

Case Study In Damage Prevention Advocacy: Ohio

The following is a case study developed by the Common Ground Alliance (CGA) Stakeholder Advocacy Committee on the effort to rewrite Ohio's damage prevention law in 2014. The case study is based on a conversation with several individuals who helped write the proposed legislation, including representatives from API (the American Petroleum Institute), Columbia Gas, Dominion East Ohio, Lingvai Excavating, Marathon Petroleum, NiSource, the National Utility Contractors Association (NUCA) of Ohio, the Ohio Contractors Association (OCA), the Ohio Utilities Protection Service (OUPS), Tallgrass Energy and UCSI. It is 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?

Prior to 2012, Ohio's utility damage prevention law had not been updated for more than two decades – since 1989, when the state's first one-call law went on the books. Although many stakeholders had put in their own bills during the interim, they faced opposition from fellow stakeholders and debate on the floor until they ultimately failed.

Following another failed effort in 2009, Ohio's one-call center, OUPS, proposed the idea of putting together a coalition of like-minded stakeholders to mount a more successful advocacy attempt. Communications were sent out to what the group believed to be every conceivable stakeholder group to solicit participation in the coalition, and representatives began meeting monthly in 2011. In 2012, the coalition managed to successfully pass a bill addressing "low-hanging fruit," or easy-to-pass safety improvements. The group continued its work to achieve its most recent update in 2014, which aimed to address enforcement among other key issues.

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

Members of the Ohio coalition approached the Senate President and Speaker of the House to discuss appropriate bill sponsors, ultimately leading to Senator Coley representing the bill in the Senate while Representative Sprague carried it in the House.

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?

The Ohio coalition was an industry-championed, rather than a government-led, group. Brought together initially by OUPS in 2011, the coalition was comprised primarily of the one-call center's stakeholder groups, associations and contractors.

There were multiple conflicting goals among the different stakeholder groups that made up the coalition, but consensus was ultimately reached.

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 elected co-chairs to lead it, as well as subcommittee chairs to direct the work of the smaller, issue-specific committees. Initially, the group's co-chairs were individuals representing the OCA and API. Committees reviewing legislative enforcement provisions were chaired by NUCA and Tallgrass Energy. The coalition's structure has evolved somewhat since its inception. Many of the active stakeholders had relationships with legislators from the previous law change attempt.

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?

As a first step in 2011, the coalition put forth a survey about the concepts addressed in the failed 2009 law update to gauge which issues members could agree were low-hanging fruit. Once those issues were identified, the coalition

formed subcommittees to work on each issue, including those that were not seen as immediate goals for a legal update (e.g., enforcement, which would not be addressed until 2014). Each subcommittee had a co-chair to lead it.

The coalition spent the first several months of its operation putting together general operating procedures, identifying its purpose, laying out the ground rules for meetings and communications, electing coalition officers (including the two co-chairs, the coalition secretary and subcommittee chairs), deciding on the consensus process and defining roles. After the operating procedures were presented to and agreed upon by the coalition members, subcommittees began their work on individual issues, with technical folks leading those discussions. Again, this structure and the consensus process have evolved somewhat since the group first convened in 2011.

The coalition referenced other recent state law revisions in its process and was able to work from the 2012 law rewrite for its 2014 effort. Additionally, other states' laws were reviewed and interviews were conducted by stakeholders identified within those states. For example, the Texas law was reviewed and interviews were conducted with the State DOT, several underground utilities and contractors operating within the state. The coalition combined what was working in other states with what was needed in Ohio to establish the 2014 legislation.

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?

Yes, both the CGA Best Practices and the “Nine Elements” of the PIPES Act were both heavily referenced and considered. The Best Practices were used as a foundation of Ohio damage prevention law revisions, although in many cases the practices were broader than the policies eventually proposed by the coalition. The “Nine Elements” were of particular focus in the 2014 law revision, because adding enforcement to Ohio’s law was a primary goal. The “Nine Elements” also largely defined the coalition’s subcommittee structure.

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, several lobbyists helped the effort. Association and corporate lobbyists successfully moved the bills through the legislative process unopposed, while technical experts were deferred to with regard to the intricacies of the proposed legislation.

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

Yes, in the earlier effort, the legislative strategy of coalescing stakeholders behind a consensus-based draft bill before introducing it to the legislature proved successful. Following the bill’s introduction, it moved quickly through a lame-duck session and passed the Senate unanimously and with only two ‘no’ votes in the House.

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

In the first effort, stakeholders who were not previously identified made themselves heard in the legislative process. During the introduction and hearings, the coalition did not meet. Stakeholders had to visit with legislators individually and at interested parties’ meetings (hosted by legislators) to air opposition. Some changes were made during this process, others were shelved until the 2014 attempt.

State Executive Branch: Was the Governor’s office involved in the process? How were state agency representatives to work with?

Yes, the Governor’s office was involved in the process. The coalition reached out to the Governor’s administration seeking to have the Public Utilities Commission of Ohio (PUCO) act as the state’s damage prevention law enforcement agency. The chairs of the enforcement committee knew the value of having a regulatory body be part of drafting legislative language. PUCO’s input was very valuable and the exposure reduced unfounded fears and biases. PUCO and PHMSA were involved in all enforcement legislation committees from 2011 onward. The coalition also sought input from the Ohio Department of Transportation and other key regulatory agencies. The executive branch was not heavily involved with the technical aspects of the law, but became involved when the bill was before the legislature.

Lessons Learned: Name a key success and something you would never do again from this experience. A key success was achieving consensus among an unwieldy and diverse stakeholder group. Prior to the establishment of the coalition in 2011, there was a great deal of distrust among the parties involved due to the fallout from past attempts at revising Ohio’s damage prevention law and day-to-day conflicts. The coalition’s committee structure established relationships among stakeholder groups during the review and research periods.

Another key success in Ohio was the use of a piecemeal approach to updating its damage prevention law. Rather than trying to achieve consensus on every single issue in one General Assembly session, the coalition first identified the easiest issues and then moved on to more difficult ones.

One element that might be avoided is that some members of the coalition suggested that adhering to voting procedures that were initially agreed to would improve future advocacy campaigns. Others expressed concern that the voting procedures could lead to politically untenable outcomes.