

WASHINGTON STATE
B A R A S S O C I A T I O N

Board of Governors Meeting

Late Materials

March 19, 2020
WSBA Conference Center
Seattle, Washington

WASHINGTON STATE
BAR ASSOCIATION

Board of Governors

BOARD OF GOVERNORS MEETING Late Materials March 19, 2020 Seattle, WA	
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To: WSBA Board of Governors
From: Sanjay Walvekar, WSBA Outreach and Legislative Affairs Manager
Date: March 13, 2020
Re: 2020 Legislative Session Report/Wrap-Up

BACKGROUND: The following is provided for the Board's information regarding action taken by the Legislature during the 2020 session.

The 60-day 2020 regular session began on January 13 and adjourned on March 12. Legislators passed a myriad of policy measures, as well as a [\\$10.4 billion state transportation budget](#) intended to [mitigate Initiative 976's potential effects on transportation spending](#) and a [\\$53.4 billion supplemental state budget](#) that spends \$200 million on Washington's COVID-19 response.

OVERVIEW:

2020 WSBA Legislative Priorities

Priority #1: Solicit and receive input from the members, sections and committees of the WSBA regarding setting the legislative priorities of the WSBA.

The WSBA legislative affairs team will continue to work with WSBA stakeholders to set legislative priorities for the 2021 session.

Priority #2: Sponsor Bar-Request legislative proposals initiated by WSBA Sections that are approved by the Board.

Gov. Inslee is expected to sign WSBA's request bill, [SB 6037](#), into law this month. Originating from the Corporate Act Revision Committee of the Business Law Section, SB 6037 addresses optional provisions in articles of incorporation, shareholder consent requirements for corporate action, and board gender diversity requirements under the [Washington Business Corporation Act](#) to better align with the Model Business Corporation Act and other leading corporate law jurisdictions, such as Delaware. This law goes into effect on 6/10/2020.

Priority #3: Support non-Bar request legislative proposals approved by the Board under GR 12.

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The Board Legislative Committee closely monitored [HB 1788](#), a bill that would repeal the majority of the State Bar Act. The WSBA Board opposed this legislation during the 2019 legislative session. The bill did not pass its house of origin this session and no bill related to the State Bar Act moved forward this year.

Priority #4: Monitor and take appropriate action on legislative proposals significant to the practice of law and administration of justice.

The WSBA Legislative Affairs team monitored numerous legislative proposals that might have impacted various WSBA entities. The following is a list of some of the key bills that were monitored and involved working collaboratively with relevant WSBA Sections:

- [SB 6028](#) (Sen. Pedersen): Adopting the uniform electronic transactions act and aligning statutory provisions relating to signatures, declarations, and documents (Solo & Small Practice: support). Passed both houses and awaiting Gov. Inslee's signature.
- [SB 6053](#) (Sen. Conway): establishing wage liens (Business Law: concerns). Did not pass Senate.
- [SB 6287](#) (Sen. Pedersen): concerning guardianships and conservatorships (Family Law: concerns). Passed both houses and awaiting Gov. Inslee's signature.
- [HB 2793](#) (Rep. Hansen): vacating criminal records (Civil Rights Law: support). Passed both houses and awaiting Gov. Inslee's signature.
- [HB 2576](#) (Rep. Ortiz-Self): concerning private detention facilities (Civil Rights Law: support). Passed both houses and awaiting Gov. Inslee's signature.
- [HB 2567](#) (Rep. Thai): concerning open courts (Civil Rights Law: support). Passed both houses and awaiting Gov. Inslee's signature.
- [HB 2806](#) (Rep. Goodman): concerning mediation in family law cases involving children (Family Law, Alternative Dispute Resolution: support). Did not pass committee.
- [HB 2544](#) (Rep. Paul): concerning the definition of a veteran (Legal Assistance to Military Personnel: support). Passed both houses and awaiting Gov. Inslee's signature.

Session statistics

During the legislative session this year, the WSBA Legislative Affairs team:

- Referred **884** bills to WSBA Sections;

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- Continuously tracked 517 bills through the end of session;
- Monitored 45 committee hearings;
- Testified and/or coordinated testimony for 4 hearings; and
- Participated in approximately 30 meetings with legislators and staff.

Legislative interim

For some bills that did not reach final passage this year, legislators have already expressed an interest in studying these issues over the summer and fall months for reintroduction in 2021. Over the interim, relevant WSBA entities and the WSBA Legislative Affairs team will monitor and participate in these discussions with legislators and legislative staff regarding various legislative proposals. The WSBA Legislative Affairs team will also work with Section executive committees to share information about the legislative process, set and align legislative goals, and develop best practices for a successful 2021 legislative session.

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Board of Governors

Carla J. Higginson, Governor District 2

TO: WSBA Board of Governors
FROM: Carla J. Higginson, Chair, ad hoc committee on sections legislation bylaw
DATE: March 13, 2020
RE: Proposed policy on Sections and the legislative process – March 13, 2020 draft

ACTION/DISCUSSION : Approval of attached WSBA Sections Legislative Policy

BACKGROUND:

The president created an ad hoc committee to consider a proposed bylaw change on Sections and the legislative process. The committee, as reported by myself at our special Board meeting in December 2019, determined that no bylaw change was needed as the bylaw is written generally. However, the consensus of the committee was that a policy should be developed to clarify how Sections proceed with regard to developing legislation to be introduced, and responding to requests for information from the legislature or taking a position on a bill that is before the legislature. The president directed me to develop a policy in that regard for consideration by the Board at our January meeting, which was done and which was discussed at the January Board meeting. The Board approved it in concept and referred the policy to the WSBA Legislative Committee for further consideration and to circulate to the Sections for their review and comment. The draft policy was sent to the Sections on February 19, 2020 with a request for feedback by March 11th so that comments could be considered by the Legislative Committee and the policy modified as necessary to submit to the Board for further consideration and approval. At its February 21, 2020 meeting (at which point no Section comment had yet been received), the Legislative Committee discussed some clarifications to the draft policy, which are reflected in the attached draft.

The revised draft was sent to the Sections for comment on March 10th with a request that comment be provided to the Legislative Committee by March 12th if possible, otherwise to the Board by March 19th. Comment was received from the Administrative Law Section (Richard E. Potter, Legislative Committee Chair of that section), the Alternative Dispute Resolution Section (Paul W. McVicker, Legislative Committee Chair of that section), the Legal Assistance to Military Personnel Section (Eric McDonald, Section Chair), and the WSBA Sections team (I am not clear on who is on this team). Changes were made pursuant to these comments and were approved at the March 13, 2020 Legislative Committee meeting. The March 13, 2020 draft is attached for the Board's consideration.

RECOMMENDATION:

I recommend approval of the attached policy.

WSBA SECTIONS LEGISLATIVE POLICY

March 13, 2020

Preamble

Sections are the experts in their fields and attorneys and other members of the WSBA expect that their sections will monitor legislation, take positions when appropriate, educate the legislators with regard to proposed legislation, recommend changes to previously passed legislation or technical corrections to existing legislation. The WSBA also needs to know about Section legislative activity so that the WSBA Outreach & Legislative Affairs Manager (“Legislative Affairs Manager”) can help avoid divergent positions and unnecessary expenditure of political capital by the WSBA and the Sections. Training should be provided to at least one designee of each Section’s Executive Committee, with other committee members welcome and encouraged to attend, on how to implement and handle these policies, to be given annually. The Legislative Affairs Manager shall be made available to Section Executive Committees as a resource for any questions as a Section works on a legislative matter in accordance with this policy.

There are two separate tracks addressed by this policy.

1. If a Section wants to originate legislation:

- (a) The Section will conduct a GR12 analysis;
- (b) The Section will work through the WSBA Legislative Review Committee and the Legislative Affairs Manager to ready the proposal to submit to the Board;
- (c) The Board will decide if the proposed bill will go to legislature as a WSBA-sponsored bill, or does not go forward;

(d) If the bill is going forward, the Section will work with the Legislative Affairs Manager to find a bill sponsor to introduce the legislation as necessary;

(e) The Section and the Legislative Affairs Manager will continue to work together to promote the bill. The Legislative Affairs Manager will report to the Board's Legislative Committee the progress of the bill and any testimony that has been presented by the Section.

2. If a Section is taking a formal substantive policy position on a bill (support or oppose):

(a) The Section will conduct a GR 12 analysis;

(b) The Section will notify the Legislative Affairs Manager and the chair of Board's Legislative Committee, as soon as possible after the decision is made by the Section on pending or proposed legislation, that the Section supports it, opposes it (including the reasons for the opposition and whether an amendment might be appropriate), or is taking no position. The Section will also notify the Legislative Affairs Manager at least 24 hours in advance of a hearing before a legislative committee on a given bill, if the Section wishes to testify regarding that bill. The Section may do nothing more until the Legislative Affairs Manager gives permission to testify or to move forward with the position being taken by the Section, which permission may be given either verbally or in writing. The Legislative Affairs Manager will bring it to the Board's Legislative Committee for direction on how to proceed if there is time. However, if there is not time to obtain such approval, the Legislative Affairs Manager will make the decision, erring on the side of approving the request to testify or to move forward with the Section's position, unless there is a good and articulable reason to deny the request, which shall be explained to the Section. The Legislative Affairs Manager will notify the Board's Legislative Committee as soon as possible thereafter.

(c) If a bill being addressed by a Section (on which the Section has received approval as set forth above) is carried forward to another legislative session, or an identical bill is introduced in a subsequent legislative session, the prior approval shall be automatically carried forward on that bill without the need to seek approval again. If a bill is not identical, the approval process as set forth above shall be followed.

(d) The Sections, Legislative Affairs Manager and Board's Legislative Committee will develop processes for a quick turnaround on Section requests and this process will be disseminated to Sections.

3. If a Section is taking no position on proposed or pending legislation but would like to work with legislator, or wishes to comment by providing background information or other assistance to the legislature.

If a Section wishes to provide technical drafting comments such as pointing out issues (typographical errors, mis-citations of RCW sections, ambiguities, possible conflicts with other RCWs not covered in the bill, and suggested amendatory language), they shall keep the Legislative Affairs Manager advised of and copied on such comments but shall not be required to go through a GR 12 analysis or obtain approval of the comments.

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TO: WSBA Board of Governors
FROM: Daniel D. Clark, WSBA Treasurer & 4th District Governor
DATE: March 15, 2020
RE: Emergency Spending Budget Authority for Interim Executive Director re: Corona Virus

ACTION/DISCUSSION: The following is meant to provide a recommendation from Treasurer Daniel D. Clark in support of request for budget modification request and expanded authority of Interim Executive Director Terra Nevitt for various necessary expenditures and authorization to properly respond to COVID-19 and Temporary Spending Authorization Request for best practice mitigations at the WSBA.

As WSBA Treasurer, I would like to recommend and urge the Board of Governors to join me in supporting the Interim Executive Director's request to approve temporary spending authorization to allow the Interim Executive Director to respond to rapidly changing guidance relating to slowing and mitigating the spread of COVID-19.

The request has been collaboratively prepared by Interim Director Nevitt, the WSBA Executive Team, President Majumdar, President-Elect Sciuchetti, and myself as WSBA Treasurer. I believe it represents a successfully collaborative effort to provide needed clarification, authorization and fiscally prudent budgetary authorization to provide Interim Director Nevitt, the necessary tools to respond to the pandemic.

The request will be able to be absorbed by 2019-20 year to date revenue over expenditures, and is in the best interest of the WSBA as an organization to be able to maintain the robust level of services to the membership to serve the public and to take reasonable best practice steps to protect WSBA employees to slow the spread of COVID-19.

Respectfully,

Dan Clark

WSBA Treasurer/4th District Governor

DanClarkBoG@yahoo.com

(509) 574-1207 (office)

(509) 969-4731 (cell)

TO: WSBA Board of Governors
FROM: Terra Nevitt, Interim Executive Director
DATE: March 16, 2020
RE: **Executive Director Notice of Planned Response to COVID-19 and Temporary Spending Authority Request**

ACTION: Approve temporary spending authorization to allow the Interim Executive Director to respond to rapidly changing guidance related to slowing the spread of COVID-19.

Background

As of March 15, Public Health-Seattle and King County reported 32 new cases of COVID-19 in King County, bringing the total case count to 420. The Health Department reports that COVID-19 is spreading more rapidly in King County. The [Washington State Department of Health, Centers for Disease Control](#) and Prevention, and [The Occupation Safety and Health Administration](#) have all provided guidance for employers, including:

- Encourage and enable as many employees as possible to telecommute
- Encourage sick employees to stay home and plan for high rates of absent employees
- Separate sick employees from others and do not require a doctor's note to return to work
- Protect workers in close contact with sick people (close contact is about 6 feet from infected person for 10 minutes or direct contact with infectious secretions)
- Encourage frequent hand washing and cleaning of frequently touched surfaces

Governor Inslee has imposed numerous social distancing limitations in the state, including a prohibition on gatherings of more than 50 people, closure of all K-12 schools, and closure of certain business and venues. King County Executive Dow Constantine and Health Officer Jeff Duchin have also prohibited gatherings of 50 people and below unless specific hygiene and social distancing criteria can be met. Similar mandates are occurring in other counties.

The purpose of this memorandum is to provide notice to the Board of Governors of actions within my authority that I have taken and am considering and to request temporary spending authorization beyond my authority that is necessary to respond to COVID-19 guidance to employers in King County.



COVID-19 Response To Date

On March 3, 2020 I first reached out to staff to urge individuals with symptoms of acute respiratory illness to stay home for at least 24 hours after those symptoms had subsided and encouraged those that may have been exposed to COVID-19 or those at higher risk for serious illness to work from home if possible. We also urged teams to begin meeting and planning for further disruption to our work with an emphasis on prioritizing the most critical work and increasing the availability of remote participation. At that time, King County had 10 confirmed cases of COVID-19.

On March 5, 2020, following the guidance issued by King County Executive Dow Constantine and the King County Department of Health I urged *all* WSBA employees to work from home to the extent they could through the end of March. Teams and Departments quickly began working to ensure that our critical functions could be done remotely with small numbers of employees coming into the office to carry out critical tasks that must be done on site. We also began examining all non-essential meetings or events involving 10 or more people through the end of March and transitioning them to entirely or largely virtual events. For events that could not be made virtual we determined what could be postponed or cancelled.

On March 12, 2020, I notified the staff that we would be following the guidance issued by Gov. Inslee and Seattle and King County Public Health to cancel any events involving more than 250 people and taking steps to minimize the risk of transmission for smaller events. Employees have been worked collaboratively with volunteers to make nearly every meeting and event virtual and/or postponing.

Today I notified staff that effective March 17, 2020, I will be limiting walk-in access to the WSBA office to ensure appropriate social distancing for those that must be on site to maintain services to our members and the public.

Although WSBA has many tools for remote participation, we are lacking much of the infrastructure and norms that would allow us to function entirely remotely. Despite this, the WSBA staff has been utterly flexible, patient, and professional in responding to rapidly changing circumstances. Thanks to their efforts, we are continuing to maintain a high-level of service, while playing our part in slowing the spread of COVID-19 to prevent our public health systems from becoming overwhelmed.

Executive Director Authority

General Executive Director Budget Authority

In order to protect WSBA employees and volunteers and to allow WSBA to continue to operate efficiently during this disease event, I am may take additional actions that may have a budget impact. The WSBA Fiscal Policies authorize the Executive Director to take the following actions up to \$10,000 per item or up to \$50,000 collectively during the fiscal year where the overall bottom line of the annual budget is not affected:

- Approve unbudgeted expenditures that are offset by unbudgeted revenue; and

- Reallocate budgeted expenditures where there is a change of intent (including new programs and significant expansion of existing programs, but does not include long-term commitments or future WSBA obligations).

Executive Director Budget Authority in an Emergency or Disaster

Additionally, in an emergency, and when it is not feasible to get Budget and Audit Committee or Board of Governors approval, the Executive Director or Treasurer have the authority to approve expenditures that are necessary and prudent to implement the WSBA's Disaster Recovery Plan or keep the WSBA operational. These expenditures may be beyond the capital or operating budgets, and may or may not impact the WSBA's reserves. The Board of Governors shall be immediately notified when expenditures of this nature are authorized.

WSBA's Disaster Recovery Plan (Plan) defines "disaster" as a major disruption of service that denies or severely limits access to or operation of WSBA's primary facility infrastructure for an extended period of time. The Plan authorizes the Executive Director to declare a "disaster" and implement the Plan.

Additional Planned COVID-19 Responses

Likely Within ED Authority

In response to the COVID-19 guidance, I am considering the actions listed below. I believe most of these actions are within my authority, however I consider it a best practice to notify you of these plans now so that we can implement a coordinated plan, including clear communication with employees and members.

- Additional expenditures on software or hardware – WSBA will need to purchase unplanned hardware, software, and/or additional licenses for existing software to enable telecommuting on a larger scale that currently available.
- Reimbursing for parking and alternative forms of transportation – Official guidance recommends social distancing of 6 feet when in enclosed spaces for longer than ten minutes. Public transportation may not allow for adequate spacing and at some point during this response, these services may be limited or halted. To address this we would temporarily offer parking reimbursement to employees who *must* be present in the office to perform *essential* job functions and do not feel safe using, or do not have access to, public transportation. WSBA's Employee handbook authorizes parking reimbursement when a vehicle is required for work, but does not address the current situation. The ED job description (approved by the BOG Personnel Committee) does permit the Executive Director to make exceptions to general policy and practice.
- Reimbursement for use of personal cell phones – During the time that the majority of our work force is telecommuting many will be required to regularly use their personal cellular phone for participating in meetings, working with members, and working with the public. WSBA fiscal policy provides for a WSBA-issued cellular phone or a fair and equitable reimbursement of their personal cellular phone service when a cell phone is required for their work. Current WSBA practice is to reimburse eligible employees \$20/month for use

of their personal cell phone. During the time that a majority of the workforce is working remotely we anticipate an increased need for phone reimbursements.

- Office closure – In the event that the situation significantly worsens and/or we have a suspected or confirmed case of COVID-19, I may need close the WSBA offices entirely. The Employee Handbook authorizes the Executive Director to close the office in the event of significant and widespread civil disruption in the 10-12 mile radius of downtown Seattle. In such cases, employees are granted a paid absence.
- Additional expenditures on environmental cleaning – In the event that have a suspected or confirmed case of COVID-19 among a person that has been present in the WSBA offices in the prior two weeks, the office would need to be closed for environmental cleaning.

The overall cost of these measures is estimated at \$25,000 through the end of April. I respectfully request that the Board ratify such expenditures.

Potential Response Not Within ED Authority – Flexibility in Addressing Leave

Although our office is open and many employees can work remotely, there are myriad circumstances under which an employee may not be able to work for an extended period of time including those who cannot work and must isolate due to exposure, illness or vulnerability and those who are impacted by the 6 week closure of schools. Under our current policies, employees who cannot work under these circumstances must first take their accrued sick leave and vacation time and then must take unpaid leave. Under current circumstances, those that exhaust their leave may benefit from Emergency Rule Unemployment Insurance or Paid Family and Medical Leave. Still, we anticipate that a handful of employees may fall into a gap that might force them to make a difficult choice between following doctors' orders or caring for their family and paying their rent.

I respectfully request that the Board authorize the Executive Director to permit employees to accrue negative sick leave if needed and, in extraordinary cases grant additional paid time to avoid undue hardship to employees. This grant would have no impact on the budget, though there would be some lost productivity for those employees unable to be at work.