

BILL ANALYSIS

C.S.H.B. 599

By: Chisum

Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Legislature enacted the State Bar Act in 1939 establishing the State Bar as a public corporation and mandating that all attorneys licensed to practice law in Texas be members of the Bar. The Bar operates as both a regulatory agency and a professional association with jurisdiction over more than 70,000 Texas attorneys. Its major functions include maintaining professional rules of conduct through an attorney grievance system, maintaining professional development and continuing legal education programs, and providing legal education and referral services to the public.

The State Bar is subject to the Sunset Act and will be abolished on September 1, 2003, unless continued by the Legislature. As a result of its review of the State Bar, the Sunset Advisory Commission recommended continuation of the Bar and several statutory modifications that are contained in C.S.H.B. 599.

RULEMAKING AUTHORITY

It is the opinion of this committee that rulemaking authority is expressly delegated to the Supreme Court in SECTION 17 (Sec. 81.0753, Government Code) and in SECTION 23 (Sec. 81.072, Government Code) of this bill.

ANALYSIS

SECTION 1.

C.S.H.B. 599 amends the Government Code relating to the continuation and functions of the State Bar of Texas. The substitute also incorporates several standard across-the-board recommendations of the Sunset Commission. It continues the State Bar for 12 years until September 1, 2015.

SECTION 2.

Conforming change to authorize the Bar to send and receive election ballots electronically.

SECTION 3.

The substitute updates standard Sunset language requiring impartial appointments to the Board and standard Sunset language requiring the Board to separate its policymaking duties from the agency's management function.

SECTION 4.

C.S.H.B. 599 adds standard Sunset language requiring members of the Board to complete training before assuming their duties. The substitute requires the State Bar to develop a comprehensive strategic plan for its operations spanning a period of five years beginning with the next odd-numbered year. The plan must include measurable goals and a system of performance measures. Each year the State Bar must report

these performance measures to the Supreme Court and the editor of the Texas Bar Journal for publication.

SECTION 5.

The substitute requires the State Bar and the Supreme Court to consider goals and performance measures identified in the Bar's strategic plan in developing and approving the Bar's annual budget, and to identify additional goals and performance measures as necessary. After implementing the budget approved by the Supreme Court, the substitute requires the State Bar to report to the Supreme Court on its progress in meeting goals and performance measures. It requires the State Bar to revise the goals and performance measures as necessary and to notify the Supreme Court of such revisions.

SECTION 6.

The substitute repeals the requirement that 51 percent of registered members of the State Bar vote in an election for the election to be considered valid and makes conforming change to authorize the Bar to send and receive election ballots electronically.

SECTION 7.

The substitute authorizes the State Bar, with the approval of the Supreme Court, to send and receive election ballots by electronic transmission and stipulates that before approving this method of balloting, the Supreme Court must be satisfied that the Bar's election procedure provides members of the Bar with secure access to election ballots and information. The substitute requires that the State Bar promote and monitor participation of members in elections and report statistics regarding that participation to the Supreme Court and the editor of the Texas Bar Journal for publication.

SECTION 8.

The substitute requires the executive committee to approve the creation of committees by the Board.

SECTION 9.

The substitute adds standard Sunset language specifying the grounds for removing a Board member.

SECTION 10.

The substitute adds standard Sunset language prohibiting Board members, high-level employees, and spouses from serving as an officer or employee of a related Texas trade association.

SECTION 11.

The substitute updates standard Sunset language requiring the Bar to have a current equal employment opportunity policy.

SECTION 12.

The substitute replaces an existing provision with standard Sunset language requiring the executive director to inform Board members and employees of the qualifications and responsibilities for office. The substitute also provides additional standard Sunset language requiring the Bar to maintain information on written complaints and to notify the parties about policies for and the status of complaints, requiring the Bar to inform employees about the State Employee Incentive Program, and requiring the Board to make effective use of technology in the delivery of information and services to the public.

SECTION 13.

The heading to Section 81.054, Government Code, is amended to read as follows: MEMBERSHIP FEES AND ADDITIONAL FEES.

SECTION 14.

C.S.H.B. 599 requires the Supreme Court to set a civil legal services fee in an amount not less than \$65 to be paid annually by members of the State Bar with funds to be distributed for approved programs providing basic civil legal services to the indigent. The substitute requires the Supreme Court to review the amount of the fee at least biennially and authorizes the court to modify the amount up to 120 percent of the lowest fee imposed under the subsection during the preceding year. The substitute requires the Supreme Court clerk to retain the civil legal services fee until distribution is approved by Supreme Court order. C.S.H.B. 599 stipulates that the fee is not subject to rulemaking election requirements under 81.024, Government Code. The substitute also adds standard Sunset language establishing a method for membership renewal and a time-frame and penalty structure for delinquent renewals.

SECTION 15.

Section 81.072, Government Code, is amended to read as follows: GENERAL DISCIPLINARY AND DISABILITY PROCEDURES.

SECTION 16.

The substitute establishes a framework for the State Bar's grievance system in statute that streamlines the hearing process. It specifies that the grievance system is to provide for an option for a trial in district court on a complaint as well as an administrative system for attorney disciplinary and disability findings in lieu of trials in district court. The substitute links a voluntary mediation and dispute resolution procedure maintained by the State Bar—the Client Attorney Assistance Program—to the grievance system. The substitute specifies that the procedure should attempt to resolve allegations of attorney misconduct dismissed from the grievance system and should coordinate with other programs administered by the Bar. The substitute stipulates that all information considered in voluntary mediation and dispute resolution are confidential to the extent that such information is confidential under the grievance system.

SECTION 17.

The substitute requires the chief disciplinary counsel's office to classify each grievance as an inquiry or a complaint before a district grievance committee can consider the matter and specifies that only complainants may appeal the classification decision. The substitute requires the chief disciplinary counsel to review and investigate all complaints and requires a panel of a district grievance committee to consider complaints as forwarded by the chief disciplinary counsel in either a hearing docket or a dismissal docket. The chief disciplinary counsel is required to refer all dismissed grievances for voluntary mediation and dispute resolution. All information presented to a panel of a district grievance committee is confidential except under certain circumstances. C.S.H.B. 599 defines the parties to a hearing as the Commission for Lawyer Discipline (CLD) and the respondent attorney and specifies that the chief disciplinary counsel presents the complainant's case in the hearing. Only the CLD and the respondent attorney may appeal findings of a district grievance committee panel to the Board of Disciplinary Appeals (BODA) and then to the Supreme Court. The substitute authorizes BODA to affirm, modify, or reverse a panel's finding, or to remand the complaint for rehearing by the panel that entered the finding or a statewide grievance committee panel composed of members from State Bar districts other than the district from which the appeal was taken. The substitute directs the Supreme Court to promulgate rules regarding the classification and disposition of grievances.

SECTION 18.

Conforming changes.

SECTION 19.

The substitute adds standard Sunset language requiring the Board to develop continuing education programs for members of the State bar.

SECTION 20.

The substitute establishes the executive committee in statute and sets its composition. The substitute requires the executive committee, on recommendation of the president, to approve the creation of additional standing and special committees of the Bar based on a fiscal impact study and a poll of existing committee chairs. The executive committee must conduct a comprehensive review of standing and special committees at least biennially to assess the continued need for each committee and to identify unnecessary overlap. The committee may perform any other duties as delegated by the Board.

SECTION 21.

Sections 81.020 (e) and 81.029 (l), Government Code, are repealed to be consistent with standard Sunset language concerning requirements for the executive director to inform Board members and employees of the qualifications and responsibilities of office, and for the agency to maintain an equal employment opportunity policy.

SECTION 22.

Requires the executive director of the State Bar to prepare the equal employment opportunity policy statement required by Section 81.029 by January 1, 2004.

SECTION 23.

The substitute requires the Supreme Court to adopt rules and procedures concerning the grievance system as provided in the substitute no later than January 1, 2004.

SECTION 24.

The substitute clarifies in instructional provision that standard Sunset language concerning Board members only applies to members appointed or elected to the Board after the effective date, September 1, 2003. Similarly, the substitute clarifies that standard Sunset language concerning maintaining information on complaints applies only to complaints filed with the Bar on or after the effective date of the substitute and that standard Sunset language concerning membership renewal applies only to membership fees that are subject to renewal after the effective date of the substitute. The substitute also clarifies that changes to the grievance procedure apply to grievances filed on or after January 1, 2004.

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 599 modifies the original to ensure that the Bar may distribute and receive election ballots electronically, and does not have to mail paper ballots.

The substitute clarifies that changes in prohibitions or qualifications for board members, apply to both appointed and elected board members.

The substitute adds a provision to require the Supreme Court to set a civil legal services fee in an amount not less than \$65 to be paid annually by members of the State Bar and to be used solely to fund basic civil legal services to the indigent as defined in statute. The substitute further requires the Supreme Court to review the amount of the fee at least biennially and authorizes the court to modify the amount up to 120 percent of the lowest fee imposed under the subsection during the preceding year. C.S.H.B 599 stipulates that the fee is not subject to rulemaking election requirements under Sec. 81.024, Government Code.

The substitute provides that standards and procedures for processing grievances against attorneys must provide for an option for a trial in district court on a complaint as well as an administrative system for attorney disciplinary and disability findings. In contrast, the original sought to eliminate the option for trial in district court, leaving only an administrative system.

The substitute clarifies that voluntary mediation efforts should attempt to resolve allegations of attorney misconduct.

The substitute reverts to existing statutory wording by changing “district grievance committee” back to “tribunal” to encompass other bodies that may exercise this authority, such as the Board of Disciplinary Appeals or the Supreme Court.

The substitute requires the chief disciplinary counsel to classify a grievance as an inquiry if the respondent attorney is deceased, has relinquished license in lieu of discipline, or is not licensed in Texas.

The substitute clarifies that the chief disciplinary counsel is required to review and investigate each grievance classified as a complaint.

The substitute clarifies that references are to a panel of a district grievance committee, rather than the full committee.

The substitute defines the parties to a hearing as the Commission for Lawyer Discipline and the respondent attorney. The substitute clarifies that the chief disciplinary counsel presents the complainant’s case at the hearing, rather than represents the complainant at the hearing. The substitute also strikes wording from the original to clarify that the complainant does not have authority to appeal.

The substitute changes “Texas Rules of Evidence” to “Texas Rules of Civil Procedure.”

The substitute adds language to authorize the Board of Disciplinary Appeals to affirm, modify, or reverse a panel’s finding, or to remand the complaint for rehearing by the panel that entered the finding or a statewide grievance committee panel composed of members from state bar districts other than the district from which the appeal was taken.

The substitute makes corrections to reflect that duties belong to the president rather than the board of directors or the president-elect.

The substitute requires the Supreme Court to adopt rules regarding changes in the grievance system not later than January 1, 2004, and stipulates that these rules apply to grievances filed on or after this date.

The substitute strikes language from the original version providing the standard Sunset across-the-board recommendation to limit rules on advertising.