

New Hampshire Bar Association Legislation Committee

ORIENTATION



How the Bar Makes Decisions About Engaging in Legislative Activity

The following analysis was originally prepared by Stephen L. Tober for the 1986 Fall Leadership Retreat. The attached includes the Bar's "Roadmap for Legislative Advocacy" and chart of "Governance and Decision-Making" updated through June 1989. The Board's procedure adopted to comply with the U.S. Supreme court decision in Keller et al. v. State Bar of California et al. is also attached.

"The line that we draw below is intended to divide issues that are within the scope of the Association's objectives...from those that fall outside those objectives...."

-Petition of William Chapman,
128 NH 24 (1986)

"Lines should not be drawn simply for the sake of drawing lines."

--Felix Frankfurter
Pearse v. Commissioner of Internal Revenue,
314 US 593 (1942)

NEW HAMPSHIRE BAR ASSOCIATION

Roadmap for Legislative Advocacy

Excerpt from Article I (purposes) – New Hampshire Bar Association Constitution:

“ The Association shall confine its activities before the General Court to those matters which are related directly to the administration of justice; the composition and operation of the courts; the practice of law and the legal profession.”

New Hampshire Bar Association legislative decision-making is a multi-step process. Those steps include:

STEP 1 – Review by the Legislation Committee, by a specially designed committee or – in exceptional circumstances – by the Board of Governors itself of proposed or pending legislation; to proceed beyond Step 1, each of the following must be answered in the affirmative:

- Is the bill of significant interest to lawyers?
- Does the bill pertain to: the administration of justice OR
- The composition and operation of the courts OR
- The practice of law and the legal profession?
- Should the Bar Association take a position on the bill?
 - Positions are:
 - **SUPPORT** – The committee and Board believe that the bill would have a positive impact on the practice of law/legal profession or the administration of justice, or the operation of the courts.
 - **OPPOSE** - The committee and Board believe the bill would have a negative impact on the practice of law/legal profession or the administration of justice, or the operation of the courts.
 - **INFORMATION** – The committee and Board believe the Bar Association cannot support or oppose the bill as it does not meet the above criteria. They also have no opinion as to whether the legislation would have a positive or negative impact, but they feel there are issues with the way the bill has been written that should be

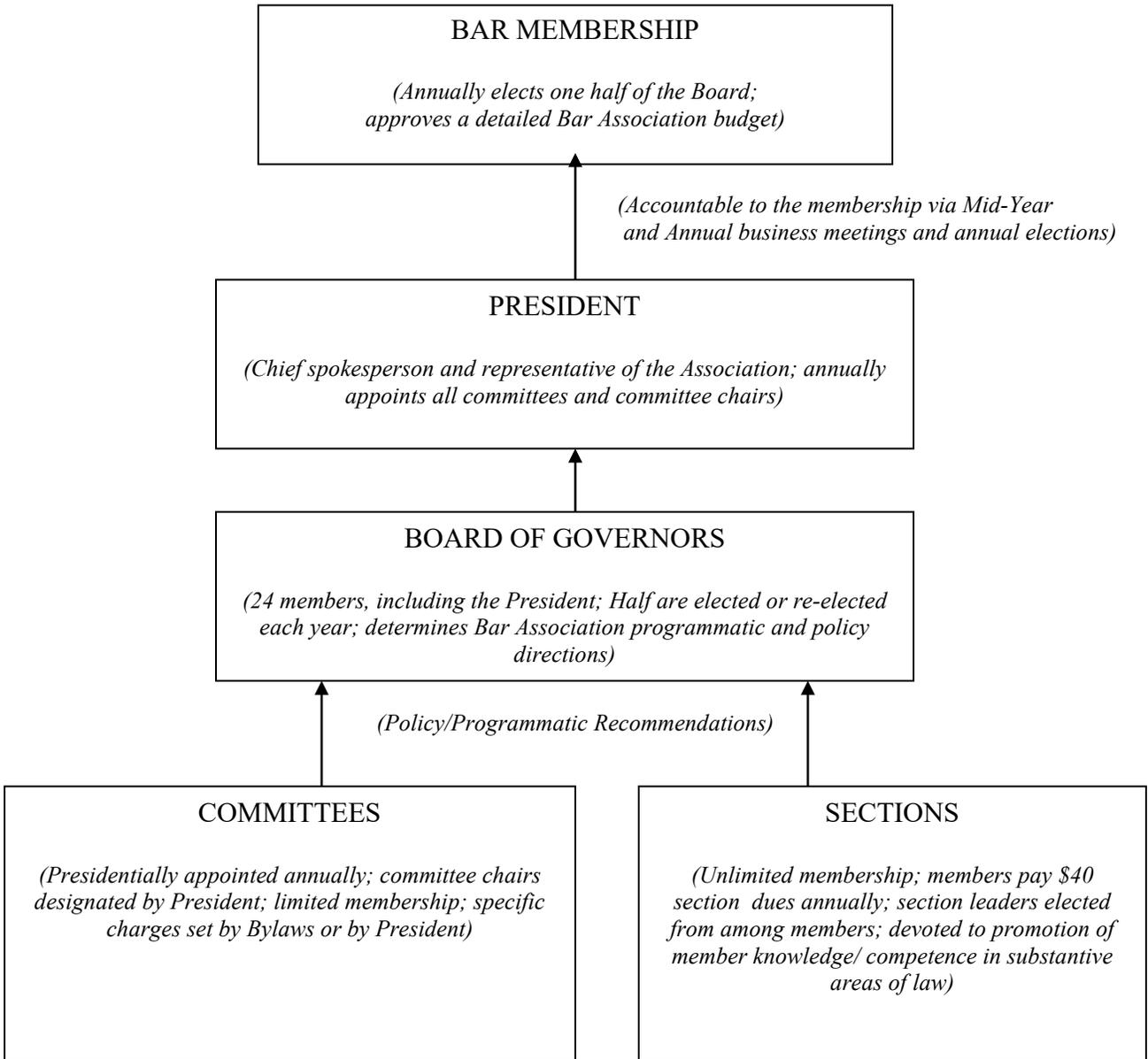
shared with the legislature. Some examples of these issues are language problems, conflict with current law, or unintended consequences.

- **INFORMATION POSITIVE** - The committee and Board believe that the Bar Association cannot fully support or oppose the bill as it does not meet the above criteria, but are generally supportive of what the legislation is trying to accomplish. They believe there are issues with the way the bill has been written that should be shared with the legislature. Some examples of these issues are language problems, conflict with current law, or unintended consequences.
- **INFORMATION NEGATIVE** - The committee and Board believe that the Bar Association cannot fully support or oppose the bill as it does not meet the above criteria, but they generally believe passage of the bill would have a negative impact on the practice of law, the administration of justice, or the operation of the courts. They believe there are issues with the way the bill has been written that should be shared with the legislature. Some examples of these issues are language problems, conflict with current law, or unintended consequences.
- **NO POSITION** – The committee and Board believe after reviewing the proposed bill, it does not meet the above criteria, or it would not be of interest to lawyers, or substantial unanimity among the members of the bar, and therefore a position should not be taken.

STEP 2 – The Legislation Committee and the Board of Governors will take into account the specific wording of the Chapman decision when undertaking this review. A specific legislative position is recommended to the Board of Governors and a vote is taken.

STEP 3 – Once a position is approved by the Board, the presidentially-designated Bar spokesperson (**ONLY**) provides testimony and/or other information to the General Court (or the position is transmitted in writing to the State’s congressional delegation).

NEW HAMPSHIRE BAR ASSOCIATION GOVERNANCE & DECISION MAKING



OUTLINE OF THE BAR'S LEGISLATIVE PROGRAM

(The basics of the Program were originally approved by the Board of Governors on September 14, 1984)

1. To assist in the implementation of a legislative program, the Bar Association will
 - a) retain a Lobbyist who will (1) carefully read and review each bill introduced in the legislature; (2) review daily House and Senate calendars to keep the Bar updated on all scheduled hearings and proposed bill amendments; (3) work with the NHBA Communications staff to prepare updates (as appropriate) while the Legislature is in session.
 - b) The Lobbyist will also, under the direction of the President or the President's designee, will track a small, select number of bills which are of key importance to the Bar Association (as determined by the Board of Governors). The Lobbyist is to work in advancing the progress of specific bills with members of the Legislature. Most of this work is to be behind the scenes, with testimony to be given on a limited number of bills.
2. The specific action steps to be taken in carrying out the Bar's Legislative Program are as follows:
 - a) the Lobbyist reviews all bills and simultaneously notifies the Legislation Committee Chair and the Staff Liaison of all bills in need of full Committee review;
 - b) Legislation Committee meeting agendas are set based on these reports; The Committee Chair and Staff Liaison call meetings and prepare materials or otherwise communicate with Committee Members as often as needed during the legislative session;
 - c) the Legislation Committee reviews all bills referred to it and determines
 - if the bill is of significant interest to lawyers and, if yes
 - if the bill pertains (1) to the practice of law and the legal profession or (2) to the operation or composition of the courts or (3) to the administration of justice
 - if the Committee should recommend to the Board of Governors that a position be taken on the bill;
 - d) the Legislation Committee recommends specific legislative positions to the Board of Governors (Special meetings of the Board of Governors will be called when necessary.);

- e) the Board of Governors, or in an emergency, the President, with the concurrence of the President-Elect or Vice-President, will have authority to take a position on bills before the Legislature; further, the Board will delegate to the President general authority to take positions on amendments or revisions to bills once general Board-authorized consensus is reached on the subject matter of the bills;
- f) testimony on important bills is to be provided by Bar officers or designated committee or section heads or other Bar leaders; the appearance of Bar leadership is important to the progress of priority bills;
- g) through the work of the Lobbyist and/or Legislation Committee, Bar members will be kept informed of the activities of the legislative session through various NHBA Communications outlets, as appropriate.