

AGENDA ITEM

143 DEC

DATE: December 9, 2011

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

FROM: Starr Babcock, General Counsel
Larry Yee, Chief Asst. General Counsel
Dina Goldman, Sr. Asst. General Counsel

SUBJECT: Adoption of Sequencing for Future Board Elections – Return from Public Comment

EXECUTIVE SUMMARY

Under newly enacted California Statutes 2011, Chapter 417 (SB 163), effective January 1, 2012, the State Bar must provide for the transition of its governing board from the current 23-member Board of Governors to a 19-member Board of Trustees by October 2014. This transition includes gradually replacing in 2012, 2013, and 2014 the current 15 elected attorney-governors from the existing nine State Bar Districts with the election of six attorney-trustees from new districts based on California's six appellate court districts. In this item, the Board of Governors would approve a random process for determining the sequence for holding staggered elections of two attorney-trustees every three years from the new State Bar Districts beginning next year. The sequence of the randomly selected district numbers will then be certified and added to new State Bar Rule 6.31, which the Board will adopt, effective January 1, 2012.

BACKGROUND

At its meeting on November 3, 2011, the Board Committee on Planning, Program Development and Budget ("PPDB") authorized the publication for public comment a proposal providing for staggering the elections in the six new State Bar Districts under SB 163. The proposal included new State Bar Rule 6.31 in the following form:

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 [].

The proposal provides that the sequence of the staggered elections be determined by a random process. The random selection of districts would be made and notarized at the meeting of the board approving the process. The randomly selected district numbers would then be certified and inserted into new State Bar Rule 6.31 and adopted, effective January 1, 2012.

To date, the State Bar has received no comments on the proposal.

ISSUE

Should the Board of Governors approve a random process for determining the sequence of holding staggered elections in the new State Bar Districts under SB 163 and adopt new State Bar Rule 6.31 with the numbers drawn randomly?

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 include 13 new attorney-trustees composed of:

- Six attorney members elected from new State Bar Districts are based on the six appellate court districts under California Government Code section 69100 as of December 31, 2012.¹
- Five attorney members appointed by the California Supreme Court.²
- Two attorney members appointed by the Legislature—one by the Senate Committee on Rules and one by the Speaker of the Assembly.³

¹ Cal. Bus. & Prof. Code § 6012(b). Under SB 163, the new State Bar Districts for election of attorney-members to the Board of Trustees are as follows:

- District 1 is the counties of Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, Solano, and Sonoma.
- District 2 is the counties Los Angeles, San Luis Obispo, Santa Barbara, and Ventura.
- District 3 is the counties of Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Yolo and Yuba.
- District 4 is the counties of Imperial, Inyo, Orange, Riverside, San Bernardino, and San Diego.
- District 5 is the counties of Fresno, Kern, Kings, Madera, Mariposa, Merced, Stanislaus, Tulare, and Tuolumne.
- District 6 is the counties of Monterey, San Benito, Santa Clara, and Santa Cruz.

² New Cal. Bus. & Prof. Code § 6013.1, added by SB 163, § 14.

³ New Cal. Bus. & Prof. Code § 6013.3, added by SB 163, § 15.5.

SB 163 also eliminates from the board the separate offices for the State Bar President⁴ and the representative of the California Young Lawyers Association (CYLA).⁵ Although SB 163 will repeal 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.⁶ SB 163 requires the State Bar to develop a plan by January 31, 2012, for implementing a gradual transition to a 19-member board by not later than October 31, 2014.⁷ Among other things, the plan must provide the order for holding staggered elections in the six new districts to select two of the six new attorney-member trustees each year as terms of the current 15 attorney-member governors expire. Five seats will expire each year in 2012, 2013, and 2014.

In November, PPDB's Subcommittee on the Governance Transition Plan presented five proposals to the full committee for the sequence of staggered elections prepared by staff and the outside consultant and demographer Michael Wagaman. PPDB approved releasing for public comment the proposal providing for a determination of the sequence by a random process. As illustrated in the methodology of the other proposals presented, the determination of who votes when is complex and has potential political implications. In authorizing the publication of a proposal for public comment, PPDB picked the proposal providing for determination of the sequence by a random process as the one that most militated against complaints of political bias or favoritism in the decision-making.

The 45-day period for public comment will expire on December 19, 2011.

If the board approves the random process, the consultant who will be in attendance at the meeting will randomly select a sequence for the staggered elections in the six new districts. The sequence will then be certified and inserted into new State Bar Rule 6.31, with the certification and form of rule as amended to be made a part of the minutes of the board. The board will then adopt new State Bar Rule 6.31, effective January 1, 2012.

SUMMARY OF PUBLIC COMMENTS

To date, the State Bar has received no public comments. Any comments received between now and the deadline of December 19, 2011, will be posted and summarized for the board.

FISCAL / PERSONNEL IMPACT:

N/A

⁴ Cal. Bus. & Prof. Code § 6011, as amended by SB 163, § 10.

⁵ Cal. Bus. & Prof. Code § 6013.4, repealed by SB 163, § 16.

⁶ New Cal. Bus. & Prof. Code § 6012(a).

⁷ Cal. Bus. & Prof. Code § 6009.7, added by SB 163, §§ 8, 10.

RULE AMENDMENTS:

Rules of the State Bar, adding new rule 6.31

BOARD BOOK IMPACT:

Tab 4 art. 3, § 3.

RECOMMENDATION

Staff recommends that the Board adopt the proposal released for public comment by adopting new State Bar Rule 6.31 providing for the sequence of staggered elections of the six attorney-members of the Board of Trustees in the new State Bar Districts under SB 163—with the sequence determined by a random process

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Planning, Program Development and Budget Committee agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that the Planning, Program Development and Budget Committee recommends that the Board adopt new State Bar Rule 6.31 providing for the sequence of staggered elections of the six attorney-members of the Board of Trustees in the new State Bar Districts under California Statutes 2011, Chapter 417 (SB 163)—with the sequence determined by a random process; and it is

FURTHER RESOLVED, State Bar Rule 6.31, as enacted, is effective January 1, 2012.

PROPOSED BOARD OF GOVERNORS RESOLUTION:

Should the Board concur with the Planning, Program Development and Budget Committee's recommendation, the following resolutions would be in order:

RESOLVED, that upon the recommendation of the Planning, Program Development and Budget Committee, the Board hereby adopts new State Bar Rule 6.31 providing for the sequence of staggered elections of the six attorney-members of the Board of Trustees in the new State Bar Districts under California Statutes 2011, Chapter 417 (SB 163)—which includes the sequence as determined by a random process at this meeting; and it is

FURTHER RESOLVED, State Bar Rule 6.31, as enacted, is effective January 1, 2012.