BILL ANALYSIS

Senate Research Center

H.B. 599
By: Chisum (Jackson)
Government Organization
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Enrolled

DIGEST AND PURPOSE

The State Bar of Texas operates as both a regulatory agency and a professional association. It is a quasi-governmental agency of the judicial branch with jurisdiction over more than 70,000 attorneys who are required to be members of the bar. The state bar is subject to the Sunset Act and will be abolished in 2003 unless continued in existence by the legislature. H.B. 599 continues the state bar for the standard 12-year period but requires increased accountability through strategic planning and performance-based budgeting.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Supreme Court in SECTION 17 (Section 81.0753, Government Code) and SECTION 28 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 81.003, Government Code, to continue the State Bar of Texas for the standard 12-year period until September 1, 2015.

SECTION 2. Amends Section 81.019(c), Government Code, to require election ballots to be distributed, rather than mailed, to the membership.

SECTION 3. Amends Sections 81.020(c) and (f), Government Code, as follows:

> (c) Requires that appointments to the State Bar board of directors (board) be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.
>
> (f) Requires the board to develop and implement policies that clearly separate, rather than define, the responsibilities of the board and the management responsibilities of the executive director and the staff of the state bar.

SECTION 4. Amends Subchapter B, Chapter 81, by adding Sections 81.0201 and 81.0215, as

follows:

Sec. 81.0201. TRAINING PROGRAM FOR BOARD MEMBERS. Applies standard language regarding board member training.

Sec. 81.0215. STRATEGIC PLAN. (a) Requires the state bar to develop a comprehensive, long-range strategic plan for its operations. Requires the state bar, each even-numbered year, to issue a plan covering five fiscal years beginning with the next odd-numbered fiscal year.

(b) Requires the strategic plan to include measurable goals and a system of performance measures that identify certain factors.

(c) Requires the state bar, each year, to report the performance measures included in the strategic plan under this section to the supreme court and the editor of the Texas Bar Journal for publication.

SECTION 5. Amends Section 81.022, Government Code, by adding Subsections (a-1) and (e), as follows:

(a-1) Requires the state bar and supreme court, in developing and approving the annual budget, to perform certain tasks.

(e) Requires the state bar, after implementing a budget approved by the supreme court, to report to the court regarding the state bar's performance on the goals and performance measures identified in the strategic plan developed under Section 81.0215. Requires the state bar to perform certain functions.

SECTION 6. Amends Sections 81.024(c) and (d), Government Code, to make conforming changes and to delete current language regarding minimum voter participation in state bar elections.

SECTION 7. Amends Subchapter B, Chapter 81, Government Code, by adding Sections 81.0241and 81.0242, as follows:

Sec. 81.0241. ELECTRONIC TRANSMISSION OF ELECTION MATERIALS. (a) Authorizes the state bar, with the approval of the supreme court, to distribute by electronic transmission ballots and related materials and to receive by electronic transmission completed ballots in an election under this chapter.

(b) Requires the supreme court, before approving the distribution of ballots and related materials by electronic transmission under this section, to be satisfied that the state bar has implemented procedures that ensure each member of the state bar

will have secure access to election ballots and information.

Sec. 81.0242. PARTICIPATION IN ELECTIONS. Requires the state bar, in the manner provide by the supreme court, to perform certain functions.

SECTION 8. Amends Section 81.026(a), Government Code, to add new language to existing text related to the board's authority to create committees.

SECTION 9. Amends Section 81.027(a), Government Code, to provide the grounds for removal of a board member. Deletes current language in existing text.

SECTION 10. Amends Section 81.028, Government Code, as follows:

Sec. 81.028. New heading: RELATIONSHIP WITH TRADE ASSOCIATION. (a) Defines "Texas trade association."

(b) Prohibits certain persons from being a member of the board of directors and from being a state bar employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments.

SECTION 11. Amends Sections 81.029(j) and (k), Government Code, as follows:

(j) Makes conforming and nonsubstantive changes.

(k) Requires the state bar's equal opportunity policy statement to be reviewed by the State Commission on Human Rights.

SECTION 12. Amends Subchapter B, Chapter 81, Government Code, by adding Sections 81.035, 81.036, 81.037, and 81.038, as follows:

Sec. 81.035. INFORMATION REGARDING REQUIREMENTS FOR OFFICE OR EMPLOYMENT. Requires the executive director or the executive director's designee to provide to members of the board of directors and to agency employees information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards on conduct for state officers or employees.

Sec. 81.036. INFORMATION ON CERTAIN COMPLAINTS. (a) Requires the state bar to maintain a file on each written complaint, other than a grievance against an attorney, filed with the state bar. Requires the file to include certain information.

(b) Requires the state bar to provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the state bar's policies and procedures relating to complaint investigation and resolution.

(c) Requires the state bar, at least quarterly until final disposition of the complaint, to notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Sec. 81.037. STATE EMPLOYEE INCENTIVE PROGRAM. Requires the executive director or the executive director's designee to provide to state bar employees information and training on the benefits and methods of participation in the state employee incentive program under Subchapter B, Chapter 2108.

Sec. 81.038. USE OF TECHNOLOGY. Requires the board of directors to develop and implement a policy requiring the executive director and state bar employees to research and propose appropriate technological solutions to improve the state bar's ability to perform its functions. Requires the technological solutions to ensure certain factors are met.

SECTION 13. Amends the heading to Section 81.054, Government Code, to read as follows:

Sec. 81.054. MEMBERSHIP FEES AND ADDITIONAL FEES.

SECTION 14. Amends Section 81.054, Government Code, by amending Subsections (a), (c), and (d) and adding Subsections (f)-(l), as follows:

(a) Requires the supreme court to set membership fees and other fees for members of the state bar. Requires the fees, except as provided by Subsection (j) and those set for associate members, to be set in accordance with this section and Section 81.024.

(c) Requires the clerk to retain the fees, other than fees collected under Subsection (j), until distributed to the state bar for expenditure under the direction of the supreme court to administer this chapter. Requires the clerk to retain the fees collected under Subsection (j) until distribution is approved by an order of the supreme court. Requires the supreme court, in ordering that distribution, to order that the fees collected under Subsection (j) be remitted to the comptroller at least as frequently as quarterly. Requires the comptroller to credit 50 percent of the remitted fees to the credit of the judicial fund for programs approved by the supreme court that provide basic civil legal services to the indigent and to credit the remaining 50 percent of the remitted fees to the fair defense account in the general revenue fund which is established under Section 71.058, to be used, subject to all requirements of Section 71.062, for demonstration or pilot projects that develop and promote best practices for the efficient delivery of quality representation to indigent

defendants in criminal cases at trial, on appeal, and in post-conviction proceedings.

(d) Authorizes fees collected under Subsection (j) to be used only to provide basic civil legal services to the indigent and legal representation and other defense services to indigent defendants in criminal cases as provided by Subsection (c). Authorizes other fees collected under this chapter to be used only for administering the public purposes provide by this chapter.

(f) Authorizes a person who is otherwise eligible to renew the person's membership to renew the membership by paying the required membership fees to the state bar on or before the due date.

(g) Authorizes a person whose membership has been expired for 90 days or less to renew the membership by paying to the state bar membership fees equal to 1-1/2 times the normally required membership fees.

(h) Authorizes a person whose membership has been expired for more than 90 days but less than one year to renew the membership by paying to the state bar membership fees equal to two times the normally required membership fees.

(i) Requires the state bar, not later than the 30th day before the date a person's membership is scheduled to expire, to send written notice of the impending expiration to the person at the person's last known address according to the records of the state bar.

(j) Requires the supreme court to set an additional legal services fee in an amount of $65 to be paid annually by each active member of the state bar except as provided by Subsection (k). Provides that Section 81.024 does not apply to a fee set under this subsection. Provides that this subsection expires on September 1, 2007.

(k) Prohibits the legal services fee from being assessed on any Texas attorney who meets certain criteria.

(l) Defines "indigent."

SECTION 15. Amends the heading to Section 81.072, Government Code, to read as follows:

Sec. 81.072. GENERAL DISCIPLINARY AND DISABILITY PROCEDURES.

SECTION 16. Amends Section 81.072, Government Code, by amending Subsections (a), (b), (e), (f), (h), and (o) and adding Subsection (e-1), as follows:

(a) Makes a conforming change.

(b) Requires the standards and procedures for processing grievances against attorneys to include an option for a trial in a district court on a complaint. Deletes "complaints" from existing text and replaces with "grievances." Makes conforming changes.

(e) Requires the state bar to establish dispute resolution procedures to perform certain tasks.

(e-1) Provides that all types of information, proceedings, hearing transcripts, and statements presented during the voluntary mediation and dispute resolution procedure established under Subsection (e) are confidential to the same extent the information, proceedings, transcripts, or statements would be confidential if presented to a panel of a district grievance committee.

(f) Makes conforming changes.

(h) Makes a conforming change.

(o) Deletes current language in existing text related to the dismissal of a grievance.

SECTION 17. Amends Subchapter E, Chapter 81, Government Code, by adding Sections 81.073, 81.074, 81.075, 81.0751, 81.0752, and 81.0753, as follows:

Sec. 81.073. CLASSIFICATION OF GRIEVANCES. (a) Requires the chief disciplinary counsel's office to classify each grievance on receipt as a specific type of grievance if certain conditions are applicable.

(b) Authorizes a complainant to appeal the classification of a grievance as an inquiry to the Board of Disciplinary Appeals, or authorizes the complainant to amend and resubmit the grievance. Provides that an attorney against whom a grievance is filed may not appeal the classification of the grievance.

Sec. 81.074. DISPOSITION OF INQUIRIES. Requires the chief disciplinary counsel to dismiss a grievance classified as an inquiry and to refer the inquiry classified under Section 81.073 (a) (2) (A) and dismissed under this section to the voluntary mediation and dispute resolution procedure established under Section 81.072(e).

Sec. 81.075. DISPOSITION OF COMPLAINTS. (a) Requires the chief disciplinary counsel to review each grievance classified as a complaint to determine whether there is just cause, as defined by the Texas Rules of Disciplinary Procedure.

(b) Requires the chief disciplinary counsel, after reviewing and investigating a complaint, to place the complaint on a dismissal docket if the counsel finds there is no just cause. Authorizes the respondent attorney, if the counsel finds just cause,

to request a trial in a district court on the complaint in accordance with the procedures adopted by the supreme court. Requires the counsel to place the complaint on a hearing docket if the respondent attorney does not request a trial in a district court.

(c) Requires a panel of a district grievance committee to consider each complaint placed on the dismissal docket at a closed hearing without the complainant or the respondent attorney present. Authorizes the committee to perform certain tasks.

(d) Requires a panel of a district grievance committee to conduct a hearing on each complaint placed on the hearing docket. Provides that the commission and the respondent attorney are parties to the hearing, and the chief disciplinary counsel presents the complainant's case at the hearing. Authorizes each party to seek and the committee to issue a subpoena to compel attendance and production of records before the panel. Authorizes each party to conduct limited discovery in general accordance with the Texas Rules of Evidence as prescribed by the rules of the supreme court.

(e) Authorizes the panel of the district grievance committee, after conducting a hearing, to perform certain functions.

Sec. 81.0751. APPEALS. (a) Authorizes the commission, on behalf of a complainant, or a respondent, to appeal certain findings.

(b) Authorizes the Board of Disciplinary Appeals (board), in an appeal of a finding of a panel of a district grievance committee made to the board, to perform certain actions.

Sec. 81.0752. CONFIDENTIALITY. (a) Provides that all types of information, proceedings, hearing transcripts, and statements presented to a panel of a district grievance committee are confidential and may not be disclosed to any person other than the chief disciplinary counsel unless certain conditions are applicable.

(b) Requires the panel of the district grievance committee, if the requirements of Subsection (a)(2) are met, on request, to make the information, proceedings, hearing transcripts, or statements available to the public.

Sec. 81.0753. RULES REGARDING GRIEVANCES. Requires the supreme court to promulgate rules regarding the classification and disposition of grievances, including rules specifying time limits for each stage of the grievance resolution process.

SECTION 18. Amends Section 81.079, Government Code, to make conforming changes.

SECTION 19. Amends Section 81.113, Government Code, by adding Subsection (c), to require the state bar to recognize, prepare, or administer continuing education programs for members of the state bar. Requires a member of the state bar to participate in the programs to the extent required by the supreme court to maintain the person's state bar membership.

SECTION 20. Amends Chapter 81, Government Code, by adding Subchapter I, as follows:

SUBCHAPTER I. EXECUTIVE COMMITTEE

Sec. 81.121. EXECUTIVE COMMITTEE. (a) Provides that the executive committee consists of certain individuals.

(b) Provides that the general counsel and executive director serve as ex officio members of the committee.

(c) Provides that the president of the state bar serves as chair of the committee. Provides that the chair of the board of directors serves as vice chair of the committee and presides over committee meetings in the committee chair's absence.

Sec. 81.122. DUTIES OF EXECUTIVE COMMITTEE. Requires the executive committee to perform certain tasks.

Sec. 81.123. APPROVAL OF COMMITTEES. Requires the executive committee, before approving the creation of an additional standing or special committee of the state bar, to perform certain functions.

SECTION 21. Amends Chapter 171, Local Government Code, by adding Section 171.010, as follows:

Sec. 171.010. PRACTICE OF LAW. (a) Provides that for purposes of this chapter, a county judge or county commissioner engaged in the private practice of law has a substantial interest in a business entity if the official has entered a court appearance or signed court pleadings in a matter relating to that business entity.

(b) Requires a county judge or county commissioner who has a substantial interest in a business entity as described by Subsection (a) to comply with this chapter.

(c) Prohibits a judge of a constitutional county court from entering a court appearance or signing court pleadings as an attorney in any matter before a certain court.

(d) Authorizes a county judge or commissioner, upon compliance with this chapter, to practice law in the courts located in the county where the county judge

or commissioner serves.

SECTION 22. Repealer: Section 81.020(e), Government Code (regarding the information on qualifications for office or employment), and 81.029(1), Government Code (regarding policies related to certain factors).

SECTION 23. Requires the executive director of the State Bar of Texas or the executive director's designee, not later than January 1, 2004, to prepare the written policy statement required by Section 81.029, Government Code, as amended by this Act.

SECTION 24. Requires the supreme court, not later than January 1, 2004, to adopt the rules and procedures required by Section 81.072, Government Code, as amended by this Act, and Section 81.0753, Government Code, as added by this Act.

SECTION 25. (a) Makes application of changes relating to prohibitions and qualifications of members of the board, of this Act, prospective.

(b) Makes application of Section 81.036 of this Act prospective.

(c) Provides that Section 81.054, Government Code, as amended by this Act, applies to membership fees for renewal of a membership in the State Bar of Texas that become due on or after the effective date of this Act.

(d) Makes application of this Act prospective to January 1, 2004.

SECTION 26. Effective date: September 1, 2003.