

AGENDA ITEM

114 MARCH

DATE: February 15, 2012

TO: Members, Board Committee on Operations
Members, Board of Trustees

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SUBJECT: SB 163 – Follow-Up Technical Amendments

EXECUTIVE SUMMARY

Senate Bill 163 (Stats. 2011, ch. 417) changed the governance structure of the State Bar. Among other things, SB 163 provided that the Board of Trustees of the State Bar be reduced from 23 to 19 members by no later than October 31, 2014, and that transition to a 19-member board be accomplished without changing, reducing, shortening, lengthening, or abolishing the terms of current board members. This agenda item proposes technical amendments to reconcile statutory language concerning transition to a 19-member board, and election of the president, vice president, and treasurer.

BACKGROUND

Senate Bill 163 (Stats. 2011, ch. 417) changed the governance structure of the State Bar.

Before January 1, 2012, the State Bar was governed by a board known as the Board of Governors of the State Bar. The 23-member Board of Governors consisted of 15 elected attorney members; six appointed public members; a representative of the California Young Lawyers Association (CYLA); and the State Bar President.

SB 163 revised and recast these provisions by renaming the Board of Governors as the Board of Trustees and revising the composition of the board. SB 163 provided for the reduction to a 19-member board by eliminating the CYLA representative, requiring that the State Bar President be one of the 19 board members, and replacing the 15 elected attorney members with 13 new attorney members who will be selected as follows: six elected, one each from the six new State Bar Districts based on California's six appellate court districts; five will be appointed by the Supreme Court; one by the Senate Committee on Rules; and one by the Speaker of the Assembly.

SB 163 required that the Board of Trustees be reduced from 23 to 19 members by no later than October 31, 2014. At the same time, SB 163 provided that the State Bar “shall not change, reduce, shorten, lengthen, or abolish the terms of board members commencing prior to December 31, 2011, or force any board member to resign in order to institute a 19-member board pursuant to this section.”¹ Technical amendments are now needed to reconcile statutory language concerning transition to a 19-member board, and election of the president, vice president, and treasurer.

ISSUE

Whether to pursue proposed amendments to the Business and Professions Code to reconcile statutory language concerning transition to a 19-member board, and election of the president, vice president, and treasurer.

CONCLUSION

The State Bar should pursue proposed amendments to the Business and Professions Code to reconcile statutory language concerning transition to a 19-member board, and election of the president, vice president, and treasurer.

DISCUSSION

Completion of transition to a 19-member board

There is one possible impediment to instituting a 19-member board by October 31, 2014.

Before Business and Professions Code section 6021 was amended by SB 163, the president was elected from among those members in the third and final year of their term. The intent was to provide for a fourth year presidency, with the president serving an additional year in a separate office on the board as its 23rd member. (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 818 (1985-1986 Reg. Sess.) as amended May 15, 1985, p. 4.) After the transition to a 19-member board, the president – as well as the vice president and treasurer – will all be elected from among the 19 trustees and will serve while on the board (similar to a municipality where the mayor is selected and rotated each year from among members of the city council). However, a member of the current board in his or her third or final year in 2014 may seek to serve a fourth and additional year on the board as the president, given the express intent of SB 163 not to shorten the terms of the current board members. If one of the current members still in

¹ Bus. & Prof. Code, § 6009.7(c). See also Bus. & Prof. Code, § 6011(b) (“It is the intent of the Legislature that the board, pursuant to the plan developed by the State Bar as described in Section 6009.7, gradually decrease its size without shortening, lengthening, or abolishing terms commencing prior to December 31, 2011, with the ultimate goal of instituting a 19-member board no later than October 31, 2014, pursuant to Section 6009.7.”)

office in 2014 was elected president and then able to extend his or her term to a fourth year, there would be a 20th member in addition to the other 19 trustees who have been elected or appointed to serve on the board.

The proposed statutory amendments would address this issue by adding language providing that, in the event a current board member is elected president and “assumes office at the conclusion of the annual meeting in 2014, then the president shall be a member in addition to the other 19 members of the board.” This would apply only to that specific scenario and only for 2014-2015.

Election of an officer who would not otherwise be one of the 19 members of the board

Prior to amendment by SB 163, Business and Professions Code section 6021 provided that officers other than the president “shall be elected from among the board members who have at least one or more years to complete their respective terms.” The underlined language was not carried over into amended section 6021, which now provides that the “president, the vice president, and the treasurer shall be elected from among all members of the board.”

Allowing a current third-year member to serve as vice president or treasurer in a fourth year, without restriction, would *lengthen* that current board member’s term, contrary to the express intent of SB 163. Moreover, as discussed above, after the transition to a 19-member board, the president, vice president, and treasurer will be elected from among the 19 trustees and will serve while on the board. At that point, allowing a member of the board in his or her third year to seek to serve a fourth year as president, vice president or treasurer could result in a 20th member in addition to the other 19 trustees who had been elected or appointed to serve on the board.

The proposed statutory amendments would address this issue by explicitly providing that “[e]ach officer, while holding office, must be a member of the board.” This language would clarify that a third-year board member could serve a fourth year as an officer, provided there is some independent basis for continuing to serve as a member of the board, i.e., reelection or reappointment as one of the 19 board members. To further clarify that this additional language would not *shorten* the term or any *current* board member (who would otherwise be eligible to serve a fourth year as president, even without an independent basis for continuing to serve as a board member), the proposed statutory amendments would also provide that a *current* board member “shall be eligible to serve a fourth year as a member of the board if elected in the third year of his or her term to be the president of the State Bar under Section 6021.”

FISCAL / PERSONNEL IMPACT:

None

RULE AMENDMENTS:

None

BOARD BOOK IMPACT:

If the Business and Professions Code is amended as proposed, amendments would be needed to:

Tab 4, article 1, section 6021

Tab 5, article 1, sections 2 and 3

RECOMMENDATION

It is recommended that the State Bar pursue proposed amendments to the Business and Professions Code to reconcile statutory language concerning transition to a 19-member board, and election of the president, vice president, and treasurer.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Board Committee on Operations agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that the Board Committee on Operations recommends that the Board approve State Bar pursuit of proposed amendments to the Business and Professions Code to reconcile statutory language concerning transition to a 19-member board, and election of the president, vice president, and treasurer, consistent with the intent of the proposed statutory amendments attached hereto.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

Should the Board concur with the Board Committee on Operations's recommendation, the following resolutions would be in order:

RESOLVED, that upon the recommendation of the Board Committee on Operations, the Board hereby approves State Bar pursuit of proposed amendments to the Business and Professions Code to reconcile statutory language concerning transition to a 19-member board, and election of the president, vice president, and treasurer, consistent with the intent of the proposed statutory amendments attached hereto.