



LEGISLATIVE AFFAIRS PROCEDURES

During the course of each session of the Maine Legislature, the MSBA reviews hundreds of pieces of proposed legislation as bills are printed and referred to one of the Joint Standing Committees. Responsibility for initial review of these bills rests with MSBA's contract lobbyist, in conjunction with the executive director and the MSBA's Legislative Committee. The MSBA lobbyist is James Cohen and he can be reached at jcohen@verrill-law.com.

Bills that are flagged as being of potential interest to the MSBA are compiled for a weekly legislative update. The bills are organized by section jurisdiction/substantive law area, and an electronic link to the bill text is provided to facilitate review. Section chairs, or individuals designated by the section chairs, are expected to review this list of newly printed bills and to provide feedback if appropriate.

Section review of proposed legislation is often a critical step in determining whether the Association will take a position, and if so, what position, on that legislation. The Association's lobbyist relies on section leaders to review legislation in as timely a manner as possible, since the legislative schedule can move very quickly. The Board of Governors, which meets only once a month, also looks to the sections for timely recommendations that may serve as the basis for arriving at the MSBA's position on a particular bill. Finally, section involvement enhances the Association's role as a resource for legislators, particularly as fewer and fewer lawyers serve in the Legislature.

The Maine Legislature is typically in session from January to June during its First Regular Session and January to April during its Second Regular Session. You can therefore expect the bulk of requests for legislative review to occur during the first half of each year. The MSBA holds an annual section chair meeting every November to review processes. During the course of a session, your section may receive a large number of bills, only a few, or possibly none at all. Of course, if you learn of a bill that has not been forwarded to you, please inform the MSBA lobbyist or executive director. Given the number of bills reviewed, it is possible that from time to time one may slip through the cracks!

When you are notified of a bill that has been flagged as being of potential interest to your section, we ask that you, either individually or through an established internal section process, review the legislation. **If your section decides to take a position on a bill, you must send a report or testimony to the executive director for review by the Legislative Committee prior to submission.** The purpose is to make the MSBA aware of the section's position, and to ensure the MSBA isn't taking a contrary position. If a bill is deemed to be of major significance to the practice of law or to have a substantial impact on access to justice, it is possible that the Board will arrive at a position independent of a section's recommendations. There are a number of issues on which certain positions have historically been taken in this regard. It is also possible for the Board to adopt a position different from that recommended by a section, although it is unusual.

If the section would like the MSBA to take a position on a bill on behalf of the entire MSBA (rather than just the section), the section must send that request to the executive director, who will review it along with the MSBA lobbyist, Legislative Committee and Board of Governors. The Board may elect to not take a position on behalf of the entire Association; in this case, the section may represent its own position to the Legislature. In order for the Association's lobbyist to actively advance an Association position on a particular bill, the Board of Governors must adopt a position on it.

PROCEDURE FOR REVIEW OF LEGISLATIVE PROPOSALS

1. When you are notified about a bill, please do not wait for your full section to meet. It will be the exception, rather than the rule, that you will have an opportunity to discuss a bill in your full section.
2. We recommend that each section appoint a committee, if not already established, to review legislation forwarded electronically to the section. Please let us know who your committee chairperson is, and, if you prefer, we will communicate electronically with him or her and copy you. We also recommend that each section have a designated contact person to work directly with the Association's lobbyist as legislation makes its way through the legislative process.

It is important to remember that there are many new bills each month for MSBA to consider. A timely response from section leaders is essential to our activities in the Maine Legislature, and assures us of an opportunity for input on legislative proposals. In order to ensure that bills are given proper consideration by the Legislative Committee and/or Board of Governors, we would appreciate receiving feedback from sections no later than a week after notice is provided to the section (or sooner if the legislative schedule necessitates).

3. As you review the legislation forwarded to your section, we ask that you recommend a position either in **support** or in **opposition** to the bill as drafted. Should you determine that the bill does not warrant MSBA involvement, a recommendation of **no position** is appropriate. Most bills will likely fall into this category.

Please indicate what parts or sections of the bill you oppose or favor and why. If you are opposed to a bill, you may wish to suggest how the bill could be amended to make it more acceptable. The same is true with respect to bills that you may support in principle. Regardless of the position MSBA takes, the Association will attempt to improve the bill if we see that it is going to be enacted in some form.

4. Often, a section will take a position without requesting MSBA support for that position. In that event, please keep the Association's lobbyist informed of your legislative activities and copied on all written testimony submitted to the Legislature, as it is likely he or she will be approached by legislators regarding your section's involvement. This also allows us to advise you of effective strategies, potential pitfalls, and other information you may want to consider.

TESTIMONY BEFORE COMMITTEES

The Board of Governors believes the Association can and should provide the best testimony possible when appearing before Committees of the Maine Legislature, and that our members' expertise as professionals should be demonstrated to the membership of the Maine Legislature. To that end, MSBA leadership may be calling upon you or a designated member of your Section to testify on bills on which the MSBA has taken a position. This will also include MSBA-initiated bills that are pending before the Maine Legislature. Our lobbyist may accompany you to the hearing and provide whatever assistance you need.

REMINDER: When appearing before any Committee of the Maine Legislature, it is important to be clear on whether you are **speaking on behalf of the Association or solely on behalf of a section** of the Association. Please do not represent that you are speaking on behalf of the Association unless the Board of Governors has so decided. Likewise, **adequate section approval should be secured prior to testifying on its behalf.**

Keeping in mind that the objective of testifying is to inform and persuade, legislative testimony should include:

- a) a discussion of the purpose/intent of the bill;
- b) some background on the bill, what prompted its introduction;
- c) if case law prompted the bill, reference to the case and what the court said;
- d) what impact the bill might have on other sections of the M.R.S.A., especially if other statutory sections are referred to in the bill;
- e) a discussion of the fiscal implications in the bill, if appropriate; and
- f) potential interaction/conflict between the bill and existing rules of procedure.

The attached outline, "Legislation Comment Preparation," may be helpful as you review a bill and/or prepare to appear before a legislative committee. If you have any questions on procedure, please feel free to contact the MSBA's lobbyist or the executive director. One thing that is important to remember when testifying is that you are not in a courtroom before a judge. Few members of the Maine Legislature are attorneys.

LEGISLATION COMMENT PREPARATION

- I. Purpose and intent of bill.
 - Does the bill amend existing law, enact new law, or repeal existing law?
 - What will the bill do?
 - Will the bill correct a problem that has arisen due to a court interpretation of a statute?
 - Is it to clarify a matter that has arisen as the result of the enactment of a conflicting statute?

- II. Background of bill.
 - What is the source of the subject matter of the bill?
 - Is it the result of a study conducted by your Section or some other Section?
 - Is it a recommendation of a national or special commission, e.g., National Commission on Uniform State Laws?

- III. Provide examples of how the bill would operate if enacted.

These examples should be comparable to the ones you would use when testifying before a legislative committee. They will also assist the sponsor of the bill in understanding the operation of the bill, and be useful in the sponsor's presentation before the Committee and on the floor during debate.

- IV. Will the bill have any fiscal impact on state or local government?

This is very important, as all bills are analyzed by the nonpartisan legislative staff prior to Committee action to determine what costs, if any, are associated with the bill.

- V. List of persons who will be available as witnesses:
 - MSBA Section Chair
 - An alternate in Augusta
 - An MSBA Section member from the sponsor's legislative district

- VI. What potential opponents do you foresee with respect to the bill?

- VII. Please provide any additional information you believe would be helpful to the MSBA's lobbyist in presenting the bill to the Maine Legislature.