

AGENDA ITEM

706 SEPTEMBER 2017

DATE: August 31, 2017
TO: Members, Board of Trustees
FROM: Elizabeth Parker, Executive Director
SUBJECT: Sections – Formation of New Corporate Entity

EXECUTIVE SUMMARY

This year's State Bar Fee Bill (SB 36) requires that the State Bar separate the Sections from the State Bar into a new private non-profit association. This item seeks the Board of Trustees' authorization to establish the corporate entity that will house the State Bar Sections and authorizes the transfer of an initial portion of the Sections' financial reserves to the new entity. The Fee Bill also requires that the State Bar and the new entity enter into an agreement setting forth the terms of the future relationship between the State Bar and the new entity. This item would authorize staff to negotiate that agreement and bring it back to the Board of Trustees for approval.

BACKGROUND

Following months of careful study and discussion, the State Bar Board of Trustees voted in January 2017 to authorize negotiation with the Legislature of a State Bar Fee Bill that would separate the Sections from the State Bar.¹ The Board approved several core principles of separation, including that the sixteen State Bar Sections move together into a free-standing unified entity; that a special relationship between the State Bar and the Sections be established, enabling collection of Sections' membership dues and such other support as may be appropriate; and that the State Bar be authorized to transfer intellectual property and reserve funds held on behalf of the Sections and to provide such other support as may be useful to a successful separation.

The currently pending Fee Bill (SB 36) adopts those principles and, if enacted as expected (no later than October 15, 2017), would mandate the separation of the Sections from the State Bar by January 1, 2018.

¹ Agenda Item 701 January 2017 (Separation of Sections From State Bar in Context of 2017 Fee Bill).

DISCUSSION

Request for Board Approval of Formation of Corporate Entity and Other Transition Steps

The pending State Bar Fee Bill (SB 36) mandates that the State Bar “shall assist the Sections of the State Bar to incorporate as a private, nonprofit corporation” and that the State Bar “shall transfer the functions and activities of the 16 State Bar Sections and the California Young Lawyers Association to the new private, nonprofit corporation.” This item seeks the Board’s authorization to permit staff to begin implementing the legislation upon its enactment by incorporating the new entity.² Under the direction of the Office of General Counsel, an outside law firm has already been retained to provide corporate governance advice to the Sections and to incorporate the new entity upon the approval of the Board.

The Fee Bill requires that upon the separation of the Sections into a new entity, the State Bar transfer to the new entity the Sections’ financial reserves and other assets no later than January 1, 2018. Staff recommends that the Board approve the dispersal of an initial portion of the funds to new entity at the discretion of the Executive Director in order to assist the new entity in establishing itself, including by entering into contracts and hiring staff.

The Fee Bill also requires that the State Bar and the new entity enter into a memorandum of understanding governing the future relationship between the two bodies, including the State Bar’s continuing role as the collector of the Sections’ membership dues on the annual licensing fee statement sent to all attorneys in the state. This item seeks the Board’s authorization to permit staff to negotiate that agreement with the leadership of the Sections and instructs staff to bring the agreement back to the Board for approval.

Report of Action Taken By Board Executive Committee on August 2, 2017

Planning for the transition of the Sections is well under way. At its August 2, 2017, meeting, the Board Executive Committee approved the hiring of a management consulting firm led by former State Bar Senior Director of Education Pam Wilson to assist the Sections in planning for their new entity.³ Staff will continue working closely with the Sections’ leadership to ensure a smooth transition and a successful future for the new entity.

FISCAL/PERSONNEL IMPACT

Separation of the sections from the State Bar will have a significant fiscal impact on the State Bar’s revenue that will be further detailed as part of the 2018 budget setting process. The subject of this specific item – the formation of the corporate entity for the Sections – will have minimal direct fiscal or personnel impact.

² The State Bar currently retains the statutory authority to establish nonprofit organizations.. The Fee Bill will terminate that authority effective March 31, 2018; however, that later date was chosen to ensure that the State Bar would be able to create the new corporate entity for the Sections this year.

³ The Board Executive Committee’s approval for this contract, the result of an RFP process managed by State Bar staff, was required because sufficient funds had not initially been allocated to cover the cost, and because Pam Wilson’s status as a retired employee of the State Bar required a waiver. The resolutions adopted by the Board Executive Committee on behalf of the Board of Trustees are reported at the end of this item.

STAFF RECOMMENDATION

Staff recommends that the Board of Trustees approve the following resolutions:

RESOLVED, that upon enactment of legislation mandating the separation of the Sections from the State Bar, the Board of Trustees authorize the Executive Director to approve incorporation of the new corporate entity that will become the successor to the State Bar Sections; and it is

FURTHER RESOLVED, that the Executive Director is authorized to transfer part of the Sections' financial reserves to the new entity after its incorporation to assist the entity in paying necessary start-up costs; and it is

FURTHER RESOLVED, that the Executive Director is authorized to negotiate with the Sections the terms of an agreement governing the future relationship between the State Bar and the new entity and to bring the agreement back to the Board of Trustees for approval.

REPORT OF ACTION TAKEN BY BOARD EXECUTIVE COMMITTEE

The following actions taken by the Board Executive Committee on August 2, 2017 are hereby reported to the full Board of Trustees:

RESOLVED, that the Board Executive Committee, acting on behalf of the Board of Trustees, approves a \$167,000 increase to the 2017 Sections Administration budget, for the cost of the contract with Pam Wilson & Associates, LLC for management consulting services; and it is

FURTHER RESOLVED, that the Board Executive Committee, acting on behalf of the Board of Trustees, waives Board Book Tab 4.3 (Contracts), Section 6 (Policy Restricting Former Members of the Board of Trustees and the Senior Managers Designated by the Executive Director from Doing Business with the State Bar), as applied to Pam Wilson, for good cause, as discussed this date.