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C O U N S E L L O R S A T L A W

THE LEGISLATIVE PROCESS IN MASSACHUSETTS
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The increasing complexity of our society and the ever-expanding role of government in our lives, have made the active participation of the public in the legislative process essential to good policymaking. Lawmakers must have easy access to timely, accurate and sometimes technical information needed to understand the far-reaching and unforeseen consequences of their actions. Whether formal or informal in nature, this activity is known as lobbying.

The political use of the word “lobby” dates from mid-17th century England, when it referred to the large anteroom near the floor of the House of Commons. There individuals called “lobby-agents” approached members of Parliament seeking special favors. Today lobbying is an inseparable part of the American political process, a right protected by the guarantees of free speech and the right “to petition the Government for a redress of grievances” contained in the First Amendment to the U.S. Constitution.

Today trade, business and professional associations, as well as unions and other special interest groups, spend large amounts of time and money advancing their views at the legislature. Individual businesses, too, are frequently finding themselves entangled in costly and time-consuming regulations or statutes which require them to bring their concerns directly to elected and appointed officials in the government.

To be a successful advocate in the legislative arena requires knowledge of how that process works. The following is a synopsis of the legislative process in Massachusetts.

General Procedures

The General Court of Massachusetts (the official name for the Legislature) is typical of most state governments. It embraces the same principles of checks and balances that are embodied in the U.S. Constitution. Its primary characteristics are:

- a bicameral (two branch) legislature;
- a hierarchical leadership scheme;
- specialized committees that hold hearings and make recommendations on bills;

- one committee (Ways and Means) more powerful than all the others with control over budget and finance;
- gubernatorial approval to enact laws or a legislative override of the governor's veto.

The Legislature sits in a biennial session, which begins on the first Wednesday in January on the odd-numbered years. All formal business of the first year of the session must be concluded by the third Wednesday in November of that year. The legislature then sits in an informal session until the first Wednesday of January of the second year (even numbered years) at which time the Legislature begins formal sittings until the last day of July of the second year, and finishes the remainder of the session in an informal sitting.

Any matter pending before the Legislature at the end of the first year of its biennial session will “carry over” into the second legislative year in the same legislative status as it was at the conclusion of the first legislative year. Once the state budget is passed by the Legislature (usually before July 1 of every year), the Legislature may (but seldom does) end the formal session by vote of both branches and agreement of governor. This is known as “prorogation.”

Filing A Bill

Under the state Constitution any citizen may file a proposed piece of legislation with the General Court through his or her representative or senator. This “right of free petition” is unique to Massachusetts. In addition, there is no prohibition upon an individual's right to continually “refile” a bill year after year.

The deadline for filing legislation is 5:00 p.m. on the third Friday in January following the start of the new biennial session. If this deadline is missed, a bill may be “late-filed.” Late filed bills must be approved by the House and Senate Committees on Rules and then receive the approval of four-fifths of the members of each branch to be introduced.

A bill is filed in two parts - the “petition” and the “bill”. The petition is the vehicle for filing various types of matters for consideration by the General Court such as bills, resolves, resolutions or orders. The petition includes the title of the bill and the names of the legislative sponsors as well as any citizen or group sponsor. The “bill” is the actual legislation in draft form.

Each session there are approximately 6,000 bills filed in the House of Representatives and 2,000 in the Senate. It is the responsibility of the clerks' office to sort and number each of these bills and assigns them to their appropriate subject matter committee. The staffs of the twenty-six joint House and Senate committees devote most of January and February to analyzing the bills and scheduling public hearings. Public hearings on the bills generally begin in early March and end in mid-June. Recently, it has become more common for committees to continue to hold public hearings during the summer and into the fall. A "daily list" of bills is published on each legislative day prior to the date of committee hearings. Anyone may present testimony in support or opposition to a bill at the public hearing.

Immediately following the public hearing the committee is apt to convene in "executive session". Although executive sessions are open to the public, only the committee members and staff may discuss the bill. At this time the committee then votes to "report the bill out of committee." The committee report usually takes one of three forms:

1. favorable report (ought to pass) — the committee recommends passage of the bill in its original form, with amendments, or in a new draft;
2. adverse report (ought not to pass) — the committee recommends that the bill be killed;
3. study order — technically means the bill is studied during the recess but most often is used as a quiet way to kill a bill.

A joint rule of the two branches requires that any bills referred to a committee before June 15 must be reported out of committee no later than the third Wednesday in March of the second year of the session. However, any bill referred to a committee on or after June 15 must be reported on within ten days.

Three Reading Process

Whenever the House or Senate meets in a formal session a "calendar" is printed for each branch listing legislative matters that have received either a favorable, adverse or study report from a committee. Bills that were filed with the Senate Clerk are reported out of committee to the Senate and bills filed with the House Clerk to that branch. The only committee reports that are subsequently debated by the House or Senate are those

with which a legislator expresses disagreement by calling “pass” during the clerks’ reading of the calendar.

If a bill receives an adverse report, the debate consists of accepting or rejecting that report. If the adverse report is accepted the bill is killed. A member disagreeing with the adverse report can move to substitute the original bill for the report. However, “substitution” of a bill for an adverse report is difficult to accomplish due to the deference given the committee’s recommendation by the representatives and senators.

If a bill gets a favorable report, floor action consists of a series of votes in each branch, known as the “three-reading” process. The purpose of the three-reading process is to ensure that legislators have ample opportunity to consider or debate each legislative proposal. The “first reading” of a bill given a favorable report merely consists of printing its number and title in the daily calendar. After the title of the bill is read aloud from the podium by the clerk, its “second reading”, the Speaker of the House or the President of the Senate asks for a vote on ordering it to a “third reading.” At this point, members may propose amendments to the bill or simply debate its merits. All proposed amendments are voted upon before the vote is taken on the original bill. If the amendments are adopted the bill is voted on as amended; if they fail it is voted on in its original form. Bills that pass this process are then sent to the Committee on Bills in Third Reading where either Senate or House Counsel reviews them for their proper legal form. Bills that fail this vote are rejected and thereby killed.

Once the Committee on Bills in Third Reading has approved a bill, the clerk again reads the bill’s title from the podium and the membership votes on whether to pass the bill to be engrossed. Here too, legislators offer amendments to speak in support or opposition to measure. If the first branch votes against passage the bill is dead. If the first branch votes in favor of passage the bill then goes to the other branch where it is subject to the same three-reading process.

Both and Senate and the House must pass the bill in exactly the same form before it may be enacted into law. If the second branch amends the bill in any way, the bill returns to the first branch, which must give its concurrence to the amended version. If concurrence is rejected, the Speaker of the House and the President of the Senate appoints a conference committee to work out a bill that each branch will adopt.

Engrossment and Enactment

After a bill has been “passed to be engrossed” in each branch, it is sent to the Engrossing Division for “engrossment.” Engrossment is the printing of a bill or special parchment. Following engrossment, a bill is sent to the House of Representatives for “enactment”. Enactment is the last step in the legislative process before a bill is sent to the governor. Enactment is usually a formality, but sometimes a controversial bill will be debated and even rejected at this point. After the House enacts a bill it is sent on to the Senate for enactment. An engrossed bill in the enactment stage may generally not be amended on the floor of the House or Senate. Following enactment in the Senate, a bill is then submitted to the governor.

The Governor

Once a bill has reached his desk the governor has ten days to sign the bill or veto it. If the governor vetoes a bill he must state his reasons in writing. A two-thirds vote of each branch is needed to override a gubernatorial veto. The governor may also return the bill to the branch where it originated with recommendations that amendments be made to it. Finally, if the governor does none of the above the bill will become law without his signature after ten days (unless the Legislature adjourns before the ten days are up in which case the bill does not become law, a so-called “pocket veto”).

Conclusion

Individuals, interest groups and businesses have a responsibility to participate in lawmaking. The democratic process needs to hear all points of view. Unfair influence occurs when lobbying is imbalance to the point that only a single side of an issue is expressed. James Madison wrote that for our government to function properly “ambition must be made to counteract ambition.” President John F. Kennedy once likened the process of lobbying to the procedures of a court of law. Lobbyists, whether professional or volunteer, act as advocates while legislators play the role of judge and jury. The result, hopefully, is a law in the public interest based on truth sifted from information and arguments presented to a deliberating legislator by many interests.

Glossary of Key Legislative Terms

Executive Session: committee meeting following public hearings to vote on how to report out bills.

Favorable Report: committee recommendation that a bill pass in its original form, as amended, or in a new form.

Adverse Report: committee recommendation that a bill not pass.

Study Order: committee recommendation that a bill be studied during recess; often used to quietly kill a bill.

First Reading: printing of bill's number and title in the daily calendar.

Second Reading: call for a vote on a bill to order it to third reading; amendments offered and voted on; failure to pass results in the bill being killed.

Third Reading: review of bills by House and Senate counsels to insure they are in the proper legal form.

Engrossment: printing of a bill on special parchment after passage by both branches.

Enactment: return of an "engrossed" bill to its branch of origination for final passage; no further amendments allowed; typically a formality.

Conference Committee: joint committee of both branches to agree upon a version for each branch to pass.

Override: if Governor refuses to sign a bill, veto may be overridden by a two-thirds vote of both branches.

Prorogation: formal ending of an annual session of the legislature, must be by vote of both branches and with the consent of the Governor.

Carry Over: Any matter pending before the legislature at the end of the first year of its biennial session will be considered during the second year at the same legislative status as it was at the conclusion of the first legislative year.