



UNIVERSITY of MARYLAND  
FRANCIS KING CAREY  
SCHOOL OF LAW

# Maryland's Legislative Process and Local Involvement

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LEGAL RESOURCE CENTER  
FOR PUBLIC HEALTH POLICY



**The Network**  
for Public Health Law

# Roadmap

- Legal Resource Center and the Network for Public Health Law
- Getting involved...
  - Lobbying vs. Advocacy (What's OK?)
  - The legislative process in Maryland

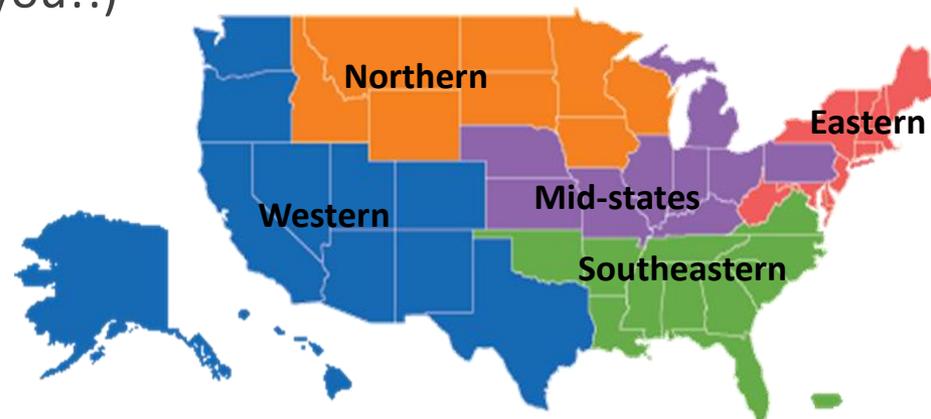


# The Legal Resource Center for Public Health Policy (LRC)

- Established in 2001, the LRC is a *grant-funded* legal center;
- Offers *pro bono legal technical assistance* on a wide-range of public health issues, including tobacco regulation, injury prevention, and reduction of obesity and hypertension;
- *Guidance provided to:*
  - State and local governments;
  - Legislators;
  - NGOs;
  - Health advocacy groups;
  - State agencies;
  - Individual citizens

# The Network for Public Health Law

- ◆ Funded by Robert Wood Johnson Foundation since 2010
  - ✓ One National Office
  - ✓ Five Regional Offices
- ◆ Our Purpose—*To increase the use and effectiveness of public health laws in protecting, promoting, and improving public health*
  - ✓ Legal Technical Assistance
  - ✓ Products (fact sheets, issue briefs, 50-state compilations, blog, webinars, updates, alerts, etc.)
  - ✓ Network of experts (That means you!!)
  - ✓ Join at [www.networkforphl.org](http://www.networkforphl.org)



# The Network for Public Health Law: School Health Work

- ✓ State laws addressing the school breakfast gap
- ✓ Partnership with National Association of School Nurses:
  - ✓ School nursing SOP laws
  - ✓ Data privacy and data sharing in school nursing (FERPA compliance)
  - ✓ Reducing chronic absenteeism
  - ✓ The role of school nurses in students' return-to-school after TBI
  - ✓ Medicaid reimbursement for school nursing services
- ✓ Return-to-play and return-to-school laws
- ✓ School discipline and public health
- ✓ School vaccination laws
- ✓ High school start times and healthy sleep



# Competing Realities

- Need to promote and protect student health
  - ✓ Stagnant or shrinking budgets
  - ✓ Greater demand than ever for evidence-based solutions
  - ✓ Population-level change often requires policy change
- ***You*** are uniquely qualified to advocate for the community's health and to educate policymakers!



# Advocacy vs. Lobbying

*While all lobbying is advocacy, not all advocacy is lobbying*



- Advocacy and lobbying are similar, and the distinction is not always clear.
- Main question: What is the source of funds?
  - ✓ Federal government?
  - ✓ State or local government?
  - ✓ Private?
  - ✓ Non-profit?

# There are restrictions on lobbying.

- Internal Revenue Code (Nonprofit organizations)
- Consolidated Appropriations Act (Federal Grantees)
- State/tribal/local law
- Restrict **direct and grassroots lobbying**

*There is usually a way to get advocacy work done without violating the law!*



# Direct Lobbying



- Three Elements:

1. **Direct written or oral communication** to a legislator, legislative staff, or other government official working on legislation
2. That **reflects a view** (for or against)
3. **Specific legislation.**
  - **“Specific legislation”** means introduced bills, legislative proposals not yet introduced, budget bills, ballot measures, U.S. Treaties and confirmation of appointees

# Grassroots Lobbying

- Four Elements:

1. **A written or oral communication to the public** (e.g., speeches, ads, op-eds, blog)
2. That **reflects a view**
3. On **specific legislation, and**
4. Includes a **call to action.**

**URGENT**  
**CALL YOUR**  
**LEGISLATORS**  
**NOW**

# What's a a call to action?



- Asks audience to contact a legislator;
- Identifies a legislator as being the audience's representative;
- Provides legislator's contact information;
- Provides a vehicle for contacting the legislator (e.g., form email, petition);
- Identifies a legislator's position on the legislation as being undecided or opposing the communication's viewpoint;
- Identifies a legislator as sitting on the voting committee; **OR**
- A paid ad that expresses a view on prominent legislation within 2 weeks of a vote, even if it doesn't contain a CTA.

# Nonprofits: Internal Revenue Code

- Limits, but does not prohibit, **nonprofits** from lobbying
- “In general, no organization may qualify for section 501(c)(3) status if a **substantial** part of its activities is attempting to influence legislation (commonly known as lobbying). A 501(c)(3) may engage in some lobbying, but too much lobbying activity risks loss of tax-exempt status.” – IRS website
- What is *substantial*?
  - Case-by-case determination made by time and money spent by organization on lobbying (“insubstantial part” test)
  - Devoting **less than 5%** of activities to lobbying is **not** substantial
- Restrictions apply to legislation only, meaning Congress, any state legislature, or local legislative body
  - IMPORTANT: Does **not** include executive, judicial, or administrative bodies\*

# Key Points

- Non-profits may educate the public, but all participation in community affairs must be *nonpartisan*
- Non-profits can, for example:
  - Advocate on an *issue*
  - Conduct candidate forums with *all* candidates
  - Send questionnaires to *each* candidate
  - Voter education
  - Voter registration
  - Candidate education

# Federal Grantees: The Consolidated Appropriations Act

- Applies to recipients of federal HHS grant funds
- Prohibits all direct and grassroots legislative lobbying
  - Same rules as for nonprofits
  - Applies to legislation pending in federal, state and local legislative bodies
- Lobbying on federal, state, or local level executive actions
  - Restrictions now extend to agency regulations, administrative actions, and executive orders\*
  - Amicus briefs are still OK!

# What is allowed?

- **Nonpartisan policy research, study, or analysis**
  - **“Full and fair exposition”** that allows recipient to form an independent opinion
  - May give a viewpoint (and even name a legislator)
  - Cannot contain a Call to Action
  - Must be broadly disseminated
- **Educating the public** on:
  - Personal health behavior and choices
  - Health issues and their public health consequences
  - Examples of best practices or success stories across states or localities

# What is allowed?

- Local health and education departments may work with the state legislature, city council, etc., if it is within the **normal scope of their work**
  - **Important:** Non-government grantees, may upon formal, written request, provide technical assistance to public officials (e.g., testify before a committee)
- Responding to request from legislative body for technical advice or assistance
  - **Note:** Request must be in writing from a committee or legislative body (**not** an individual legislator) and the response/advice must be available to all members of that body. May advocate a viewpoint or opinion if the request ***specifically asks for one.***

# Key Points

- The lobbying restrictions only apply to the use of federal grant dollars. Employees on federal grants may lobby if using other, unrestricted funds.
- If an activity constitutes lobbying, it does not mean you cannot do it, but rather that the activity must be paid from *a non-federal funding source*.

# **THE MARYLAND LEGISLATIVE PROCESS**

# BEFORE THERE IS A BILL, THERE IS AN IDEA, A PROBLEM, AN OPPORTUNITY

## *Sources of Legislation:*

- Advocacy Organizations;
- Individuals;
- Legislative Studies (Task Forces/Commissions);
- Administration (Governor, Executive Agencies)

# DRAFTING PROCESS

- Member requests a draft bill from the Department of Legislative Services (DLS).
  - **Single Subject Rule**
  - **Short title; Purpose; Function Clause**
- LR version returned to member for review;
- Once final, it is dropped into the “Hopper” and assigned a Bill Number.

# FIRST READING

- “Read” by Clerk of House/Secretary of Senate
- Assigned to **Committee** based on subject matter

## FISCAL AND POLICY NOTE PREPARED BY DLS

- Impact on **State** and **Local** Government, **small business**;
- Reveals who contributed to note and who drafted;
- Should be amended if necessary with Committee amendments (**rarely occurs**)

# HEARINGS

- ***Most*** bills get a hearing;
- ***Little notice*** is often provided;
- Lobbyists representing organized interest groups, officials from State agencies, local government representatives, and other interested citizens provide testimony at these hearings

## AFTER THE HEARING

- May be assigned to a ***sub-committee*** to make recommendation to committee;
- Committee voting sessions;
- Committee may make ***amendments***; Majority vote (tie does NOT pass): Favorable (with amendments); Unfavorable; No Position (rare); Refer to Interim Study (technically dead)
- ***Only favorable (with amendment) passed on to full body***

# SECOND READING

- Presented at Floor Session with opportunity for question and debate;
- *May be amended*;
- *Special Order*—to a date certain;
- *Laid Over*—next day/session;
- *Voice Vote—majority*

# THIRD READER

- May ***NOT*** be amended unless it is a ***CROSSED OVER BILL***.

## ***What if second chamber amends on cross over (or cross filed bills get amended differently)?***

- House of Origin can accept amendments or request second house to withdraw amendments;
- If no agreement, **CONFERENCE COMMITTEE:**
  - 3 members from each house selected by Speaker/President;
  - Usually Committee Chair/Vice-Chair; bill sponsor;
  - Produce CC REPORT (must be agreed upon by at least 4 of 6 members);
  - Report presented to each house; if accepted, appropriate bill then submitted to each house for a vote.

# PRESENTMENT TO GOVERNOR

- **Presentment during session:**
  - If presented in the first 83 days, Governor has 6 days to sign or veto;
  - If presented during the last week, Governor has 30 days to sign or veto;
- **Governor may:**
  - Sign;
  - Refuse to sign;
  - Veto (must do within 30 days of presentment)
- **Veto Override:** 3/5 vote of each chamber to override

# Sign up for Our Legislative Updates!

- **Bi-weekly conference calls beginning second week of January.**
  - Review bills of interest and take questions.
- **Tracking document updates**
  - Detailed information including hearing dates and hearing summaries;
  - Updated on Google Docs for ready access at any time and current version in pdf form distributed weekly.
- **Email Brooke Torton at [btorton@law.umaryland.edu](mailto:btorton@law.umaryland.edu) to be added to the listserv.**

**Questions?**