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# AIA State Legislative Strategies Guide for Managing Encroachments: A Primer for Volunteer Architects

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*AIA State & Local Relations*

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## Introduction

Managing legislative issues on behalf of the architectural profession requires vision, political savvy, and staying power. It is imperative that AIA components recognize that legislative challenges do not go away and most often will not be resolved during one legislative session. True success is accomplished through team work and vigilance. As is true with all licensed professions, such as doctors, lawyers, accountants and the like, practice encroachment is standard fare in state legislatures everywhere. From battles between dental hygienists and dentists, to optometrists and ophthalmologists, paralegals versus attorneys, physician assistants and medical doctors, and bookkeepers to accountants, butting “heads” on where the line is drawn between licensed practiced and unlicensed encroachment is a fact in the policy world. Clouding the issue further is the fact that 99% of lawmakers across the nation, to date, are NOT architects. This makes your state component advocacy activities *that* much more important!

To maintain perspective on the legislative process, it is important to recognize that as you represent the AIA on legislative issues, you must know that negotiated agreements between the AIA state component and other interest groups are only as good as the legislative session at hand. Come next legislative session, all bets are off and more changes may be pursued regardless of promises made and compromises given. New faces representing the stakeholders and new legislators representing their constituency is a constant rhythm in the world of lawmaking. This is especially true in an age of term limits, which lead to tremendous turnover from one legislative session to the next. The political landscape ebbs and flows and legislative leaders that are here today will be gone tomorrow. For this reason, the most important strategy for architects is to expect the encroachment issue to resurface. Keep this reality in the front of your mind when you get the urge to compromise. Know that each and every concession made in one legislative session simply becomes the starting point of negotiation for the next legislative session. Compromise is a critical part of the legislative process, but it’s incumbent on the negotiators to consider the history and precedent they are establishing every step of the way. This Guide offers strategies designed to help you and your state component prepare for, and succeed in, the legislative and political process ahead.

## Key Strategies

- I. **Legitimize Your Government Affairs Program.** *“We need, first of all, for there to be accountability, for there to be somebody who is responsible for enforcing standards and holding people’s feet to the fire.”* Jennifer Granholm (Former Governor of Michigan)

Having a legitimate process in place to vet and prioritize your legislative and regulatory issues lends accountability to the political positions your state component takes. It not only demonstrates to your membership that the AIA values advocacy but it also helps your state component keep a realistic pulse on the issues that impact the architectural profession. A side benefit is that it boosts your Political Action Committee’s (PAC) activities and provides increased credibility.

- a. Committee Structure:
  - i. Select/appoint a Chair (with a defined term and appointment process) who has the following traits:
    1. Strong communication skills;
    2. a record of participation and interest in your chapter’s activities;

3. a willingness to listen;
  4. the ability to command attention and to inspire leaders;
  5. the ability to control without domination;
  6. recognizes the importance of consensus and transparency;
  7. knowledge of parliamentary procedure;
  8. possesses prestige and respect within the architectural profession;
  9. knowledge and appreciation of the importance of government affairs, politics, and advocacy;
  10. architect-PAC contributor;
  11. the ability to think and act in terms of the AIA chapter's overall goals and objectives;
  12. knowledge of AIA public policies and position statements;
  13. the ability to create the right atmosphere for productive committee work;
  14. the availability to carry out responsibilities; and
  15. a clear understanding of the position of the staff and the need for a close working relationship.
- ii. Select 10-20 Committee members (with defined staggered terms and process of appointment) who are representative of the demographics of your Chapter relative to firm size, type of practice, and geography (rural/urban) and who have the following traits:
1. knowledgeable about or interested in government affairs, politics, and advocacy;
  2. have contributed to the state architect PAC;
  3. appreciation for the role of the committee (i.e. to plan, conduct meetings, get action, and evaluate results in the policy and regulatory arena);
  4. knowledgeable in, or willing to learn, the practices, policies and procedures of AIA National and Component Chapters;
  5. team-oriented;
  6. action-oriented and able to set realistic goals;
  7. not wearing a "D" (Democrat) or an "R" (Republican) hat, but genuinely interested in working on behalf of the architectural profession; and
  8. doesn't have a personal agenda that could disrupt transparency and process.

b. Committee Process:

- i. Annually or biennially issue a government affairs survey to chapter members to keep a pulse on the most pressing issues for the profession. The side benefit to this survey is that it demonstrates to the individual members of your chapter that the AIA state component not only values government affairs, but also member opinion on issues.
- ii. Establish a prioritizing process on issues that take into account resources and a political reality check. Some issues will only require a grassroots alert which involves telephone calls. Others will require testimony (written and oral), a letter-writing campaign, coalition building, lobbying, or a physical demonstration of concern/support at the Capitol during a hearing.
- iii. Always operate following the premise that good politics is the art of the possible; some things, no matter how noble, have no chance of passage due to the political environment and thus should not be part of an active agenda.

Political realities should play a role in determining what AIA state components should pursue each legislative session. For example, if the general economic climate is poor, you wouldn't want to pursue legislation that has fiscal implications. That's not to say that the possibility of a fiscal note should squelch any consideration of an issue. There are plenty of creative ways that a bill can be drafted to make it revenue-neutral. Explore these with great ingenuity and get advice from key contacts (who can do some behind-the-scenes investigations) or lobbyists who can explore the issue through contacts with legislative staff who are involved in the budget process.

A "prioritizing system" example:

+3	Support issue with testimony, letters, grassroots, and lobbying
+2	Support issue with testimony, letters
+1	Support issue with letter, joining coalitions
0	No position

II. **Politics First.** *"A friendship founded on business is better than a business founded on friendship."* John D. Rockefeller

Encroachment and licensure issues are among the least favorite issues for lawmakers. Unless the lawmaker has professional experience in the design and construction industry or a close personal relationship that is tied to the industry, it is important to recognize that discussing the difference between architecture and engineering or architecture and interior design or any other "inside ball" issues are as dull as dish-water, especially when compared to admittedly more pressing issues like public education and healthcare. Respecting this fact and addressing it is half the battle. To overcome this reality, architects must recognize the importance of strengthening personal relationships *before* you're in a position of asking for help.

If you know that your state component will likely see a "repeat" encroachment-related bill from past legislative sessions, you have no excuses. You must lay a solid foundation of good will now. Showing up to the proverbial "potluck" legislative session empty-handed, having deposited no good will in advance, is terrible form, a violation of legislative etiquette, and demonstrates an organization's lack of sophistication in the business world of lawmaking. When you know an issue is coming, you must invest some time and resources beforehand to boost your credibility and to justify the "ask" that you will inevitably need to make. Here are some basic steps:

- a. Identify the most likely political players who will have a vote on the issue at hand. Have they served on key committees considering this kind of issue in the past? Or does the elected official have a constituency that would want the official to weigh in?
- b. Once you've identified the "more valuable players," consider: are they up for re-election and likely to win? Assess what kind of campaign assistance the official might need.
  - i. Do they need block-walkers or other volunteers to distribute flyers, or signs? Put out a call for volunteers. A couple of volunteer hours on a Saturday morning makes a huge statement! Get creative, volunteering time is just as important as PAC contributions – create a program that rewards volunteering just as it rewards PAC contributions.

- ii. Organize/host a fundraiser event for the lawmaker. It doesn't have to be a huge event - cozy events at someone's house are valuable too.
- iii. Organize a coffee event to give the lawmaker a stage to talk about his/her issues and to meet with voters.

III. **Know Your Negotiating Boundaries** *"Important principles may, and must, be inflexible."*  
Abraham Lincoln

Before you embark on legislative negotiations on behalf of your state component and to give you a framework for those negotiations, refer to the [AIA Directory of Public Policies and Position Statements](#), to learn about the Institute's fundamental guiding principles. **These policies and position statements are binding on all components.** This will help you know what your limitations may be so that you don't find yourself over-promising or compromising on issues outside of your control. When managing legislative encroachment initiatives, the following four (4) position statements are particularly relevant.

**Public Policy Regulation of Architecture I.C**

*"The practice of architecture should be regulated. The privileges and responsibilities of practice should be extended only to those architects who demonstrate through education, experience, and examination that they are ethically and technically prepared."*

**Position Statement I.C.1 - Definition of Architectural Practice**

*"The AIA supports a uniform definition of architectural practice that delineates the scope of activities over which each jurisdiction has regulatory control. The definition should follow the recommendations developed by the National Council of Architectural Registration Boards."*

**Position Statement I.C.2 - Design of Structures for Human Habitation or Use**

*"The AIA maintains that it is in the public interest for architects to design all structures primarily intended for human habitation or use. The architect's comprehensive education and training equips them to address the impact of design and technology on the health, safety, and well-being of the public and the built and natural environments. Each jurisdiction has a responsibility to its citizens to ensure that structures used or occupied by the public are designed by architects."*

**Position Statement I.C.3 - Architectural Practice and Title Regulations**

*"In the public interest, the AIA holds that only architects and engineers licensed through examination possess the necessary education, training and experience to protect the health, safety and welfare of the public in the built environment. Other individuals may possess useful skills in designing within the built environment, but fragmentation of responsible control of the building design process endangers and misleads the public as to respective areas of competence and expertise. The AIA opposes practice or title regulation of individuals or groups other than architects and engineers for the design of buildings."*

The definition of the "practice of architecture" varies widely from state to state, making it difficult to assess a best practice model for states in the midst of legislative encroachment efforts by unlicensed practitioners. It is instructive, therefore, to also turn to [NCARB's Legislative Guidelines and Model Law](#) which is explicitly limited to major issues that transcend geographic boundaries based on developing national standards for registration and regulation.

IV. **Legislative Victory = Successful "Trifecta" Analysis** *"Success is a science; if you have the conditions, you get the result."* Oscar Wilde

a. The “Trifecta” – Analyze Your Issue Based on:

i. State Policy:

1. What is the problem that the “encroacher” is trying to solve? What does the law currently say? Is it really a problem that deserves a change in law? Are consumers negatively impacted and seeking change or is it a market issue? Do you have an alternative solution that addresses a legitimate issue?

- If so, meet with the “other” side to begin discussions. Take the initiative to draft legislative language that addresses the issue. Better you author the solution than the other side. Schedule a follow-up meeting to discuss the proposal.
- Prepare talking points or summaries of the proposed legislation.
- Synthesize. Bulleted text is always preferred.
- Meet with lawmakers together – at least one representative from each side. You should initiate scheduling meetings with lawmakers; It gives you a chance to build a relationship with him/her and his/her staff.

2. If the problem is a market issue or strictly political (based on your analysis of meetings between stakeholders of each side) and will harm the architectural profession, strategize opposition.

- Prepare your one-page position.
- Synthesize, synthesize and synthesize. Bulleted text is always preferred. No acronyms, lots of white space on the page, and boil your message down to its very essence. Keep it simple and avoid technical jargon. Details can be fleshed out in testimony or in face to face meetings, if necessary. If a bill has been filed, then in bold letters at the very top center of the page, include your ask “Please vote “no” on H.B. \_\_\_\_.” Format your summary so that it has a “background” section to provide some context for the reader and an “Analysis” section that tells the reader what the bill does. “This bill would...”
- If the bill has not been filed, meet with lawmakers in advance to do a “light touch” on the upcoming issue. Present your case, without too much detail. You don’t want to overwhelm a lawmaker with too much information at an early stage, especially when the issue isn’t in front of them for a vote. If you can’t address the issue in 5 minutes, forget it, you’ve lost them.
- Also, is the proposed bill inconsistent with other state or national policies? Would this policy make your state an odd-ball relative to the rest of the nation?

ii. Politics: What other groups might be interested in this issue? Think about how a change in law could impact the other group’s work load or liabilities. Make a list and start scheduling meetings. Start with your obvious allies. Get permission from them to list them as supporters of the architectural profession in your one-pager. The idea is to assemble the broadest coalition possible. Many voices with disparate interests and backgrounds speaking as one is a powerful weapon in the world of politics.

- iii. **Fiscal Implications:** Will the proposed issue/bill cost the state money? It might not be a direct, obvious cost so you'll need to think about potential down-stream implications. Budget analysts are not skilled at projecting and calculating quality and long-term savings. Those points will likely need to be made by your Chapter. Think of ways to tell your story in numbers. Go to groups like the building owners and building officials to help connect the fiscal dots. Data from FOIA requests might be helpful as well.

**V. Always, Always Remain at the Negotiation Table** "*Diplomacy, n. is the art of having somebody else have your way.*" David Frost

- a. Even if you and the other side cannot seem to come to agreement, never be the side that throws in the towel. It will come back to bite you by giving the other side ammunition to say (true or not) that the "architects don't want to cooperate." Always graciously offer (and document those offers in writing) to meet to try to resolve the problem.
- b. Recognize that meeting the other side for negotiations will result in compromise. Determine ahead of time, through a consensus-based process, what authority you have to compromise. Refer to the [AIA Directory of Public Policies and Position Statements](#) so you know in advance how much discretion you have to negotiate and that you don't erroneously place your component in a position of non-compliance with AIA national policy, and recognize that you only have authority to go so far. Don't compromise the process by over-promising but assure the other side that you will take the results of the negotiations back to the government affairs committee, or other authorized body, to provide a response.
  - If you've hit a wall in negotiations, start proposing alternative solutions for the other side to take back to their organization's deciding body. Put the ball in their court to reject. Even if you highly suspect that the proposed solution will go nowhere, always make the offer. Your goal is to provide lawmakers with a picture of cooperation.

**VI. Set Aside your Ego, Take Off Your Super-Hero Cape, and Recognize that this Issue is Bigger than You and Your State.** "*It's a terrible thing to see and have no vision.*" Helen Keller

- a. Negotiations between two professions are just that...negotiations between two professions, not individuals. Do not allow your ego to dominate the discussions. If you have a process in place, stick to it!
- b. Recognize that even if you reach an agreement with the other side, the proposed agreement and new law is *only* good until the next legislative Session. It's fair game to re-open an issue, especially when time has passed, the lawmakers are new, and the representatives negotiating on behalf of the interest groups are no longer involved. The new "starting point" is the law that exists when the legislative session begins. Incremental changes are the best, long-term approach. Agreeing to a "machete" solution in hopes to end the issue "once and for all" almost never works.

**VII. Trust -- but Verify -- the Message of Your Contract Lobbyist(s)** "*Let every eye negotiate for itself and trust no agent.*" William Shakespeare

- a. If you have a contract lobbyist, you have political access and a political advisor. Access and advice does NOT equal advocacy. And if you're relying on your lobbyist to be your voice,

your money is being wasted. A lobbyist is but one of many elements to a successful advocacy program. It is imperative that you recognize that a contract lobbyist's life's blood is their relationships with lawmakers. It is literally the value they bring to a client. In the mind of a contract lobbyist, no issue or interest group warrants sacrificing those relationships for one simple reason, money. Anytime a lobbyist takes action that could damage their relationship with a legislator, they've compromised their value to existing and future clients, and fewer clients mean less income. So no matter how strong you believe your relationship is with your contract lobbyist, always use them to advise not lead your advocacy efforts and have your message delivered by in house lobbyists/staff or architect members.

**VIII. Always Remember that One Legislator's Blustering Does Not a Mandate Make** "*Let us never negotiate out of fear. But let us never fear to negotiate.*" John F. Kennedy

One lawmaker can file a bad bill, but it takes many more to pass it. Work the rest of the legislative body and count your votes. Acknowledge the fact that a lawmaker may not appreciate the architectural profession's value, but don't consider that fact dispositive on the issue. You must look at the issue objectively. Here's where your contract lobbyists must be checked through your key architect contacts. Some lobbyists will be tempted to tell a lawmaker, in confidence, that they will "manage their client's expectations" or "help the architects recognize the need for compromise." This is understandable given the fact that good lobbyists will always make every attempt to please a lawmaker. So, what you need to do is find out who your friends are and try to get commitments on votes supporting your position. Analyze which committee will vote on the issue and what the vote count will be. If there are unknowns, make a plan to visit those lawmakers. Who are they and which architects might have a relationship? If there are none, then organize a group of constituents to schedule a meeting with the lawmaker. If there are no constituent architects, then explore your relationships with other allied groups: contractors, engineers, builders, building officials. If those groups have close relationships, you may want to explore meetings that include those groups as well. Persistence is key.

## Closing

In closing, like the practice of architecture, lawmaking is an art form of managing people's needs and wants, but it's also a science of creating a governance structure through a systematic process of collaboration and input from various knowledgeable stakeholders. Despite a hesitancy to get involved in politics from many within the architectural profession, in reality architects are naturally skilled at politics and the lawmaking process. As a matter of routine and integral to the practice of architecture, architects identify problems, solicit meaningful input, and design solutions that can be realistically implemented in the form of a building rather than in the form of a law. Keep this in mind as you navigate through what might appear (on its surface) to be foreign soil. Just as you would begin and end an architectural project with the client's best interests in the forefront of your mind, you must consider your advocacy work in the same manner. Negotiations must be conducted with utmost care to protect and advance the architectural profession now and in the future because it only takes one state's misstep to cause a precedent-setting domino effect on the entire industry nationwide.

We hope this Guide offers your state component guidance that can be applied to any issue that may surface in your state. The Appendix includes 4 matrices: [Appendix A: Definitions of Architectural Practice in Each State](#), [Appendix B: Definition of Engineering Practice in Each State](#), [Appendix C: How States' Architecture and Engineering Statutes Handle the Other Profession](#), and [Appendix D: Definitions of Interior Design in Each State](#). These matrices may be relevant to you as you attempt to negotiate the line between architecture and other trades/professions.



This Guide is considered a living document that will continue to evolve just as the State & Local Relations program will. For now and as always, AIA staff remains available to assist you and your state component in all legislative, regulatory and judicial matters that impact your practice and the built environment.