

Safety & Damage Prevention

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Stakeholder Advocacy



CGA
Common Ground Alliance

Case Study In Damage Prevention Advocacy: Maryland

The following is a case study developed by the Common Ground Alliance (CGA) Stakeholder Advocacy Committee on the effort to rewrite Maryland's Underground Facilities Damage Prevention Law (more commonly known as the Miss Utility Law), which passed the legislature in 2010 and created the Maryland Underground Facilities Damage Prevention Authority (MUFDDPA). The case study is based on a conversation with Jim Barron, executive director MUFDDPA, Tom Baldwin of Baltimore Gas and Electric (BGE), a current member of the MUFDDPA, and lobbyist Bruce Bereano. It's intended to serve as a resource for individuals and organizations conducting or planning to undertake advocacy activity related to state one call and damage prevention legislation.

ORIGIN: What was the basis for advocacy?

The first version of Maryland's Miss Utility law was passed in the early 1980s after a contentious process involving conflicts between facility owners and excavators. After the initial law was passed, these two groups began to see their common interests and work together harmoniously, voluntarily forming a Damage Prevention Committee and Miss Utility Maryland Subscribers Group (members of the one call center), which both continue to meet regularly with the goal of preventing damage to buried utilities.

In 2006, the Maryland Public Service Commission (PSC) drafted new legislation that aimed to create an enforcement mechanism in the state, which was not well-received by facility owners or excavators, who were not yet convinced that the Pipelines and Hazardous Materials Safety Administration (PHMSA) would either enforce the law or direct the PSC to do so. After the passage of the PIPES Act by Congress later that year, PHMSA made it clear that Maryland's law was lacking in enforcement, creating additional pressure that inspired the damage prevention community to form a coalition and change the state law in a way that satisfied the "Nine Elements" of the PIPES Act and uniquely suited Maryland.

LEGISLATIVE STRATEGY: How did you identify and entice lawmakers to champion the legislative proposal? What materials did you use to advocate?

The coalition spent a great deal of time drafting the new legislation and ensuring that it was consensus-based to avoid conflicts among stakeholders following the bill's introduction. Once the coalition agreed on the draft bill, the group developed a report to present to legislators, regulators and other people or groups that the coalition knew would be interested in or affected by the legislation. The report detailed the history of the Maryland one call law, the PIPES Act's "Nine Elements" and the benefits of having enforcement originate from the state level and not the federal level.

Additionally, the coalition's lobbyist worked with coalition members to set up individual meetings with key legislators and subsidiary groups for several months prior to the start of the 2010 Maryland General Assembly session, where the case for the new law was made clear. This tactic ensured that those who would be voting on the law or potentially testifying about it to the General Assembly were fully briefed and had their concerns addressed before the hustle-and-bustle of the legislative session began. It also meant that once the bill dropped, legislators knew that it was a united effort from many stakeholders. Once the session began, meetings with lawmakers occurred as necessary.

Ultimately, the vice chairman of the Senate Finance Committee and the chairman of the House Economic Matters Committee were recruited as the primary sponsors of the legislation.

Coalitions: Was this an effort of an industry and/or government coalition?

How was it formed and who were the stakeholders?

Were there conflicting goals/positions among coalition members?

Many industries worked together to form the coalition, with the Maryland Damage Prevention Committee and the Miss Utility Subscribers Group serving as the starting point. These two voluntary groups already contained most of the relevant stakeholders, including excavators, facility owners, locators, regulators and industry groups/associations.

Early on, the group decided to employ the Common Ground model to invite additional stakeholders to the table. All legislative drafting sessions were open to anyone. Television operators and fiber optic stakeholders, who were not active members of the DP Committee or Subscribers Group, were engaged by the coalition through lobbyist Bruce Bereano.

Key Players: Who were the leaders of the coalition and how were they selected?

Did coalition leaders have political relationships within the legislature?

The coalition appointed a steering team and a chairman. Jim Barron – an excavator and Common Ground Alliance board member who was involved with the Common Ground Study – was selected to chair the group. The steering committee was comprised of a representative from each stakeholder group. For example, Tom Baldwin (BGE) represented the electric stakeholder group. In addition to electric, stakeholders from gas, telecommunications, cable television, the public works, excavators and the one call center were represented. Again, the coalition employed the Common Ground Alliance model, with the steering committee members as “primaries” who communicated with their own stakeholders as well as the other groups.

Many of the coalition members were politically savvy and had relationships with lawmakers, but the group relied primarily on its lobbyist to execute its legislative strategy.

Process/Ground Rules: What ground rules were necessary to keep the coalition together?

How did the group identify key components of the legislation? Was existing legislation used as a template?

The coalition convened regularly, with approximately 85 meetings taking place over a year and a half period. Within the first couple meetings, the coalition decided on following the Common Ground Alliance model and selected a chairman and steering committee members. The final coalition meetings were several hours long as members reached consensus on legislative wording and details, with the goal of having a strong draft bill that the group could easily defend.

At the time, Maryland’s existing damage prevention legislation was quite strong: It fully met six of the PIPES Act’s “Nine Elements,” and partially met the other three. Creating an enforcement mechanism was the primary thrust of the new legislation, as PHMSA and the Maryland PSC had both identified the state law as “lacking teeth” in that area. The coalition decided to create a fully independent, stakeholder-run authority to enforce the Miss Utility law through mandatory training or fines, which would be called the Maryland Underground Facilities Damage Prevention Authority (MUFDPDA).

Other provisions of the 2010 Miss Utility law included changing the response time of owner members to one call tickets to two full business days, the addition of the Maryland Department of Transportation and its administrations as Miss Utility owner members, along with other elements that simplified the law..

CGA Best Practices and “Nine Elements”: Were the Best Practices a central tool of the effort?

Were the Nine Elements of the PIPES Act considered?

CGA Best Practices were frequently referenced in coalition meetings as the group drafted legislation, and where practical, they were implemented. Specifically in the areas of digging procedures and tolerance zones, the Best Practices were instructive.

The 2010 Miss Utility law sought to directly amend the three of the “Nine Elements” that were not already in place in Maryland, including enforcement.

Role of lobbyists: Did professional lobbyists participate in the effort, and if so, who did they represent? Did lobbyists help or hurt the effort?

Yes, the coalition was represented by lobbyist Bruce Bereano, and several of the stakeholders (e.g., facility owners) also employed attorneys or lobbyists. Bruce was ultimately responsible for translating the coalition’s consensus on issues into statutory language for the draft legislation, as well as communicating with stake-

holder lobbyists so that everyone was on the same page and was staying on-message when conducting outreach about the legislation. His legislative strategy, personal contacts and deep knowledge of the Maryland General Assembly made the effort a success.

Legislative Process: Did your legislative strategy prepare you adequately once the bill started moving?

Yes, it did prepare the coalition well after the legislation was introduced. Many subsidiary groups with whom the coalition had met in the months leading up to the General Assembly session ended up testifying on behalf of the bill as a result. The legislation was introduced in the Senate and made it through untouched, and ultimately made it through the House of Representatives with limited changes.

Challenges: Where were the roadblocks encountered during the legislative process? How were they addressed and ultimately overcome?

Yes, there were a few challenges that came up during the legislative process. Maryland is one of the only states that allows facility owners or municipalities to charge a fee for marking underground lines, and the coalition tried to eliminate this provision of the state law in 2010. However, two very politically powerful entities – the Maryland Association of Counties (MACo) and the Maryland Municipal League (MML) – were strongly opposed to making this change. Ultimately, the coalition was not successful in removing this element from the law.

At the end of the process, the Maryland Department of Transportation (MDOT), which had not previously been an owner member of the Miss Utility one call center, came out as being opposed to the law unless certain amendments exempting them from Miss Utility membership were added. Jim Barron and Bruce Bereano met with the bill’s sponsors about this issue, who were displeased that MDOT waited until the eleventh hour to try to kill the bill despite clearly having been aware of its contents for quite some time. Ultimately, a phone call from Jim Barron to PHMSA, coupled with pressure from the chairman of the Senate Finance Committee, convinced MDOT to back down.

Finally, with only a few days left in the session, a House staffer took it upon himself to amend the legislation in a way that made MUFDDPA a state-funded and state-controlled entity. After this version of the bill passed the House, the coalition’s lobbyist had to go back to the chairman of the Economic Matters Committee and explain that the bill needed to be voted on again without this amendment, due to the coalition’s strong desire to self-regulate the Miss Utility law.

STATE EXECUTIVE BRANCH: Was the Governor’s office involved in the process? How were state agency representatives to work with?

Governor Martin O’Malley was not involved in the process. While MDOT proved challenging, the PSC sent its lobbyist to attend the committee hearings on the bill in support of the legislation, which was very helpful.

Lessons Learned: Name a key success and something you would never do again from this experience. A key success was creating the completely unique and independent enforcement authority, MUFDDPA. The coalition decided to pattern its effort after the Common Ground Alliance model and felt that it achieved that goal. Some coalition leaders feel that a misstep might have been not aggressively engaging MACo and MML from the beginning of the process. Although these groups were invited to the initial coalition meetings, they did not attend and the coalition did not pursue them further, and they proved to be a hurdle in the legislative process. Others feel that deeply engaging MACo and MML earlier would only have derailed the process.

