

# AGENDA ITEM

54-116 MAY 10 13

**DATE:** May 1, 2013

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

**FROM:** Joseph Dunn, Executive Director/CEO

**SUBJECT:** Support Position re SB 666 Employment: retaliation  
(Steinberg) – *Late Item* (State Bar Rule 6.51(B))

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## EXECUTIVE SUMMARY

The Senate Pro Tem has requested the support of the State Bar of California for his Senate Bill No. 666 (2013-2014 Regular Session) (hereinafter "SB 666"). SB 666 includes a provision that would make it a cause for suspension, disbarment, or other discipline for any member of the State Bar to report immigration status or threaten to report immigration status of a witness or party to a civil or administrative action or his or her family member because the witness or party has exercised a right related to his or her employment.

Because this request was received after the 10-day period for notice of agenda, in order to add this as a late item to the agenda, the board committee and board must first, by respective two-thirds vote, determine that there is a need to take immediate action. State Bar Rule 6.51(B)(2). The next regular meeting of the board to which the request of the Senate Pro Tem may be included with the 10-day notice is July 18 and 19, 2013. Immediate action by the board committee and the board is appropriate so that any position of the board will be considered when the bill is taken up on the Senate floor before May 31, 2013.

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## BACKGROUND

SB 666, as amended April 11, 2013, § 2, would add new section 6103.7 to the Business and Professions Code to read:

It is cause for suspension, disbarment, or other discipline for any member of the State Bar to report immigration status or threaten to report immigration status of a witness or party to a civil or administrative action or his or her family member to a federal, state, or local agency because the witness or party exercises or has exercised a right related to his or her

employment, broadly interpreted. As used in this section, “family member” line 19 means a spouse, parent, sibling, child, uncle, aunt, niece, nephew, line 20 cousin, grandparent, or grandchild related by blood, adoption, line 21 marriage, or domestic partnership.

This provision is among others in SB 666 to prohibit retaliation on the basis of immigration status a witness or party has exercised protected rights under existing employment laws.

On April 30, 2013, the Senate Committee on the Judiciary voted (6 ayes, 1 no) to pass the bill as amended. The bill must be approved by the full Senate by May 31, the last day for all bills to be passed out of the house of origin. J.R. 61(a)(8).

On May 1, 2013, the Senate Pro Tem requested the State Bar’s support of SB 666.

## **DISCUSSION**

### ***Late Item***

Before the board committee or board may consider SB 666, it must first by a two-thirds vote approve adding the matter as a late item to the agenda. To do so, the board committee and board may adopt the respective proposed resolutions in the section below in **RECOMMENDATIONS Action for Late Item**.

Notice of meetings of the board and board committees must be posted on the State Bar Web site no fewer than ten days before the meeting. State Bar Rule 6.51(A)(1). No item may be added to an agenda after the ten-day notice period unless “two-thirds of the board or board committee, or if less than two-thirds are present, all those present, vote that there is a need to take immediate action” and notice of the additional item is provided at least forty-eight hours before the meeting.

The next regular meeting of the board committee and board is scheduled for July 18 and 19, 2013. Meanwhile the Senate may act on the bill anytime now before May 31. To assure that any position of the State Bar may be considered by the Senate, it would be necessary for the board committee and board to act at this meeting. Accordingly, it would be appropriate for the item to be added as a late item.

The minimum forty-eight hour notice for this item has been provided.

### **SB 666**

As stated in the Senate Committee analysis of the bill:

- Existing law provides protections, rights, and remedies available under state law to all individuals, regardless of immigration status, who have applied for employment, or who are or who have been employed, in this state. Further, California’s labor laws provide anti-retaliation protection for employees, who make claims against their employers for violations of labor laws.

- A recent study noted that there are approximately 2.6 million undocumented individuals in California. Cho and Smith, *Workers' Rights on ICE: How Immigration Reform Can Stop Retaliation and Advance Labor Rights*, National Employment Law Project (Feb. 2013) <<http://www.nelp.org/page/-/Justice/2013/Workers-Rights-on-ICE-Retaliation-Report-California.pdf?nocdn=1>> [as of Apr. 22, 2013], p. 2. The study also noted that “[m]ost undocumented immigrants work in traditionally low-wage occupations such as agriculture, construction, manufacturing, and service industries, where workers face the greatest risk for exploitation. Undocumented workers are far more likely to experience violations of wage and hour laws.” *Id.* The study states that many undocumented workers do not file claims against their employers out of fear of “‘getting in trouble’ or being fired.” *Id.* The study also found that “[w]hile threats of job loss have an especially serious consequence in this job market, an employer’s threat to alert immigration or local law enforcement of an undocumented immigrant worker’s status carries added force. Such action is at least as frequent as other forms of retaliation.” *Id.* at pp. 2-3.
- In order to further address employer retaliation against employees who assert their rights under the Labor Code and reaffirm the Legislative protections available to all employees, regardless of citizenship status, this bill would prohibit retaliation against an employee based on the citizenship or immigration status of the employee or his or her family members. This bill would also clarify that an employer is prohibited from discriminating, retaliating, or taking adverse action against an employee who makes a written or oral complaint that the employee is owed unpaid wages, and provides up to a \$10,000 penalty for violations thereof.
- This bill would also supplement the California Whistleblower Protection Statute by protecting an employee who provides information to, or testifies before, any public body conducting an investigation, hearing, or inquiry into improper employer conduct, as specified.
- This bill would also subject a business licensee to disciplinary action for threatening to retaliate or retaliating against an employee based on the employee’s citizenship or immigration status. More specifically, with respect to the State Bar, this bill would also provide for disciplinary action against an attorney who threatens to report the immigration status of a witness or party to a civil or administrative proceeding, as specified.

Sen. Com. on Judiciary, Analysis of Sen. Bill No. 666 (2013-2014 Reg. Sess.), as amended Apr. 11, 2013, pp. 1-2.

#### **FISCAL / PERSONNEL IMPACT:**

Not clear at this time on whether there will be any substantial increase in cost to discipline system in implementing the measure if it is enacted.

## **RULE AMENDMENTS:**

n/a

## **BOARD BOOK IMPACT:**

n/a

## **RECOMMENDATIONS**

### **I. *Action on “Late Item”***

Adding this matter as a Late Item would be appropriate and is recommended.

### **A. PROPOSED BOARD COMMITTEE RESOLUTION RE ACTION ON “LATE ITEM”:**

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

**WHEREAS**, the request of the Senate Pro Tem for the Board to support SB 666 was made after the 10-day period for notice of the agenda for this meeting; and

**WHEREAS**, the Joint Rules of the Legislature, May 31, 2013, is the last day for all bills originating in the Senate to be passed out of the house; and

**WHEREAS**, the next regular meeting of the Board Committee on Operations is July 18 and 19, 2013; it is

**RESOLVED**, that the Board Committee on Operations hereby finds that immediate action on the request is necessary and approves adding as a late item to the request of the Senate Pro Tem for the State Bar to support SB 666.

### **B. PROPOSED BOARD OF TRUSTEES RESOLUTION RE ACTION ON “LATE ITEM”:**

Should the Board concur with the above recommendation, the following resolutions would be in order:

**WHEREAS**, the request of the Senate Pro Tem for the Board to support SB 666 was made after the 10-day period for notice of the agenda for this meeting; and

**WHEREAS**, the Joint Rules of the Legislature, May 31, 2013, is the last day for all bills originating in the Senate to be passed out of the house; and

**WHEREAS**, the next regular meeting of the Board of Trustees is not until July 18 and 19, 2013; it is

**RESOLVED**, that the Board hereby finds that immediate action on the request is necessary and approves adding as a late item the request of the Senate Pro Tem for the State Bar to support SB 666.

## **II. Action on SB 666**

Support of the proposed legislation is recommended.

### **A. PROPOSED BOARD COMMITTEE RESOLUTION RE ACTION ON SB 666:**

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 support of SB 666.

### **B. PROPOSED BOARD OF TRUSTEES RESOLUTION RE ACTION ON SB 666:**

Should the Board of Trustees concur with the Board Committee on Operations recommendation, the following resolution would be in order:

**RESOLVED**, that upon the recommendation of the Board Committee on Operations, the Board of Trustees hereby approve support of SB 666.