

AGENDA ITEM

NOV III C: Proposed Governance Transition Plan – Request for Public Comment

DATE: October 18, 2011

TO: Members, Planning, Program Development and Budget Committee
Members, Board of Governors

FROM: Governance Transition Plan Subcommittee

SUBJECT: Proposals Providing for Sequence of Elections – Release for Public Comment

EXECUTIVE SUMMARY

The Subcommittee on the Governance Transition Plan requests the Planning, Program Development and Budget Committee of the Board of Governors to authorize for public comment one or more proposals for providing for the staggered order of the elections of the 6 new attorney-members of the board over the next three years and each of the following years.

BACKGROUND

To comply with requirements of newly enacted California Statutes 2011, Chapter 417 (SB 163) to gradually reduce the State Bar's governing board from 23 to 19 members, the State Bar must develop and submit an implementation plan and written report to the Legislature by January 31, 2012.¹ Essential to the plan is the sequence of the elections of six new attorney members in 2012, 2013, and 2014, which will occur concurrently with the expiration of terms and offices of the existing 15 elected attorney-members and that of the State Bar President and representative of the California Young Lawyers Association. In addition, the new elections must take into account the timing of the appointments of five attorney members by the Supreme Court and two by the Legislature to the restructured and renamed governing Board of Trustees.

Staff has prepared with the assistance of an outside consultant alternative proposals providing for the sequence of the elections in 6 new districts. After public comment and approval of one of these proposals and its incorporation into the Rules of the State Bar, it will be included in the plan and written report that will be submitted by January 31, 2012, to the Senate and Assembly Committees on the Judiciary.

¹ New Cal. Bus. & Prof. Code § 6009.7, added by SB 163, § 8.

ISSUE

Which proposals for determining the sequence of the elections—beginning in 2012, 2013, and 2014—for the restructured governing board of the State Bar should be circulated for public comment?

DISCUSSION

SB 163 replaces over the next three years the current 23 members of the Board of Governors with the 19 member, renamed Board of Trustees. The 19 trustees retain the current six appointed public members and add 13 new attorney-trustees, which include:

- Six new attorney members elected from six new districts that replace the current 15 attorney-governors elected and nine State Bar Districts.² The new State Bar Districts are based on the six appellate court districts under California Government Code section 69100 as of December 31, 2012.³
- Five attorney members appointed by the California Supreme Court.⁴
- Two attorney members appointed by the Legislature—one by the Senate Committee on Rules and one by the Speaker of the Assembly.⁵

SB 163 also eliminates from the board the separate offices for the State Bar President⁶ and the representative of the California Young Lawyers Association (CYLA).⁷

Although SB 163 will abolish the current State Bar Districts on January 1, 2012, it expressly provides that the attorney members elected in 2009, 2010, and 2011 will serve their full three-year terms.⁸ With the existing system of staggered terms,⁹ each year five offices under the current districts will cease at the conclusion of the State Bar's annual meeting as follows:

- In 2012, offices in Districts 1, 3, 5, 7, and 9 under the pre-redistricting boundaries¹⁰ will end with the respective terms of Governors Gehlbach, Hicks, Carruth, Kelly, and Lyman.
- In 2013, offices in Districts 2, 3, and 4, and two office in District 7 under pre-redistricting boundaries will end with the respective terms of Governors Goodman, Chang, Kieve, Nelson, and Rodriguez.

² New Cal. Bus. & Prof. Code §§ 6012, 6013.2 added by SB 163, §§ 11, 15.

³ Cal. Bus. & Prof. Code § 6012(b).

⁴ New Cal. Bus. & Prof. Code § 6013.1, added by SB 163, § 14.

⁵ New Cal. Bus. & Prof. Code § 6013.3, added by SB 163, § 15.5.

⁶ Cal. Bus. & Prof. Code § 6011, as amended by SB 163, § 10.

⁷ Cal. Bus. & Prof. Code § 6013.4, repealed by SB 163, § 16.

⁸ New Cal. Bus. & Prof. Code § 6012(a).

⁹ Cal. Bus. & Prof. Code § 6017, repealed by SB 163, § 22; State Bar Rule 6.32.

¹⁰ In 2010, the boundaries of the State Bar Districts were amended by adjusting the counties included in each district, as required by California Business and Professions section 6012.5. The redrawn districts and allocated offices was effective for the board election in 2011. Section 6012.5 is among the provisions that are repealed by SB 163.

- In 2014, the remaining offices in Districts 4, 6, 7, 8, and 9 under the post-redistricting boundaries will end with the respective terms of Governors Fineman, Shem, Holden, Mann, and Rosing.

In 2012, the offices of the State Bar President and the CYLA representative will also cease when their one-year terms expire.

In the transition plan required under SB 163, the board must provide for the election of the six attorney members from the new State Bar Districts.¹¹ This will require amending existing Rules of the State Bar governing the elections of board members and bar officers to conform to SB 163. Most significant is the sequence for the elections of the new offices to replace the current offices that will end as the terms expire. In addition, because SB 163 provides that the board may be no larger than 23 members during the transition, it will also be necessary to consider and consult with the Supreme Court, the Senate Pro Tempore, and the Assembly Speaker regarding the order of their appointments.

Michael Wagaman, the outside consultant and demographer, prepared two memoranda (copies of which are attached) that presented 5 options to the Subcommittee when it met on October 10, 2012. The proposals are summarized below.

Transition Period Focused Options

These options focus on achieving specific goals for elections held during the transition period from 2012-2014.

1. Minimum Representation¹²

This option focuses on minimizing the number of attorney members who end up having no elected representative on the Board. These gaps occur when the terms of board members elected based on old districts end before the first election of a board member from the overlapping new district.¹³ While these gaps are inevitable they can be minimized if the elections are sequenced in the following order:

- 2012: Districts 3 and 5
- 2013: Districts 1 and 6
- 2014: Districts 2 and 4

2. Proportional Representation¹⁴

This option focuses on trying to balance the ratio of board members to attorney members consistent with the concept of “one person, one vote.” Ultimately, there will

¹¹ New Cal. Bus. & Prof. Code § 6012(b).

¹² The process for calculating this sequence is described at pages 3 through 5 of the Wagaman Memo (Oct. 3, 2011) (Attachment 1.).

¹³ As terms of current board members expire, members in those counties that were part of the old district and now reallocated to the 6 new districts may be without representation. See supra note 10.

¹⁴ Previously referred to as the Equal Representation Option. See Wagaman, Supplemental Memo (Oct. 8, 2011), 2-5 (Attachment 2), for a description of the methodology used to determine the sequence under this model.

be wide disparities in the number of attorney-members in each district. These disparities can be minimized during the transition period if the elections are sequenced in the following order:

- 2012: Districts 2 and 4
- 2013: Districts 1 and 3
- 2014: Districts 5 and 6

Post Transition Period Focused Options

These options focus on achieving specific goals in years extending beyond the transition period.

3. Sequential Numbering

This option focuses has districts elected in sequential order to minimize member confusion. For example districts could be sequenced in the following order:

- 2012: Districts 1 and 2
- 2013: Districts 3 and 4
- 2014: Districts 5 and 6

It should be noted that the elections could start with a different pairing of districts and still be sequential in future years. For example, District 3 and 4 could vote in 2012, 5 and 6 in 2013 and 1 and 2 in 2014.

4. Geographic

This option focuses on pairing districts based on the regions they cover. For example District 6, which covers the central coast, could be paired with District 5, which covers the central valley, to create a central state grouping. Alternatively it could be paired with District 1, which covers the Bay Area, to create a coastal grouping.

There are multiple different potential pairings and sequences.

Other Options

5. Random

This option allows random chance to select the sequencing of the election and thus is not designed to achieve any specific policy goal during either the transition or post-transition periods.

Summary

Option		2012		2013		2014	
Transition Period	Minimum Representation	3	5	1	6	2	4
	Proportional Representation	2	4	1	3	5	6
Post Transition Period	Sequential Numbering*	1	2	3	4	5	6
	Geographic	Multiple potential options					
Other	Random	Outcome to be determined					



* One example of the sequential numbering option.

FISCAL / PERSONNEL IMPACT:

N/A

RULE AMENDMENTS:

Rules of the State Bar, adding new rule 6.31¹⁵

BOARD BOOK IMPACT:

Tab 4 Art. 3, § 3.

RECOMMENDATION

The Subcommittee discussion focused on the proposals for providing the sequence for the elections under options no. 1 and 2 that used factors maintaining *minimum or proportionate representation* during the transition period and under option no. 5 that would use a *random* process. The Planning, Program Development and Budget Committee may authorize requests for public comment on one or more of these three options, or it may include options 3 and 4, as well.¹⁶

¹⁵ Existing State Bar Rule 6.32, which the board adopted after the 2010 redistricting, provides for the sequence of elections in the current 9 State Bar Districts. Amendments to repeal this and other provisions pertaining to the election of the board (State Bar Rules 6.2, 6.9, 6.30, 6.31, and 6.32) and to conform to the statutory provisions in SB 163 will be made in a separate agenda item, which will not require public comment because the changes are made to conform to requirements now specifically governed by SB 163. State Bar Rule 1.10(B)(1).

¹⁶ If the Committee decides to seek public comment on the sequential numbering or geographic options, then it must also decide on a sequence in each option.

Minimum Representation Option

If the request for public comment includes the minimum representation option, the request would contain draft language for a new Rule 6.31 to the Rules of the State Bar that reads:

Rule 6.31 Sequence of election of attorney members

The six attorney members of the board are elected as follows:

- (A) In 2012 and every three years thereafter, one member each from State Bar Districts 3 and 5.
- (B) In 2013 and every three years thereafter, one member each from State Bar Districts 1 and 6.
- (C) In 2014 and every three years thereafter, one member each from State Bar Districts 2 and 4.

Proportionate Representation Option

If the request for public comment includes the proportionate representation option, the request would contain draft language for a new Rule 6.31 to the Rules of the State Bar that reads:

Rule 6.31 Sequence of election of attorney members

The six attorney members of the board are elected as follows:

- (A) In 2012 and every three years thereafter, one member each from State Bar Districts 2 and 4.
- (B) In 2013 and every three years thereafter, one member each from State Bar Districts 1 and 3.
- (C) In 2014 and every three years thereafter, one member each from State Bar Districts 5 and 6.

Random Option

If the request for public comment includes the option for determining the sequence by a random process, the request would contain the following draft language for a new Rule 6.31 to the Rules of the State Bar with the sequence left blank. The notice would state that under this process, if adopted, the sequence for the elections would then be immediately determined by a drawing by lot during the meeting of the board and the sequence then added to the rule.

Rule 6.31 Sequence of election of attorney members

The six attorney members of the board are elected as follows:

- (A) In 2012 and every three years thereafter, one member each from State Bar Districts [] and [].
- (B) In 2013 and every three years thereafter, one member each from State Bar Districts [] and [].
- (C) In 2014 and every three years thereafter, one member each from State Bar Districts [] and [].

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Planning, Program Development and Budget Committee agree with the above recommendation, the Committee may include the options it finds appropriate and adopt the following resolution:

RESOLVED, that the Planning, Program Development and Budget Committee authorizes the circulation for a public comment period of 45 days the proposal(s) for the sequencing of the election of the new Board of Trustees of State Bar commencing in 2012, 2013, and 2014, as set forth herein in option(s) _____; and it is

FURTHER RESOLVED, that the request for public comment on the proposals does not constitute—and should not be construed as—approval of the proposals by the Committee or the Board of Governors.