



# WSBA

LEGISLATIVE DIVISION

## WSBA LEGISLATIVE PROCESS ROADMAP

### I. Introduction

While the Washington State Legislature meets only a few months each year, the legislative process is a year-round endeavor. The bulk of the work that goes into a successful legislative proposal is done well in advance of the legislative opening day in January. For the Washington State Bar Association, that work is done by Sections and Committees. What follows is a roadmap for those sections and committees that seek to solve a statutory problem whose solution lies with the legislature.

### II. **WSBA Comment Policy and the relationship between Sections and the Board of Governors**

The WSBA bylaws provide that the WSBA may “[m]aintain a legislative presence to inform members of new and proposed laws and to inform public officials about bar positions and concerns.” WSBA Bylaws I. B. 17. The bylaws further provide that the WSBA will not “[t]ake positions on political or social issues which do not relate to or affect the practice of law or the administration of justice.” WSBA Bylaws I. C. 2.

In furtherance of those bylaws the Board of Governors (BOG) adopted a Legislation and Court Rule Comment Policy. Sections, committees, divisions and councils (hereafter collectively referred to as “sections”) as entities of the WSBA, are bound by the policy. Sections may take positions independently of the Board of Governors, but only under the conditions outlined in the Comment Policy.

What does this mean for Sections? If you wish to take a public position, whether you are proposing legislation or responding to others’ proposals, you need to notify the Legislative Division so that we can advise the BOG. It is often the case that sections will take positions on legislation upon which the BOG is silent, but it is critical for the credibility of the WSBA and its members that our public voice be coordinated. Although rarely exercised, the Board of Governors retains authority to prohibit sections from advocating legislative positions. Sections also, from time to time, propose legislation that has unintended consequences for other WSBA sections. For those reasons, sections wishing to propose legislation must send their proposals to the BOG through the Legislative Committee, which is described in detail below.

### **III. Role of the WSBA Legislative Committee**

The Legislative Committee serves as the vetting ground for legislative proposals to be presented to the Board of Governors. The WSBA Legislative Committee is composed of up to 33 members of the WSBA, selected to reflect the perspective of the bar as a whole. The membership of the Legislative Committee includes, as much as possible, representation of our members' practice areas, geographic areas, differing size of law firm and other forms of diversity present in our profession. The Legislative Committee represents the interests of the broader bar membership, not any one perspective or practice area within the bar.

The Legislative Committee does not propose legislation of its own. Rather, the committee reviews all legislative proposals emanating from any WSBA section. If the committee receives a proposal from an individual member of the bar, we send it to the appropriate section(s) for substantive comment and recommendation. Proposed legislation is typically sent out for comment to any other WSBA section or organization that might be affected by it. We do this so that the Legislative Committee's review process can be as thorough as possible, identifying and debating any potential points of controversy that might arise during the legislative session. The Bar's legislative success over the years has been due in no small measure to its reputation for the kind of thorough debate that our Legislative Committee process requires.

The Legislative Committee meets from September through November and presents its legislative recommendations to the Board of Governors for their action in December. Rick Bartholomew is the 2011-2012 chair of the Legislative Committee. Sean O'Donnell serves as vice chair.

### **IV. Role of the WSBA Office of Legislative Affairs**

The WSBA Legislative Division is in the WSBA Department of Justice and Diversity Initiatives. This division coordinates WSBA and judicial interests in the governmental and legislative arena, as well as coordinates the activities of the WSBA Legislative Committee. WSBA maintains an Olympia office, staffed year-round by Diane Froslie, Legislative Assistant. Kathryn Leathers, Legislative Liaison, works out of the Olympia office full time during the legislative session and out of both the Olympia and Seattle offices when the legislature is not in session. During the legislative session, the time and resources of the WSBA legislative team are primarily devoted to Board-approved legislation, but we also monitor and respond to other legislation that affects the practice of law and the administration of justice and facilitate the participation of WSBA Sections in the legislative process.

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## ENGAGING IN THE LEGISLATIVE PROCESS: DEVELOPING OR RESPONDING TO LEGISLATION

### V. Developing Legislation

WSBA-sponsored legislation begins as an idea tossed around by members of a section. Seeing that idea through to legislative enactment requires a lot of groundwork in advance of presentation to the WSBA Legislative Committee and ultimately to the legislature. What follows is a general timeline for the development of legislation. Keep in mind that it is common for major legislative proposals to take more than a year to develop into the final proposal that is introduced in Olympia.

#### Timeline

The Washington State Legislature convenes on the second Monday of every January. It meets for 105 days in odd-numbered years and 60 days in even-numbered years. They can meet even longer in special session by call of the Governor. For WSBA Sections and Committees who wish to propose legislation, the work begins at least 11 months prior to January.

**FEBRUARY - We ask for a heads up:** At the beginning of each legislative session, the Legislative Office sends a letter to all WSBA section chairs. We ask you to let us know whether your section is considering offering any legislative proposals for the following year. If you are, we ask that you let us know, by February 28<sup>th</sup>, the general idea of your proposal as well as the name of a contact person.

Why are we asking you to let us know what you're working on? One of our responsibilities in the WSBA Legislative Office is to know which other constituent groups, legislators or WSBA sections might be affected by your proposal and are thus likely to have an interest in your bill – meaning they are likely to weigh in on your bill during the legislative session. If you inform us about what you're working on, we can advise you about these potentially interested groups and

help you decide whether and when to involve them as you develop your proposal over the next few months. The legislative process is constructed so as to be deliberative and slow to change the law. Controversy about a bill can bump it off the tracks at any point during the process. The more you can iron out concerns ahead of time, the better chance your bill will have when it's introduced in the legislature.

**JUNE – We need your specific proposal:** The WSBA Legislative Committee begins meeting in early September. The Legislative Office needs to have your draft legislative proposal by June 1 so that we can distribute it to the Legislative Committee for its review.

Why do we need your proposal in June for a September committee meeting? We need to allow time for other affected groups to review and comment on your proposal so that you have time to address any potential issues before you take your proposal to the Legislative Committee. Preparation for the session includes getting your bill draft to the Code Reviser's office, which requires lead time. Finally, the Legislative Committee may raise questions or concerns that you will want to take back to your members. In such cases the Legislative Committee may postpone action until a later meeting. If you don't get your proposal to us until September or October you risk delaying BOG action on your bill for that year.

**SEPTEMBER – DECEMBER –The Legislative Committee takes up your proposal:** Sections present their proposals to the Legislative Committee. The Legislative Committee makes its recommendations to the Board of Governors at the December BOG meeting. Sections also present their proposals at that meeting.

Barring extraordinary circumstances, the Board of Governors will not consider sponsorship of legislative proposals after its December meeting.

**JANUARY – APRIL - Into the sausage factory:** If the BOG has voted to sponsor your legislation, the Legislative Office shepherds it through the legislative process, from finding sponsors to requesting hearings to responding to legislators' questions and concerns. Things move fast once the session starts; we need to be able to reach you at a moment's notice with information about the status of your legislation. We may need you to respond to or negotiate an issue raised in a committee hearing. Your section will be well served to have an internal process for quickly making decisions about proposed changes to your legislation. The most successful sections select a legislative chair or point person who can develop a familiarity with the legislative process, legislators and related interest groups.

## **VI. Responding to Legislation**

In contrast to the slow, deliberative process of developing legislation, the process for responding to legislation is often conducted at a breakneck speed. This can be a challenge for a profession that, quite rightly, prides itself on highly deliberative problem solving.

Sections may be asked to respond to legislation in two ways. First, legislators, interest groups or other WSBA sections may be developing legislation. They may seek the full participation of a WSBA section or committee throughout the process of developing their legislation. Or they may instead seek a section's comment on or endorsement of a final legislative proposal. Remember that a section's public endorsement of someone else's legislation constitutes a public position for purposes of the Legislative and Court Rule Comment Policy, requiring a 75% vote of the governing body of the section or committee.

The WSBA Legislative Office asks that you let us know when your section is participating in these activities. This allows us to advise you of effective strategies, potential pitfalls and other information that you may want to consider.

The second way sections may be asked to respond to legislation comes from the Legislative Office. On average, thousands of bills are introduced each legislative session. We go through every one of them looking for bills that may affect the practice of law or the administration of justice. When we identify such bills we send them to the appropriate sections for review.

So what exactly are we asking sections to do with these bills? We rely on sections to tell us whether a bill is of such import to the practice of law that the BOG – or the section – should weigh in publicly. When we send these bills out we usually have no information other than the language of the bill itself. There are not yet any bill reports or other legislative documentation explaining the genesis of the bill or even what problem it is trying to address.

Timing is the greatest challenge for sections wishing to recommend that the WSBA or a WSBA section weigh in on a bill. The Comment Policy applies here as well, and the legislative process moves quickly. There may be only a matter of days from introduction of a bill until it is scheduled for public hearing. For every one of the steps in the legislative process there is a deadline by which a bill must move to the next step or it is dead for the year. To weigh in effectively, the WSBA and its sections must be timely. As a practical matter, that means if a section wishes to take a position on a bill that the Legislative Division has referred to them, they need to let us know immediately. If you wait too long, you can miss the opportunity to weigh in most effectively.

## **VII. Conclusion**

As practitioners, you may see a problem that can best – or only – be solved by statutory changes. The WSBA serves its members and the public by helping sections navigate the legislative process to achieve that solution.

# LEGISLATION AND COURT RULE COMMENT POLICY

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**Purpose:** This policy governs Section, Committee, Division or Council comment on court rules and legislation and clarifies the conditions under which WSBA entities can publicly comment.

**Policy:**

The Board of Governors, the Executive Director, the Legislative Committee, or the Legislative Representative, are authorized to refer legislative proposals or proposed court rule changes to Sections, Committees, Divisions and Councils of the Washington State Bar Association for their consideration; and Sections, Committees, Divisions and Councils are authorized to appear before the Legislature or a committee of the Legislature, or to comment on any proposed rule change pursuant to Supreme Court General Rule 9(f), upon the following conditions:

1. The Section, Committee, Division or Council will not take a position unless that position is the opinion and position of at least 75% of the total membership of the governing body of the Section, Committee, Division or Council.
2. The Section, Committee, Division or Council shall not advocate a position in opposition to a legislative or rule proposal or position of the Board of Governors without prior written notice to the Board.
3. The Executive Director, the Board of Governors, the Legislative Committee, and the Legislative Representative, shall, as appropriate, be advised on an ongoing basis of decisions, positions, and actions of the Section, Committee, Division or Council.
4. The Sections, Committees, Divisions or Councils shall represent to the Legislature or to the Chief Justice that their views and opinions are those of the Section, Committee, Division or Council only, and not the official position of the Washington State Bar Association unless the Section, Committee, Division or Council has the written approval of the Board of Governors to represent the Association.
5. The Section, Committee, Division or Council representatives shall cease to advocate the position of the Section, Committee, Division or Council if requested to do so by the Executive Director, the Board of Governors, the President of the Bar, or, in the case of comment on legislative proposals, the Legislative Committee or the Legislative Representative.
6. Sections, Committees, Divisions or Councils are prohibited from joining or affiliating with groups or associations whose legislative advocacy reaches beyond the areas allowable under GR 12: "affecting the practice of law or the administration of justice."