

SENATE BILL 877

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CF 0lr0852

By: **Senators Feldman and Hershey**

Introduced and read first time: February 3, 2020

Assigned to: Finance

A BILL ENTITLED

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
26 person to add a temporary excavator to an existing ticket; requiring certain
27 notification to be repeated under certain circumstances; requiring certain
28 re–marking to comply with certain requirements; requiring an owner–operator or its
29 contract locator to mark certain underground facilities in a certain manner under
30 certain circumstances; authorizing an owner–member to enter into a documented
31 agreement for certain marking; requiring a person performing excavation or

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



demolition to have a copy of a certain ticket available on the site of the activity; requiring certain persons to exercise due care to avoid certain interference or damage where clear evidence of an unmarked underground facility exists; requiring the use of certain techniques when utilizing a trenchless technology method for certain work; requiring the use of certain equipment to make certain piping and facilities detectable or locatable in a certain manner; requiring a primary contractor to provide certain notice and directly supervise a temporary excavator under certain circumstances; limiting the use of certain temporary excavators; requiring a designated temporary excavator to notify the one-call system under certain circumstances; establishing certain procedures and requirements for initiating a nonexcavation ticket request; requiring the one-call system to provide certain information to certain persons for certain nonexcavation tickets; altering certain provisions on the assessment and calculation of civil penalties by the Authority for certain offenses; providing that certain prior offenses may be subject to certain enhanced penalties under certain circumstances; establishing certain fines and penalties for certain violations; defining certain terms and altering certain definitions; making stylistic changes; providing for the construction of this Act; and generally relating to underground facilities and damage prevention.

BY repealing and reenacting, without amendments,

Article – General Provisions

Section 1–101 and 1–110

Annotated Code of Maryland

(2019 Replacement Volume)

BY repealing and reenacting, with amendments,

Article – Public Utilities

Section 12–101, 12–107, 12–111, 12–112, 12–113, 12–117, 12–120, 12–121, and 12–124 through 12–129; 12–131 to be under the amended part “Part V. Other Requests”; and 12–135

Annotated Code of Maryland

(2010 Replacement Volume and 2019 Supplement)

BY repealing

Article – Public Utilities

Section 12–103

Annotated Code of Maryland

(2010 Replacement Volume and 2019 Supplement)

BY adding to

Article – Public Utilities

Section 12–103 and 12–130

Annotated Code of Maryland

(2010 Replacement Volume and 2019 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

That the Laws of Maryland read as follows:

Article – General Provisions

1–101.

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

1–110.

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

Article – Public Utilities

12–101.

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

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

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

(D) “CLEAR EVIDENCE” INCLUDES A VISIBLE INDICATION THAT A FACILITY OR STRUCTURE IS NOT MARKED AS REQUIRED IN § 12–126 OF THIS SUBTITLE.

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

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

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

[(d)] (H) “Demolition” means an operation in which a structure or mass of

1 material is wrecked, razed, rended, moved, or removed using any tool, equipment, or
2 explosive.

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

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

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

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

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

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

23 **(N) “EXTENT OF WORK” MEANS A CLEAR AND CONCISE DESCRIPTION OF**
24 **WORK TO BE DONE AT A PROPERTY, INCLUDING THE PROPERTY ADDRESS OR**
25 **SPECIFIC DISTANCE AND DIRECTION FROM A SPECIFIED POINT, NOT TO EXCEED**
26 **1,320 FEET, THAT COMPLETELY DEPICTS THE SCOPE OF WORK AND THAT THE**
27 **EXCAVATOR CAN COMPLETE WITHIN THE DESIGNATED LIFE OF THE TICKET.**

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

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

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

33 (2) a federal legal holiday.

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

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

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

11 (1) allows a person to notify owner—members of planned excavation or
12 demolition by:

13 (i) calling a toll-free number or abbreviated dialing code; or

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

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

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

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

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

19 (2) “Owner” includes:

20 (i) a public utility;

21 (ii) a telecommunications corporation;

22 (iii) a cable television corporation;

23 (iv) a political subdivision;

24 (v) a municipal corporation;

25 (vi) a steam heating company;

26 (vii) an authority; and

27 (viii) a unit of the State.

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

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

4 (2) “Person” includes:

5 (i) a municipal corporation;

6 (ii) the State;

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

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

9 **(w) “PRIMARY CONTRACTOR” MEANS THE PERSON THAT:**

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

12 **(2) PERFORMS EXCAVATION DUTIES FOR THE DURATION OF THE**
13 **TICKET; AND**

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

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

20 ~~[(m)]~~ **(y)** “Ticket” means a numbered document issued by a one–call system to
21 notify owner–members that:

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

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

25 **(z) (1) “TRENCHLESS TECHNOLOGY” MEANS A FAMILY OF METHODS,**
26 **MATERIALS, AND EQUIPMENT CAPABLE OF BEING USED FOR THE INSTALLATION OF**
27 **NEW OR REPLACEMENT, OR REHABILITATION OF EXISTING, UNDERGROUND**
28 **INFRASTRUCTURE THAT REQUIRES EXCAVATION WITH MINIMAL DISRUPTION TO**
29 **SURFACE TRAFFIC BUSINESS AND OTHER ACTIVITIES.**

(2) “TRENCHLESS TECHNOLOGY” INCLUDES:

(I) TUNNELLING;

(II) MICROTUNNELLING;

(III) HORIZONTAL DIRECTIONAL DRILLING OR DIRECTIONAL BORING;

(IV) PIPE RAMMING;

(V) PIPE JACKING;

(VI) MOLING;

(VII) HORIZONTAL AUGER BORING; AND

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

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

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

(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]** **TELECOMMUNICATIONS, CABLE TELEVISION,** or electricity.

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

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

[12–103.

This subtitle does not apply to an excavation or demolition performed or to be performed by an owner or lessee of a private residence when the excavation or demolition

1 is performed or to be performed:

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

4 (2) without the use of machinery.]

5 **12-103.**

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

7 (1) **COMPLETE REPLACEMENT OF AN EXISTING UNDERGROUND**
8 **FACILITY;**

9 (2) **UNDERGROUND STORM DRAIN SYSTEMS AND APPLICABLE**
10 **DEVICES; AND**

11 (3) **AN EXISTING PREVIOUSLY DETECTABLE UNDERGROUND FACILITY**
12 **OR LOCATABLE UNDERGROUND FACILITY.**

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

16 (C) **NOT LATER THAN OCTOBER 1, 2021, ANY PREVIOUSLY DETECTABLE**
17 **UNDERGROUND FACILITY OR LOCATABLE UNDERGROUND FACILITY MUST BE**
18 **RESTORED TO BE DETECTABLE OR LOCATABLE.**

19 **12-107.**

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

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

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

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

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

29 (4) one member from a list submitted to the Governor by the one-call

1 centers operating in the State;

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

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

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

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

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

13 **(2) A MEMBER SHALL RESIDE IN THE STATE MORE THAN 6 MONTHS**
14 **EACH YEAR.**

15 **(3) FOR THE STAKEHOLDER MEMBERS APPOINTED UNDER**
16 **SUBSECTION (B)(1) THROUGH (7) OF THIS SECTION:**

17 **(I) THE MEMBER'S PRIMARY BUSINESS, EMPLOYMENT, OR**
18 **MEMBERSHIP DETERMINES THE ENTITY THAT THE MEMBER IS APPOINTED TO**
19 **REPRESENT; AND**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) a federal or State grant;

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

(I) MAILING COSTS;

(II) FEES FOR DELIVERY OR SERVICE OF PROCESS;

(III) REPRODUCTION COSTS; AND

(IV) LABOR COSTS ASSOCIATED WITH THE COMPLAINT;

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

(4) any other source.

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

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

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

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

12–112.

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

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

(2) MAY RECOMMEND NECESSARY ENFORCEMENT ACTIONS.

(B) (1) THE AUTHORITY SHALL:

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

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

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

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

6 ~~[(3)]~~ **(2)** **THE AUTHORITY MAY** reach a settlement instead of assessing
7 a civil penalty.

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

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

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

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

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

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

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

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

22 12–113.

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

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

26 (2) the proceedings shall be recorded.

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

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

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

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

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

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

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

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

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

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

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

24 12–117.

25 (a) There is a Maryland Underground Facilities Damage Prevention Education
26 and Outreach Fund.

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

28 (1) public education and outreach programs; and

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

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

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

(e) The Fund consists of:

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

(2) investment earnings of the Fund; and

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

(f) (1) The Fund may be used [only] for:

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

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

(III) COVERING AN UNEXPECTED SHORTFALL IN THE OPERATIONAL ACCOUNT OF THE AUTHORITY.

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

12–120.

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

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

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

(b) If an underground facility is damaged by a person that fails to comply with this subtitle, the person is deemed negligent and is liable to the owner for the total cost of repair of the underground facility, unless the owner has failed to become an owner–member in accordance with § 12–123 of this subtitle.

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

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

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

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

(1) a third party to recover **FINANCIAL** 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 **FINANCIAL** damages sought by a third party under paragraph (1) of this subsection.

12–121.

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

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

(1) **IDENTIFY THE LOCATION AND EXTENT OF WORK IN A CLEAR AND CONCISE MANNER;**

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

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

(c) (1) **THE OWNER—MEMBER OR ITS CONTRACT LOCATOR SHALL RESPOND TO AN EMERGENCY NOTICE AS SOON AS POSSIBLE BUT NOT LATER THAN 3 HOURS FROM THE TRANSMISSION OF THE TICKET FROM THE ONE—CALL CENTER.**

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

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

(II) BE REGISTERED WITH THE UNDERGROUND FACILITIES INFORMATION EXCHANGE SYSTEM BY THE OWNER OF THE UNDERGROUND FACILITY.

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

(I) THE EXTENT OF WORK IS MARKED; OR

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

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

12-124.

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

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

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

(b) Notice provided to a one-call system under subsection (a) of this section shall indicate:

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

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

(3) the type of work to be performed in connection with the proposed

1 excavation or demolition; AND

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

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

7 (2) Based on information collected under § 12-124(b)(2) of this subtitle, the
8 one-call system shall promptly transmit a copy of the ticket to the Department of
9 Transportation, an administration of the Department of Transportation, or the Maryland
10 Transportation Authority, as applicable.

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

13 12-125.

14 (a) A person shall repeat the notification required under § 12-124 of this subtitle
15 if the person:

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

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

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

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

26 **(C)** A person shall repeat the notification regardless of:

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

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

31 **(D) ANY RE-MARKING MADE AFTER A NOTIFICATION PROVIDED UNDER**

1 **THIS SECTION SHALL COMPLY WITH THE REQUIREMENTS OF § 12-126 OF THIS**
2 **SUBTITLE.**

3 12-126.

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

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

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

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

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

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

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

24 (1) mark the location of the owner-member's underground facility and
25 report to the underground facilities information exchange system that the underground
26 facility has been marked; or

27 (2) report to the underground facilities information exchange system that
28 the owner-member has no underground facilities in the vicinity of the planned excavation
29 or demolition.

30 (d) (1) If an owner-member **OR ITS CONTRACT LOCATOR** is unable to mark
31 the location of the owner-member's underground facility within the time period prescribed
32 in subsection (c) of this section because of the scope of the proposed excavation or
33 demolition, the owner-member shall:

34 (i) promptly notify the underground facilities information exchange

1 system and the person that intends to perform the excavation or demolition; and

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

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

11 (3) If, due to circumstances beyond **THE CONTROL OF** an
12 [owner–member’s control] **OWNER–MEMBER OR ITS CONTRACT LOCATOR** and for
13 reasons other than those specified in paragraph (1) of this subsection, an owner–member
14 **OR ITS CONTRACT LOCATOR** is unable to mark the location of the owner–member’s
15 underground facility within the time period prescribed in subsection (c) of this section, the
16 owner–member **OR ITS CONTRACT LOCATOR** shall report to the underground facilities
17 information exchange system that an extension is required.

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

22 12–127.

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

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

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

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

33 (b) (1) After an owner–member **OR ITS CONTRACT LOCATOR** has marked the
34 location of an underground facility in accordance with § 12–126 of this subtitle, the person
35 performing the excavation or demolition is responsible for the maintenance of the

1 designated [marker] MARK.

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

3 (I) shall repeat the notification required under § 12–124 of this
4 subtitle; BUT

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

6 (c) (1) A PERSON PERFORMING EXCAVATION OR DEMOLITION OR
7 SUPERVISING A TEMPORARY EXCAVATOR SHALL HAVE A COPY OF THE TICKET
8 ISSUED BY A ONE-CALL SYSTEM AVAILABLE, BY ANY MEANS, ON THE SITE OF THE
9 ACTIVITY FOR THE DURATION OF THE TICKET.

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

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

14 (II) WHERE CLEAR EVIDENCE OF AN UNMARKED
15 UNDERGROUND FACILITY EXISTS.

16 [(2)] (3) Before using mechanized equipment for excavation or demolition
17 within 18 inches of an underground facility marking, a person shall expose the
18 underground facility to its outermost surfaces by hand or other nondestructive techniques.

19 (4) WHEN UTILIZING A TRENCHLESS TECHNOLOGY METHOD, TO
20 PREVENT THE OCCURRENCE OF A CROSS-BORE, A PERSON SHALL EXPOSE BY
21 NONDESTRUCTIVE TECHNIQUES INTERSECTING UNDERGROUND FACILITIES TO THE
22 DEPTH OF THE EXCAVATION PLUS 18 INCHES IN THE PATH OF THE TRENCHLESS
23 TECHNOLOGY OPERATION DURING THE ENTIRE TRENCHLESS INSTALLATION
24 OPERATION.

25 [(3)] (5) A person may not use mechanized equipment to excavate within
26 18 inches of the outermost surface of an exposed underground facility.

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

31 (2) If the damage, dislocation, or disturbance results in the escape of a
32 flammable, toxic, or corrosive gas or liquid, the person performing the excavation or

1 demolition immediately shall report the damage to the 9–1–1 emergency system.

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

6 (i) has repeated the notification AS required under [§ 12–124] §
7 **12–125** of this subtitle; and

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

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

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

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

19 12–128.

20 (a) A political subdivision, municipal corporation, the Department of
21 Transportation, an administration of the Department of Transportation, or the Maryland
22 Transportation Authority may charge, assess, or collect from a person a one–time initial
23 marking fee not exceeding \$35 for reimbursement of expenses that the political subdivision,
24 municipal corporation, the Department of Transportation, an administration of the
25 Department of Transportation, or the Maryland Transportation Authority incurs to comply
26 with this subtitle.

27 (b) If re–marking is requested, or is required after renotification under [§
28 12–108(b)] § **12–125** of this subtitle, a political subdivision, municipal corporation, or any
29 of the transportation entities specified in subsection (a) of this section may charge, assess,
30 or collect from a person a re–marking fee not exceeding \$15 for reimbursement of expenses
31 that the political subdivision, municipal corporation, or any of the transportation entities
32 specified in subsection (a) of this section incurs to comply with this subtitle.

33 12–129.

34 (a) Subject to subsection (c) of this section, any new or replacement piping that is
35 buried or installed for the [purpose] **PURPOSES** of connecting a building to a water supply

1 system [or], a sewerage system, **AN UNDERGROUND STORM DRAIN SYSTEM, OR ANY**
2 **OTHER APPLICABLE DEVICE** shall be buried or installed with a wire **OR AN EQUIVALENT**
3 **PRODUCT OR TECHNOLOGY** that makes the piping detectable **OR LOCATABLE**.

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

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

8 (2) be installed:

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

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

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

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

17 (i) the point where the piping intersects with the water supply
18 system or the sewerage system; or

19 (ii) the point where the sewerage system disposes of or processes the
20 sewage.

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

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

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

25 **12-130.**

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

27 (I) **PERFORMS THE EXCAVATION DUTIES FOR THE DURATION**
28 **OF A TICKET;**

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

1 (III) IS ON SITE TO SUPERVISE ALL ACTIVITIES AND EMPLOYEES;
2 AND

3 (IV) INTENDS TO UTILIZE SERVICES OR EQUIPMENT OF A
4 TEMPORARY EXCAVATOR.

5 (2) FOR PURPOSES OF THIS SECTION, A PRIMARY CONTRACTOR DOES
6 NOT INCLUDE A PRIVATE HOMEOWNER THAT INTENDS TO HIRE A TEMPORARY
7 EXCAVATOR.

8 (B) A PRIMARY CONTRACTOR:

9 (1) SHALL:

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

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

14 (III) DIRECTLY SUPERVISE THE ON-SITE ACTIVITIES OF THE
15 TEMPORARY EXCAVATOR; AND

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

19 (2) MAY NAME ONLY ONE TEMPORARY EXCAVATOR FOR THE
20 DURATION OF THE TICKET.

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

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

23 (II) AN EXCAVATION CONTRACTOR THAT IS NOT AN EMPLOYEE
24 OF THE PRIMARY CONTRACTOR; OR

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

27 (2) THE DESIGNATED TEMPORARY EXCAVATOR SHALL NOTIFY THE
28 ONE-CALL SYSTEM WITH THE ASSOCIATED TICKET NUMBER TO VERIFY THAT THE

1 EXCAVATOR HAS BEEN HIRED TO WORK FOR THE PRIMARY CONTRACTOR.

2 Part V. [Designer] OTHER Requests.

3 12–131.

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

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

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

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

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

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

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

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

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

26 [(c) (1) Within 15 business days after receiving notice from a one–call system
27 that a designer has made a request under this section, an owner–member of an
28 underground facility in the area of the project shall notify the designer of the type and
29 approximate location of the underground facility.

30 (2) An owner–member may provide notice of the approximate location of
31 an underground facility through the use of:

- (i) field locates;
- (ii) maps;
- (iii) surveys;
- (iv) installation records; or
- (v) other similar means.]

(C) IN THE CASE OF AN OBSTRUCTION CAUSED BY A SUSPECTED CROSS-BORE:

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

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

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

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

12-135.

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

(2) THE AUTHORITY SHALL CALCULATE THE CIVIL PENALTY CONSIDERING:

- (I) THE SERIOUSNESS OF THE VIOLATION;**
- (II) THE INTENT AND GOOD FAITH OF THE VIOLATOR; AND**
- (III) THE PAST HISTORY OF VIOLATIONS.**

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

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

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

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

(i) require that a person:

1. participate in damage prevention training; or

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

(ii) impose other similar measures.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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