

# Tobacco Control Policies & the Legislative Process

## LEGISLATION 101



This fact sheet is designed to help those interested in state commercial tobacco control<sup>1</sup> policy better understand how legislatures typically operate, what to look for in bills, and the most effective ways to publicly engage with the legislature. Its purpose is to provide the public health community with the tools needed to effectively track and shape commercial tobacco control policy.

### Bill Life Cycle

This section briefly summarizes the typical life cycle of a bill in a state legislature. The process varies somewhat by state, but most legislatures follow a broadly similar outline.

### Bill Introduction

The first formal step in the legislative process is for a bill to be introduced. Bills may be introduced



for any number of reasons, including an attempt to enact the law in the current legislative session, a show of support for an important constituency, or to set up a conversation for a future session. Before a bill is introduced, significant work has often been done to prepare the bill, such as stakeholder engagement and drafting support from professional legislative staff, state agencies,

or even outside entities. The bill will have a primary sponsor and may also be introduced with additional co-sponsors. Bills may be introduced in one chamber alone, but will need to earn support in both chambers to succeed, so many bill authors secure a counterpart in the other body to carry their bill. Some chambers have deadlines by when bills can be introduced and others limit the number of bills each sponsor can introduce.

## Committee Hearings

The next step in the process is for the bill to receive committee hearings. Bills are assigned to a committee upon introduction, typically by legislative leadership based on committee jurisdiction. Bill referrals can sometimes be used strategically (for example, a committee chair might be selected because of the chair's opposition to a proposal and inclination to not refer the bill to a further committee).

Committees are generally where the bulk of substantive legislative work occurs. Members are assigned to committees based on interest and are often those most knowledgeable about the topic. Committee hearings are where the public has the best opportunity to be heard directly in the legislative process. The rules for each committee vary by state and even by committee chair, but generally hearings on a bill allow public testimony with some limits on time or number of testifiers. At their best, committees are an opportunity for legislators to engage with the public and each other and to ask questions to better understand the proposal before them.

The bill sponsor will typically be the main presenter of the bill, and the sponsor may recruit members of the public to speak to it or be part of the bill's presentation. Committee members may offer amendments to the bill, or even substitute amendments, that then receive votes by the full committee. This process is often referred to as the bill "mark up." Once the bill has received its final amendment votes, the bill may be referred to the next committee "stop" or to the full House or Senate. Sometimes this comes with a favorable or unfavorable recommendation from the committee. In most states, committee chairs have discretion about whether to report a bill out from their committee. This means they can effectively "kill" the bill if they choose to hold it in their committee and not refer it out. Some bodies have procedures that the whole House or Senate can follow to override a chair and take up a bill directly before the full chamber, such as a discharge petition. Another option can be to find a different path for a bill or a different home, such as including a provision in a broader budget bill.

When a bill is referred to another committee or to the floor for consideration, a committee report is written. This is a formal document confirming that the committee has acted, and the report will often be processed during floor proceedings for a bill to move to its next committee stop.



## Floor Proceedings

A standard practice is that a bill must receive three “readings” before it can receive its final vote, generally on separate days. A reading is simply a reporting by the clerk and does not involve an actual reading of the bill’s text. When a bill is introduced, it typically gets its first reading on the floor and its committee referral.

Once a bill is scheduled to be taken up by the whole body, it receives its second reading. In some states this involves a rules committee determining that a bill will be added to the calendar for that day. Sometimes a “Committee of the Whole” is used, which is a way for the full legislature to act in effect as a committee to consider amendments. Chambers have different rules about the offering of amendments, including the number that can be offered, and whether they must be “pre-filed” so that the public and other legislators can see them in advance or whether they must be offered in real time as the bill is being considered.

Once amendments are considered, the bill will be given its third reading, which means it is ready for the final debate and vote. Debate rules also vary by chamber, with most setting some limits on the total time or the number of times a member can speak, or limiting the time to debate the bill as a whole. Most states have the option of motions such as “calling the previous question” to cut off debate and force a vote on a bill. After debate, the vote will be called on the bill. In most states, a roll call vote is required on a bill’s final passage.

## Other Chamber Action and Conference Committees

Except for unicameral Nebraska, a bill must pass both the House and Senate in identical form before it can be sent to the Governor. One option is for a chamber to simply accept and pass the version it received from the other chamber. Another option is to “ping pong” a bill, making amendments and sending it back and forth until the other chamber agrees to the changes.

A third option — if both chambers pass different versions of the same bill — is to appoint a conference committee with members of both the House and Senate to work out the differences. Conference committees can be the most important stage of the legislative process, as they are often where the final deals are made. They have varying levels of transparency, but because they sometimes take public testimony, they can be another target for advocacy. The conference reports that come back to the respective chambers can generally not be amended and can only receive an up or down vote.

## Governor Action

Once a bill has passed both bodies, it heads to the Governor. If the Governor signs the bill, it becomes law. If the Governor vetoes the bill, the legislature can override it, typically requiring a supermajority vote of two-thirds or three-fifths. Governors can sometimes refuse to sign and allow a bill to become law without their signature, or — if the legislature has adjourned — they can “pocket veto” a bill by taking no action.

## Typical Players

Many individuals play roles in the legislative process. Among legislators, committee chairs often have a substantial ability to control the agenda in their jurisdiction. They may be able to choose whether a bill leaves their committee, and if so in what form. They often also have the ability to control or significantly direct conference committees. Outranking the chairs, though, is legislative leadership, which can include the Speaker of the House and House Majority Leader, the Senate Majority Leader and Senate President, or other titles that vary by state. Legislative leadership often controls where bills are referred, who is appointed to a conference committee, and when and whether a bill comes to the floor. Leadership can sometimes maneuver a bill around a recalcitrant chair.

Staff also play a critical role in legislation. This includes the staff that draft the bills, which could be non-partisan counsel or policy staff. It also can include partisan or personal member staff, committee staff, leadership staff, and others that help support getting legislation through the process. Some states have personal staff for each legislator, while others rely on pooled or

shared staff. It is helpful for advocates to be on good terms with legislative staff and to identify those staff most important to their issue area.

Agencies and the Governor can also get directly involved in the legislative process, sometimes bringing forward legislative proposals of their own. Agency opposition or support to a bill can be influential with legislators and agency technical expertise can be useful to ensuring a bill is fully vetted and ready for passage.

Lobbyists for various interests are also an important part of the legislative process. They can use their relationships and knowledge of the process to either help or hinder a particular bill's progress. It is helpful for advocates to understand who is likely to lobby in support of or opposition to a particular bill, and which legislators will be more open to persuasion from those interests.

## Differences by State

While the above description is a broad overview of the legislative process at a high level, the process varies a great deal among states. For example, state legislatures differ widely in how often they are in session. Some state legislatures rarely leave session, while others are capped at a total number of available legislative days or they meet only every other year. The National Conference of State Legislators (NCSL) maintains a helpful website that shows whether each legislative chamber is currently in session.<sup>2</sup> NCSL also has a useful resource categorizing states by whether they are considered full- or part-time legislatures.<sup>3</sup> This status can determine who can serve in the legislature, as some part-time legislative positions are low-paying and that can greatly restrict who chooses to run for office.

## Preemption

Preemption can play a critical role in the legislative process. Preemption occurs when a "higher" level of government eliminates or reduces the authority of a "lower" level to legislate in a certain area. Under the Supremacy Clause of the U.S. Constitution, Congress and federal regulators have virtually unlimited authority to preempt state and local public health laws. Similarly, states generally have broad authority to preempt local laws. The most effective public health policies typically begin at the local level where they are tested and improved upon, before being adopted by states. When local control is eliminated, this process of developing strong public health policies is lost.

For those tracking commercial tobacco policy, states may attempt to preempt the legislative efforts of local governments, particularly where local governments may differ from the state on their willingness to use public health laws to combat commercial tobacco. Review all draft legislation



carefully to ensure that preemptive language has not been introduced either at the outset or later in the legislative process. Watch out for the following terms: “preemption,” “supersede,” “shall be consistent with state law,” “uniform state standard,” “exclusive,” and “occupy the field.” Be prepared for preemption to become part of any proposed tobacco control legislation, even if it is not in the original bill, and even if it pertains to a subject area outside the scope of the bill. For more information, please see the Public Health Law Center’s publication, *Why Preemption Matters for Tobacco Control*.<sup>4</sup> Also, for a full description of local authority and preemption in the tobacco context, see the Center’s publication, *Dillon’s Rule, Home Rule, and Preemption*.<sup>5</sup>

Advocacy can make a difference when local commercial tobacco policies are preempted. In Colorado, for example, a coalition of over 20 organizations successfully repealed a decades-old preemption law of local government point-of-sale strategies.<sup>6</sup>

## Tips for Public Engagement

### How to Track a Bill

Following a bill through the legislative process can sometimes feel daunting. However, most states have websites that allow people to track a bill, follow which committee is the next stop,

learn when a hearing is occurring, and discover any amendments that have been made along the way. Bill introductions can also be worth reviewing periodically, which can be done by scanning new bill lists and summaries or doing a regular keyword search of introduced bills.

## How Best to Engage

Getting engaged early is always a good practice. Shaping a bill before it is introduced, for example, is better than trying to influence a bill later in the process. It is worth investing time to build relationships with legislators and their staff and engage in conversation before a bill is introduced.

Once a bill has been introduced, supporters have several ways to help move the bill along the process. One option may be to recruit new co-sponsors, sometimes called co-authors, to the bill by contacting legislators or their staff in support of the bill, or by encouraging members of a coalition to do so. Another would be to testify publicly in support of the bill at committee meetings. Testifiers should come prepared to make a succinct case on their issue and coalitions may wish to choose testifiers based on their knowledge of the subject matter and public presentation skills. Personal stories are particularly compelling for legislators and often more impactful and memorable than reciting facts or data.

Bill opponents or those who want to see the bill changed will want to try to engage directly with the bill author if the author is receptive. If not, it will be helpful to cultivate additional allies who can bring amendments to the bill along the way. These allies could be members of key committees that the bill will have to travel through. Testifying in opposition to the bill and recruiting others to do so can be effective, as well as public displays of opposition, such as rallies, or email or phone campaigns targeting legislators that might be persuadable.

For legislators, the more personal the connection, the more likely it is to have an impact. The best form of communication is a face-to-face meeting with legislators themselves. The next best approach would be a personal communication, such as a phone call, email, or letter. A form email or form letter can make an impact if the volume is large enough, but will often result in a form reply, rather than a personal response.

Before engaging in these activities, be aware of any lobbying restrictions. Lobbying can be restricted among certain professions, such as government employees or as part of funding contracts.



## Preemption Bill Passage – An Ohio Story

Below is an example of how a tobacco control preemption law went through the entire legislative process to become a law in Ohio.

In 2021, commercial tobacco control opponents introduced an amendment to a bill that would prohibit cities and local jurisdictions from implementing their own limitations on tobacco sales, such as flavor bans. This amendment was first introduced in December 2021 and in December 2023 it became law in Ohio, taking two separate sessions.

The preemption amendment hit all the points discussed above before becoming law. The bill, as introduced in the Ohio House, originally only focused on the collection or discharge of bad debt related to tobacco, cigarette, and vapor products.<sup>7</sup> When the bill moved to the Senate, the preemption amendment was added that stated that tobacco control should only be done at the state or federal level.<sup>8</sup> The amendment prohibited local jurisdictions from enacting their own tobacco control polices, like flavor bans.

Proponents of public health believed that the preemption amendment was introduced in retaliation to the city of Columbus's recent passage of a flavor ban on tobacco products.<sup>9</sup> In 2022, the bill did pass with the preemption amendment in



both houses. The bill as amended had support from the bill authors who noted that tobacco regulation should take place at the state or federal level because cities can sometimes go too far. There was opposition from the bill in one of its Senate hearings from public health advocates and some legislators.<sup>10</sup> Once passed out of committee in both the House and Senate, the bill then passed easily from each chamber's floor as amended. The Governor ultimately vetoed HB 513 in January 2023. He stated that flavored products pose a danger to young people and that local governments should not be limited in how they wish to address this issue.<sup>11</sup>

Although HB 513's path had ended in a veto, the supporters of the amendment found another path for the bill in the following session. When Ohio's education budget bill was introduced in 2023 (HB 33), it included the preemption language that the Governor had vetoed earlier in the year. This time the preemption language faced less obvious opposition because the language was embedded in an education budget bill. The budget bill saw numerous committee hearings and testimony, but none of it focused on the preemption amendment.

The budget bill did pass both the Ohio House and Senate, and the Governor had an opportunity to line-item veto certain provisions in the budget bill. One of the provisions he vetoed was the tobacco preemption language.<sup>12</sup> Yet, of all of his line item vetoes, the Ohio House took this one up for reconsideration and overturned the veto.<sup>13</sup> In the Senate, the same veto was also taken up for reconsideration and subsequently overturned.<sup>14</sup>

In this respect, this bill went from introduction to passage to veto and then passage again. The path of this preemption language shows how proponents of bills can keep trying and finding different, sometimes simpler, paths for their bills to pass. Though public health advocates were not successful in their efforts to block preemption in the legislature, the Ohio court system has now deemed this provision in the law unconstitutional.<sup>15</sup>

Legislating can be a long process and most bills take at least a couple of introductions or piecemeal iterations before a full idea is passed.

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## Endnotes

- 1 Traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and Tribes for centuries. Commercial tobacco is manufactured for recreational use and profit, resulting in disease and death. When the word “tobacco” is used throughout this document, a commercial context is implied and intended. For more information, visit the National Native Network at <https://keepitsacred.itcml.org>.
- 2 *2024 Legislative Session Calendar*, NAT’L CONFERENCE OF STATE LEGISLATORS, <https://www.ncsl.org/about-state-legislatures/2024-state-legislative-session-calendar>.
- 3 *Full- and Part-Time Legislatures*, NAT’L CONFERENCE OF STATE LEGISLATORS, <https://www.ncsl.org/about-state-legislatures/full-and-part-time-legislatures>.
- 4 Public Health Law Center, *Why Preemption Matters for Tobacco Control* (2023), <https://www.publichealthlawcenter.org/sites/default/files/resources/Preemption-Tobacco-Control.pdf>.
- 5 Public Health Law Center, *Dillon’s Rule, Home Rule, and Preemption* (2020), <https://www.publichealthlawcenter.org/sites/default/files/resources/Dillons-Rule-Home-Rule-Preemption.pdf>.
- 6 *Counter Tools’ Healthy POS Webinar Series: Revisiting Preemption — A Colorado Case Study*, Counter Tobacco (2019), [https://countertobacco.org/wp-content/uploads/2019/03/Reversing-Preemption-A-Colorado-Case-Study\\_Healthy-POS-Webinar-Series\\_finalslidedeck.pdf](https://countertobacco.org/wp-content/uploads/2019/03/Reversing-Preemption-A-Colorado-Case-Study_Healthy-POS-Webinar-Series_finalslidedeck.pdf).
- 7 H.B. 513, 134th Gen. Assemb., Reg. Sess. (Ohio 2021), [https://search-prod.lis.state.oh.us/solarapi/v1/general\\_assembly\\_134/bills/hb513/IN/00/hb513\\_00\\_IN?format=pdf](https://search-prod.lis.state.oh.us/solarapi/v1/general_assembly_134/bills/hb513/IN/00/hb513_00_IN?format=pdf).
- 8 H.B. 513, 134th Gen. Assemb., Reg. Sess., at 1.16 (Ohio 2021), [https://search-prod.lis.state.oh.us/solarapi/v1/general\\_assembly\\_134/bills/hb513/RS/03/hb513\\_03\\_RS?format=pdf](https://search-prod.lis.state.oh.us/solarapi/v1/general_assembly_134/bills/hb513/RS/03/hb513_03_RS?format=pdf).
- 9 Nick Evans, *Ohio Gov. Dewine Vetoes Tobacco Measure That Would Prohibit Local Bans*, OHIO CAPITAL JOURNAL, Jan. 6, 2023, <https://ohiocapitaljournal.com/2023/01/06/ohio-gov-dewine-vetoes-tobacco-measure-that-would-prohibit-local-bans>.
- 10 *Fourth Hearing on H.B. 513 Before the S. Comm. on Ways and Means*, 134th Gen. Assemb. (Ohio 2022), <https://www.legislature.ohio.gov/legislation/134/hb513/committee>
- 11 Evans *supra* note 9.
- 12 *Veto Messages: Statement of the Reasons for the Veto of Items in Amended Substitute House Bill 33*, OFFICE OF THE GOVERNOR, July 3, 2023 (Ohio 2023) at 14, <https://www.legislature.ohio.gov/assets/legislation/legislation-documents/135/VetoMessageAmSubHB33.pdf>.
- 13 Morgan Trau, *Tobacco Veto Override Continues Fight between Ohio Cities and State*, OHIO CAPITAL JOURNAL, Dec. 15, 2023, <https://ohiocapitaljournal.com/2023/12/15/tobacco-veto-override-continues-fight-between-ohio-cities-and-state>.
- 14 *Ohio Senate Overrides Veto, Prohibiting Local Regulation of Tobacco*, FOX 28 COLUMBUS, Jan. 24, 2024, <https://myfox28columbus.com/news/local/ohio-senate-overrides-veto-prohibiting-local-regulation-of-tobacco>.
- 15 Bethany Bruner, *Ohio Judge: State Effort to Keep Cities from Banning Flavored Tobacco Was Unconstitutional*, THE COLUMBUS DISPATCH, May 17, 2024, <https://www.dispatch.com/story/news/courts/2024/05/17/flavored-tobacco-ban-ohio-rules-unconstitutional-state-law/73718064007>.