

Miss Utility Law (2010)

§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) "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.

(e) "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.

(f) (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 grading, trenching, digging, ditching, dredging, drilling, boring, augering, tunneling, scraping, cable or pipe plowing and driving a mass of material.

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

(h) "Legal holiday" means:

(1) the day on which a legal holiday, as defined in Article 1, § 27 of the Code, is observed; or

(2) a federal legal holiday.

(i) "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.

(j) (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:

- (i) a public utility;
- (ii) a telecommunications corporation;
- (iii) a cable television corporation;
- (iv) a political subdivision;
- (v) a municipal corporation;
- (vi) a steam heating company;
- (vii) an authority; and
- (viii) a unit of the State.

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

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

(2) "Person" includes:

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

(m) "Ticket" means a numbered document issued by a one-call system to notify owner-members that:

(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.

(n) "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) (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.

§12-102.

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.

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.

§12-106.

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

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

§12-107.

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

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

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

§12-108.

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

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

§12-109.

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

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

(c) 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.

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

§12-111.

- (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) of this subtitle; and
 - (3) any other source.
- (b) Except as provided in subsection (a)(2) 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) 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) (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) 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.

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

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

(d) (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) (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) (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.

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.

§12-117.

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

(b) 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) 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.

(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 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 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 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.

(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.

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

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

(2) 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) 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.

§12-122.

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

§12-123.

(a) (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) (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.

(a) A person that intends to perform an excavation or demolition 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.

(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 excavation or demolition.

(c) (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.

(a) A person 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 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.

(b) 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.

§12-126.

(a) An owner-member shall mark its underground facility if the owner-member has determined that a proposed excavation or demolition:

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

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

(b) (1) An owner-member shall mark the location of its underground facility by marking on the ground within 18 inches on a horizontal plane on either side of the underground facility.

(2) (i) When marking the location of an underground facility, an owner-member shall use the current color codes established by the American Public Works Association for marking underground facilities.

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

(c) 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 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) (1) If an owner-member 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, 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 schedule for marking the underground facility.

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

(3) If, due to circumstances beyond an owner-member's control and for reasons other than those specified in paragraph (1) of this subsection, an owner-member 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 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 and the owner-member may establish a working agreement regarding the time periods for marking the underground facility.

§12-127.

(a) A person may begin excavation or demolition only after the person receives notification from the underground facilities information exchange system of the one-call system confirming that all applicable owner-members 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) (1) After an owner-member 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.

(2) If the marker is obliterated, destroyed, or removed, the person shall repeat the notification required under § 12-124 of this subtitle.

(c) (1) A person performing an excavation or demolition shall exercise due care to avoid interference with or damage to an underground facility that an owner-member has marked in accordance with § 12-126 of this subtitle.

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

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

(d) (1) The person performing an excavation or demolition 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 9-1-1 emergency system.

(e) (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 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.

(a) 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 to comply with this subtitle.

(b) 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.

§12-131.

(a) 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) 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) (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) (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.

§12-134.

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

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

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

(b) (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.

(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 not exceeding:

- (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) 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.

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