

AGENDA ITEM

JANUARY 112
State Bar Section and
Committee Sponsored
Affirmative Legislative
Proposals

DATE: December 10, 2009

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

FROM: Office of Governmental Affairs

SUBJECT: State Bar Section and Committee Sponsored Affirmative Legislative Proposals

EXECUTIVE SUMMARY

State Bar Sections and Committees have submitted a total of twelve affirmative legislative proposals for the 2010 Section and Committee Legislative Program. The November 12 - 14 Board of Governors meeting included this same agenda item. The item was discussed during the Board Committee on Operations meeting on November 12. Consideration of the item was deferred until the January Board meeting, in light of the veto of the State Bar's fee bill for 2010, and the status of legislation to extend the State Bar's authority to assess membership fees for active members for 2010. The State Bar's Office of Governmental affairs has reviewed the legislative proposals and proposes that the Board Committee on Operations, pending further discussion of the status of the State Bar's fee bill for 2010, recommend to the full Board of Governors that the legislative proposals be approved for inclusion in the 2010 Section and Committee Legislative Program. Questions regarding this agenda item should be directed to Anthony Williams at (916) 448-4000 or Saul Bercovitch at (415) 538-2306.

INTRODUCTION

The November 12 - 14 Board of Governors meeting included this same agenda item. The item was discussed during the Board Committee on Operations meeting on November 12. Consideration of the item was deferred until the January Board meeting, in light of the veto of the State Bar's fee bill for 2010, and the status of legislation to extend the State Bar's authority to assess membership fees for active members for 2010. This item is being presented again, pending further discussion of the status of the State Bar's fee bill for 2010.

BACKGROUND

State Bar Sections and Committees have submitted a total of twelve affirmative legislative proposals that they seek to have introduced and enacted by the Legislature in 2010.

State Bar Sections and Committees may sponsor affirmative legislation in their own name following Board review and approval of their proposals. These twelve proposals have been circulated to State Bar Sections, State Bar Standing Committees, and other interested parties for comment.

Under *Keller v. State Bar of California*, State Bar legislative activities funded from mandatory fees are limited to those necessarily or reasonably related to regulating the legal profession or improving the quality of legal services. Because sections use voluntary funds, State Bar legislative policies and procedures include an additional germaneness standard for their legislative activities, as follows:

"A section may use voluntary dues to take positions on bills of others or make affirmative legislative proposals that are germane to the designated practice area of the section, and pursuant to the authority granted under Business and Professions Code section 6031, under the following germaneness standard:

- (1) The matter is necessarily or reasonably related to the regulation of the legal profession or improvement of the quality of legal services available to the people of the state, or
- (2) The matter requires the special knowledge, training, experience or technical expertise of the section, or
- (3) The position advocated, while not specifically related to the regulation of the legal profession or improvement of the quality of legal services, would promote clarity, consistency or comprehensiveness in the law."

The standards and guidelines for legislative activities of committees funded from the lobbying deduction fund provides as follows:

“(a) Legislative activities paid for out of the lobbying deduction fund of committees and other State Bar entities that receive funding from the general fund must be germane to the charge of the committee or other entity and meet the following germaneness standard:

(1) The matter is necessarily or reasonably related to the improvement of the quality of legal services available to the people of the state; or

(2) The matter is related to the improvement of the functioning of the courts, judicial efficacy and efficiency;

(b) In interpreting this germaneness standard, the following guidelines should be applied:

(1) Legislative comments should reflect the special knowledge, training, experience or technical expertise of the State Bar entity;

(A) Involvement in or comments on legislative matters that are ideological or highly controversial or divisive within the bar or the society are disfavored;

(B) The potential impact of comments and other legislative activities of the State Bar entity on the State Bar and the rest of the bar’s legislative program should be considered.”

The following is a description of the 2010 Section and Committee legislative proposals (with links to the proposals):

Title & Brief Description	Sponsor	Code §§ Affected
<p>Proposal to Extend Anti-Deficiency Protection to Refinanced Mortgage Obligations (BLS-2010-01) Would (1) extend purchase money anti-deficiency protection to homeowners who have refinanced their home loans, and (2) codify the right of sold-out property vendors who subordinate their liens to new construction financing to obtain a deficiency against the developer after foreclosure.</p>	<p>Business Law Section (Insolvency Law Committee)</p>	<p>Amends § 580b of the Code of Civil Procedure</p>

Title & Brief Description	Sponsor	Code §§ Affected
<p>Nonprofit and Unincorporated Association Cleanup (BLS-2010-02) Would clarify various sections of the Corporations Code so that nonprofit corporations and unincorporated associations may have more certainty in their operations.</p>	<p>Business Law Section (Nonprofit & Unincorporated Organizations Committee)</p>	<p>Adds §§ 7914 and 9634 to, and amends §§ 5211, 5212, 5213, 5235, 6321, 6324, 7211, 7212, 7213, 8321, 8324, 9211, 9212, 9213, 9250, and 18300 of the Corporations Code</p>
<p>Charitable Pledges (BLS-2010-03) Would provide clear statutory guidance on when a charitable pledge is enforceable.</p>	<p>Business Law Section (Nonprofit & Unincorporated Organizations Committee)</p>	<p>Adds § 1616 to the Civil Code</p>
<p>Annual Corporate Disclosure Statements (BLS-2010-04) Would clarify certain disclosure requirements in a manner intended to (1) promote the consistency and comprehensiveness of the disclosures made by publicly traded corporations, and (2) reduce the burden imposed on publicly traded corporations doing business in California of complying with two different frameworks requiring disclosure of similar information where such reduction does not materially decrease the comprehensiveness of such disclosure.</p>	<p>Business Law Section (Corporations Committee)</p>	<p>Amends §§ 1502.1 and 2117.1 of the Corporations Code</p>
<p>Statutory Close Corporations (BLS-2010-05) Would enact a new chapter of the Corporations Code concerning closely held California corporations electing to be governed pursuant to special statutes, relocating substantially all of the relevant provisions of the Corporations Code to one new chapter, and making other necessary changes.</p>	<p>Business Law Section (Corporations Committee)</p>	<p>Adds §§ 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, and 2063 to the Corporations Code; amends §§ 154, 202, 203, 204, 300, 418, 902, 1001, 1100, 1152, 1201, 1300, 1800, 1900, 1901, 1902, 1904, 2000 and 25103 of the Corporations Code; repeals §§ 158, 186, 421 and 1111 of the Corporations Code</p>

Title & Brief Description	Sponsor	Code §§ Affected
<p>Appointment of Counsel for a Proposed Conservatee Who May Lack the Capacity to Hire Counsel (T&E-2010-06)</p> <p>Would clarify the court's ability to appoint counsel for a proposed conservatee who may lack the capacity to hire counsel.</p>	Trusts & Estates Section	Amends § 1470 of the Probate Code and adds Rule 7.1102 to the California Rules of Court.
<p>Revision of Statutory Will Form (T&E-2010-07)</p> <p>Would revise language in the statutory will form to provide greater clarity.</p>	Trusts & Estates Section	Amends § 6240 of the Probate Code
<p>Update of Provisions of the Probate Code Pertaining to the Collection or Transfer of Small Estates without Formal Probate Administration (T&E-2010-08)</p> <p>Would raise the small estate limits to account for inflation, the rise in asset values that occurs over time, increases in the costs and time delays involved in formal probate administration, and increased burdens on the court system.</p>	Trusts & Estates Section	Amends §§ 13050, 13100, 13101, 13151, 13152, 13154, 13200, 13600, 13601 and 13602 of the Probate Code
<p>Statutory Form Power of Attorney Amendments (T&E-2010-09)</p> <p>Would (1) extend special protections that prevent an agent from taking certain potentially abusive actions to dispose of the principal's property during lifetime or at death, unless the power of attorney expressly grants that power to the agent, to statutory form powers of attorney, and (2) clarify, harmonize and remove inconsistencies between statutory form powers of attorney and other powers of attorney regarding these sensitive powers.</p>	Trusts & Estates Section	Amends §§ 4260, 4264, 4401, 4407, 4457, 4458, 4460, 4462 and 4465 of the Probate Code

Title & Brief Description	Sponsor	Code §§ Affected
<p>Hearing Procedures in Probate Proceedings (T&E-2010-10) Would harmonize procedures in probate litigation and general civil litigation by (1) clarifying that the same general rules regarding the admissibility of sworn written statements that apply in general civil proceedings also apply in probate proceedings, and (2) clarifying that the motions available in general civil litigation are also available in litigation under the Probate Code.</p>	Trusts & Estates Section	Amends §§ 1000 and 1022 of the Probate Code
<p>Computation of Number of Days before a Hearing (CAJ-2010-11) Would clarify computation of “court” days and “calendar” days by specifying that when a statute requires moving, opposition or reply papers to be served a certain number of days before a hearing, those days are computed backward from the hearing date, and not forward from the date the moving, opposition or reply papers are served.</p>	Committee on Administration of Justice	Adds § 12c to the Code of Civil Procedure
<p>Time Limitation for Making a Peremptory Challenge to a Judge in Direct Calendar, Fast Track Cases (CAJ-2010-12) Would clarify the time for a party to challenge a judge in certain fast track cases by filing a motion supported by an affidavit of prejudice under Code of Civil Procedure section 170.6.*</p>	Committee on Administration of Justice	Repeals § 68616(i) of the Government Code

* The Litigation Section of the Los Angeles County Bar Association was opposed to CAJ-2010-12, but suggested a revision to address that opposition. Discussions have taken place since the November Board of Governors meeting. CAJ has agreed to the proposed revision. As revised, CAJ-2010-12 would: (1) repeal Government Code section 68616(i) (as in CAJ’s original proposal); and (2) amend that part of Code of Civil Procedure section 170.6(a)(2) governing the time to file a peremptory challenge in a case assigned to a judge for all purposes, to increase the time from 10 days to 15 days (an amendment that is compatible with CAJ’s original proposal). The LACBA Litigation Section and Executive Committee support CAJ’s proposal, as revised. As of December 10, 2009, the matter was still pending before the LACBA Board of Trustees.

FISCAL/STAFF IMPACT

These proposals, if approved for the affirmative legislative program, will have no fiscal or personnel impact on the General Fund. Legislative work on section and committee legislative proposals is funded from voluntary funds. Sufficient voluntary funds are available to support the legislative work on these proposals if approved for the affirmative legislative program.

BOARD BOOK IMPACT

None

RULE AMENDMENT IMPACT

None

RECOMMENDATION

The Office of Governmental affairs has reviewed the legislative proposals, and proposes that the Board Committee on Operations, pending further discussion of the status of the State Bar's fee bill for 2010, recommend to the full Board of Governors that all of the current Section and Committee legislative proposals be approved for inclusion in the 2010 Section and Committee Legislative Program.

PROPOSED BOARD COMMITTEE RESOLUTION

If the Board Committee on Operations agrees with the above recommendation, the following resolution would be appropriate:

RESOLVED that the Board Committee on Operations recommends that the Board of Governors approve the following legislative proposals for inclusion in the 2010 Section and Committee Legislative Program: BLS-2010-01, BLS-2010-02, BLS-2010-03, BLS-2010-04, BLS-2010-05, T&E-2010-06, T&E-2010-07, T&E-2010-08, T&E-2010-09, T&E-2010-10, CAJ-2010-11, CAJ-2010-12.

PROPOSED BOARD RESOLUTION

If the Board of Governors concurs with the recommendation of the Board Committee on Operations, the following resolution would be appropriate:

RESOLVED that, upon recommendation of the Board Committee on Operations, the Board of Governors hereby approves the following legislative proposals for inclusion in the 2010 Section and Committee Legislative Program: BLS-2010-01, BLS-2010-02, BLS-2010-03, BLS-2010-04, BLS-2010-05, T&E-2010-06, T&E-2010-07, T&E-2010-08, T&E-2010-09, T&E-2010-10, CAJ-2010-11, CAJ-2010-12.