

SECTIONS LEGISLATIVE COMMENT POLICY

Note: This is a revision to the May 21, 2020 draft of the Sections Legislation Comment Policy, with thanks to the RPPT and Family Law Sections for their comments, the Member Engagement Committee, and Greys Harbor Bar Association President Jean Cotton. It prohibits municipal and federal comment unless authorized by the Board of Governors. If adopted, this Legislative Policy would supersede and replace the WSBA Legislation and Court Rule Comment Policy amended November 13, 2015 by the Board of Governors.

Purpose: This Policy governs the authority of Sections of the Washington State Bar Association to comment publicly on state legislation, executive orders, and administrative rulemaking (hereinafter “Matter”). For purposes of this Policy, to “comment” means to take a position (for example, expressing support, concerns, or opposition) with or without accompanying statements explaining the position; it also means to provide input (for example, suggested amendments, recommendations, analysis, or comments to the media) without taking a position. The reason for this Policy is to provide a mechanism for divergent positions on legislation to be reconciled with the assistance of the Legislative Affairs Manager in order to provide the Legislature with the best possible information in developing new laws.

The work of the Sections in the legislative process is valuable and important to WSBA members and requires a contribution of significant time and energy by Section Executive Committee members. 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. Sections also benefit from learning of the positions of other Sections on the same bills or on companion bills.

Policy:

1. Sections are encouraged to identify legislative issues within their area of expertise. The Legislative Affairs Manager will also identify bills to a Section that are within a particular Section’s expertise and will keep the Sections updated on a bill’s progress and pivotal points in the legislative process.

2. Training should be provided annually by the WSBA staff and Section members with significant experience in the legislative setting to at least one designee of each Section’s Executive Committee, with other committee members welcome and encouraged to attend, on how to implement this Policy. Such training should include how to accomplish Section goals and how to act responsibly in the legislative setting.

3. 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. Each Section and the Legislative Affairs Manager will work cooperatively to establish a process to assist each Section’s Executive Committee in the development of and consideration of any comment. Similarly, Sections should be a resource

to the WSBA on legislative matters within a Section's subject area.

4. Sections are authorized to appear before or otherwise comment on legislation to the Legislature, or a committee of the Legislature, only under the following conditions:

a. The Section may not comment unless: (a) at least 75% of the total membership of the Section's Executive Committee has first determined that the matter under consideration meets GR 12; and (b) after determining that the Matter meets GR 12, that the comments are the opinion of at least 75% of the total membership of the Executive Committee of the Section. A subcommittee or other subset of a Section may not communicate its comments on a Matter to the Legislature or a committee thereof.

b. The Section shall not communicate comments on a Matter if such comments are in conflict with or in opposition to decisions or policies of the Board of Governors or Board Legislative Committee, including GR12 analyses.

c. The Section shall seek authorization from the Legislative Affairs Manager or the Board Legislative Committee Chair prior to communicating its comments on a Matter. In order to officially comment on behalf of the WSBA, the Section must have the prior written approval of the Board Legislative Committee or the Board of Governors, and any comments will be subject to limitations established by the Board of Governors. If authorization is granted, Sections may represent that the comments are the official comments of the WSBA.

d. Each Section will apprise the Legislative Affairs Manager and the chair of Board's Legislative Committee, as soon as possible after a decision is made by the Section on pending or proposed legislation, that the Section intends to support it, oppose it (including the reasons for the opposition and whether an amendment might be appropriate), or is taking no position. Each 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 of the decision as soon as possible thereafter.

e. Each Section is responsible for advising the Legislative Affairs Manager, on an ongoing basis, regarding decisions, comments, and actions of the Section regarding Matters. The Section shall advise the Legislative Affairs Manager of any proposed action intended to communicate its comments on legislation in advance of taking such action. Unless otherwise authorized by the Board of Governors or the Board of Governors Legislative Committee, the Section shall follow the advice, guidance, and recommendations of the Legislative Affairs Manager in taking any action. However, a Section representative may answer questions posed by legislators in a manner consistent with the Section position that has been authorized in accordance with this Policy.

f. Each Section may 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 a bill, and suggested amendatory language) without a GR 12 analysis. The Legislative Affairs Manager shall be advised of and copied on such comments in a timely manner.

g. Sections may not comment on municipal (defined as a city or county) Matters or on Federal Matters, which are defined as federal court rules and legislation, executive orders, administrative rulemaking, and international treaties. If a Section believes that comment on a municipal or Federal Matter should be undertaken, the Section may bring the Matter to the Board of Governors to seek the Board's authorization. Such authorization is subject to such limitations as may be established by the Board of Governors.

h. This Policy supersedes and replaces any and all prior policies on the same subject, as they apply to Sections, including but not limited to the WSBA Legislation and Court Rule Comment Policy amended November 13, 2015 by the Board of Governors.