



# Think globally, act locally!

## Understanding your public health role and authority in the local legislative process.

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January 6, 2017



# YOUR VOICE IN ANNAPOLIS

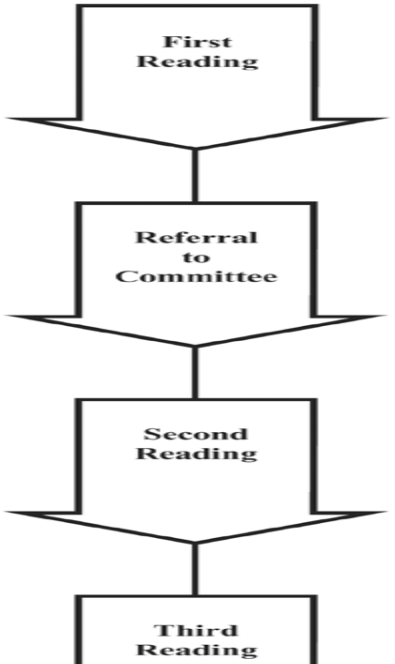
# BEFORE THERE IS A BILL, THERE IS . . . AN IDEA, A PROBLEM, AN OPPORTUNITY

## *Sources of Legislation:*

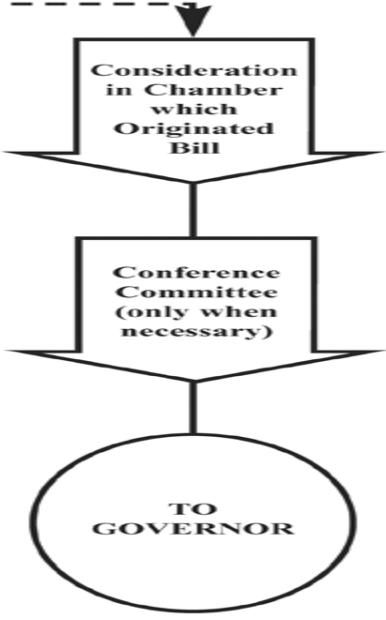
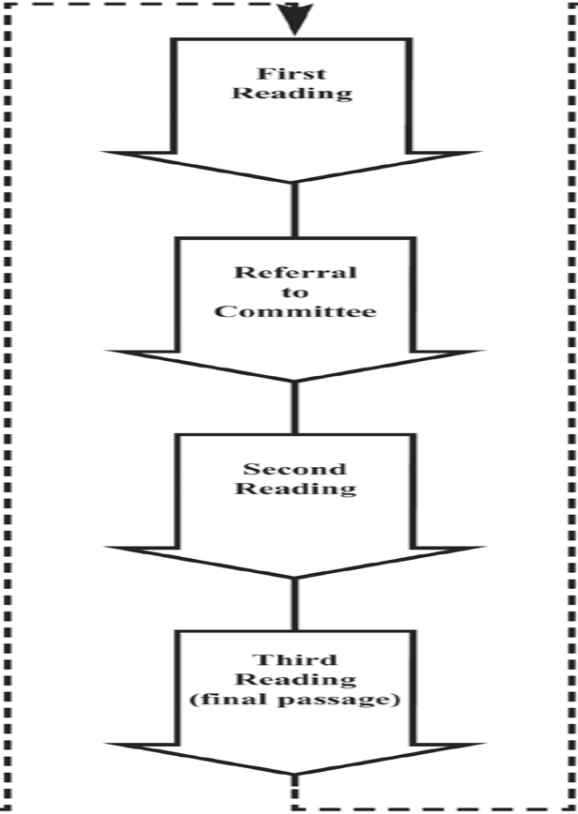
- Advocacy Organizations
- Individuals
- Legislative Studies (Task Forces/Commissions)
- Administration (Governor, Executive Agencies)



**FIRST CHAMBER**



**SECOND CHAMBER**



# A BILL MUST HAVE A LEGISLATOR AS SPONSOR OR BE AN ADMINISTRATION BILL

- Governor's Bill's: President/Speaker=Sponsor
- Departmental Bills: Committee Chair=Sponsor
- Delegation Bills (members are sponsors)
- Caucus Bills (members are sponsors)

# SECURING A SPONSOR

Best to look for a sponsor:

- In Committee that will hear bill;
- Delegation if impacts one County/type of County;
- With subject matter expertise.

*This is a strategic and political decision that can be difficult to “undo” in later years.*

# DRAFTING PROCESS

- Member requests a draft from DLS: Confidential!!
  - A good advocate will have prepared a draft with comments that the member may submit to DLS drafter
- Drafting Manual and Style Manual for Statutory Law
  - [http://dls.state.md.us/data/legandana/legandana\\_bildra/legandana\\_bildra\\_bildraman/Drafting-Manual.pdf](http://dls.state.md.us/data/legandana/legandana_bildra/legandana_bildra_bildraman/Drafting-Manual.pdf)
- Highlights:
  - Single Subject Rule
  - Short title; Purpose; Function Clause
- May consider how to draft to get into a certain committee
- LR version returned to member for review; easy to change at LR

# CO-SPONSORS AND THE HOPPER

- When satisfied, take LR around in folder to get initials from co-sponsors
- How many co-sponsors? Depends . . . (This process is really first step in advocacy, so be smart.)
- Then . . . Drop in Hopper to get a BILL NUMBER; Now it is Public.



# FIRST READING

- “Read” by Clerk of House/Secretary of Senate (House—Blue; Senate—White)
- Assigned to Committee (sometimes assigned to two committees—one can take lead and other will act only if passed by lead; or can have joint hearing and voting)

## FISCAL AND POLICY NOTE PREPARED BY DLS

- Impact on State and Local Government; Small Business
- Reveals who contributed to note and who drafted it
- Read it carefully; can try to get corrections—but best to try to get information to drafter in advance, via sponsor; and/or earn reputation as helpful person on certain issues
- Should be amended if necessary with Committee amendments (rare); but definitely point out any errors clearly and directly in written and oral testimony

# ONCE BILL IS FILED

## *Start Advocating to Committee Members:*

- In person visits; deliver one-pager with your contact information.
- Identify constituents to take along to visits.

## *Start Advocating to Public:*

- Letters to Editor/Secure OpEd.
- Press releases/conferences.

# HEARINGS

- Most bills get a hearing (with some notorious exceptions);
- Little notice—in-committee sponsor helps on this;
- How to prepare:
  - *review previous year bill file* (in Annapolis) and hearing (online) if same or similar bill heard before;
  - *meet with sponsor* (as close to hearing as possible);
  - *line up panel members* (experts on issues; citizens impacted; agency staff impacted; local legislators; other state legislators or administrators)

# HEARINGS

- Arrive at least one hour early to sign in and submit testimony (see each Committee's page for details on # copies and timing)
- Everyone who signs in will be heard
- Plan this well in advance—create panels and avoid duplication—use sponsor to get panels to chair (or can try on your own, usually works)
- Proponents then Opponents; so rebut in advance (unless large number of people; then may alternate panels)
- Submit written testimony—DO NOT READ!!!

# AFTER THE HEARING

- May be assigned to a sub-committee to make recommendation to committee; focus on those members
- Follow-up in person and post-hearing one-pager and other written testimony to committee (if necessary—i.e. correct something said in hearing—deliver personally to any member whose question you answered incorrectly or less than adequately or to whom you promised further response)
- Committee Voting Sessions—little notice
- May make amendments; vote on them first—majority rule
- 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*
- *Floor Report Prepared*
  - ***Now you have to visit all members . . .***

# SECOND READING

- Presented at Floor Session (morning); “Committee Reprint” if extensive amendments
- Hand out one-pager; stalk members as they enter the chamber
- Opportunity for question and debate
- May be amended; if offered, voted on first; majority carries
- Special Order—to a date certain; Laid Over—next day/session
- Voice Vote—majority
- Ordered “printed for third reading” (except if crossed over; then “passed to third reader”)

# THIRD READER

- May NOT be amended unless is **CROSSED OVER BILL**
- Special Order permitted (often delay tactic)
- Roll Call—recorded vote; majority
- \*\*Majority exceptions:
  - Constitutional Amendment or Emergency Bill: 3/5 of each house
- ***Repeat in other house . . . unless CROSS FILED***



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

- House of Origin can accept amendments or request second house to recede
- If not agree, CONFERENCE COMMITTEE
  - 3 Members from each house selected by Speaker/President
  - Usually Committee Chair/Vice-Chair; bill sponsor
  - This is part of advocacy, getting the right people on a CC
  - Produce CC REPORT (must be agreed on by at least 4 of 6 members)
  - Report presented to each house (no amendments); if accepted, appropriate bill then submitted to each house.

# PRESENTMENT TO GOVERNOR

- Can be presented DURING session; if in first 83 days, Gov'r has 6 days; in last week, Gov'r has 30 days
- Must be presented within 20 days of adjournment (do not become law if not presented)
- GOVERNOR may: 1) sign; 2) refuse to sign (pocket veto: treated as if signed on 31<sup>st</sup> day after presentment); 3) veto (must do within 30 days of presentment) –no veto of budget or constitutional amendment; if veto during session—may be considered in that session.
- Veto Override: NOT in first year of session; otherwise, at first session following (whether regular or special); 3/5 vote of each house to override

# Constitutional Amendment

- Only passes with 3/5 of each house;
- Presented to voters at next General Election;
- Secretary of State writes question; passes by majority of voters (if specific to one jurisdiction, majority of those voters AND of all voters)

# EFFECTIVE DATE

- Emergency: on signature of Governor (or on 7<sup>th</sup> day after presentment if not signed or vetoed) or other date set in bill
- Fiscal: July 1
- General: October 1
- Earliest: June 1
- Latest: Can be whenever in future

# CHAPTER LAW

- ***When all is completed: Becomes a Chapter Law—assigned a chapter # in order that signed***
- (Laws of Maryland=actual laws; Michie/West/Lexis=evidence of law)
- \*RESOLUTIONS: Passed by majority of each house; make statements/opinions; ask Gov'r or agency to do something; create Task Force.

# Poke Around the GA Website

<http://mgaleg.maryland.gov/webmga/frm1st.aspx?tab=home>

# Sign up for Our Injury Prevention Updates!

- Bi-weekly conference calls beginning January 9<sup>th</sup> at 1 p.m.
  - Review significant injury prevention bills and take questions on any of the bills.
- Tracking document updates
  - Detailed information on each injury prevention bill, 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 Mellissa Sager at [msager@law.umaryland.edu](mailto:msager@law.umaryland.edu) to be added to the listserv.



# **Powers of County Legislatures and Boards of Health in Maryland**



# Four Forms of County Government

- Charter Home Rule
- Code Home Rule
- Commissioner System
- Baltimore City

# Health Powers in Commissioner Counties

- The governing body of a county may:
  - (1) prevent and remove nuisances; and
  - (2) prevent the introduction of contagious diseases into the county.
    - *Local Government Article §§13-401(c)*

*Calvert, Carroll, Garrett, St. Mary's, Somerset, and Washington*

# Health Powers in Charter Counties

- “A county council may pass any ordinance, resolution, or bylaw not inconsistent with State law that . . . **may aid in maintaining the peace, good government, health, and welfare of the county.**”

– *Local Government Article §10-206*

*Anne Arundel, Baltimore County, Cecil, Dorchester, Frederick, Harford, Howard, Montgomery, Prince George’s, Talbot, and Wicomico*

# Health Powers: Charter and Code Counties

A county may provide for the **prevention, abatement, and removal of nuisances** and the **prevention of contagious diseases** in the county.

A county may regulate any place where offensive trades are conducted or that may involve or give rise to unsanitary conditions or conditions detrimental to health.

*--Local Government Article §10-328*

*Anne Arundel, Baltimore County, Cecil, Dorchester, Frederick, Harford, Howard, Montgomery, Prince George's, Talbot, and Wicomico*

*Caroline, Kent, Queen Anne, Worcester, Allegany, and Charles*

# Baltimore City

- The City's Home Rule predates Maryland Constitution, Art. XI-A
- Can be given unique powers
- Enumerated powers listed in Baltimore City Charter, Article II
- Health Powers: "To provide for the preservation of the health of all persons within the City; to prevent the introduction of contagious diseases within the City, and within three miles of the same upon land, and within fifteen miles thereof upon the navigable waters leading thereto; and to prevent and remove nuisances."
- Baltimore City Charter, Article II, §(11). See also Art. II, §(47).

# Who Comprises a County Board of Health?

## ***Maryland Health-General Article:***

- Section 3-201:
  - *(a) Except as provided in subsection (b) of this section, the **governing body** of a county is ex officio the board of health for the county.*
  - *(b) In a **code county** or **charter county**, the governing body is ex officio the board of health for the county, unless the governing body establishes a board of health.*

# What is a Governing Body?

**Governing body** is the Board of County Commissioners in Commissioner Counties (non-home rule) and Code Home Rule Counties and in Charter Counties lacking a County Executive.

In Charter Counties with a County Executive, the County Council and the County Executive together constitute the governing body.

*See Montgomery County v. Anchor Inn Seafood Restaurant, 374 Md. 327, 336 (2003).*

# COMMISSIONER COUNTIES (NO HOME RULE)

The Board of County Commissioners serves as the Board of Health (Health-Gen. 3-201) with the State law powers (Health-Gen. 3-202).

***This cannot be changed at the county level.***

- ***Calvert, Carroll, Dorchester, Garrett, St. Mary's, Somerset, Washington***



# CODE HOME RULE COUNTIES

The County Commissioners serve as the Board of Health (Health-Gen. 3-201) unless the Commissioners have passed an ordinance otherwise constituting the Board of Health (Health-Gen. 3-201).

***No Code Home Rule County has adopted a provision to alter the composition of the Board of Health.***

- ***Allegany, Caroline, Kent, Queen Anne's, Worcester, Charles***

# CHARTER COUNTIES

The County Council and the County Executive (where one exists) comprise the Board of Health (Health-Gen. 3-201; *Anchor Inn* decision) unless the County Code or Charter otherwise designates.

# CHARTER COUNTIES

The following Charter Counties have passed an ordinance that designates the County Council as the Board of Health (such that the County Executive has no role on the Board):

- *Anne Arundel, Harford, Montgomery, Prince George's*

# CHARTER COUNTIES

The following Charter Counties have not passed such a provision so that by operation of law, the County Council and the County Executive comprise the Board of Health:

- *Wicomico, Frederick, Cecil*

The following Charter County does not have a County Executive so that the County Council comprises the Board of Health:

- *Talbot*

# CHARTER COUNTIES: BALTIMORE COUNTY

***Baltimore County*** has a Charter provision creating a Board of Health (Charter, Article V, §539(d)):

- 7 Members; 3 Year Terms (Staggered)
- Appointed by County Executive
- *Caveat: Any regulation adopted must be passed as a county ordinance (verbatim or by reference) by the County Council.*

# CHARTER COUNTIES:

## HOWARD COUNTY

***Howard County*** has passed an ordinance creating a Board of Health (Health Code §12.101):

- 9 Members; 5 Year Terms (Staggered); Howard County Residents
  - 1 Professional in Environmental Health;
  - 3 Health Professionals;
  - 5 Members of the Public (specifically requiring at least 2 members *without* professional or administrative experience in the health profession).
- Appointed by County Executive, confirmed by County Council

# Baltimore City

There is no Board of Health in Baltimore City.

Health Commissioner holds regulatory power akin to a Board of Health:

“To provide for the preservation of the health of all persons within the City; to prevent the introduction of contagious diseases within the City, and within three miles of the same upon land, and within fifteen miles thereof upon the navigable waters leading thereto; and to prevent and remove nuisances.” (*Baltimore City Charter, Article II*).

# Summary

- The County Council plus the County Executive or the County Commissioners are the default Board of Health (*Health General § 3-201*)
- Charter and Code counties may establish a county board of health to act instead of the county legislative body (*Local Gov't § 10-327*)
  - Several counties have designated the County council, without county executive, as the Board of Health
  - Two counties have designated non-council members as the Board of Health
- Commissioners serve as the Board of Health in Commissioner (non-home rule) counties; this cannot be changed at the county level



# County Boards of Health Composition

| <b>Commissioner</b><br>Commissioners as BoH   | <b>Code</b><br>Commissioners as BoH  | <b>Charter</b><br>Council and County Exec.<br>as BoH   | <b>Charter</b><br>Council w/o County Exec.   |
|---|--|--|--|
| <ul style="list-style-type: none"> <li>• Calvert</li> <li>• Carroll</li> <li>• Dorchester</li> <li>• Garrett</li> <li>• St. Mary's</li> <li>• Somerset</li> <li>• Washington</li> </ul> | <ul style="list-style-type: none"> <li>• Allegany</li> <li>• Caroline</li> <li>• Charles</li> <li>• Kent</li> <li>• Queen Anne's</li> <li>• Worcester</li> </ul> | <ul style="list-style-type: none"> <li>• Cecil</li> <li>• Frederick</li> <li>• Wicomico</li> </ul> | <ul style="list-style-type: none"> <li>• Anne Arundel</li> <li>• Harford</li> <li>• Montgomery</li> <li>• Prince George's</li> <li>• Talbot</li> </ul> |

## Alternative Approaches:

- Baltimore County
- Howard County
- Baltimore City

# What about the Health Officer?

§3-306(c)(1) of the Health-General Article designates the Health Officer as the Secretary and Executive Officer of the Board of Health

Does this grant a Health Officer voting powers on a Board of Health?

*Best answer is no.*

# Duties and Powers of Boards of Health

- **Broad Grant of Authority**: “Each county board of health may adopt and enforce rules and regulations on **any nuisance** or **cause of disease** in the county.” (*Health-General § 3-202*)
- **Additional Express Powers**:
  - Any condition that is dangerous to health or safety (nuisance definition) (*Health-General § 20-301*)
  - Regulate any “facility that may involve conditions that are unsanitary or detrimental to health” (*Local Gov’t § 13-401*)
  - Assess a fee or charge in association with any rule or regulation (*Health-General § 3-202(c)*)
  - Direct the health officer to enforce any rule or regulation (*Health-General § 3-206(c)(4)*)

# Duties and Powers of Boards of Health

*(a)(1) Except as provided in paragraph (2) of this subsection, each county board of health shall exercise the duties imposed by law on a board of health.*

Paragraph 2 limits the ability of a Board of Health to impose regulations within a municipality if the municipality has passed an ordinance on the same topic that is at least as restrictive as the Board of Health regulation and contains enforcement provisions.

*Health-General Article §3-202(a)*

## Duties and Powers of Boards of Health

- (b) Boards of Health must meet twice annually, coordinate with DHMH and “[r]eport to the Department on the sanitary conditions of the county whenever the board considers it important and necessary to do so.”
- (c) Boards of Health may impose fees as part of a regulation but need DHMH approval if the service for which the fee is to be charged is covered in whole or in part by state or federal funds.

*Health-General Article §3-202(b), (c)*

# Duties and Powers of Boards of Health

Some county charters or ordinances explain the scope of power of the board of health.

**For example, BoH in Montgomery County may:**

*“adopt and enforce all needful rules and regulations concerning sanitation for eating and drinking establishments, habitable buildings and private water supplies” and impose regulatory fees and penalties.*

*Montgomery County Code §24-1*

# Duties and Powers Boards of Health

In Howard County, the BoH has the powers in Health-General §3-202 and:

- *[G]eneral responsibility for the health and sanitary interests of the people of the County.*
- *May investigate and study the causes of disease, epidemics and nuisances affecting public health, the prevention of contagious diseases and the preservation of health.*
- *[T]he power to administer oaths, issue subpoenas and apply for injunctive relief.*

# Duties and Powers of Boards of Health

- *Advise the County Executive and County Council on health matters.*
- *Act as the appeals board for decisions of the Health Officer regarding enforcement of the County Health Code.*
- *At the directive of the County Executive or by resolution of the County Council, the Board of Health shall review and make recommendations on any matter related to public health.*

*Howard County Code §12.101*



# Existing Board of Health Regulations

- Mobile homes and trailer parks (*Charles County Ch. 257, adopted January 19, 1960*)
- Group day care centers/nursing homes
- Indoor smoking restrictions
- Tanning facilities
- Trans fat ban
- Menu labeling in restaurants (i.e. calorie listings)
- Disclaimer for non-licensed medical service facilities
- Massage parlors and workers Tattoo/piercing
- Pest control
- Tobacco sales to minors
- Swimming pool fences
- Bicycle helmets
- Slaughterhouses
- Water quality/sewage disposal
- Lead in children's jewelry
- Lead Abatement

# Why use Board of Health Power?

- Avoids possible veto power if oppositional County Executive is not on Board of Health;
- Provides potentially broader policy power to Commissioner Counties when Commissioners convene as Board of Health;
- Clear that Boards of Health may direct the Health Officer to conduct enforcement;
- Emphasizes public health basis for a particular action;
- May be able to be put in place more quickly than an ordinance (depending on local process for Board action v. legislative action).

# Advantages of a Community-Based Board of Health

- Expertise of health professionals in establishing health policy for county;
- Avoids the sometimes polarizing politics of a local legislature and executive;
- Community member involvement leads to greater acceptance of health policy;
- Typically more nimble and quick in responding to public health needs.

# Models of Local Boards of Health

***Howard County Model***—Full power given to Board on which NO elected official sits.

- Perhaps most difficult to secure because of Council/Commissioner fear of usurpation of power.

***Hybrid Model***—Elected officials serve along with health professionals and community members; may minimize political polarization; adds level of expertise.

- Likely more politically palatable to elected officials because they retain degree of control/power.

# Models of Local Boards of Health

***Agency-Like Regulatory Model***—Modest independent powers; broad power to promulgate regulations to effectuate legislative policy.

- Akin to relationship between State agencies and General Assembly; allows for details to be developed by those with expertise.

***Advisory Model***—Community-based Board has no regulatory power but advises legislature and executive.

- Allows for use of health professional expertise; may bring issues to attention of legislature; may serve as advocates for public health policy change (more difficult to avoid if formalized process for advising).

# Board of Health vs. County Legislative Body

|  | Board of Health | County Legislative Body    |
|--|-----------------|----------------------------|
| Does the law apply in municipalities?                      | Yes             | Municipalities may opt out |
| May the County Executive veto?                             | No              | Yes                        |
| May the health officer be directed to conduct enforcement? | Yes             | ?                          |
| May establish fees in connection with law?                 | Yes             | Yes, generally?            |

# Procedures for Adoption of BoH Regulation

Boards may adopt procedures for the promulgation of regulations

- Should comply with Maryland Administrative Procedures Act and Open Meetings Act
- Safe approach is to employ procedures used by the Commissioners/Council
- See also procedures for Commissioner (non-home rule) Counties in §9-105 of the Local Government Article

# Partnership for Safer Maryland

The Partnership for a Safer Maryland (PSM) is committed to heighten awareness of injuries as a major public health problem throughout the State of Maryland.

Membership is free and affords those interested the following:

- Quarterly membership & training opportunities.
- Monthly electronic newsletters.
- Networking with other injury prevention professionals.
- Technical assistance referrals for data access and use.
- Avenues to promote your organization and activities.
- Input and access to collateral injury prevention specific materials.

If interested in joining the Partnership for a Safer Maryland visit their website <http://www.safermaryland.org/membership>



# QUESTIONS???

If you are interested in exploring how your County could create a new Board of Health or how your County can use its Board of Health, contact the Legal Resource Center:

**Kathleen Hoke**

Professor, Maryland Carey Law

Director, Legal Resource Center

Director, Network for Public Health Law

500 West Baltimore Street, Baltimore, 21201

410-706-1294; [khoke@law.umaryland.edu](mailto:khoke@law.umaryland.edu)

An evaluation survey will be distributed via email following this presentation. We look forward to your feedback!