

WASHINGTON STATE BAR ASSOCIATION

WSBA LEGISLATIVE ROADMAP

Overview

This WSBA Legislative Roadmap details how the WSBA participates in the legislative process and includes a description of the guiding policies as well as the role of the WSBA Board of Governors (Board), WSBA entities, and the WSBA Legislative Affairs team.

While the Washington State Legislature convenes only for a few months each year, the legislative process is a year-round endeavor. In any given year, the Washington State Bar Association (WSBA) typically puts forth and advocates for passage of request bills, comments (pro, con, or neutral) on various pieces of legislation, tracks legislation of interest for various WSBA entities, and partners with lawmakers to offer technical advice aimed toward law improvement. All this activity is guided by the legislative policies and processes established by the Board, grounded in rules, laws, and caselaw established by the Washington Supreme Court and federal courts. The Board's policies and processes are carried out by the WSBA Legislative Affairs team.

Legislative Philosophy

Under its delegated authority to regulate the practice of law, the WSBA is uniquely suited and authorized to advocate for an effective and accessible legal system, which includes drafting, commenting on, and taking stances on bills that relate to or affect the practice of law or the administration of justice. Also, legal professionals are perhaps closest to Washington's laws as used daily across all jurisdictions, which makes WSBA members uniquely situated to engage with and assist legislators to ensure their laws are working as intended to serve the public. This type of legislative work is aimed at law improvement, and it is done through the collective voice of WSBA's entities agreeing and advising in their respective area of expertise.

Governing Frameworks: Bylaws, General Rules, Caselaw, and Policies

WSBA legislative activities and procedures are governed by three interrelated frameworks: 1. WSBA Bylaws; 2. Applicable Washington Supreme Court and federal court rules, laws, and caselaw; and 3. WSBA policies and procedures.

The WSBA bylaws provide broad permission for the WSBA to “[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.) These bylaws are informed by the Washington Supreme Court's General Rule 12.2, which prohibits the state bar from taking “positions on political or social issues which do not relate to or affect the practice of law or the administration of justice.” (GR12.2.(c)(2) Evolving caselaw, however, supersedes other

WASHINGTON STATE BAR ASSOCIATION

considerations about what a mandatory bar association is or is not allowed to do in terms of political activity; currently, the key test, derived in *Keller v. State Bar of California* (1990), is that the activity must be germane to regulating the legal profession or improving the quality of legal services available to the public.

Weaving all these governing frameworks together, the Board has adopted a Legislation and Court Rule Comment Policy (Policy 1501). WSBA sections, committees, and councils, as entities of the WSBA, are bound by this policy. The policy provides that an entity may only take a position on legislation and court rules if (1) the issue is within the scope of permissible Bar activities under GR 12.2 and other legal requirements applicable to Bar activities and (2) at least 75 percent of its governing body (typically its executive committee) agrees on the position.

Guidance Applying Policies

The Legislative Affairs Team has created a document, “Guidance in Applying WSBA Policy for Legislative Activity,” to assist WSBA entities that want to engage in any legislative activity. It provides guidance and examples of how WSBA leaders put their policy into practice when evaluating GR 12.2 and evolving caselaw regarding mandatory bar associations and political activities. It is in the form of a flowchart with timelines and steps for entities to take for each legislative action they may want to take.

ROLES and RESPONSIBILITIES

WSBA Legislative Affairs Team: Go-to Resource for All Legislative Work

The WSBA Legislative Affairs Team is the go-to resource for questions, requests, and guidance regarding legislative activity. All WSBA entities must attend the annual legislative primer organized by the Legislative Affairs Team before they are authorized to engage in legislative activity; all entities must notify the Legislative Affairs Team before engaging in any legislative activity. Overall, the Legislative Affairs Team coordinates and drives legislative efforts with elected officials, agencies, organizations, and key stakeholders that play a role in advancing and supporting WSBA-related priorities. The Legislative Affairs Manager serves as the WSBA’s official registered lobbyist and coordinates WSBA and judicial interests within government relations activities, as well as the activities of the Board of Governors and Legislative Review Committees.

During the legislative session, the Legislative Affairs Team prioritizes efforts around Board-approved legislation while also monitoring other bills that may impact the practice of law and administration of justice. By attending the annual legislative primer, WSBA entities can partner with the Legislative Affairs Team to keep updated on legislation that directly impacts their practice area. When the Legislature is not in session, the Legislative Affairs Team works towards

WASHINGTON STATE BAR ASSOCIATION

meeting emergent legislative goals and prepares for future sessions through a collaborative process with internal entities constituencies and key external stakeholders.

WSBA Entities: Propose, Monitor, Comment On, and Improve Bills

Within the parameters established by the Board through its policies and decisions, and with the assistance of the WSBA Legislative Affairs Manager, WSBA entities—notably Sections—play key roles in both proposing and advocating for legislation and reviewing and advising legislators regarding non-WSBA request legislation (law improvement). In the legislative arena, entity activity is not considered separate from WSBA activity (i.e., “I am speaking for XX section” is not meaningfully different than “I am speaking for the WSBA.”). **That is why entities partner closely with the Legislative Affairs Team in their legislative goals and are required to send at least one representative to the annual Legislative Primer before engaging in legislative activities.** These activities include:

- *Developing WSBA-request legislation.* Entities may draft proposed legislation and seek support from the WSBA to find a sponsor for the bill and advocate for the bill during session. Each proposal must:
 - Be within the scope of permissible Bar activities under GR 12.2 and other legal requirements applicable to Bar activities;
 - Be well vetted within the WSBA as well as external stakeholders; and
 - Be approved by at least 75 percent of the WSBA entity’s executive committee.

The work involved with request legislation will take, at minimum, months of preparation and can often span multiple legislative sessions. In general, a proposal must be received by the Legislative Affairs Manager no later than 90 days before the November Board meeting. The process will include working with impacted stakeholders, certifying approval from within the entity’s membership and issue-spotting from the WSBA membership at large, and getting approval from the Board Legislative Committee, the Legislative Review Committee, and the Board as a whole. *Please see “Guidance in Applying WSBA Policy for Legislative Activity” for more information.*

- *Monitoring relevant legislation.* Via the annual Legislative Primer, entities can partner with the Legislative Affairs Team to designate a representative to receive notifications and updates about legislation that impacts the entities’ practice area or interests.
- *Responding to non-WSBA request legislation:* In contrast to the process of developing WSBA-request legislation, the process for responding to non-WSBA request legislation may be conducted at a fast pace, as dictated by rapid developments in the legislative session. This activity is governed by Policy 1501, and the Legislative Affairs Team will offer training via an annual Legislative Primer; at least one representative must attend

WASHINGTON STATE BAR ASSOCIATION

from each entity that wants to engage in legislative activity. Entities respond to non-WSBA request legislation in two ways:

1. Legislators, interest groups, or other WSBA sections may seek the input and participation of a WSBA entity in the development of a particular legislative proposal. The type of input sought may be substantive or aimed towards law-improvement.
2. More commonly, the WSBA Legislative Affairs team will refer a bill of interest to relevant WSBA entities for review and possible feedback.

The WSBA Legislative Affairs Manager provides advice and assistance to WSBA entities responding to non-WSBA request legislation year-round and is always available to brainstorm and offer guidance.

Board of Governors Legislative Committee (BLC): Authorization Clearinghouse

The Board of Governors Legislative Committee (BLC) comprises 11 members of the Board, including the President, President-Elect, Immediate Past President, and Treasurer. It is a subset authorized to take positions on legislative proposals on behalf of the WSBA, which is necessary due to the fast pace of the legislative session and high volumes of bills introduced each year. The BLC meets weekly during the legislative session and is responsible for responding quickly to important legislation that may impact the WSBA.

The BLC shapes the overall WSBA legislative priorities for the upcoming session by crafting Bar-request bills or partnering with stakeholders to recommend WSBA support for upcoming bills. The BLC also screens all entity Bar-request bills. The Legislative Affairs Manager funnels all such requests through the BLC, which applies two primary lenses: Does the proposed bill fit in with the WSBA's overall legislative priorities and objectives; and is the proposed bill within the scope of permissible Bar activities under GR 12.2 and aligned with federal case law and other legal requirements applicable to Bar activities? If the BLC clears the request bill for both questions, it will move forward to the Legislative Review Committee for stakeholder analysis before, potentially, advancing for approval from the full Board in November.

Legislative proposals from WSBA entities seeking Bar sponsorship must be received by the Legislative Affairs Manager no later than 60 days prior to the date of the scheduled November Board meeting. This date will be published on the WSBA Legislative Affairs webpage and shared with WSBA entities well in advance. By this date, all WSBA entities seeking Bar sponsorship must (1) submit to the Legislative Affairs manager a cover sheet summarizing the legislative proposal, and (2) certify that the proposal has been sent for comment to their entity's entire membership, with a summary of feedback received included in the cover sheet. *Please see "Guidance in Applying WSBA Policy for Legislative Activity" for more information.*

Role of Governors: Governors on the BLC participate in all meetings, including weekly conference calls during the legislative session, and make decisions on behalf of the WSBA when

WASHINGTON STATE BAR ASSOCIATION

appropriate. All Governors receive weekly reports to keep fully apprised of action taken by the BLC.

Role of the WSBA Legislative Affairs Team:

The WSBA Legislative Affairs Manager is the staff liaison to the BLC and provides materials for its review. The WSBA Legislative Affairs Team refers bills to the BLC for review. During session, the Legislative Affairs Manager facilitates and participates in weekly conference calls with the BLC to report on legislative matters of importance and to provide recommendations for potential action to be taken by the WSBA. The Legislative Affairs team also schedules and coordinates an annual meeting of legislative stakeholders in the legal field and follows up with the Committee and stakeholders on any desired action on the part of the WSBA.

Legislative Review Committee (LRC): Stakeholder analysis

The WSBA Legislative Committee (LRC) serves as the stakeholder vetting ground for legislative proposals that are presented to the Board of Governors each November. The LRC comprises up to 35 WSBA members, with the goal of a wide range of representation in terms of practice area, experience, demographics, etc. The LRC is meant to represent the interests of the broader bar membership, not any one perspective or practice area within the Bar.

The LRC does not propose legislation of its own but receives request bills after the BLC has reviewed and cleared them to advance. These proposals typically come from a WSBA section. The LRC's primary task is to determine whether the proposal has been appropriately vetted both internally and externally with twin goals: To ensure the entity's membership has been notified and is supportive of the bill, as a reflection of agreement in the bill's practice area; and to ensure the WSBA's membership has been widely notified with opportunity to issue-spot and note objections from other practice areas.

The entity requesting bill sponsorship is responsible for certifying its executive committee and membership is unified in advancing the bill. If the proposed legislation is authorized to advance by the BLC, the Legislative Affairs Manager is responsible for sending the proposal to the entire Bar membership for feedback. All feedback will be shared with the LRC. The LRC will meet annually, as necessary, no later than 30 days prior to the date of the November Board meeting to review all legislative proposals. A representative of the entity will be invited to present the proposal to the LRC, explain the need for the proposal, and answer questions.

LRC members may ask any substantive and technical questions about the proposal and may ask for additional information or language modifications. Deference should be afforded to the subject-matter expertise of the WSBA entity, as is appropriate. Once the LRC has thoroughly reviewed a proposal and has been provided with sufficient information to make a recommendation to the Board of Governors, the Committee must vote on each proposal.

WASHINGTON STATE BAR ASSOCIATION

A simple majority is needed to take a position on behalf of the LRC. The actual vote count on each proposal will be reported to the Board. Voting options for WSBA-request bills include:

- **Sponsor.** A vote to sponsor a proposal is a recommendation to the Board of Governors that the proposal be supported by the WSBA and be presented to the Legislature as a WSBA-request bill;
- **Do Not Sponsor.** A vote not to sponsor a proposal means that the Committee has reviewed the proposal and concluded not to recommend to the Board of Governors that the WSBA sponsor the legislative proposal this session; or
- **Table.** A vote to table a proposal means that the Committee has insufficient information to make a recommendation to the Board of Governors. In this case, the Committee is not indicating support or opposition but has opted not to take a position.

Role of the Governors: After considering recommendations by the Board of Governors Nominations Committee, the Board appoints all members of the LRC. The Board receives the LRC's recommendations at the November Board meeting and determines a final legislative agenda in preparation for the upcoming session.

Role of the WSBA Legislative Affairs Team: The WSBA Legislative Affairs Manager is the staff liaison to the LRC. The WSBA Legislative Affairs team provides the LRC with corresponding materials including a cover sheet. The cover sheet includes a summary of the legislative proposal as well as internal and external stakeholder vetting work. A representative of the WSBA entity presents the proposal to the LRC, explains the need for the proposal, and answers questions.

If legislation proposed by sections is recommended by the LRC and is approved by the Board, the WSBA Legislative Affairs Manager is responsible for working with appropriate WSBA entities to shepherd the proposal through the legislative process. For non-WSBA proposals that are supported by the Board, the Legislative Affairs Manager is responsible for representing the WSBA's position on those proposals before the Legislature. The WSBA Legislative Affairs team also works with LRC leadership to develop recommendations for appointments to the LRC which are then provided to the Board of Governors Nominations Committee.