

# Revisions to Maryland’s “Miss Utility Law”

Senate Bill 877/House Bill 1330

2020 Legislative Session



**MARYLAND UNDERGROUND FACILITIES DAMAGE PREVENTION AUTHORITY**

7223 Parkway Drive, Suite 100, Hanover, Maryland

James A. Barron, Executive Director

[www.mddpa.org](http://www.mddpa.org)

410-789-2102



## TABLE OF CONTENTS

<i>About the Maryland Authority.....</i>	<i>3</i>
<i>Maryland Authority Members .....</i>	<i>4</i>
<i>Executive Summary .....</i>	<i>7</i>
<i>Stakeholders Re-write Work Group .....</i>	<i>8</i>
<i>Proposed Changes.....</i>	<i>12-20</i>

## About the Maryland Authority



The Maryland Underground Facilities Damage Prevention Authority (“The Authority”) was created by the Maryland General Assembly in 2010 to enforce the Miss Utility Law (Annotated Code of MD, Public Utilities, Title 12). This legislation was required by actions taken by the federal government which ordered all states and U.S. territories to create a One-Call Compliance Program. The Authority seeks to protect all underground facilities of owners in the State of Maryland from destruction, damage or dislocation in order to prevent death or injury to individuals; property damage to private and public property; and the loss of services provided to the general public.

The Authority is a quasi-judicial agency of the Executive Branch of Maryland state government; whose nine (9) members are appointed by the Governor and sit as Administrative Law Judges when deliberating over violations of the Title XII statute. The Authority does not seek grants or aid from the State of Maryland. The Authority’s operational budget is supported by an annual federal grant; revenues from outgoing Miss Utility tickets as well as grants from local subscribers. All fines collected by the Authority are used solely for Education and Outreach purposes. Maryland counties and Municipalities are exempted from the ticket surcharge and any other charges associated with the issuance of a Miss Utility ticket under the current statute.

At the request of the Maryland subscriber’s group and other stakeholders, the Authority undertook the facilitation of the complete overhaul of the Title XII statute “the Miss Utility law” in Maryland. The Authority invited all significant stakeholders and allied groups to participate in this major undertaking; which began in May 2017 and culminated in November 2018 after meeting twenty-nine times. The process was governed by consensus, therefore, the final product, the 2020 Title XII re-write bill, is a document borne out of debate and compromise.

# The Maryland Authority

(All Members Are Appointed by the Governor)

<b>Member</b>	<b>Representing</b>	<b>Company</b>
Joyce P. Brooks Exp. 9/30/2021	General Public	Somerset Group Consulting, Inc.
Paul Kwiatkowski Exp. 9/30/2021	Maryland Association of Counties	Howard County DPW
Walter F. Gainer Treasurer Exp. 09/30/2020	Associated Utility Contractors of Maryland	W. F. Wilson & Sons
Derek Shreves Exp. 9/30/2020	Maryland Municipal League	Town of Sykesville Public Works
Michael I. Jewell Exp. 9/30/2020	Underground Facility Owner	Cumberland Gas
Tamara Neal Exp. 9/30/2021	Underground Facilities Owner	Washington Gas
Erik L. Philips Chairman Exp. 9/30/2021	Underground Utility Locator	Utiliquest
Kellyn H. Ruddo Secretary Exp. 9/30/2020	One Call Centers	One Call Concepts, Inc.
Amber D. Brengel Exp. 9/30/2021	Public Works Contractors Association	Utilities, Inc.

## **Staff**

James A. Barron  
Executive Director

Susan A. M. Stroud  
Deputy Director

Deena L. Madore  
Data Manager

Bruce Bereano  
Staff Advisor

## Executive Summary

The Title XII law has been in effect since 2010, with very few changes over the ensuing years. At the request of the major Maryland stakeholders, which included: Washington Gas, BGE, PEPCO, Columbia Gas, Chesapeake Utilities, Comcast, Verizon, Pipeline Operators, Contract locators, Utility Contractors and Miss Utility. In addition, organizations representing commercial developers, home builders, multi-family housing, Realtors, plumbers MML, MACo, MDOT/SHA and other allied industries were invited to participate in the re-write project. A majority of those invited participated on a regular basis, some organizations chose not to participate or send representatives. Each participating organization selected a lead person and an alternate to represent their interest groups

Targeting a 2020 General Assembly session introduction date, the Authority convened a steering committee to tackle the overhaul of the Title XII statute. The group agreed to operate under a “consensus model”; which was utilized when Common Ground Study was conducted to develop, in conjunction with the U.S. Department of Transportation – Pipeline and Hazardous Materials Administration (PHMSA), the national model for underground facility safety; which mandated the establishment of State Damage Prevention Programs in all fifty states and its territories.

The committee met twelve (12) times in 2017 and another eighteen (18) sessions in 2018 with a number of significant agreements coming forward for the 2020 draft legislation. Some of these proposed changes include:

- **Definitions** -- New or enhanced definitions were added for: Clear Evidence, Contract Locator, Cross Bore, Damage, Detectable and Locatable, Emergency, Excavator, Extent of Work, Mark, Primary and Temporary Excavator, Trenchless Technology, Underground Facility.
- **Exemptions** -- The Homeowner Exemption was removed at the request of PHMSA/U.S.DOT. Homeowners will not have to join Miss Utility but will have to call Miss Utility (811) if they plan to do any major digging on their property. However, “reasonableness” would not require an 811 call if flowers are being planted in an existing flower bed.
- **Utility Detection Improvements** -- New language was added that all utilities must be “Detectable and Locatable” installed after 10/1/2021. This is an amplification of the tracer wire requirements added in 2016 so that previously unlocatable facilities such as storm sewer lines can be located in order to avoid cross borings
- **Authority Operations** -- Some housekeeping changes have been made to the Authority processes, such as Operating Procedures, Member Replacement, Funding, Enforcement and Hearing Procedures.

- **Emergency Tickets** -- Additional language was added to clarify what a true emergency excavation or demolition is. This was done to address the large number of abuses of the Emergency Ticket designation and to enhance the response time of owner /operators and contract locators when “Emergencies” are identified and reported to the One-Call Center.
- **Subcontractor Relief** -- A “Temporary Excavator” category has been added to allow contractors to bring a subcontractor in under his existing ticket in certain circumstances. This was done to reduce the number of inadvertent violations caused by the common practice of using an operator and his equipment on an as needed basis.
- **Markings** -- Changes were made to the marking requirement to clarify when a contractor should call Miss Utility for additional markings, such as when the marks need to be refreshed, the excavation site has enlarged, or a temporary excavator is to be used.
- **Ticket Size** – Guidelines were added to clarify the enhanced definition for “Extent of Work”. This change will reduce the size and scope of the marking request to allow the locator to focus a more defined area of disturbance and cut down on unnecessary markings.
- **Designer Tickets** -- “Designer Requests” designations have been broadened to “Other Requests”. As a result, any Non-Excavation ticket request has been paired down to providing accurate contact information so that the designer can have ready access to the underground facility owner’s representative. And, notification language was added so that excavators who suspect a potential Cross Bore, can call Miss Utility to alert the facility owner of the potential issue.
- **Civil Penalties** -- Language from the March 26, 2016 Maryland Court of Appeals decision in the Reliable Contracting vs. MUFDP case, that requires the Authority to consider three factors when assessing fines has been added to the statute. Allows the increase of maximum fines for all subsequent violations. Current law only applies a second failure to call Miss Utility. Also, at the discretion of the Authority a penalty for failing to appear at a formal hearing may be assessed and would allow fines to be assessed on Emergency Ticket abusers.
- **“Call before you Clear”** -- Several jurisdictions around the country have initiated programs to encourage plumbers and public works departments to call before they clear sewer clogs outside the public right-of-way. This issue has arisen as a result of the proliferation of “legacy” cross-bores and the ensuing dangers of clearing sewer clogs with mechanical devices. Several remedies are under discussion by the Title XII rewrite committee. In 2016, the Authority amended the Title XII statute to require sewer laterals on private property to be equipped with detectable tracer wire in order to address threats of cross boring to homeowners.

## Cross Bores

*Example: Unlocatable storm sewer with an intersecting gas line --  
This is a classic case of a “Cross-Bore”.*



**“MISS UTILITY LAW”  
Stakeholders Re-write Work Group**

NAME	Organization
Andes, Guy <b>Alternate</b>	WSSC
Ballentine, Tom <b>Voting</b>	NAIOP
Barron, James <b>Facilitator</b>	MUFDPA
Beall, Whitney	Beall & Sons
Beckert, Erv	PG County
Bereano, Bruce <b>Staff Advisor</b>	
Black, Kevin <b>Voting</b>	WSMPA
Bond, Dave	MDOT/SHA
Breitschwerdt, Whitney	Ferguson
Brown, Annette	Verizon
Brown, Leba <b>Voting</b>	WSSC
Brown, Scott <b>Voting</b>	WGL
Carroll, Jim	MDE
Clementson, John <b>Voting</b>	MDPSC
Corbin, Lenny <b>Alternate</b>	Gray & Son, Inc.
Crowley, Jim	Easton Utilities
Daffar, George	Utiliquest
Deist, Doug	SIGNTRAKER Tech.
DiPietro	MACo
Donoho, Candace <b>Voting</b>	MML
Durbin, Linda <b>Alternate</b>	Comcast
Dye, Chris	SIGNTRAKER

Ellison, Jack	Wash. Gas
Evans, Robert <i>Alternate</i>	Wash. Gas
Feronti, Joe <i>Alternate</i>	USIC
Gaines, David <i>Voting</i>	MBIA
Gainer, Walter <i>Voting</i>	AUC
Garner, Jeff	MML
Gayle, Wm.	MDOT/SHA
Graf, Lori <i>Alternate</i>	MBIA
Greenfield, Aaron	MMHA
Gregory, Deidre	SHA
Haines, Marc	BGE
Hamilton, Tim	Columbia Gas
Hamrick, Mark	Verizon
Harner, Mike	Balt. County
Harris, Martin	PG County
Hastings, Tom <i>Voting</i>	OCCLS, Inc.
Healy, Vince <i>Voting</i>	Verizon
Herrera, Mitsuko	Montgomery County
House, Tammy	Comcast
Hurley, Lisa	SMECO
Israel, Tom	Dominion Trans.
Jackson, Bill <i>Voting</i>	SHAA
Jewell, Michael	Columbia Gas
Jorch, Bill <i>Alternate</i>	MML
Lampley, Damion	WSSC

Lolli, Emily	Comcast
Johnson, Lawrence	PinPoint
Kahl, Sam	MDOT/SHA
Kaptein, Tim Voting	Comer Const.
Kerfoot, Rick Voting	Comcast
Keyser, Steve	CHPK
Kim, Byung	Utiliquest
Kinnally, Kevin	MACo
Ligon, Peter	Ligon & Ligon
Looney, Sean	Comcast
McCadden, Charlie Voting	BGE
Mehu, Natasia Voting	MACo
Miller, Guy	Anchor Construction
Neal, Tamara	WGL
Openshaw, Dave	Ligon and Ligon
Parks, Dora	MISS UTILITY
Parron, Sean	Pepco
Patel, Satish Alternate	WSSC
Peck, Jim	MML
Phillips, Erik Voting	Utiliquest
Pope, Dominic	Gaines & Co.
Ratliff, Chris	Lambert Cable
Ravindiran, Ranjith	ATM Engineering
Rosenblum, A.	MBIA
Ruddo, Matt Voting	One Call Concepts

Seymour, John	WSMPA
Shelton, Jo	B. Frank Joy
Simmons, Brian <i>Alternate</i>	OCC
Small, Charles	WSMPA
Smith, Ken	BGE
Smith, Thurman	Utiliquest
Spriggs, Diane	WSSC
Stroud, Susan <i>Deputy Facilitator</i>	MUFDPA
Swauger, Calvin	Columbia Gas
Taylor, Susan <i>Alternate</i>	Verizon
Taylor, Brian	Easton Utilities
Taylor, Bucky <i>Voting</i>	PWCA
Vogel, Juan	Utiliquest
Weath, Fred	MWPHCL
Wedding, Jason	OCC Locating
Welling, Sherry	Gray & Son
Wilson, Walter	Montgomery Co.
Woolbright, Kevin <i>Voting</i>	WSSC

**Proposed Amendments to the Maryland “Miss Utility Law”**

## 2020 Legislative Session

### §12-101. Definitions

- After subsection (c) in §1-101 all subsequent subsections have been re-numbered.
- Subsection (d) is a new definition added to clarify circumstances in §12-127(c)(2) & (4)(e) when underground facilities may be present
- Subsection (e) is added to connote the relationship between the locator to the facility owner. The addition of the term “contract” has been added throughout the title for consistency.
- Subsection (f) is new language identifying “Crossbores” an industry “term of art” in §12-127(c)(i) & §12-131(a)(2) when an underground facility directly intersects another underground facility causing a breach or damage.
- Subsection (g) is new language which describes an act which can lead to a violation of the statute; this should not to be confused with the noun “damage” which is the recoupment of financial loss in §12-120.
- Subsections (j)(1) & (2) were added to create a differentiation between the use of “electronic” detection and the use of “visual” means for locating an underground facility. There is reference to a grandfather clause for “...all underground facilities” in §12-103. And is referenced again in §12-129, with regards to water and sewer connections on private property.
- Subsection (k) is new language added to clarify and strengthen the provisions in §12-121; which describe the circumstances of an “emergency”. Actions that constitute the violation of the term “emergency” will be subject to increased penalties under §12-135.
- Subsection (l)(2), a qualifier has been added to the definition as well as a new category of excavation activity.
- Subsection (m) for purposes of clarity, a definition has been added for “excavator”, who is the “person” engaged in the action of excavation. This is not be construed to be interchangeable with subsection (u) which refers to the owner of an “underground facility.”
- Subsection (n) is new language added to mirror subscriber business rules when calling the One-Call system as referenced in §12-121 & §12-126 of the subtitle.
- Subsection (r) is new language which describes the means of physical identification of an underground facility in §12-125 & §12-126.
- Subsections (v) & (w) “Primary Contractor” & “Temporary Excavator” are a substantive change to this

article, which will allow an excavator to operate under another entity's one-call ticket on a limited basis. References of these circumstances are found in sections §12-121; §12-124; §12-127 & §12-130. This provision was created to reduce the over-use of "emergency tickets" by members of the excavating community.

- Subsection (y) is new language added to address the use of new techniques in the installation and repair of underground facilities.
- Subsection (aa) (1) & (2) replaces original subsection §1-101 (o) in its entirety. Note: the use of the term "underground facility" has replaced the term "underground utility" throughout the subtitle for the purposes of consistency.

### **§12-103. Scope of Title**

- The provisions of this subtitle §12-103 – "Scope of Title" have been stricken from this title in its entirety. The private homeowner exemption currently in the statute has been removed due to the federal requirement **CFR198.53. U.S. Department of Transportation – Pipeline and Hazardous Materials Safety Administration (PHMSA)**. The private homeowner exemption in the Maryland statute; which precludes a homeowner from calling the One-Call system prior to digging at their private residence for any reason, has been a source of concern for the Maryland Underground Facilities Damage Prevention Authority.
- PHMSA has consistently noted this exemption to the Maryland statute during its annual program evaluations and certification reviews of State pipeline safety and damage prevention law enforcement programs. Therefore, the Title- 12 Re-write Committee has elected to remove the exemption from the statute in order to satisfy PHMSA requirements and ensure that Maryland's damage prevention program remains adequate. It should be noted that a private homeowner shall not be required to join the One-Call system if they plan to excavate on their own property. (See Revisor's note for §12-123.)
- Section §12-103 has been re-used to address the issue of **unlocatable** and **undetactable** underground facilities, which can lead to the development of "cross bores" (see §12-101(f)). Crossbores have become a serious danger in Maryland and across the country leading to deaths and major property damage. A period of one year from the time of enactment has been added in order to assist counties and municipalities and other entities in their efforts to comply with the requirement to make their underground facilities either locatable or detectable.

### **§12-106. Authority Established**

- A non-substantive change was made to subsection (a) for clarification of the Authority's membership breakdown.
- Subsection (b) was created to emphasize that a stakeholder member's employer or business must adequately reflect the area of expertise the Authority seat requires.
- Subsection (d) has been added in order to clarify the Maryland residency requirement for membership on the Authority. In addition, a new subsection (e) was added to limit the number of votes one type of associated industry could control on the Authority.
- Subsection (h) has been added regarding replacement appointments to the Authority; the new subsection sets a time limit each named member entity must comply with when appointing or re-appointing a representative to the Authority. If the timeframe is not adhered to, the Authority will be given the ability to make a recommendation to the Governor for a replacement (within the same membership category). This change has been made because in several instances since the Authority's inception, certain appointments have taken up to a year to be completed; which has created quorum issues and caused existing members to continue participation well past the expiration of their term.

#### **§12-111. Funding**

- New language has been added to this subsection: (a)(2), which will allow the Authority to assess reasonable fees to cover any additional administrative costs accrued during the processing of a Notice of Probable Violation (NPV). A schedule of these fees will be posted on the Authority website. (i.e. FOIA requests, process service etc.)
- The language in section (c)(b) has been stricken in order to allow the assessment of operational costs in addition to filing fees.

#### **§12-112. Enforcement**

- In this subsection, current Authority processes, which are outlined in the Authority's operating procedures and by-laws have been added to the statute for clarity and consistency. These processes are currently available for download on the Authority website [www.mddpa](http://www.mddpa).
- A new (5) has been added to this subsection in order to codify the Authority's ability to continue with a scheduled hearing, if a violator or complainant fails to appear after being given sufficient notice of the date, time and location of the hearing via certified mail.

#### **§12-113. Hearing Procedure**

- Subsection (1)(i) is new language allowing the administration of the Oath by another member of the Authority in the Chairman’s absence.
- New subsection (2) has been added to codify the practice of recording and preserving all hearing proceedings.

**Part III**

**§12-117 Fund Established**

- Subsection (f)(1)(iii) has been added to give the Authority the ability to use monies from the Education and Outreach Fund. These funds are derived by fines assessed on violators, by the Authority. Should a fund balance shortfall occur in the Authority Operational Account, funds from the Education and Outreach Fund would be made available for operational purposes.

The Operational Account is derived from a 5-cent surcharge on all facility owners (with the exception of counties and municipalities) on all outgoing Miss Utility ticket (see SB480; 2016 – Public Utilities; §12-111 Annotated code of Maryland, 2010 Replacement volume & 2015 supplement). The proceeds from that dedicated funding source has become unreliable due technical changes in the ticket processing system, which has caused a marked decline in the number of tickets being processed by the One-Call system.

Another major overhaul of the ticket processing system of the One-Call ticketing system will go into effect in late 2019 further impacting Authority revenues. At present, One-Call members are not willing to consider an increase to the ticket surcharge to offset the reduction in ticket volume.

**PART IV**

**§12-120. Effect of subtitle**

- In this subsection the word “financial” has been added as a modifier to the term “damage” in order to differentiate between financial impacts and the physical damage to underground facilities.

### **§12-121. Emergency excavation or demolition**

- This subsection has been substantially reworked (see (a)(1) & (2)) in order to clarify the circumstances in which “emergencies” are justifiable. The intent of these changes is to narrow the ability of any entity from abusing the “emergency ticket” process”. The unnecessary filing of emergency tickets has become too numerous. The emergency ticket abuse is both costly and time-wasting for both facility owners and their contract locators, and unfairly impact situations that require emergency action.
- Subsection (a)(2) was added to show that “emergency tickets” are self-limiting in nature and as such cannot be updated.
- Subsection (b) “Requirements” have been reworded for consistency with the new definition of “emergency” see §12-101(k) and other amendments to this subsection. Including (b)(1) which requires a more clear and specific description of the work required in order to abate the emergency.
- New subsection (b)(4) delineates the responsibilities of the owner-member and their representative when responding to an emergency request. Communication between the involved parties must take place within a three (3) hour timeframe. This change has been made in order to initiate a response, either by the physical presence of the owner-members representative or by verbal communication between the parties.

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

- This subsection’s legislative intent is reinforced in the November 19, 1998 Opinion of the Maryland Attorney General (83 Opinions of the Attorney General; Opinion No. 98-021 (November 19, 1998) which addressed the issue of requiring Political Subdivisions and State Agencies to be members of the One-Call system which stated ... “The essential provisions of the present Miss Utility Law were enacted in 1990 amendment of Article 78, §28A (*Article 78, 28A as subsequently amended, was repealed along with the rest of Article 78 when the Public Utilities Article was created. Chapter 8, §1, Laws of Maryland, 1998. The repeal of Article 78 and the enactment of the new Article took effect on October 1, 1998. Chapters 8, §13, Laws of Maryland 1998. See also Chapter 653, Laws of Maryland 1998.*) However, it is not the intention of the revised statute to require private homeowners to become members of the One-Call system with the striking of §12-103.

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

- This subsection (a) has been change for stylistic reasons.
- A new subsection (1) has been added creating the ability for a “temporary operator” to perform work under an existing ticket. This is a substantive addition to the statute, since previously only one person could excavate under a ticket. This change allows, in certain circumstances, the addition of an excavator when their services are needed as a result of an emergency or unexpected circumstance. The use of a “temporary excavator” is limited by statute and safeguards have been added to prevent abuse.
- Subsection (b)(4) has been added to emphasis the importance of having the correct contact information for the “temporary excavator

**§12-125. Repeat notification.**

- The title of this subsection has been amended to “Re-Notification” to better reflect current practices.
- A new subsection (b) has been added to emphasize the requirements that any person involved in a specified excavation has certain responsibilities. If any marking at the excavation site has been disturbed etc. In these instances, only a “contract locator” can make repairs to the marks.
- New subsection (e) creates a clearer tie to §12-126 – Marking Requirements.

**§12.126. Marking requirements.**

- New definition “extent of work” (§12-101(n)) is now used in this subsection.
- For the purposes of consistency, the “contract locator” designation has been added throughout this section to reflect the new definition §12-101(e). In addition, the term “extent of work” as defined in §12-101 (n) is now referred to in the general provisions of this section.

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

- The title of this subsection has been changed to “Requirements prior to performing excavation or demolition” to provide clarity and to reflect current best practices.
- New language has been added to subsection (a) in order to amplify the responsibilities of person performing excavation or demolition activities. This includes but is not limited to the care of any markers on the excavation or demolition site.
- New subsection (b)(1)(ii) added to prevent any unauthorized person from replacing or repairing existing markers at a specified excavation or demolition site.
- In subsection (c)(1) language has been added that requires all appropriate persons to be able to present a copy of the ticket issued by the One-Call System by any means (i.e. digital or paper) upon request. This includes a “temporary excavator”.
- In subsection (c)(2) the “clear evidence” (§12-101(d)) requirement has been added.
- New subsection (3)(i) has been added to address the use of new technology and the issue of “cross bore” prevention. An excavator must hand dig or use other means to a certain depth to expose an existing underground facility.
- Subsection (e) new language puts the responsibility on the excavator to address the potential of an underground facility if no marks are present but other factors exist

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

- In subsection (b) an incorrect cite was incorporated in the legislative language the 2010 (§12-108(b)). The error has been corrected with the citing of the appropriate subsection: §12-125(b).

**§12-129. Detectable Wires.**

- The new title of the subsection is now: UTILIZING DETECTABLE OR LOCATABLE METHODS ON PRIVATE PROPERTY WHEN CONNECTING BUILDINGS TO WATER SUPPLY, UNDERGROUND STORM DRAIN SYSTEMS OR SEWERAGE SYSTEMS.
- The title of this subsection has been amended to address the change in the requirements for locating underground facilities (see§12-101(j)(1) & (2)) Note: This subsection applies to private property only and adds underground storm drain systems and other types of underground facilities to the category of devices that are required to be located after a certain date and under certain circumstances.

**§12-130. Primary Contractors and Temporary Excavators.**

- This new subsection was added to the statute to provide for the addition of a “temporary excavator” to an existing ticket for a limited period and delineates the responsibilities of the “primary contractor” whose ticket the “temporary excavator can operate under.
- Subsection (b) clarifies the various scenarios in which a “temporary excavator” can be named and utilized.

#### **The Part V. DESIGNER REQUESTS.**

- The heading has been amended to expand the categories of requests of a non-excavation nature. This subsection formally addressed only Designer requests for information. The new heading is now OTHER.

#### **§12-131. Designer initiating ticket requests.**

- This subsection has been amended to reflect the change to Part V. A majority of this subsection has been renumbered, amended or stricken to reflect current practices and business rules. The new emphasis of this subsection is to provide flexibility for the facility owners as well as to provide accurate contact information for each affected underground facility for the designer.
- New subsections (a)(2) (i) & (ii)) have been added to encourage excavators who suspect the presence of a cross-bore to contact the One-Call Center to request a non-excavation ticket.
- This action will trigger the notification of underground facility owners in that area that a potential cross-bore (see §12-101(f)) exists. New subsection (3) requires the facility owner to be responsive but does not dictate what actions to take.

### **PART VI. ENFORCEMENT AND PENALTIES**

#### **§12-135. Civil penalties.**

- Language has been stricken in subsection (a)(1) that requires that a damage of any type must occur to an underground facility in order for a violator to be found negligent and apply civil penalties for the violation.
- Subsection (a)(2) has been added to address the 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. Since that high court ruling, all violations reviewed by the Authority are screened through an objective rating system, called the Standardized Fining matrix (SFM). Fines are weighted using the three (3) factors.
- Subsection (a)(2)(3)(ii) “subject to subsection (c) of this section” was stricken. This was a drafting

error in the 2010 legislation (see SB 911/HB1290; 2010 session of the MD General Assembly); which create a double jeopardy situation. The original legislative intent was to utilize either the powers of the Authority OR the civil courts, NOT BOTH.

- Subsection (a)(4)(1) incorporates into existing language the ability of the Authority to fine for subsequent violations of ANY part of the section IV which has previously only applied to violations of §12-124(2) – Failure to notify the One-Call system.
- New subsection (a)(5) establishes a three (3) year statute of limitations on violations for subsequent violations, unless the violator is not in good standing with the Authority (i.e. fails to participate in Damage prevention training or has an outstanding fine balance). Violators may also be fined additionally for failure to act on Authority recommendations within the timeframe established by the Authority. This language is being added due to the lack of response from violators and the excessive cost of multiple notifications from the Authority seeking payment of fines and participation in Damage Prevention training.
- New subsection (a)(7) allows the Authority to assess an additional fine of \$200, when a violator or complainant, after proper notification of a scheduled hearing, fails to appear. This action is intended to encourage attendance at hearings and as an offset for hearing costs; which are currently held at no cost to the parties involved.
- New subsection (a)(8) establishes a maximum fine for filing “emergency tickets” for non-emergency purposes. This practice has become an enormous problem in Maryland and has become one of the leading abuses of the Miss Utility law.

### **Section 3**

- This new section has been added, at the request of MDOT/SHA and certain agencies of political subdivisions that require permits to excavate in their deeded rights-of-way. The new language clarifies that any Authority actions would not supersede or negate the requirements of that permitting agency.