INFORMATION OR MARKS SHALL BE DIRECTED TO THE APPROPRIATE OWNER-MEMBERS.

§ 12-110. PROCEDURES FOR OWNER-MEMBER IN RESPONSE TO A DESIGNER NOTIFICATION.

(a) AN OWNER-MEMBER, UPON NOTIFICATION BY A DESIGNER SHALL:

- (1) RESPOND TO THE DESIGNER'S REQUEST FOR UNDERGROUND FACILITY INFORMATION WITHIN FIFTEEN WORKING DAYS IN ACCORDANCE WITH ITEMS 2, AND 3 OF THIS SECTION;
- (2) PROVIDE DESIGNERS WITH THE NAME, THE TYPE OF UNDERGROUND FACILITY AND THE APPROXIMATE HORIZONTAL LOCATION OF THE FACILITY. THE FOREGOING INFORMATION MAY BE PROVIDED TO THE DESIGNER THROUGH THE MEANS THAT INCLUDE, BUT ARE NOT LIMITED TO, FIELD LOCATES, MAPS, SURVEYS, INSTALLATION RECORDS OR OTHER MEANS (SEE ITEM 5 UNDER NOTIFICATION AND PROCEDURES FOR DESIGNERS). IF A FIELD LOCATE IS PERFORMED, IT WILL BE DONE IN A SIMILAR MANNER AS AN EXCAVATION LOCATE.
- (3) PROVIDE SUCH INFORMATION ABOUT THE LOCATION OF THE FACILITIES TO DESIGNERS FOR INFORMATIONAL PURPOSES ONLY. OWNER-MEMBERS WILL NOT BE LIABLE FOR ANY INCORRECT INFORMATION PROVIDED OR FOR SUBSEQUENT USE OF THIS INFORMATION, NOR WILL THEY BE SUBJECT TO CIVIL PENALTIES FOR THE ACCURACY OF THE INFORMATION OR MARKS PROVIDED.

REVISOR'S NOTE: Sections 12-209 and 12-210 are new language which establishes a designer ticket and procedure for licensed architects and engineers who need information as to existing underground facilities or want to record proposed underground facilities for plans and drawings. A procedure is established for owner members to respond within a certain time frame to designer's requests.

[§12-109. Requirements of owners – In general.

(a) *Filing of notice for calls.* - Each owner shall file notice with and submit to the Commission in writing the telephone number of the person in each county to which calls concerning proposed excavations or demolitions are to be directed.

(b) *Membership to one-call system.* - Each owner shall be a member of a one-call system that has filed a telephone number with the Commission on behalf of all owner-members.

(c) *Time for determination.* - Excluding Saturdays, Sundays, and legal holidays, within 48 hours after receiving notice from a person under § 12-108 of this subtitle, an owner shall determine if a proposed excavation or demolition:

- (1) is within 5 feet of the horizontal plane of an underground facility; or
- (2) because of planned blasting, is in such proximity to an underground facility that the underground facility may be damaged or disturbed.

(d) *Notice of determination.* - Excluding Saturdays, Sundays, and legal holidays, within 48 hours after receiving the person's notice under § 12-108 of this subtitle, an owner that determines under subsection (c) of this section that an underground facility may be damaged or disturbed shall notify the person of the determination.

(e) *Time for performing excavation or demolition.* - An owner that elects to perform a proposed excavation or demolition shall perform the excavation or demolition around the underground facility in a timely manner.]

REVISOR'S NOTE: This section is repealed in light of new section 12-111.

[§12-110. Marking of location of underground facility.

(a) *In general.* - An owner shall mark the location of an underground facility within 18 inches on a horizontal plane on either side of the underground facility if the owner has determined under § 12-109 of this subtitle that a proposed excavation or demolition:

- (1) is within 5 feet of the horizontal plane of the underground facility; or
- (2) because of planned blasting, is in such proximity to an underground facility that the underground facility may be damaged or disturbed.

(b) *Time of marking.* - Excluding Saturdays, Sundays, and legal holidays, if an owner cannot complete the marking under subsection (a) of this section within 48 hours after a determination under § 12-109 of this subtitle, the owner shall notify the person of the date and time when the location will be marked.

(c) *Color code.* - When marking the location of an underground facility, an owner shall use the following color code:

UTILITY TYPE AND PRODUCT

SPECIFIC GROUP
IDENTIFYING COLOR

Electric power distribution and transmission	safety red
Municipal electric systems	safety red
Gas distribution and transmission	high visibility safety yellow
Oil distribution and transmission	high visibility safety yellow
Dangerous materials, product lines, and steam lines	high visibility safety yellow
Telephone and telecommunications	safety alert orange
Cable television	safety alert orange
Water systems	safety precaution blue
Sewer lines	safety green.

(d) *Exceptions.* - Excluding Saturdays, Sundays, and legal holidays, within 48 hours after receiving notice from a person under § 12-108 of this subtitle, an owner shall notify the person that marking is unnecessary if the owner determines that:

- (1) the owner does not have an underground facility at the location stated in the notice;
- (2) the proposed excavation or demolition is not planned within 5 feet of the horizontal plane of an underground facility; or
- (3) the proposed excavation or demolition to be performed by blasting is not planned in such proximity to an underground facility that the underground facility may be damaged or disturbed.

(e) *Maintenance of designated marker.* - After an owner has marked the location of an underground facility in accordance with this section, the person solely is responsible for the maintenance of the designated marker.

(f) *Re-marking.* - If a marker is obliterated, destroyed, or removed, an owner shall re-mark the location of the underground facility not more than 48 hours, excluding Saturdays, Sundays, and legal holidays, after receiving a request to re-mark the location.

(g) *Notification.* -

(1)

- (i) No later than 48 hours after a person notifies the one-call system of proposed excavation or demolition, the owner or person acting on the owner's behalf, after taking all action required by this section to identify the owner's underground facilities in the vicinity of the proposed excavation or

demolition, shall notify the owner-contractor information exchange system of whether the location is marked or clear of the owner's underground facilities.

(ii) Notification under this subsection that the location is clear of the owner's underground facilities constitutes notice by the owner required under subsection (d) of this section.

(2) The one-call center shall repeat notification to any owner who has failed to respond to the owner-contractor information exchange system within 48 hours after the original notification under paragraph (1) of this section.]

REVISOR'S NOTE: This section is repealed in light of new section 12-111.

§ 12-111. Requirements of owners – in general.

(A) *Membership in a one-call system.* – EACH OWNER SHALL BE A MEMBER OF THE ONE-CALL SYSTEM WITHIN THE STATE.

(B) *Filing of notice for calls.* – EACH OWNER-MEMBER SHALL FILE NOTICE WITH AND SUBMIT TO THE ONE-CALL SYSTEM IN WRITING THE TELEPHONE NUMBER OF THE PERSON TO WHICH CALLS CONCERNING PROPOSED EXCAVATIONS OR DEMOLITIONS ARE TO BE DIRECTED. OWNER-MEMBERS ARE REQUIRED TO KEEP ALL CONTACT INFORMATION CURRENT WITH THE ONE-CALL SYSTEM.

(C) *Marking facility location.* – AN OWNER-MEMBER SHALL MARK ON THE GROUND SURFACE THE LOCATION OF ITS UNDERGROUND FACILITY SUCH THAT THE LOCATION OF THE MARKS ARE WITHIN 18 INCHES ON A HORIZONTAL PLANE ON BOTH SIDES OF THE UNDERGROUND FACILITY IF THE OWNER-MEMBER HAS DETERMINED THAT THE PROPOSED EXCAVATION OR DEMOLITION

(1) IS WITHIN 5 FEET OF THE HORIZONTAL PLANE OF AN UNDERGROUND FACILITY; OR

(2) BECAUSE PLANNED BLASTING IS IN SUCH PROXIMITY TO AN UNDERGROUND FACILITY THAT THE UNDERGROUD FACILITY MAY BE DAMAGED OR DISTURBED.

(D) *Time for marking and reporting.* –PURSUANT TO THE NOTIFICATION SCHEDULE SET FORTH IN §12-108 OF THIS TITLE, AN OWNER-MEMBER SHALL MARK THE LOCATION OF ITS UNDERGROUND FACILITIES AND REPORT TO THE OWNER-EXCAVATOR INFORMATION SYSTEM WITHIN TWO FULL BUSINESS DAYS AFTER THE START TIME EXCLUDING SATURDAYS, SUNDAYS & HOLIDAYS. IF NO UNDERGROUND FACILITIES

ARE PRESENT IN THE VICINITY OF THE PLANNED EXCAVATION OR DEMOLITION, THE OWNER-MEMBER SHALL RESPOND TO THE INFORMATION EXCHANGE SYSTEM THAT NO MARKING IS REQUIRED.

(E) *Extension of time.* – IF, DUE TO CIRCUMSTANCES BEYOND THE OWNER-MEMBER’S CONTROL, AN OWNER-MEMBER IS UNABLE TO MARK THE LOCATION OF ITS UNDERGROUND FACILITIES AS REQUIRED THE OWNER-MEMBER SHALL RESPOND TO THE OWNER-EXCAVATOR INFORMATION EXCHANGE SYSTEM THAT AN EXTENSION IS REQUIRED.

(F) *Marking by color code.* - IN MARKING THE APPROPRIATE LOCATION OF UNDERGROUND FACILITIES, THE OWNER-MEMBER SHALL FOLLOW THE LATEST AMERICAN PUBLIC WORKS ASSOCIATION (APWA) UNIFORM COLOR CODE FOR MARKING UNDERGROUND FACILITIES. SHOULD THIS CODE BE AMENDED, THE AMENDED CODE SHALL BE APPLIED AND FOLLOWED. WHERE TWO OR MORE OWNER-MEMBERS SHARE THE SAME COLOR CODE, EACH SHALL INCLUDE ITS IDENTITY WITH THE MARKINGS.

REVISOR’S NOTE: This section is substantially rewritten from current sections 12-109 and 12-110. The rewriting is to reflect current practices and procedures. It specifies and clarifies marking facility locations, times for marking and reporting, extensions of time and color marking codes.

The specific listing of colors and codes is detailed in light of the new reference incorporating the uniform color code for marking underground facilities established by the American Public Works Association as amended from time to time.

[§12–111. Reimbursement of political subdivision or municipal corporation.

(a) *Marking fee authorization.* - A political subdivision or municipal corporation may charge, assess, or collect from a person a one-time initial marking fee not exceeding \$35 for reimbursement of expenses that the political subdivision or municipal corporation incurs to comply with this subtitle.

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

REVISOR’S NOTE: This section is repealed. Only a few counties and municipalities currently charge and collect a fee for marking. Primarily Baltimore City does this as to all underground facilities, while Baltimore County and Harford County apply it to only certain facilities. St. Mary’s County had adopted such a policy but since abandoned it as not working well. It is strongly believed that charging a fee for

marking and remarking underground facilities greatly discourages people from calling before digging and not complying with the law. The strong public policy reasons for the law, public safety, damage control and avoidance of disruption of service are substantially jeopardized and undercut by those government jurisdictions which exercise this practice.

§ 12-112. Injunctive actions.

(a) *Authorized.* – To stop or prevent a negligent or unsafe excavation or demolition, an owner or the Attorney General may file an action for a writ of mandamus or injunction in a court of competent jurisdiction in Baltimore City or the county in which the excavation or demolition is being performed or is to be performed or in which the person resides or has its principal place of business, if the person:

- (1) is performing an excavation or demolition in a negligent or unsafe manner that has resulted in or is likely to result in damage to an underground facility; or
- (2) is intending to use procedures to carry out the excavation or demolition that are likely to result in damage to an underground facility.

(b) *Joinder of parties and remedies.* -

- (1) To make its judgment or processes effective, the court may join as parties any persons necessary or proper.
- (2) If appropriate, the court shall issue a final order granting the injunction or writ of mandamus.

REVISOR’S NOTE: This section has no changes.

§ 12-113. Maryland Underground Facilities Damage Prevention Authority.

(A) *Establishment.* – THERE IS ESTABLISHED A MARYLAND UNDERGROUND FACILITIES DAMAGE PREVENTION AUTHORITY.

(B) *Purpose.* - THE PURPOSE OF THE AUTHORITY IS TO ESTABLISH AND MAINTAIN COMPLIANCE AND ENFORCEMENT OF THIS TITLE, AND TO ASSESS CIVIL FINES AND PENALTIES AND SETTLEMENT AGREEMENTS IN LIEU THEREOF.

(C) *Membership.* -

- (1) THE AUTHORITY CONSISTS OF 9 MEMBERS.
- (2) OF THE 9 AUTHORITY MEMBERS:

- (i) ONE CHOSEN BY THE ASSOCIATED UTILITY CONTRACTORS OF MARYLAND AND ONE CHOSEN BY THE PUBLIC WORKS CONTRACTORS ASSOCIATION;
- (ii) TWO OWNER MEMBERS CHOSEN BY THE MARYLAND MEMBERS OF THE MARYLAND/DC SUBSCRIBERS COMMITTEE;
- (iii) ONE ONE-CALL MEMBER CHOSEN BY THE ONE CALL CENTER;
- (iv) ONE MEMBER OF THE UNDERGROUND UTILITY LOCATOR COMMUNITY CHOSEN BY THE MARYLAND MEMBERS OF THE MARYLAND/DC DAMAGE PREVENTION COMMITTEE;
- (v) ONE MEMBER OF THE MARYLAND ASSOCIATION OF COUNTIES WHO IS KNOWLEDGABLE AND EXPERIENCED IN THE FIELD OF UNDERGROUND FACILITIES CHOSEN BY THE ASSOCIATION;
- (vi) ONE MEMBER OF THE MARYLAND MUNICIPAL LEAGUE WHO IS EXPERIENCED IN THE FIELD OF UNDERGROUND FACILITIES CHOSEN BY THE LEAGUE;
- (vii) ONE MEMBER OF THE PUBLIC NOT REPRESENTED ON THE AUTHORITY BUT CHOSEN BY THE AUTHORITY;

(D) *Tenure; vacancies.* -

- (1) THE TERM OF A MEMBER IS 2 YEARS.
- (2) THE TERMS OF MEMBERS ARE STAGGERED AS REQUIRED BY THE TERMS PROVIDED FOR MEMBERS OF THE AUTHORITY ON OCTOBER 1, 2010.
- (3) AT THE END OF A TERM, THE MEMBER CONTINUES TO SERVE UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.
- (4) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.
- (5) A MEMBER MAY NOT BE APPOINTED FOR MORE THAN 2 CONSECUTIVE FULL TERMS.
- (6) TO THE EXTENT PRACTICABLE, THE AUTHORITY SHALL FILL ANY VACANCY ON THE AUTHORITY WITHIN 60 DAYS OF THE VACANCY.
- (7) VACANCIES SHALL BE FILLED IN THE SAME MANNER PROVIDED FOR IN THE ORIGINAL APPOINTMENTS.

(E) *Chairman.* – THE AUTHORITY ANNUALLY SHALL ELECT FROM AMONG ITS MEMBERS A CHAIRPERSON OF THE AUTHORITY WHO MAY NOT SERVE MORE THAN TWO CONSECUTIVE YEARS.

(F) *Meetings; Compensation, staff, immunity.* -

- (1) THE AUTHORITY SHALL MEET AT THE TIME AND PLACE THAT THE AUTHORITY DETERMINES AT LEAST ONCE EVERY THREE MONTHS.
- (2) A QUORUM FOR A MEETING CONSISTS OF FIVE MEMBERS.
- (3) THE AUTHORITY SHALL ESTABLISH AND HAVE AS NECESSARY AND NEEDED, THE ADMINISTRATIVE STAFF AND ESTABLISH AN OFFICE AND HEARING ROOM.
- (4) A MEMBER OF THE AUTHORITY MAY NOT RECEIVE ANY COMPENSATION OR REIMBURSEMENT OF EXPENSES TO SERVE AS A MEMBER OF THE AUTHORITY.
- (5) THE MEMBERS OF THE AUTHORITY SHALL BE IMMUNE, INDIVIDUALLY AND JOINTLY, FROM CIVIL LIABILITY FOR ANY ACT OR OMISSION DONE OR MADE IN THE PERFORMANCE OF THEIR DUTIES WHILE SERVING AS MEMBERS OF THE AUTHORITY BUT ONLY IN THE ABSENCE OF WILLFUL MISCONDUCT.

(G) *Powers and Duties of Authority.* –

THE AUTHORITY:

- (1) MAY ADOPT RULES AND REGULATIONS GOVERNING ITS OPERATIONS AND FUNCTIONS.
- (2) MAY RECEIVE AND HEAR COMPLAINTS AND ESTABLISH FILING FEES AND ADMINISTRATIVE COSTS FOR PURPOSES OF COMPLIANCE AND ENFORCEMENT OF THE MARYLAND UNDERGROUND FACILITY DAMAGE PREVENTION LAWS, AND ASSESS AND IMPOSE CIVIL PENALTIES PURSUANT TO THIS TITLE OR ESTABLISH AMOUNTS OF SETTLEMENT AGREEMENTS IN LIEU OF FINES AND PENALTIES.
- (3) SHALL DETERMINE THE PROCEDURE AND CONDUCT OF ANY HEARINGS WHICH SHALL BE ON THE RECORD AND ALL TESTIMONY UNDER OATH.
- (4) MAY UTILIZE AN OUTSIDE SOURCE AND/OR THE ATTORNEY GENERAL'S OFFICE TO COLLECT FINES AND PENALTIES ALONG

WITH THEIR ADMINISTRATIVE COSTS WITH ALL FINES AND PENALTIES COLLECTED RETURNED TO THE MARYLAND UNDERGROUND FACILITY DAMAGE PREVENTION AUTHORITY EDUCATION AND OUTREACH FUND. ADMINISTRATIVE COSTS WILL BE ASSESSED AT TEN TIMES THE AMOUNT OF THE ORIGINAL FINE.

(5) MAY DERIVE MONIES FOR OPERATIONS FROM THE FOLLOWING SOURCES:

- (i) ANY GRANT FROM THE STATE;
- (ii) ANY GRANT FROM THE FEDERAL GOVERNMENT;
- (iii) ANY MONEY WHICH THE AUTHORITY DETERMINES TO ASSESS FROM EXISTING OWNER-MEMBERS;
- (iv) FILING FEES SHALL BE DETERMINED BY THE AUTHORITY FOR ANY COMPLAINTS BROUGHT BEFORE THE AUTHORITY; AND
- (v) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR THE PURPOSES OF THE OPERATION OF THE AUTHORITY.

(6) SHALL REPORT TO THE GOVERNOR AND THE GENERAL ASSEMBLY IN ACCORDANCE WITH §2-1246 OF THE STATE GOVERNMENT ARTICLE, ANNUALLY BEGINNING JANUARY 1, 2012 AS TO THE ACTIONS AND ACTIVITIES OF THE AUTHORITY, AS WELL AS ANY RECOMMENDATIONS CONCERNING UNDERGROUND UTILITIES DAMAGE PREVENTION AND THIS ACT.

(H) *Appeal and Admissibility of Authority Action.* - ANY ACTION AND DECISION OF THE AUTHORITY CONCERNING ANY COMPLAINT FILED IS FINAL AND NOT SUBJECT TO ANY FURTHER ADMINISTRATIVE APPEAL OR ANY JUDICIAL APPEAL IN A COURT OF LAW. ANY REFERENCE TO OR USE OF THE AUTHORITY'S COMPLAINT PROCEEDING AND HEARING INCLUDING TESTIMONY OR EVIDENCE CONCERNING ANY SUBJECT MATTER OR PARTIES TO THE COMPLAINT MAY NOT BE USED OR CONSIDERED ADMISSIBLE EITHER IN ANY OTHER ADMINISTRATIVE PROCEEDING OR IN ANY OTHER JUDICIAL PROCEEDING IN A COURT OF LAW CONCERNING THE SAME OR RELATED MATTER OR PARTIES.

REVISOR'S NOTE: This is a new section which creates the Maryland Underground Facility Damage Prevention Authority to bring Maryland's law and current section into compliance with Element No. 7 of the Federal PIPES Act of 2006.

The section establishes in a law a private non-governmental entity to maintain and enforce compliance with this title, and to have the ability to assess civil fines and

penalties and other settlements of violations thereof.

The section sets forth the membership, tenure, structures and operations of the Authority as well as enumerating its powers, duties, and functions.

§ 12-[113] 114. Civil penalties.

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

(b) *Action to recover.* – An action to recover a civil penalty under this section shall be brought by an owner of a damaged, dislocated, or disturbed underground facility or the Attorney General in a court of competent jurisdiction in Baltimore City or the county in which the damage, dislocation, or disturbance occurred.

(c) *Disposition of funds.* – All civil penalties recovered in an action under this section, including reasonable attorney’s fees, shall be paid into the General Fund of the State.]

(A) *In general.* – A PERSON WHO VIOLATES ANY PROVISION OF TITLE 12. IS SUBJECT TO A CIVIL PENALTY PER INCIDENT OF UP TO \$2,500.

(B) *Action to recover.* – AN ACTION TO RECOVER A CIVIL PENALTY UNDER THIS SECTION SHALL BE BROUGHT BY THE AUTHORITY.

(C) *Disposition of funds.* –ALL CIVIL PENALTIES RECOVERED IN AN ACTION UNDER THIS SECTION INCLUDING ANY REASONABLE ATTORNEY’S FEES SHALL BE PAID IN THE MARYLAND UNDERGROUND FACILITIES DAMAGE PREVENTION AUTHORITY EDUCATION AND OUTREACH FUND.

(D) *Training in lieu of or in addition to civil penalties.* - DAMAGE PREVENTION TRAINING, MITIGATING PROCEDURES OR OTHER ACTIONS MAY BE PRESCRIBED IN LIEU OF OR IN ADDITION TO MONETARY FINES.

REVISOR’S NOTE: This section is rewritten in part to change civil penalties to act as a deterrent, change actions to recover and disposition of funds to tie such actions to the Authority in lieu of the Attorney General and the General Fund. It also adds a provision for training in lieu of or in addition to penalties bringing Title 12 into accordance with Element No. 7 of the 9 Damage Prevention Program Elements established in the Federal PIPES Act of 2006.

[*Subtitle 2. Excavation Near Underground Lines and Structures in Montgomery County.*]

[§12–201. Scope of subtitle.

This subtitle applies only in Montgomery County.]

[§12–202. Requirements of public service companies – Requests for information.

(a) *In general.* - On request from a person under subsection (b) of this section, a public service company shall provide to the person information under this subtitle that shows the location of the existing underground utility lines and structures of the public service company.

(b) *Persons entitled to request information.* - A person, including a public agency, is entitled to request information under this subtitle if the person intends to grade, strip, excavate, clear, transport, or fill land in the county or move earth in the county for the purpose of construction, development, or land clearing.

(c) *Time for making requests.* - A person requesting information under subsection (a) of this section shall make the request at least 7 days but not more than 30 days before the scheduled start of work.

(d) *Contents.* - If site drawings or plans are required by the county or a municipal corporation in which the work site is located, a request for information shall include two copies of a site drawing or plan that shows the location of the work site.

(e) *Certification.* - Promptly after receiving a request for information under subsection (a) of this section, a public service company shall certify to the person making the request:

- (1) whether underground utility lines or structures of the public service company are located in the intended work area; and
- (2) if underground utility lines or structures of the public service company are located in the area where the work is to be performed, that the location and size of the underground utility lines or structures have been marked on the ground or the date and time by which the marking will be performed.

(f) *Return of site drawing or plan.* - At the same time the public service company provides the certification under subsection (e) of this section, the public service company shall:

- (1) return to the person making the request one copy of any site drawing or plan

previously submitted; and

(2) indicate on the site drawing or plan the horizontal location and size of its underground utility lines and structures.]

[§12–203. Same – Marking of underground utility lines and structures.

(a) *In general.* –

(1) Excluding Saturdays, Sundays, and holidays, not more than 48 hours before the start of the work described in § 12–202 of this subtitle, a public service company shall mark on the ground by staking, painting, or other suitable means the horizontal location and size of its underground lines and structures indicating the center of the line and its size or the sides of the structure.

(2) The public service company shall mark, as appropriate, within 3 feet of the center of the underground utility line or the side of the underground utility structure.

(3) If the underground structure is a cable or cables, the public service company shall include in the marking the number of cables.

(b) *Exception.* - If a public service company cannot mark the work site because of extraordinary circumstances within the time required under subsection (a) of this section, the public service company shall so notify the county and the person that made the request for information under § 12–202 of this subtitle of the date and time the work site will be marked.]

REVISOR’S NOTE: Subtitle 2 of this title which only applies to Montgomery County is repealed. One uniform statewide law should exist and be applicable to everyone. The substance of section 12-202 is retained and made statewide in sections 12-109 and 12-110. Therefore, section 12-202 is unnecessary and duplicative.

Section 12-203 is repealed in particular because the time and procedure for markings should be uniform statewide and because it requires in Montgomery County only that marks be done within 3 feet (36 inches) of the center of the underground facility whereas the requirement in the rest of the State is only 18 inches. For statewide uniformity policy reasons as well as the belief that the Montgomery County 36” requirement increases excavation labor costs, and increases the potential of damaging underground facilities by requiring more excavating. The requirement is changed to 18” as is the case in the rest of the State.

SECTION 2. AND BE IT FURTHER ENACTED, That Section 12-113 of this Act shall take

effect October 1, 2010.

SECTION 3. AND BE IT FURTHER ENACTED, That except as provided in Section 2, this Act shall take effect January 1, 2011.

SECTION 4. AND BE IT FURTHER ENACTED, That the terms of the initial members of the Maryland Underground Utilities Damage Prevention Authority shall expire as follows:

1. The member chosen by The Public Works Contractors Association of Maryland, one of the owner members chosen by the Maryland members of the Maryland/D.C. Subscribers Committee, the member of the underground utility locator community chosen by the Maryland members of the Maryland/D.C. Damage Prevention Committee, the member chosen by the Maryland Association of Counties, the member chosen by the Maryland Municipal League, and the member of the public, chose by the Authority; all shall expire on October 1, 2011; and
2. the member chosen by the Associated Utility Contractors of Maryland, one of the owner members, chosen by the Maryland Members of the Maryland/D.C. Subscribers Committee, the one member chosen by the one call center and the member chosen by the Maryland Municipal League all shall expire on October 1, 2012.