

*"Annotated Code of Maryland"*

**PUBLIC UTILITIES**

**DIVISION I. PUBLIC SERVICES AND UTILITIES**

**TITLE 12. UNDERGROUND FACILITIES**

**SUBTITLE 1. EXCAVATION OR DEMOLITION NEAR UNDERGROUND FACILITIES**

**PART I. DEFINITIONS; GENERAL PROVISIONS**

**§ 12-101. Definitions**

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

(b) Authority. -- "Authority" means the Maryland Underground Facilities Damage Prevention Authority.

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

(d) Clear Evidence. -- "Clear evidence" means a person has:

(i) Visible indication that a facility or structure is not marked as required in §12-126 of this subtitle;

(ii) Knowledge that an underground facility or structure is in the area of the planned or ongoing excavation or demolition and is not marked as required in §12-126 of this subtitle;

(iii) Reason to know that an underground facility or structure is in the area of the planned or ongoing excavation or demolition and is not marked as required in §12-126 of this subtitle.

(e) Contract Locator – as referenced in §12-107(5) means any person contracted by an owner specifically to determine the approximate horizontal location of said 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, [and/or] disturbed or obstructed.

(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, but not limited to, the protective coating, lateral support, cathodic protection, or housing for the underground facility.

(h) **Demolition.** -- "Demolition" means an operation in which a structure or mass of material is wrecked, razed, rended, moved, or removed using any tool, equipment, or explosive.

(i) **Designer.** -- "Designer" means a licensed architect, professional engineer, professional land surveyor, or licensed landscape architect, as those terms are defined in the Business Occupations and Professions Article, who prepares a drawing for a project that may require excavation or demolition.

(j) **Emergency.** – “Emergency” means a sudden or unexpected occurrence involving a clear and imminent danger demanding immediate action to prevent or mitigate loss of, or injury to, life, health, property, or essential public service. [Amending §12-121](#)

(k) **Emergency Obstruction.** – “Emergency Obstruction” means any blockage of an essential service lateral to a building [in or out of the public right-of-way] that requires immediate remedy by mechanical means to prevent or mitigate loss of, or injury to, life, health, property, or essential public service.

(k) **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 not limited to, grading, trenching, digging, ditching, dredging, drilling, boring, augering, tunnelling, scraping, cable or pipe plowing, pipe bursting and driving a mass of material **or removal of an obstruction by mechanical means.**

(l) “Excavator” – a person that performs an excavation, **[or] demolition, or removal of an obstruction by mechanical means.**

(m) “Extent of Work” – a clear & concise description to include the property address(es) or specific distance and direction from a specified point that depicts the scope of work completely; and that the excavator can complete within the designated life of the ticket, not to exceed 1320 feet.

(n) Fund. -- "Fund" means the Maryland Underground Facilities Damage Prevention Education and Outreach Fund.

(o) Legal holiday. -- "Legal holiday" means:

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

(2) a federal legal holiday.

(p) One-call system. -- "One-call system" means a communications system in the State that:

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

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

(ii) initiating an interactive Internet ticket request; and

(2) maintains an underground facilities information exchange system.

(q) Marker /Mark Definition - "Mark" means any line, arrow, curve, whiskers, flag, stake, or other symbol, placed or made as part of a mark-out.

(r)"Mark-out" means letters, symbols and marks, as defined in this section, placed on the ground or other surface in order to show the location and characteristics of an underground facility. (New Jersey statute)

(s) 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 not limited to:

(i) a public Facility;

(ii) a telecommunications corporation;

(iii) a cable television corporation;

- (iv) a political subdivision;
- (v) a municipal corporation;
- (vi) a steam heating company;
- (vii) an authority; *[and]*
- (viii) a unit of the State.

~~[(3) Owner or lessee or occupant on a single-family property are not included in this definition. Should this be a definition????]~~

**(t) Owner-member.** -- "Owner-member" means an owner that participates as a member in a one-call system.

**(s) Person.** --

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

(2) "Person" includes; *but is not limited to:*

- (i) a municipal corporation;
- (ii) the State;
- (iii) a political subdivision of the State; *[and]*
- (iv) any governmental unit, department, or agency.

**(u) Primary Contractor.** -- "Primary Contractor means the person who initiates the notification to the one-call system in order to establish a ticket; and

(1) performs the main excavation duties for the duration of the ticket; and

(2) supervises all activities, employees and, any Temporary Excavator added to the existing ticket; and shall

(3) name only one Temporary Excavator at a time during the life of the ticket; and

(4) shall notify the one-call system in a timely manner when a Temporary Excavator is to begin work under this ticket; or

(5) is no longer working under the existing ticket; and shall

(6) assume all liability if a damage should occur to an underground facility by any person named as an Temporary Excavator on the existing ticket; and

(7) a private home owner shall not be designated as Primary Contractor for the purposes of hiring a Temporary Excavator.

(v) Temporary Excavator. – “Temporary Excavator” means the person who a primary contractor may identify and add as a subcontracting excavator to an existing ticket:

(1) a Temporary Excavator is a;

(i) piece of rental equipment and its operator; or

(ii) excavation contractor who is not an employee of the Primary Contractor; or

(iii) an equipment operator who is not a direct employee of the Primary Contractor.

(2) prior to beginning work under an existing ticket, a Temporary Excavator shall notify the one-call system with the ticket number to verify that they have been hired to work for the Primary Contractor; and

(3) re-notify the one-call system when their contracted extent of work is completed.

(w) Ticket. -- "Ticket" means a numbered document [that identifies the “Extent of Work” that is] issued by a one-call system to notify owner-members that:

Note: Extent of Work is a requirement for Emergency ticket changes

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

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

(x) Underground facilities information exchange system. -- "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.

(y) 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 pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, ~~[and those portions of poles below ground.]~~

(3) "Underground facility" does not include a stormwater drain **installed prior to June 1, 2020 (Date TBD).**

**(i) stormwater drains installed or replaced or rehabilitated after June 1, 2020 (Date TBD) are an "underground facility" for the purposes of this act. Note: MML & MACo to discuss issue.**

## **§ 12-102. Legislative intent**

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 services provided to the general public.

## ~~**§ 12-103. Scope of subtitle**~~

~~—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 is performed or to be performed:~~

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

~~—(2) without the use of machinery.]~~ §12-120, 128 & 135 will need to be amended to augment this §.

## §§ 12-104, 12-105

Reserved.

## PART II. MARYLAND UNDERGROUND FACILITIES DAMAGE PREVENTION AUTHORITY

### § 12-106. Authority established.

(a) In general. -- There is a Maryland Underground Facilities Damage Prevention Authority.

(b) Legislative intent. -- It is the intent of the General Assembly that the Authority not be funded by appropriations from the State budget.

### § 12-107. Membership.

(a) In general. -- The Authority consists of **eight Stakeholder [nine] members and one public member** appointed by the Governor.

**(b) Each Stakeholder member's primary business, employment or membership shall be determine the Stakeholder's entity they are appointed to represent. (DC statute)**

**[(b)](c)** Composition. -- The nine members shall be appointed as follows:

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

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

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

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

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

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

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

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

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

(d) Limitation -- No ~~company, entity or organization~~ shall have two seats on the Authority.

[(d)] (e) Term. --

(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, a 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 two consecutive full 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)] (f) Removal. -- On the recommendation of the Authority, the Governor may remove a member for incompetence or misconduct.

## § 12-108. Chair.

(a) In general. -- From among its members, each year the Authority shall select a chair.

(b) Method. -- Subject to subsection (c) of this section, the manner of selection of the chair and the chair's term of office shall be as the Authority determines.

(c) Term. -- A member may not serve more than 2 consecutive years as chair of the Authority.

**§ 12-109. Quorum; meetings; compensation and reimbursement.**

(a) Quorum. -- Five members of the Authority are a quorum.

(b) Meetings. -- The Authority shall meet at least once every 3 months at the times and places it determines.

(c) Compensation; reimbursement. -- A member of the Authority:

(1) may not receive compensation as a member of the Authority; and

(2) is not entitled to reimbursement for expenses.

**§ 12-110. Powers.**

(a) In general. -- The Authority may:

(1) adopt bylaws for the conduct of its business;

(2) adopt a seal;

(3) maintain an office at a place it designates;

(4) maintain facilities for the purpose of holding hearings under this subtitle;

(5) employ a staff;

(6) accept a grant, a loan, or any other assistance in any form from any public or private source, subject to the provisions of this subtitle;

(7) enter into contracts and execute the instruments necessary or convenient to carry out this subtitle to accomplish its purposes; and

(8) do all things necessary or convenient to carry out the powers expressly granted by this subtitle.

(b) Code of conduct. -- The Authority shall adopt a code of conduct for its members.

### **§ 12-111. Funding.**

(a) In general. -- 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) of this subtitle; **which includes but is not limited to:**

**(i) all mailing costs; or**

**(ii) delivery or process server fees; or**

**(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) Permitted assessments or charges. -- 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) Charges or assessments prohibited. -- Except as provided in subsection (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. Enforcement.**

(a) In general. -- To enforce this subtitle, the Authority may:

(1) hear complaints for violations of this subtitle;

- (2) after a hearing, assess a civil penalty under § 12-135 of this subtitle; and
  - (3) reach a settlement instead of assessing a civil penalty.
- (b) Fees and penalties; exemptions. --
- (1) The Authority may:
    - (i) establish reasonable complaint filing fees and administrative fees for complaints heard by the Authority; and
    - (ii) use the services of a third party to collect civil penalties.
  - (2) If the Authority determines that an individual cannot afford to pay a fee established under paragraph (1)(i) of this subsection, the Authority may exempt the individual wholly or partly from the fee.
- (c) Prerequisites to assessment of penalty. -- The Authority may not assess a civil penalty against a person unless the person:
- (1) receives reasonable prior notice of the complaint; and
  - (2) has an opportunity to be heard under § 12-113 of this subtitle.

### **§ 12-113. Hearing procedure.**

- (a) In general. -- In a hearing before the Authority for an alleged violation of this subtitle:
- (1) all testimony shall be given under oath; and
  - (2) the proceedings shall be recorded.
- (b) Oath. -- The chair or a member of the Authority may administer the oath.
- (c) Subpoena powers. -- The Authority may compel the attendance of a witness by subpoena.
- (d) Decision. --
- (1) The Authority shall issue its decision in writing, stating the reason for its decision.
  - (2) A copy of the decision shall be delivered or mailed to all parties to the complaint proceedings.

(e) Judicial review. --

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

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

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

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

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

(f) Record. --

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

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

**§ 12-114. Annual reports.**

Beginning January 1, 2012, the Authority shall report each year to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly on the activities of the Authority and any recommendations of the Authority.

**§§ 12-115, 12-116**

Reserved.

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

**§ 12-117. Fund established.**

(a) In general. -- There is a Maryland Underground Facilities Damage Prevention Education and Outreach Fund.

(b) Purpose. -- The purpose of the Fund is to cover the costs of:

- (1) public education and outreach programs; and
- (2) the development of safety procedures to prevent damage to underground facilities.

(c) Administration by Authority. -- The Authority shall hold and administer the Fund.

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

(e) Contents. -- 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) Use. --

(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.

(2) The Authority may make grants to local governments or private entities consistent

with the purposes of the Fund.

## §§ 12-118, 12-119

Reserved.

## PART IV. EXCAVATION, DEMOLITION AND OBSTRUCTION REMOVAL

### § 12-120. Effect of subtitle

(a) In general. -- 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 or obstruction removal in a careful and prudent manner; and

(2) liability for damages or injury that results from the excavation, [or] demolition or obstruction removal.

(b) Effect of failure to comply. -- 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) Effect of failure to become an owner-member. -- If an underground facility is damaged by a person who is in compliance with this subtitle and the owner has failed to become an owner-member in accordance with § 12-123 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) 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.

## § 12-121. Emergency excavation, [or] demolition or obstruction removal

*Emergency definition approved - New language inserted in red below.*

(a) In general. -- 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.

(b) Requirements. – **A Primary Contractor or the** person performing an emergency excavation, **[or] demolition or the removal of an obstruction in or out of the public right of way,** **that necessitates immediate action as defined in § 12-101 of this subtitle in order;** to prevent danger to life, health, **[or] property, or essential public service** shall:

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

(2) immediately notify the one-call system serving the geographic area where the emergency excavation, **[or] demolition or the removal of an obstruction** is performed to inform the appropriate owner-members of the excavation or demolition area.

(i) **the location and extent of work as referenced in § 12-124(b)(1) shall be clear and concise.**

(3) **the owner-member or its contract locator shall respond to an emergency notice as soon as possible but no later than three hours from the transmission of the ticket from the One-Call Center.**

(i) **the **Primary Contractor or the** excavator shall be on site or in communication with the owner-member, their contract locator or their representative within three hours ~~[of notification]~~ from the transmission of the ticket [from] by the One-Call Center; or a mutually agreed upon response time; and shall be registered with the underground facilities information exchange system by the facility owner as defined in §12-101(n) of this subtitle.**

(ii) **the owner-member or its contract locator shall respond to the Underground Facilities Information Exchange System as soon as the “Extent of Work” as referenced in § 12-124(b)(1) of this subtitle is marked or it is determined that no underground facilities are in the delineated area.**

(c) **the life of an Emergency ticket shall not exceed 24 hours from the time of the one-call system notification.**

~~(1) should the emergency repair exceed the life of the emergency ticket, said ticket may be extended daily until the emergency is abated.~~

(i) once the emergency is abated any additional work at the delineated location will require a new standard ticket as described in §12-124 (c)(3) of this subtitle.

### **§ 12-122. One-call system registration and certification requirements; owner-contractor 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) Exception. -- 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) Underground facilities information exchange system. --

(1) The operator of a one-call system shall install and make available an underground facilities information exchange system in its one-call center in the State.

(2) The underground facilities information exchange system shall be available to any caller at all times.

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

### **§ 12-123. Owner-member of one-call system.**

(a) In general. --

(1) An owner shall be a member of a one-call system.

(2) Except as provided in paragraph (3) of this subsection, an owner becomes a member of a one-call system by registering with the one-call system.

(3) The Department of Transportation, its administrations, and the Maryland Transportation Authority shall become members of the one-call system through a separate agreement and using the information collected under § 12-124(b)(2) of this subtitle.

(b) Required submissions. --

(1) An owner-member of a one-call system shall submit to the one-call system, in writing, the telephone number of the person to which calls concerning proposed

excavations or demolitions shall be directed.

(2) An owner-member shall ensure that all contact information provided to the one-call system remains current.

### **§ 12-124. Notice to one-call system.**

*Strengthen "Extent of Work" requirements se §12-101*

(a) In general. – A [person] **Primary Contractor as defined in §12-1-1(u)**; that intends to perform an excavation, [or] demolition **or obstruction removal** in the State shall initiate a ticket request by notifying the one-call system serving the geographic area where the excavation or demolition is to be performed of the person's intent to perform the excavation or demolition; **or**

**(i) intends to add a Temporary Excavator as defined in §12-101(v); to an existing ticket; or**

**(ii) remove a Temporary Excavator from an existing ticket.**

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

(1) the location of the proposed excavation, [or] demolition **or obstruction removal**;

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

(3) the type of work to be performed in connection with the proposed excavation, [or] demolition **or obstruction removal**; **or**

**(4) the correct name and contact information of the Temporary Excavator being used to perform work under the ticket.**

(c) Transmission of ticket request. --

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

(2) Based on information collected under § 12-124(b)(2) of this subtitle, the one-call

system shall promptly transmit a copy of the ticket to the Department of Transportation, an administration of the Department of Transportation, or the Maryland Transportation Authority, as applicable.

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

### **12-125. Re [peat] notification.**

(a) In general. – A [person] **Primary Contractor** shall repeat the notification required under § 12-124 of this subtitle if the person:

(1) has not completed or will not complete the excavation, [or ]demolition or **obstruction removal** within the time period authorized by the ticket; or

(2) intends to expand the excavation or demolition beyond the location indicated in the notice under § 12-124(b) of this subtitle; or

**(3) adds or changes a Temporary Excavator within the time period authorized by the ticket.**

**(b) if a person discovers the marker is obliterated, destroyed or removed they shall notify the call center to request, all or part of the current scope of work, of a valid ticket be re-marked.**

**(c) Additional requirements.** -- A person shall repeat the notification regardless of:

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

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

discuss clear evidence...§12-127(e)

### **§ 12-126. Marking requirements.**

(a) In general. -- An owner-member or its contract locator shall mark its underground facility if the owner-member or its contract locator has determined that a proposed excavation, [or] demolition or **obstruction removal**, specified in the “Extent of Work” contained in the ticket:

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

(2) because of planned blasting, is so near to the underground facility that the

underground facility may be damaged or disturbed.

(b) Method. --

(1) An owner-member or its contract locator shall mark the location of its underground facility specified in §12-126 (a) by marking on the ground within [48] 24? inches on a horizontal plane on either side of the underground facility.

(2) When marking the location of an underground facility, an owner-member or its contract locator shall use the [current] color codes established by the American Public Works Association for marking underground facilities in effect at the time of marking.

(i) If two or more owner-members share the same color code, each owner-member or its contract locator shall include information with the marking that indicates the owner-member of the marked underground facility.

(c) Time requirements; report. -- Except as provided in subsection (d) of this section, within 2 business days after the day on which a ticket is transferred to an owner-member, the owner-member or its contract locator shall:

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

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

(d) Inability to mark within time period; rescheduling; working agreements. --

(1) If an owner-member or its contract locator is unable to mark the location of the owner-member's underground facility within the time period prescribed in subsection (c) of this section because of the scope of the proposed excavation, [or] demolition or obstruction removal, the owner-member shall:

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

(ii) work with the person that intends to perform the excavation or demolition to develop a mutually [agreeable] documented agreement [schedule] for marking the underground facility

~~[-; and shall be registered with the underground facilities information exchange system by the facility owner as defined in §12-101(n) of this subtitle.]~~

(2) If the owner-member or its contract locator and person that intends to perform the excavation, [or] demolition or obstruction removal cannot reach a mutually agreeable schedule for marking under paragraph (1) of this subsection, the owner-member or its contract locator shall mark that portion of the site where excavation, [or] demolition or obstruction removal will first occur, and the owner-member or its contract locator shall mark the remainder of the site within a reasonable time.

(3) If, due to circumstances beyond an owner-member's or its contract locator control and for reasons other than those specified in paragraph (1) of this subsection, an owner-member or its contract locator is unable to mark the location of the owner-member's underground facility within the time period prescribed in subsection (c) of this section, the owner-member or its contract locator shall report to the underground facilities information exchange system that an extension is required.

(4) In connection with extensive or contiguous excavation or demolition projects, the person performing the excavation, [or] demolition or obstruction removal and the owner-member or its contract locator may establish a working agreement regarding the time periods for marking the underground facility.

#### **§ 12-127. Excavation after notice that facilities marked or not in vicinity.**

(a) In general. -- A [person] Primary Contractor may begin excavation, [or] demolition or obstruction removal only after the person receives notification from the underground facilities information exchange system of the one-call system confirming that all applicable owner-members or its contract locator have:

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

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

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

#### **(b) Maintenance of designated marker.**

(1) After an owner-member or its contract locator has marked the location of an underground facility in accordance with § 12-126 of this subtitle, the person performing the excavation or demolition is responsible for the maintenance of the designated marker. Maintenance means:

(i) If the marker is obliterated, destroyed, or removed, the person shall [repeat the

notification required] request the area be re-marked as required under §12-[124]125 (b) of this subtitle; and

(ii) the person shall not, under any circumstance, replace or repair marks.

c) Duties of excavator. – Note: Maintenance Language

(1) The Primary Contractor performing an excavation, [or] demolition or obstruction removal or supervising a Temporary Excavator shall have a copy of the ticket issued by a one-call system as defined in §12-101(s) of this subtitle available, by any means, on the excavation site during the life of said ticket. ~~including, but not limited to, any updates or extensions.~~

(2) A person performing an excavation, [or] demolition or obstruction removal shall exercise due care to avoid interference with or damage to an underground facility that an owner-member or its contract locator has marked in accordance with § 12-126 of this subtitle.

(3) Before using mechanized equipment for excavation, [or] demolition or obstruction removal within 18 ~~24~~ inches of an underground facility marking, a person shall expose the underground facility to its outermost surfaces by hand or other nondestructive techniques.; and

(i) when directional drilling, in order to prevent the occurrence of a cross bore, as defined in §12-101(f) of this statute, a person shall expose by non-destructive techniques all intersecting [existing] marked underground facilities to the depth of the excavation plus 18 inches in the path of the directional drilling operation during the entire directional drilling operation.

(4) A person may not use mechanized equipment to excavate within 18 ~~24~~ inches of the outermost surface of an exposed underground facility.

(5) the excavator shall exercise reasonable care to protect the private facilities including; but not limited to, any unmarked sewer and water laterals.

(d) Notification of discovery or cause of damage. --

(1) The person performing an excavation, [or] demolition or obstruction removal immediately shall notify the owner-member of the facility if the person discovers or causes any damage to or dislocation or disturbance of an underground facility in connection with the excavation or demolition.

(2) If the damage, dislocation, or disturbance results in the escape of a flammable, toxic, or corrosive gas or liquid, the person performing the excavation or demolition immediately shall report the damage to the 911 emergency system.

(e) Effect of knowledge or Clear Evidence of unmarked facility. --

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

(i) has repeated the notification required under §12-124 of this subtitle; and

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

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

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

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

### **§ 12-128. Reimbursement of political subdivision, municipal corporation, or governmental entities.**

(a) Marking fee authorized. -- A political subdivision, municipal corporation, the Department of Transportation, an administration of the Department of Transportation, or the Maryland Transportation Authority may charge, assess, or collect from a person a one-time initial marking fee not exceeding \$35 for reimbursement of expenses that the political subdivision, municipal corporation, the Department of Transportation, an administration of the Department of Transportation, or the Maryland Transportation Authority incurs

(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, municipal corporation, or any of the transportation entities specified in subsection (a) of this section may charge, assess, or collect from a person a re-marking fee not exceeding \$15 for reimbursement of expenses that the political subdivision, municipal

corporation, or any of the transportation entities specified in subsection (a) of this section incurs to comply with this subtitle.

### **§ 12-129. Detectable wires for connecting buildings to water supply or sewerage systems.**

Do we need to address storm drains in this section? See §12-101(o)(3)(i)

(a) In general. -- Subject to subsection (c) of this section, any new or replacement piping that is buried or installed for the purpose of connecting a building to a water supply system, [or a] sewerage system, **or stormwater drain in or out of the public right-of-way**, shall be buried or installed with a wire that makes the piping detectable.

(b) Requirements for wires. -- The wire required under subsection (a) of this section shall:

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

(2) be installed:

(i) in the same trench as the piping that connects the building to the water supply system, ~~or~~ the sewerage system **or stormwater drain**;

(ii) within 12 inches of the piping that connects the building to the water supply system, ~~or~~ the sewerage system **or stormwater drain**; and

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

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

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

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

(c) Inapplicable to repair or partial replacement. -- The requirement of subsection (a) of this section with regard to replacement piping connecting a building to a water supply system or a sewerage system:

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

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

### **§ 12-130.**

Reserved.

## **PART V. DESIGNER REQUESTS**

**§ 12-131. Designer initiating ticket request.**

(a) Notification by designer. -- In connection with a project that may require excavation or demolition, a designer may initiate a ticket request by notifying the one-call system serving the geographic area covering the planned project.

(b) In general. -- A designer initiating a ticket request under this section:

(1) may initiate only one ticket request for a single project; and

(2) shall, in connection with a ticket request:

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

(ii) notify the one-call system of any owner-members from which the designer does not require underground facilities information; and

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

(c) Notification by owner-member. --

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

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

(i) field locates;

(ii) maps;

(iii) surveys;

(iv) installation records; or

(v) other similar means.

(d) Informational purposes only. --

(1) Information provided to a designer under this section is for informational purposes only.

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

## §§ 12-132, 12-133

Reserved.

## PART VI. ENFORCEMENT AND PENALTIES

### § 12-134. Injunctive actions

(a) Authorized. -- To stop or prevent a negligent or unsafe excavation, [or] demolition or obstruction removal, 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 or obstruction removal 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 or obstruction removal that are likely to result in damage to an underground facility.

(b) Joinder of parties. --

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

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

### § 12-135. Civil penalties

Amend §1-100 regarding collections - authority may seek recovery of processing costs, attorney fees, charge losing party all costs associated with a violation.

(a) In general. --

(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, or obstructs an underground facility is deemed negligent and is subject to a civil penalty assessed by the Authority.

(2) The Authority must derive the civil penalty using the three standards set forth in State Government Article §10-1001:

- (i) Seriousness of violation; and
- (ii) Intent “good faith” of the violator; and
- (iii) Past History of violations;

(3) not to exceed:

- (i) [\$ 2,000] \$3,000 for the first offense; and
- (ii) subject to subsection (c) of this section, [\$ 4,000] \$6,000 for each subsequent offense.

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

(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
3. impose other similar measures.

(i) any person that does not meet the conditions of the assessed penalty within the proscribed time frame, shall be subject to double the maximum fine for each violation.

[(3)] (5) A person that violates any provision of Part IV of this subtitle is subject to a civil

penalty assessed by the Authority not exceeding [\$ 2,000] \$3,000; or

(i) any person that files for an Emergency Ticket that does not meet the definition of Emergency, as defined in §12-101(i) of this subtitle shall be subject to penalties under this subsection:

1. a person that falsely notifies the One-Call system of an Emergency shall be

subject to a fine not to exceed \$5,000 per occurrence.

(b) Action to recover. --

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

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

(3) An action to recover a civil penalty under this subsection shall be brought by an owner of a damaged, dislocated, [or disturbed, or obstructed] 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.

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

(c) When penalty assessment prohibited. -- The Authority may not assess a civil penalty under subsection (a)(1)(ii) of this section if an action to recover a civil penalty has been brought under subsection (b) of this section.

(d) Disposition of funds. -- All civil penalties recovered under this section shall be paid into the Fund.

*March 28, 2016 ruling of the Maryland Court of Special Appeals (Reliable Contracting v. Maryland Underground Facilities Damage Prevention Authority); which upheld the constitutionality of the Authority, but also stated that when assessing fines, the Authority must take into consideration three factors 1) Seriousness of the Violation, 2) Intent "good faith" of Violator, 3) Past history of Violations.*

End of Excerpt