

Case Study In Damage Prevention Advocacy: Pennsylvania

The following is a case study developed by the Common Ground Alliance (CGA) Stakeholder Advocacy Committee on the effort to rewrite Pennsylvania'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 UGI, Columbia Gas of PA and the National Utility Contractors Association (NUCA) Pennsylvania chapter. 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?

The Pennsylvania damage prevention law is reevaluated every 10 years under a "sunset provision," with the last update being passed in 2006. Because the 2006 version of the law provided only an unfunded enforcement mandate and included several exemptions (for municipalities, among other entities), those were primary goals of the 2014 rewrite effort. Pennsylvania damage prevention advocates could be deemed ineligible for Pipelines and Hazardous Materials Safety Administration Grants/Funding (PHMSA) as a result of those issues. PHMSA rulemaking and the proximity of the sunset provision (2016) were the primary bases for advocacy. Pennsylvania was identified in the 2008 PHMSA Characterization Study as one of approximately ten States with inadequate one call legislation. A lack of adequate enforcement and exemptions for DOT and Municipal entities were also factors.

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

House Representative Matt Baker was identified as the primary sponsor because he had successfully passed a bill the previous session dealing with inspections on interstate pipelines, and was seen as someone who could work well across the aisle. The legislative strategy was to draft a solid bill among stakeholders before it was introduced as opposed to having several things added or removed during the hearing process.

Several materials were used in legislative advocacy, including a letter signed by the board members (representing utilities and other stakeholders) of PA 811 in support of the legislation, as well as documents explaining the current one-call law and proposed changes in 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?

The 2014 effort was primarily driven by the Pennsylvania Public Utility Commission (PUC). Pennsylvania One Call's Legislative Task Force participated heavily and offered up much of the language for the PUC bill. Industry was involved to the extent that Task Force volunteers were members of Pennsylvania One Call (PA 811). Task force volunteers worked with the PUC for approximately 18 months crafting a bill that would strengthen enforcement, improved safety and that everyone could live with.

There were several conflicting goals among the different stakeholder groups that make up PA 811, but there was compromise that moved the group into a better position.

Key Players: Who were the leaders of the coalition and how were they selected? Did coalition leaders have political relationships within the legislature?

The PUC lead the coalition, as the organization that drove the process of writing a consensus-based draft bill. 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 PUC directing the effort was an effective way of organizing the bill rewrite. Working together and looking at the Nine Elements of the PIPES Act, the coalition identified the key changes to the legislation, which revolved around strengthening enforcement and removing municipal and equipment exemptions. The 2006 legislation was strong as far as Best Practices were concerned, so it was a solid foundation on which the 2014 built upon.

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?

The CGA Best Practices were not a particular concern, as Pennsylvania’s law was already a strong one and is updated every 10 years. The Nine Elements were used to determine the key issues the new bill would address. Weak enforcement in the hands of the state’s Department of Labor and Industry had to be addressed.

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. The Energy Association of PA (EAP) President represented the utility industry, in addition to lobbyists representing PA 811, Pennsylvania American Water, NUCA and other associations, Columbia Gas of Pennsylvania, UGI and Verizon – all in support of the draft legislation.

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

The legislative strategy did successfully move the bill through the House unanimously, although it was not without debate and political strife. Unfortunately the bill got hung up from February to June in the House and by the time it made its way to the Senate, it ran out of time. However, the lobbying and legwork put into the 2014 effort, combined with the motivation of the sunset provision coming due in 2016, should enable the coalition to hit the ground running in 2015.

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

Yes, there were several roadblocks encountered during the legislative process. Primary among them was that the chairman of the PUC and the chairman of the house committee in which the bill was being heard had an intense personality conflict. As a result, the committee chairman put in a bill amendment that the coalition was entirely against. There was a similar personality conflict between the PUC Chairman and the Speaker of the House. The Speaker refused to allow a floor vote on the bill unless an exemption was included regarding the Pennsylvania Independent Oil and Gas Association (PIOGA) and shallow-well drilling. That amendment passed only after the PUC agreed to drop its opposition. In addition, the minority Chairman of the Consumer Affairs Committee successfully added an amendment dealing with the coal industry.

These issues stalled the bill in the House for months. Although it did ultimately pass unanimously, it ran out of time in the Senate.

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

Yes, the Governor lobbied on it generally before the process really got started. His administration worked to get the Department of Labor and Industry – which had been charged with enforcement under existing legislation but has not been acting effectively – on board ahead of the game. The Department of Labor and Industry testified on behalf of the bill.

Lessons Learned: Name a key success and something you would never do again from this experience. A key success was getting consensus from major stakeholders beforehand and then going back into planning sessions hammering out day-to-day provisional details in the legislation.

A success would be that the goal of the proposal was to develop the framework to change and fund the enforcement entity and address exemptions in Pennsylvania within the bill and work out much of the detail such as the newly created Damage Prevention Committee, by-laws and operating procedures after the bill passed. This leaves the details to be worked out by those who must live with the legislation versus having legislators make a best efforts attempt. Another key success is that the sunset provision built into the law set a sense of urgency for legislators.

Elements not to repeat include: 1) Leaving the bill to hang in limbo in the House from February through June while trying to reach consensus with PIOGA proved fatal to passage; 2) Not having PHMSA address the PIOGA issue as it has jurisdiction over them already and could make their one call resistance go away by flexing the regulations they already have over gathering lines; 3) not involve all stakeholders in the process from the beginning; 4) not discourage lobbying efforts throughout the legislative process to any stakeholder.