

**Introduced by Senator Evans**

February 2, 2011

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~~An act to amend Section 6140 of the Business and Professions Code,~~  
*An act to amend Sections 6001.2, 6005, 6006, 6007, 6008.1, 6008.4, 6010, 6011, 6013.6, 6015, 6016, 6018, 6019, 6020, 6021, 6024, 6033, 6036, 6037, 6040, 6042, 6046.7, 6069, 6070, 6076, 6076.5, 6079.5, 6086, 6086.5, 6086.14, 6140, 6140.05, 6140.5, 6161, 6168, 6169, 6170, 6190.1, 6200, 6201, 6203, 6204, 6206, 6222, 6225, 6226, 6231, and 6238 of, and to add Sections 6001.1, 6009.7, 6012, 6013.2, 6013.3, 6026.7, and 6140.12, to, to repeal Sections 6012.5, 6013.4, 6014, and 6017 of, and to repeal and add Section 6013.1 of, the Business and Professions Code, relating to attorneys.*

LEGISLATIVE COUNSEL'S DIGEST

SB 163, as amended, Evans. Attorneys: *board of trustees*: annual membership fee.

Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation. ~~Existing~~

*(1) Under existing law, the State Bar is governed by a board known as the board of governors of the State Bar. The board of governors consists of 23 members, including 15 attorney members, one attorney member elected by the board of directors of the California Young Lawyers Association, 6 public members, and the President of the State Bar. Existing law provides for the election of attorney members to the board from specified counties included in State Bar Districts. Under*

existing law, the public members of the board are appointed by the Governor and the Legislature.

This bill would revise and recast these provisions by renaming the board of governors as the board of trustees and would also revise the composition of the board to include no more than 23 members and no less than 19 members, as specified and determined by the State Bar, to include the existing 6 public members appointed by the Governor and the Legislature and 13 attorney members. Under the bill, the 13 attorney members would consist of 6 attorney members elected from State Bar Districts based on the 6 court of appeal districts, 5 attorney members appointed by the Supreme Court, and 2 attorney members appointed by the Speaker of the Assembly and the Senate Committee on Rules. The bill would require these attorney members to serve for a term of 3 years and would limit the elected and Supreme Court appointed members to being reappointed or reelected for one additional term. With respect to the Supreme Court appointments, the bill would specify criteria that the Supreme Court should consider in making these appointments and would require the State Bar to carry out the administrative responsibilities related to the Supreme Court's appointments.

The bill would require the State Bar to determine how to reduce the board of trustees from 23 members to 19 members by October 31, 2014. The bill would require the State Bar to develop a plan for implementing the transition to a 19-member board by January 31, 2012, and to submit a written report detailing that plan to the Judiciary Committees of the Legislature by January 31, 2012. The bill would also require the State Bar to report annually to the Judiciary Committees on its progress toward implementing this transition. The bill would prohibit the State Bar from changing or abolishing a board member's term that commenced prior to December 31, 2011, or forcing any board member to resign whose term commenced prior to that date in order to accomplish the transition. The bill would also declare the intent of the Legislature in this regard.

The bill would make other conforming changes related to the renaming of the board and the establishment of both an election and appointment process for attorney members of the board.

(2) Under existing law, the officers of the State Bar are a president, 4 vice presidents, a secretary, and a treasurer, and one of the vice presidents may also be elected to the office of treasurer. Existing law requires the board, within 270 days before the annual meeting, to elect

*the officers for the ensuing year. Existing law requires the president and other officers to be elected from among members with specified terms. Under existing law, the president may vote only in the case of a specified tie vote.*

*This bill would instead provide that the officers include a president, a vice president, a secretary, and a treasurer. The bill would require the board to elect the officers within 90 days before the annual meeting. The bill would also authorize the president and the other officers to be elected from among all members of the board. The bill would also delete the limitation on the president’s voting authority.*

*(3) The bill would require the board to complete and implement a 5-year strategic plan and would require the president to report to the Supreme Court, the Governor, and the Judiciary Committees on certain aspects of the strategic plan.*

*(4) Existing law establishes a Governance in the Public Interest Task Force within the State Bar. The task force is made up of 11 specified board members appointed by the president. Existing law requires the task force to prepare a report, that includes its recommendations for, among other things, enhancing and ensuring the protection of the public.*

*This bill would instead reconstitute the task force to be comprised of a total of 6 members and the President of the State Bar. Under the bill, the task force would consist of 2 elected attorney members, 2 appointed members, and 2 public members who would be selected as specified. The bill would require the task force to make suggestions to the board regarding the strategic plan described above and other issues as requested by the Legislature.*

*(5) Existing law requires the board of governors to charge an annual membership fee for active members of up to \$315 for 2011.*

*This bill would require the board to charge that annual membership fee for active members for 2012.*

*Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.*

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 6001.1 is added to the Business and
- 2     Professions Code, to read:
- 3     6001.1. Protection of the public shall be the highest priority
- 4     for the State Bar of California and the board of trustees in
- 5     exercising their licensing, regulatory, and disciplinary functions.

1 *Whenever the protection of the public is inconsistent with other*  
2 *interests sought to be promoted, the protection of the public shall*  
3 *be paramount.*

4 *SEC. 2. Section 6001.2 of the Business and Professions Code*  
5 *is amended to read:*

6 6001.2. (a) On or before February 1, 2011, there shall be  
7 created within the State Bar a Governance in the Public Interest  
8 Task Force comprised of ~~11~~ *six members appointed by and the*  
9 *President of the State Bar, seven* ~~two~~ *of whom shall be elected*  
10 *attorney members of the board who are selected by the elected*  
11 *attorney members, two of whom shall be attorney members of the*  
12 *board appointed by the Supreme Court who are selected by the*  
13 *Supreme Court appointees, and three* ~~two~~ *of whom shall be public*  
14 *members of the board selected by the public members. The*  
15 *president shall also be a member of the task force and shall preside*  
16 *over its meetings, all of which shall be held consistent with Section*  
17 *6026.5.*

18 (b) On or before May 15, 2011, and every three years thereafter,  
19 the task force shall prepare and submit a report to the Supreme  
20 Court, the Governor, and the Assembly and Senate Committees  
21 on Judiciary that includes its recommendations for enhancing the  
22 protection of the public and ensuring that protection of the public  
23 is the highest priority in the licensing, regulation, and discipline  
24 of attorneys, to be reviewed by the Assembly and Senate  
25 Committees on Judiciary in their regular consideration of the  
26 annual State Bar dues measure. If the task force does not reach a  
27 consensus on all of the recommendations in its report, the  
28 dissenting members of the task force may prepare and submit a  
29 dissenting report to the same entities described in this subdivision,  
30 to be reviewed by the committees in the same manner.

31 (c) *The task force shall make suggestions to the board of trustees*  
32 *regarding possible additions to, or revisions of, the strategic plan*  
33 *required by Section 6140.12. In addition, the task force shall also*  
34 *make suggestions to the board of trustees regarding other issues*  
35 *requested from time to time by the Legislature.*

36 *SEC. 3. Section 6005 of the Business and Professions Code is*  
37 *amended to read:*

38 6005. Inactive members are those members who have requested  
39 that they be enrolled as inactive members or who have been

1 enrolled as inactive members by action of the board of ~~governors~~  
2 *trustees* as in Section 6007 of this code provided.

3 *SEC. 4. Section 6006 of the Business and Professions Code is*  
4 *amended to read:*

5 6006. Active members who retire from practice shall be  
6 enrolled as inactive members at their request.

7 Inactive members are not entitled to hold office or vote or  
8 practice law. Those who are enrolled as inactive members at their  
9 request may, on application and payment of all fees required,  
10 become active members. Those who are or have been enrolled as  
11 inactive members at their request are members of the State Bar for  
12 purposes of Section 15 of Article VI of the California Constitution.  
13 Those who are enrolled as inactive members pursuant to Section  
14 6007 may become active members as provided in that section.

15 Inactive members have such other privileges, not inconsistent  
16 with this chapter, as the board of ~~governors~~ *trustees* provides.

17 *SEC. 5. Section 6007 of the Business and Professions Code is*  
18 *amended to read:*

19 6007. (a) When a member requires involuntary treatment  
20 pursuant to Article 6 (commencing with Section 5300) of Chapter  
21 2 of Division 5 of, or Part 2 (commencing with Section 6250) of  
22 Division 6 of the Welfare and Institutions Code, or when under  
23 an order pursuant to Section 3051, 3106.5, or 3152 of the Welfare  
24 and Institutions Code he or she has been placed in or returned to  
25 inpatient status at the California Rehabilitation Center or its  
26 branches, or when he or she has been determined insane or mentally  
27 incompetent and is confined for treatment or placed on outpatient  
28 status pursuant to the Penal Code, or on account of his or her  
29 mental condition a guardian or conservator, for his or her estate  
30 or person or both, has been appointed, the Board of ~~Governors~~  
31 *Trustees* or an officer of the State Bar shall enroll the member as  
32 an inactive member.

33 The clerk of any court making an order containing any of the  
34 determinations or adjudications referred to in the immediately  
35 preceding paragraph shall send a certified copy of that order to the  
36 State Bar at the same time that the order is entered.

37 The clerk of any court with which is filed a notice of certification  
38 for intensive treatment pursuant to Article 4 (commencing with  
39 Section 5250) of Chapter 2 of Division 5 of the Welfare and

1 Institutions Code, upon receipt of the notice, shall transmit a  
2 certified copy of it to the State Bar.

3 The State Bar may procure a certified copy of any determination,  
4 order, adjudication, appointment, or notice when the clerk  
5 concerned has failed to transmit one or when the proceeding was  
6 had in a court other than a court of this state.

7 In the case of an enrollment pursuant to this subdivision, the  
8 State Bar shall terminate the enrollment when the member has had  
9 the fact of his or her restoration to capacity judicially determined,  
10 upon the member's release from inpatient status at the California  
11 Rehabilitation Center or its branches pursuant to Section 3053,  
12 3109, or 3151 of the Welfare and Institutions Code, or upon the  
13 member's unconditional release from the medical facility pursuant  
14 to Section 5304 or 5305 of the Welfare and Institutions Code; and  
15 on payment of all fees required.

16 When a member is placed in, returned to, or released from  
17 inpatient status at the California Rehabilitation Center or its  
18 branches, or discharged from the narcotics treatment program, the  
19 Director of Corrections or his or her designee shall transmit to the  
20 State Bar a certified notice attesting to that fact.

21 (b) The board shall also enroll a member of the State Bar as an  
22 inactive member in each of the following cases:

23 (1) A member asserts a claim of insanity or mental incompetence  
24 in any pending action or proceeding, alleging his or her inability  
25 to understand the nature of the action or proceeding or inability to  
26 assist counsel in representation of the member.

27 (2) The court makes an order assuming jurisdiction over the  
28 member's law practice, pursuant to Section 6180.5 or 6190.3.

29 (3) After notice and opportunity to be heard before the board  
30 or a committee, the board finds that the member, because of mental  
31 infirmity or illness, or because of the habitual use of intoxicants  
32 or drugs, is (i) unable or habitually fails to perform his or her duties  
33 or undertakings competently, or (ii) unable to practice law without  
34 substantial threat of harm to the interests of his or her clients or  
35 the public. No proceeding pursuant to this paragraph shall be  
36 instituted unless the board or a committee finds, after preliminary  
37 investigation, or during the course of a disciplinary proceeding,  
38 that probable cause exists therefor. The determination of probable  
39 cause is administrative in character and no notice or hearing is  
40 required.

1 In the case of an enrollment pursuant to this subdivision, the  
2 board shall terminate the enrollment upon proof that the facts found  
3 as to the member's disability no longer exist and on payment of  
4 all fees required.

5 (c) (1) The board may order the involuntary inactive enrollment  
6 of an attorney upon a finding that the attorney's conduct poses a  
7 substantial threat of harm to the interests of the attorney's clients  
8 or to the public or upon a finding based on all the available  
9 evidence, including affidavits, that the attorney has not complied  
10 with Section 6002.1 and cannot be located after reasonable  
11 investigation.

12 (2) In order to find that the attorney's conduct poses a substantial  
13 threat of harm to the interests of the attorney's clients or the public  
14 pursuant to this subdivision, each of the following factors shall be  
15 found, based on all the available evidence, including affidavits:

16 (A) The attorney has caused or is causing substantial harm to  
17 the attorney's clients or the public.

18 (B) The attorney's clients or the public are likely to suffer  
19 greater injury from the denial of the involuntary inactive enrollment  
20 than the attorney is likely to suffer if it is granted, or there is a  
21 reasonable likelihood that the harm will reoccur or continue. Where  
22 the evidence establishes a pattern of behavior, including acts likely  
23 to cause substantial harm, the burden of proof shall shift to the  
24 attorney to show that there is no reasonable likelihood that the  
25 harm will reoccur or continue.

26 (C) There is a reasonable probability that the State Bar will  
27 prevail on the merits of the underlying disciplinary matter.

28 (3) In the case of an enrollment under this subdivision, the  
29 underlying matter shall proceed on an expedited basis.

30 (4) The board shall order the involuntary inactive enrollment  
31 of an attorney upon the filing of a recommendation of disbarment  
32 after hearing or default. For purposes of this section, that attorney  
33 shall be placed on involuntary inactive enrollment regardless of  
34 the membership status of the attorney at the time.

35 (5) The board shall formulate and adopt rules of procedure to  
36 implement this subdivision.

37 In the case of an enrollment pursuant to this subdivision, the  
38 board shall terminate the involuntary inactive enrollment upon  
39 proof that the attorney's conduct no longer poses a substantial  
40 threat of harm to the interests of the attorney's clients or the public

1 or where an attorney who could not be located proves compliance  
2 with Section 6002.1.

3 (d) (1) The board may order the involuntary inactive enrollment  
4 of an attorney for violation of probation upon the occurrence of  
5 all of the following:

6 (A) The attorney is under a suspension order any portion of  
7 which has been stayed during a period of probation.

8 (B) The board finds that probation has been violated.

9 (C) The board recommends to the court that the attorney receive  
10 an actual suspension on account of the probation violation or other  
11 disciplinary matter.

12 (2) The board shall terminate an enrollment under this  
13 subdivision upon expiration of a period equal to the period of  
14 stayed suspension in the probation matter, or until the court makes  
15 an order regarding the recommended actual suspension in the  
16 probation matter, whichever occurs first.

17 (3) If the court orders a period of actual suspension in the  
18 probation matter, any period of involuntary inactive enrollment  
19 pursuant to this subdivision shall be credited against the period of  
20 actual suspension ordered.

21 (e) (1) The board shall order the involuntary, inactive  
22 enrollment of a member whose default has been entered pursuant  
23 to the State Bar Rules of Procedure if both of the following  
24 conditions are met:

25 (A) The notice was duly served pursuant to subdivision (c) of  
26 Section 6002.1.

27 (B) The notice contained the following language at or near the  
28 beginning of the notice, in capital letters:

29 IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE  
30 WITHIN THE TIME ALLOWED BY STATE BAR RULES,  
31 INCLUDING EXTENSIONS, OR IF YOU FAIL TO APPEAR  
32 AT THE STATE BAR COURT TRIAL, (1) YOUR DEFAULT  
33 SHALL BE ENTERED, (2) YOU SHALL BE ENROLLED AS  
34 AN INVOLUNTARY INACTIVE MEMBER OF THE STATE  
35 BAR AND WILL NOT BE PERMITTED TO PRACTICE LAW  
36 UNLESS THE DEFAULT IS SET ASIDE ON MOTION TIMELY  
37 MADE UNDER THE RULES OF PROCEDURE OF THE STATE  
38 BAR, (3) YOU SHALL NOT BE PERMITTED TO  
39 PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS

1 YOUR DEFAULT IS SET ASIDE, AND (4) YOU SHALL BE  
2 SUBJECT TO ADDITIONAL DISCIPLINE.

3 (2) The board shall terminate the involuntary inactive enrollment  
4 of a member under this subdivision when the member's default is  
5 set aside on motion timely made under the State Bar Rules of  
6 Procedure or the disciplinary proceedings are completed.

7 (3) The enrollment under this subdivision is administrative in  
8 character and no hearing is required.

9 (4) Upon the involuntary inactive enrollment of a member under  
10 this subdivision, the notice required by subdivision (b) of Section  
11 6092.5 shall be promptly given.

12 (5) The board may delegate its authority under this subdivision  
13 to the presiding referee or presiding judge of the State Bar Court  
14 or his or her designee.

15 (f) The pendency or determination of a proceeding or  
16 investigation provided for by this section shall not abate or  
17 terminate a disciplinary investigation or proceeding except as  
18 required by the facts and law in a particular case.

19 (g) No membership fees shall accrue against the member during  
20 the period he or she is enrolled as an inactive member pursuant to  
21 this section.

22 (h) The board may order a full range of interim remedies or  
23 final discipline short of involuntary inactive enrollment, including,  
24 but not limited to, conditions of probation following final  
25 discipline, or directly ordered interim remedies, to restrict or  
26 supervise an attorney's practice of law, as well as proceedings  
27 under subdivision (a), (b), (c), or (d), or under Section 6102 or  
28 6190. They may include restrictions as to scope of practice,  
29 monetary accounting procedures, review of performance by  
30 probation or other monitors appointed by the board, or such other  
31 measures as may be determined, after hearing, to protect present  
32 and future clients from likely substantial harm. These restrictions  
33 may be imposed upon a showing as provided in subdivision (c),  
34 except that where license restriction is proposed, the showing  
35 required of the State Bar under the factors described in  
36 subparagraph (B) of paragraph (2) of subdivision (c) need not be  
37 made.

38 *SEC. 6. Section 6008.1 of the Business and Professions Code*  
39 *is amended to read:*

1 6008.1. No bond, note, debenture, evidence of indebtedness,  
2 mortgage, deed of trust, assignment, pledge, contract, lease,  
3 agreement, or other contractual obligation of the State Bar shall:

4 (a) Create a debt or other liability of the State nor of any entity  
5 other than the State Bar (or any successor public corporation).

6 (b) Create any personal liability on the part of the members of  
7 the State Bar or the members of the board of ~~governors~~ *trustees*  
8 or any person executing the same, by reason of the issuance or  
9 execution thereof.

10 (c) Be required to be approved or authorized under the  
11 provisions of any other law or regulation of this State.

12 *SEC. 7. Section 6008.4 of the Business and Professions Code*  
13 *is amended to read:*

14 6008.4. All powers granted to the State Bar by Sections 6001  
15 and 6008.3 may be exercised and carried out by action of its board  
16 of ~~governors~~ *trustees*. In any resolution, indenture, contract,  
17 agreement, or other instrument providing for, creating, or otherwise  
18 relating to, any obligation of the State Bar, the board may make,  
19 fix, and provide such terms, conditions, covenants, restrictions,  
20 and other provisions as the board deems necessary or desirable to  
21 ~~facilitate~~ *facilitate* the creation, issuance, or sale of such obligation  
22 or to provide for the payment or security of such obligation and  
23 any interest thereon, including, but not limited to, covenants and  
24 agreements relating to fixing and maintaining membership fees.

25 *SEC. 8. Section 6009.7 is added to the Business and Professions*  
26 *Code, to read:*

27 6009.7. (a) (1) *The State Bar shall determine the manner by*  
28 *which to reduce the board of trustees from 23 members to 19*  
29 *members, as described in Section 6011, pursuant to the election*  
30 *and appointment processes specified in Sections 6012, 6013.1,*  
31 *6013.2, and 6013.3.*

32 (2) *The State Bar shall develop a plan for implementing the*  
33 *transition to a 19-member board by January 31, 2012.*

34 (3) *By January 31, 2012, the State Bar shall submit a written*  
35 *report to the Senate and Assembly Judiciary Committees that*  
36 *includes, but is not limited to, the implementation plan described*  
37 *in paragraph (2).*

38 (b) *The State Bar shall complete the transition to a 19-member*  
39 *board no later than October 31, 2014.*

1 (c) *The State Bar shall not change, reduce, shorten, lengthen,*  
2 *or abolish the terms of board members commencing prior to*  
3 *December 31, 2011, or force any board member to resign in order*  
4 *to institute a 19-member board pursuant to this section.*

5 (d) *The State Bar shall report annually to the Senate and*  
6 *Assembly Judiciary Committees on its progress toward*  
7 *implementing the transition to a 19-member board.*

8 *SEC. 9. Section 6010 of the Business and Professions Code is*  
9 *amended to read:*

10 6010. (a) *The State Bar is governed by a board known as the*  
11 *board of ~~governors~~ trustees of the State Bar. The board has the*  
12 *powers and duties conferred by this chapter.*

13 (b) *As used in this chapter or any other provision of law, “board*  
14 *of governors” shall be deemed to refer to the board of trustees.*

15 *SEC. 10. Section 6011 of the Business and Professions Code*  
16 *is amended to read:*

17 6011. (a) *The board ~~consists~~ shall consist of ~~22~~ no more than*  
18 *23 members ~~and the President of the State Bar~~ and no less than*  
19 *19 members.*

20 (b) *It is the intent of the Legislature that the board consist of*  
21 *no more than 23 members and no less than 19 members during*  
22 *the period of transition from a 23-member board to a 19-member*  
23 *board, as described in Section 6009.7. It is the intent of the*  
24 *Legislature that the board, pursuant to the plan developed by the*  
25 *State Bar as described in Section 6009.7, gradually decrease its*  
26 *size without shortening, lengthening, or abolishing terms*  
27 *commencing prior to December 31, 2011, with the ultimate goal*  
28 *of instituting a 19-member board no later than October 31, 2014,*  
29 *pursuant to Section 6009.7.*

30 *SEC. 11. Section 6012 is added to the Business and Professions*  
31 *Code, to read:*

32 6012. (a) *State Bar Districts, as they existed on December 31,*  
33 *2011, pursuant to Section 6012.5, as added by Chapter 1223 of*  
34 *the Statutes of 1989, shall cease, pursuant to the act that added*  
35 *this section, for purposes of the election of attorney members of*  
36 *the board. However, attorney members who were elected in 2009,*  
37 *2010, or 2011 to serve for a three-year term commencing at the*  
38 *conclusion of the annual meeting held in those years shall be*  
39 *eligible to serve their full three-year terms.*

1 (b) Commencing on January 1, 2012, State Bar Districts shall  
 2 be based on the six court of appeal districts as constituted pursuant  
 3 to Section 69100 of the Government Code, as they existed on  
 4 December 31, 2011. The board shall provide for the election of  
 5 six attorney members of the board from these six State Bar Districts  
 6 as specified in Section 6013.2.

7 SEC. 12. Section 6012.5 of the Business and Professions Code  
 8 is repealed.

9 ~~6012.5. Notwithstanding any other provision of law, beginning~~  
 10 ~~July 1, 1990, and every 10 years thereafter, the board shall adjust~~  
 11 ~~the counties included in the State Bar Districts as they existed on~~  
 12 ~~June 30, 1990, and shall provide for the election of attorney~~  
 13 ~~members of the board from those districts. The primary~~  
 14 ~~consideration to be employed when adjusting the counties included~~  
 15 ~~in the State Bar Districts shall be the development of an equitable~~  
 16 ~~distribution of attorney members to governors in each district,~~  
 17 ~~except for the district containing rural counties such as those~~  
 18 ~~contained in State Bar District No. 1 as it existed on June 30, 1990.~~

19 SEC. 13. Section 6013.1 of the Business and Professions Code  
 20 is repealed.

21 ~~6013.1. The attorney membership of the board is composed~~  
 22 ~~of:~~

23 ~~(a) Fifteen members to be elected from the State Bar Districts~~  
 24 ~~created by the board pursuant to Section 6012.5.~~

25 ~~(b) One member from the membership of the California Young~~  
 26 ~~Lawyers Association appointed pursuant to Section 6013.4.~~

27 ~~This section shall become operative on July 1, 1990.~~

28 SEC. 14. Section 6013.1 is added to the Business and  
 29 Professions Code, to read:

30 6013.1. (a) The Supreme Court shall appoint five attorney  
 31 members of the board pursuant to a process that the Supreme  
 32 Court may prescribe. These attorney members shall serve for a  
 33 term of three years and may be reappointed by the Supreme Court  
 34 for one additional term only.

35 (b) An attorney member elected pursuant to Section 6013.2 may  
 36 be appointed by the Supreme Court pursuant to this section to a  
 37 term as an appointed attorney member.

38 (c) The Supreme Court shall fill any vacancy in the term of, and  
 39 make any reappointment of, any appointed attorney member.

1 (d) When making appointments to the board, the Supreme Court  
2 should consider appointing attorneys that represent the following  
3 categories: legal services; small firm or solo practitioners;  
4 historically underrepresented groups, including consideration of  
5 race, ethnicity, gender, and sexual orientation; and legal  
6 academics. In making appointments to the board, the Supreme  
7 Court should also consider geographic distribution, years of  
8 practice, particularly attorneys who are within the first five years  
9 of practice or age 36 and under, and participation in voluntary  
10 local or state bar activities.

11 (e) The State Bar shall be responsible for carrying out the  
12 administrative responsibilities related to the appointment process  
13 described in subdivision (a).

14 SEC. 15. Section 6013.2 is added to the Business and  
15 Professions Code, to read:

16 6013.2. (a) Six members of the board shall be attorneys elected  
17 from the State Bar Districts created by the board pursuant to  
18 Section 6012.

19 (b) An attorney member elected pursuant to this section shall  
20 serve for a term of three years. An elected attorney member may  
21 run for reelection, but may be reelected to only serve one additional  
22 term.

23 SEC. 15.5. Section 6013.3 is added to the Business and  
24 Professions Code, to read:

25 6013.3. (a) One attorney member of the board shall be  
26 appointed by the Senate Committee on Rules and one attorney  
27 member shall be appointed by the Speaker of the Assembly.

28 (b) An attorney member appointed pursuant to this section shall  
29 serve for a term of three years. An appointed attorney member  
30 may be reappointed pursuant to this section.

31 SEC. 16. Section 6013.4 of the Business and Professions Code  
32 is repealed.

33 ~~6013.4. Notwithstanding any other provision of law, one~~  
34 ~~member of the board shall be elected by the board of directors of~~  
35 ~~the California Young Lawyers Association, from the membership~~  
36 ~~of that association.~~

37 ~~Such member shall serve for a term of one year, commencing~~  
38 ~~at the conclusion of the annual meeting next succeeding the election~~  
39 ~~and is eligible for reelection. A vacancy shall be filled by election~~  
40 ~~in the manner provided herein for the unexpired term.~~

1     *SEC. 17. Section 6013.6 of the Business and Professions Code*  
 2     *is amended to read:*

3     6013.6. (a) Except as provided in subdivision (b), any full-time  
 4     employee of any public agency who serves as a member of the  
 5     Board of ~~Governors~~ *Trustees* of State Bar of California shall not  
 6     suffer any loss of rights, promotions, salary increases, retirement  
 7     benefits, tenure, or other job-related benefits, which he or she  
 8     would otherwise have been entitled to receive.

9     (b) Notwithstanding the provisions of subdivision (a), any public  
 10    agency which employs a person who serves as a member of the  
 11    Board of ~~Governors~~ *Trustees* of the State Bar of California may  
 12    reduce the employee's salary, but no other right or job-related  
 13    benefit, pro rata to the extent that the employee does not work the  
 14    number of hours required by statute or written regulation to be  
 15    worked by other employees of the same grade in any particular  
 16    pay period and the employee does not claim available leave time.  
 17    The employee shall be afforded the opportunity to perform job  
 18    duties during other than regular working hours if such a work  
 19    arrangement is practical and would not be a burden to the public  
 20    agency.

21    (c) The Legislature finds that service as a member of the Board  
 22    of ~~Governors~~ *Trustees* of the State Bar of California by a person  
 23    employed by a public agency is in the public interest.

24    *SEC. 18. Section 6014 of the Business and Professions Code*  
 25    *is repealed.*

26    ~~6014. Five of the attorney members of the board are elected~~  
 27    ~~each year for terms of three years each.~~

28    ~~No person shall be nominated for, or eligible to, membership on~~  
 29    ~~the board who has served as a member for three years next~~  
 30    ~~preceding the expiration of his current term, or would have so~~  
 31    ~~served if his current term were completed.~~

32    ~~Within the meaning of this section, the time intervening between~~  
 33    ~~any two successive annual meetings is deemed to be one year.~~

34    *SEC. 19. Section 6015 of the Business and Professions Code*  
 35    *is amended to read:*

36    6015. No person is eligible for attorney membership on the  
 37    board unless ~~he or~~ *both of the following conditions are satisfied:*

38    (a) *He or she is an active member of the State Bar and unless*  
 39    ~~he or~~

40    (b) *Either:*

1 (1) *If elected, he or she maintains his or her principal office for*  
2 *the practice of law within the State Bar district from which he or*  
3 *she is elected.*

4 (2) *If appointed by the Supreme Court or the Legislature, he or*  
5 *she maintains his or her principal office for the practice of law*  
6 *within the State of California.*

7 *SEC. 20. Section 6016 of the Business and Professions Code*  
8 *is amended to read:*

9 6016. The term of office of each attorney member of the board  
10 shall commence at the conclusion of the annual meeting next  
11 succeeding his or her election *or appointment*, and he or she shall  
12 hold office until his or her successor is elected *or appointed* and  
13 qualified. *For the purposes of this section, the time intervening*  
14 *between any two successive annual meetings shall be deemed to*  
15 *be one year.*

16 ~~Vacancies~~

17 *Except as specified in Section 6013.1, vacancies in the board of*  
18 ~~governors trustees~~ shall be filled by the board by special election  
19 or by appointment for the unexpired term.

20 The board of ~~governors trustees~~ may provide by rule for an  
21 interim board to act in the place and stead of the board when  
22 because of vacancies during terms of office there is less than a  
23 quorum of the board.

24 *SEC. 21. Section 6017 of the Business and Professions Code*  
25 *is repealed.*

26 ~~6017. Members of the board shall be elected for terms of three~~  
27 ~~years as follows:~~

28 (a) ~~In 1939, one member each shall be elected from State Bar~~  
29 ~~Districts 4, 6 and 8 and two members from State Bar District 7.~~

30 (b) ~~In 1940, one member each shall be elected from State Bar~~  
31 ~~Districts 1, 3, 5, 7 and 9.~~

32 (c) ~~In 1941, one member each shall be elected from State Bar~~  
33 ~~Districts 2, 3 and 4 and two members shall be elected from State~~  
34 ~~Bar District 7.~~

35 ~~Thereafter, five members of the board shall be elected each year,~~  
36 ~~each for three year terms, from the State Bar Districts in which~~  
37 ~~vacancies will occur in that year by reason of the expiration of the~~  
38 ~~term of office of a member theretofore elected thereto.~~

39 *SEC. 22. Section 6018 of the Business and Professions Code*  
40 *is amended to read:*

1 6018. Nominations of *elected* members of the board shall be  
 2 by petition signed by at least twenty persons entitled to vote for  
 3 such nominees.

4 Only active members of the State Bar maintaining their principal  
 5 offices for the practice of the law in the respective State Bar  
 6 districts shall be entitled to vote for the member or members of  
 7 the board therefrom.

8 *SEC. 23. Section 6019 of the Business and Professions Code*  
 9 *is amended to read:*

10 6019. Each place upon the board for which a member is to be  
 11 elected *or appointed* shall for the purposes of the election *or*  
 12 *appointment* be deemed a separate office.

13 If only one member seeks election to an office, the member is  
 14 deemed elected. If two or more members seek election to the same  
 15 office, the election shall be by ballot. The ballots shall be  
 16 distributed to those entitled to vote at least twenty days prior to  
 17 the date of canvassing the ballots and shall be returned to a site or  
 18 sites designated by the State Bar, where they shall be canvassed  
 19 at least five days prior to the ensuing annual meeting. At the annual  
 20 meeting, the count shall be certified and the result officially  
 21 declared.

22 In all other respects the elections shall be as the board may by  
 23 rule direct.

24 *SEC. 24. Section 6020 of the Business and Professions Code*  
 25 *is amended to read:*

26 6020. The officers of the State Bar are a president, ~~four~~ *a vice*  
 27 ~~presidents~~ *president*, a secretary, and a treasurer. ~~One of the vice~~  
 28 ~~presidents may also be elected to the office of treasurer.~~

29 *SEC. 25. Section 6021 of the Business and Professions Code*  
 30 *is amended to read:*

31 6021. (a) (1) Within the period of ~~270~~ *90* days next preceding  
 32 the annual meeting, the board, at a meeting called for that purpose,  
 33 shall elect the president, vice ~~presidents~~ *president*, and treasurer  
 34 for the ensuing year. The president, *the vice president, and the*  
 35 *treasurer* shall be elected from among ~~those members of the board~~  
 36 ~~whose terms on the board expire that year, or if no such member~~  
 37 ~~is able and willing to serve, then from among the board members~~  
 38 ~~who have completed at least one or more years of their terms~~ *all*  
 39 *members of the board.*

1 ~~The other officers shall be elected from among the board~~  
2 ~~members who have at least one or more years to complete their~~  
3 ~~respective terms.~~

4 ~~The~~

5 (2) ~~The~~ newly elected president, vice ~~presidents~~ *president*, and  
6 treasurer shall assume the duties of their respective offices at the  
7 conclusion of the annual meeting following their election.

8 (b) ~~The~~ term of the board president shall be one year, except  
9 that he or she may be reelected to a second one-year term as the  
10 board president.

11 *SEC. 26. Section 6024 of the Business and Professions Code*  
12 *is amended to read:*

13 6024. The president shall preside at all meetings of the State  
14 Bar and of the board, and in the event of his or her absence or  
15 inability to act, ~~one of the vice presidents~~ *president* shall preside.

16 Other duties of the president and the vice ~~presidents~~ *president*,  
17 and the duties of the secretary and the treasurer, shall be such as  
18 the board may prescribe. ~~The president may vote only in the case~~  
19 ~~of a tie vote of the other members of the board present and voting.~~

20 *SEC. 27. Section 6026.7 is added to the Business and*  
21 *Professions Code, to read:*

22 6026.7. *The board shall ensure that its open meeting*  
23 *requirements, as described in Section 6026.5, are consistent with,*  
24 *and conform to, the Bagley-Keene Open Meeting Act (Article 9*  
25 *(commencing with Section 11120) of Division 3 of Title 2 of the*  
26 *Government Code).*

27 *SEC. 28. Section 6033 of the Business and Professions Code*  
28 *is amended to read:*

29 6033. (a) Notwithstanding any other provision of law, the  
30 State Bar is expressly authorized to facilitate the professional  
31 responsibilities of members by collecting, in conjunction with the  
32 State Bar's collection of its annual membership dues or otherwise,  
33 voluntary financial support for nonprofit organizations that provide  
34 free legal services to persons of limited means.

35 (b) To implement this section, the State Bar, in consultation  
36 with the Chief Justice of California, shall appoint a task force of  
37 key stakeholders to analyze the mechanisms and experience of bar  
38 associations that have adopted programs for the collection of  
39 financial contributions from bar members and shall propose an  
40 appropriate method for facilitating the collection and distribution

1 of voluntary contributions that is best calculated to generate the  
2 greatest level of financial support and participation from State Bar  
3 members, taking into account such issues as the justice-gap  
4 between the legal needs of low-income people in California and  
5 the legal resources available to assist them. The method and any  
6 recommended voluntary contribution amount adopted by the Board  
7 of ~~Governors~~ *Trustees* of the State Bar of California shall be  
8 implemented for the 2008 fiscal year, and shall be reviewed and  
9 adjusted as needed after two years and, thereafter, every five years  
10 as needed, in consultation with affected service providers and other  
11 key stakeholders.

12 *SEC. 29. Section 6036 of the Business and Professions Code*  
13 *is amended to read:*

14 6036. (a) Any member of the board of ~~governors~~ *must trustees*  
15 *shall* disqualify himself or herself from making, participating in  
16 the making of, or attempting to influence any decisions of the  
17 board or a committee of the board in which he or she has a financial  
18 interest, as that term is defined in Section 87103 of the Government  
19 Code, that it is reasonably foreseeable may be affected materially  
20 by the decision.

21 (b) Any member of the board of ~~governors~~ *trustees* must  
22 likewise disqualify himself or herself when there exists a personal  
23 nonfinancial interest which will prevent the member from applying  
24 disinterested skill and undivided loyalty to the State Bar in making  
25 or participating in the making of decisions.

26 (c) Notwithstanding subdivisions (a) and (b), no member shall  
27 be prevented from making or participating in the making of any  
28 decision to the extent his or her participation is legally required  
29 for the action or decision to be made. The fact that a member's  
30 vote is needed to break a tie does not make his or her participation  
31 legally required for the purposes of this section.

32 (d) A member required to disqualify himself or herself because  
33 of a conflict of interest shall (1) immediately disclose the interest,  
34 (2) withdraw from any participation in the matter, (3) refrain from  
35 attempting to influence another member, and (4) refrain from  
36 voting. It is sufficient for the purpose of this section that the  
37 member indicate only that he or she has a disqualifying financial  
38 or personal interest.

1 (e) For purposes of this article and unless otherwise specified,  
2 “member” means any appointed or elected member of the board  
3 of ~~governors~~ trustees.

4 *SEC. 30. Section 6037 of the Business and Professions Code*  
5 *is amended to read:*

6 6037. No action or decision of the board or committee of the  
7 board shall be invalid because of the participation therein by a  
8 member or members in violation of Section 6036. However, any  
9 member who intentionally violates the provisions of subdivision  
10 (a) of Section 6036 is guilty of a misdemeanor, punishable by  
11 imprisonment in the county jail not exceeding five days, or by a  
12 fine not exceeding one thousand dollars (\$1,000), or by both, and,  
13 if the member is an attorney member of the board, a certified copy  
14 of the record of conviction shall be transmitted to the Supreme  
15 Court for disposition as provided in Sections 6101 and 6102. Upon  
16 entry of final judgment of conviction, the member’s term of office  
17 on the board of ~~governors~~ trustees, and duties and authority  
18 incidental thereto, shall automatically terminate. Any member who  
19 intentionally violates the provisions of subdivision (b) of Section  
20 6036 shall be liable for a civil penalty not to exceed five hundred  
21 dollars (\$500) for each violation, which shall be assessed and  
22 recovered in a civil action in a court of competent jurisdiction  
23 brought in the name of the state only by a district attorney of a  
24 county in which the member resides or maintains offices and the  
25 penalty collected shall be paid to the treasurer of that county.

26 *SEC. 31. Section 6040 of the Business and Professions Code*  
27 *is amended to read:*

28 6040. The board of ~~governors~~ trustees may create local  
29 administrative committees and delegate to them such of its powers  
30 and duties as seems advisable. The board may in its discretion  
31 divide any committee into units or sections with concurrent powers  
32 and duties in order to handle the work of the committee more  
33 expeditiously. The board may also prescribe the powers of the  
34 committee and the units or sections thereof.

35 *SEC. 32. Section 6042 of the Business and Professions Code*  
36 *is amended to read:*

37 6042. The members of local administrative committees, except  
38 ex-officio members of the board of ~~governors~~ trustees, shall hold  
39 office at the pleasure of the board.

1     *SEC. 33. Section 6046.7 of the Business and Professions Code*  
2     *is amended to read:*

3     6046.7. (a) (1) Notwithstanding any other provision of law,  
4     the Committee of Bar Examiners shall adopt rules that shall be  
5     effective on and after January 1, 2008, for the regulation and  
6     oversight of unaccredited law schools that are required to be  
7     authorized to operate as a business in California and to have an  
8     administrative office in California, including correspondence  
9     schools, that are not accredited by the American Bar Association  
10    or the Committee of Bar Examiners, with the goal of ensuring  
11    consumer protection and a legal education at an affordable cost.

12    (2) Notwithstanding any other provision of law, the committee  
13    shall adopt rules that shall be effective on and after January 1,  
14    2008, for the regulation and oversight of nonlaw school legal  
15    programs leading to a juris doctor (J.D.) degree, bachelor of laws  
16    (LL.B.) degree, or other law study degree.

17    (b) Commencing January 1, 2008, the committee shall assess  
18    and collect a fee from unaccredited law schools and legal programs  
19    in nonlaw schools in an amount sufficient to fund the regulatory  
20    and oversight responsibilities imposed by this section. Nothing in  
21    this subdivision precludes the board of ~~governors~~ *trustees* from  
22    using other funds or fees collected by the State Bar or by the  
23    committee to supplement the funding of the regulatory and  
24    oversight responsibilities imposed by this section with other funds,  
25    if that supplemental funding is deemed necessary and appropriate  
26    to mitigate some of the additional costs of the regulation and  
27    oversight to facilitate the provision of a legal education at an  
28    affordable cost.

29    *SEC. 34. Section 6069 of the Business and Professions Code*  
30    *is amended to read:*

31    6069. (a) Every member of the State Bar shall be deemed by  
32    operation of this law to have irrevocably authorized the disclosure  
33    to the State Bar and the Supreme Court pursuant to Section 7473  
34    of the Government Code of any and all financial records held by  
35    financial institutions as defined in subdivisions (a) and (b) of  
36    Section 7465 of the Government Code pertaining to accounts which  
37    the member must maintain in accordance with the Rules of  
38    Professional Conduct; provided that no such financial records shall  
39    be disclosed to the State Bar without a subpoena therefor having  
40    been issued pursuant to Section 6049 of this code, and further

1 provided that the board of ~~governors~~ *trustees* shall by rule provide  
2 notice to the member similar to that notice provided for in  
3 subdivision (d) of Section 7473 of the Government Code. Such  
4 notice may be sent by mail addressed to the member's current  
5 office or other address for State Bar purposes as shown on the  
6 member's registration records of the State Bar.

7 The State Bar shall, by mail addressed to the member's current  
8 office or other address for State Bar purposes as shown on the  
9 member's registration records of the State Bar, notify its members  
10 annually of the provisions of this subdivision (a).

11 (b) With regard to the examination of all financial records other  
12 than those mentioned in subdivision (a) of this section, held by  
13 financial institutions as defined in subdivisions (a) and (b) of  
14 Section 7465 of the Government Code, no such financial records  
15 shall be disclosed to the State Bar without a subpoena therefor  
16 having been issued pursuant to Section 6049 of this code and the  
17 board of ~~governors~~ *trustees* shall by rule provide for service of a  
18 copy of the subpoena on the customer as defined in subdivision  
19 (d) of Section 7465 of the Government Code and an opportunity  
20 for the customer to move the board or committee having  
21 jurisdiction to quash the subpoena prior to examination of the  
22 financial records. Review of the actions of the board or any  
23 committee on such motions shall be had only by the Supreme Court  
24 in accordance with the procedure prescribed by the court. Service  
25 of a copy of any subpoena issued pursuant to this subdivision (b)  
26 may be made on a member of the State Bar by mail addressed to  
27 the member's current office or other address for State Bar purposes  
28 as shown on the member's registration records of the State Bar. If  
29 the customer is other than a member, service shall be made  
30 pursuant to Chapter 4 (commencing with Section 413.10) of Title  
31 5 of Part 2 of the Code of Civil Procedure, except that service may  
32 be made by an employee of the State Bar.

33 (c) For purposes of this section, "member of the State Bar" or  
34 "member" means every member of the State Bar, law firm in  
35 California of which a member of the State Bar is a member, and  
36 law corporation within the meaning of Article 10 of Chapter 4 of  
37 Division 3 of this code.

38 *SEC. 35. Section 6070 of the Business and Professions Code*  
39 *is amended to read:*

1     6070. (a) The State Bar shall request the California Supreme  
2 Court to adopt a rule of court authorizing the State Bar to establish  
3 and administer a mandatory continuing legal education program.  
4 The rule that the State Bar requests the Supreme Court to adopt  
5 shall require that, within designated 36-month periods, all active  
6 members of the State Bar shall complete at least 25 hours of legal  
7 education activities approved by the State Bar or offered by a State  
8 Bar approved provider, with four of those hours in legal ethics. A  
9 member of the State Bar who fails to satisfy the mandatory  
10 continuing legal education requirements of the program authorized  
11 by the Supreme Court rule shall be enrolled as an inactive member  
12 pursuant to rules adopted by the Board of ~~Governors~~ *Trustees* of  
13 the State Bar.

14     (b) For purposes of this section, statewide associations of public  
15 agencies and incorporated, nonprofit professional associations of  
16 attorneys, shall be certified as State Bar approved providers upon  
17 completion of an appropriate application process to be established  
18 by the State Bar. The certification may be revoked only by majority  
19 vote of the board, after notice and hearing, and for good cause  
20 shown. Programs provided by the California District Attorneys  
21 Association or the California Public Defenders Association, or  
22 both, including, but not limited to, programs provided pursuant to  
23 Title 1.5 (commencing with Section 11500) of Part 4 of the Penal  
24 Code, are deemed to be legal education activities approved by the  
25 State Bar or offered by a State Bar approved provider.

26     (c) Notwithstanding the provisions of subdivision (a), officers  
27 and elected officials of the State of California, and full-time  
28 professors at law schools accredited by the State Bar of California,  
29 the American Bar Association, or both, shall be exempt from the  
30 provisions of this section. Full-time employees of the State of  
31 California, acting within the scope of their employment, shall be  
32 exempt from the provisions of this section. Nothing in this section  
33 shall prohibit the State of California, or any political subdivision  
34 thereof, from establishing or maintaining its own continuing  
35 education requirements for its employees.

36     (d) The State Bar shall provide and encourage the development  
37 of low-cost programs and materials by which members may satisfy  
38 their continuing education requirements. Special emphasis shall  
39 be placed upon the use of internet capabilities and computer  
40 technology in the development and provision of no-cost and

1 low-cost programs and materials. Towards this purpose, the State  
2 Bar shall ensure that by July 1, 2000, any member possessing or  
3 having access to the internet or specified generally available  
4 computer technology shall be capable of satisfying the full  
5 self-study portion of his or her MCLE requirement at a cost of  
6 fifteen dollars (\$15) per hour or less.

7 *SEC. 36. Section 6076 of the Business and Professions Code*  
8 *is amended to read:*

9 6076. With the approval of the Supreme Court, the Board of  
10 ~~Governors Trustees~~ may formulate and enforce rules of  
11 professional conduct for all members of the bar in the State.

12 *SEC. 37. Section 6076.5 of the Business and Professions Code*  
13 *is amended to read:*

14 6076.5. (a) With the approval of the Supreme Court, the  
15 members of the State Bar may formulate by initiative, pursuant to  
16 the provisions of this section, rules of professional conduct for all  
17 members of the bar in the state.

18 (b) Only active members of the State Bar shall be proponents  
19 of initiative measures pursuant to this section.

20 (c) Prior to the circulation of any initiative petition for  
21 signatures, the proponents shall file the text of the proposed  
22 initiative measure with both the Secretary of the State Bar and the  
23 Clerk of the Supreme Court.

24 (d) Upon receipt of the text of a proposed initiative measure,  
25 the secretary shall prepare a summary of the chief purposes and  
26 points of the proposed initiative measure. The summary shall give  
27 a true and impartial statement of the purpose of the measure in  
28 such language that it shall not be an argument or likely to create  
29 prejudice either for or against the measure. The secretary shall  
30 provide a copy of the summary to the proponents within 30 days  
31 after receipt of the final version of the proposed measure. If during  
32 the 30-day period the proponents submit amendments, other than  
33 technical, nonsubstantive amendments, to the final version of such  
34 measure, the secretary shall provide a copy of the summary to the  
35 proponents within 30 days after receipt of such amendments.

36 (e) The proponents of any proposed initiative measure shall,  
37 prior to its circulation, place upon each section of the petition,  
38 above the text of the measure and across the top of each page of  
39 the petition on which signatures are to appear, in boldface type  
40 not smaller than 12-point, the summary prepared by the secretary.

1 (f) All such initiative petitions shall have printed across the top  
2 thereof in 12-point boldface type the following: “Initiative measure  
3 to be submitted directly to the members of the State Bar of  
4 California.”

5 (g) Any initiative petition may be presented in sections, but  
6 each section shall contain a full and correct copy of the title and  
7 text of the proposed measure.

8 (h) The petition sections shall be designed so that each signer  
9 shall personally affix his or her:

- 10 (1) Signature;
- 11 (2) Printed name;
- 12 (3) State Bar membership number; and
- 13 (4) Principal office address for the practice of law.

14 Only a person who is an active member of the State Bar at the  
15 time of signing the petition is entitled to sign it.

16 The number of signatures attached to each section shall be at  
17 the discretion of the person soliciting the signatures.

18 (i) Any member of the State Bar, or employee or agent thereof,  
19 may circulate an initiative petition anywhere within the state.

20 Any person circulating a petition may sign the section he or she  
21 is circulating if he or she is otherwise qualified to do so.

22 (j) Each section shall have attached thereto the affidavit of the  
23 person soliciting the signatures stating:

- 24 (1) The qualifications of the solicitor;
- 25 (2) That the signatures affixed to the section were made in his  
26 or her presence;
- 27 (3) That to the best of his or her knowledge and belief, each  
28 signature is the genuine signature of the person whose name it  
29 purports to be;
- 30 (4) That to the best of his or her knowledge and belief, each  
31 State Bar membership number is the genuine membership number  
32 of the person whose number it purports to be; and
- 33 (5) The dates between which all signatures were obtained.

34 The affidavit shall be verified free of charge by any officer  
35 authorized to administer oaths.

36 Petitions so verified shall be prima facie evidence that the  
37 signatures thereon are genuine and that the persons signing are  
38 active members of the State Bar. Unless and until it be otherwise  
39 proven upon official investigation, it shall be presumed that the

1 petition presented contains the signatures of the requisite number  
2 of active members of the State Bar.

3 (k) All sections of the petition shall be filed with the Secretary  
4 of the State Bar within 180 days after the date upon which the  
5 secretary mailed or delivered to the proponents a copy of the  
6 summary specified in subdivision (d), but all sections circulated  
7 in any State Bar district shall be filed at the same time.

8 (l) No initiative measure shall be submitted to the members of  
9 the State Bar for a vote unless with regard to each State Bar district  
10 the petition has been signed by at least 20 percent of the number  
11 of active members whose principal office for the practice of law  
12 was within the district as of the January 1 preceding the date upon  
13 which all sections of the petition from all State Bar districts were  
14 filed with the secretary.

15 (m) The secretary shall promptly determine the total number of  
16 signatures from each State Bar district affixed to the petition. If  
17 the total number of signatures from any State Bar district is less  
18 than the number required by subdivision (l), the secretary shall so  
19 notify the proponents and no further action shall be taken in regard  
20 to the petition. If the total number of signatures from each and  
21 every State Bar district is equal to or greater than the number  
22 required by subdivision (l), the secretary shall verify the names  
23 and State Bar membership numbers, and may, in his *or her*  
24 discretion, verify the office addresses and signatures of the persons  
25 who signed the petition. If the total number of verified signers of  
26 the petition from any State Bar district is less than the number  
27 required by subdivision (l), the secretary shall so notify the  
28 proponents and no further action shall be taken in regard to the  
29 petition. If the total number of verified signers of the petition from  
30 each and every State Bar district is equal to or greater than the  
31 number required by subdivision (l), the secretary shall cause the  
32 initiative measure to be submitted within 90 days to all of the active  
33 members of the State Bar for mail vote pursuant to such rules and  
34 regulations as the board may from time to time prescribe.

35 (n) The board of ~~governors~~ *trustees*, without petition, may also  
36 direct the secretary to cause an initiative measure embodying a  
37 rule of professional conduct formulated by the board to be  
38 submitted to all of the active members of the State Bar for mail  
39 vote in accordance with the rules and regulations prescribed by  
40 the board.

1 (o) If a majority of the active members of the State Bar fail to  
2 approve the initiative measure, the secretary shall so notify the  
3 proponents and the Clerk of the Supreme Court.

4 If a majority of the active members of the State Bar approve the  
5 initiative measure, the secretary shall cause the measure to be  
6 submitted to the Supreme Court for its consideration as a rule of  
7 professional conduct.

8 (p) The rules of professional conduct submitted to the Supreme  
9 Court pursuant to the provisions of this section, when approved  
10 by the Supreme Court, shall have the same force and effect as the  
11 rules of professional conduct formulated by the board of ~~governors~~  
12 *trustees* and approved by the Supreme Court pursuant to Sections  
13 6076 and 6077.

14 *SEC. 38. Section 6079.5 of the Business and Professions Code*  
15 *is amended to read:*

16 6079.5. (a) The board shall appoint a lawyer admitted to  
17 practice in California to serve as chief trial counsel. He or she shall  
18 be appointed for a term of four years and may be reappointed for  
19 additional four-year periods. He or she shall serve at the pleasure  
20 of the board. He or she shall not engage in private practice. The  
21 State Bar shall notify the Senate Rules Committee and the Senate  
22 and Assembly Judiciary Committees within seven days of the  
23 dismissal or hiring of a chief trial counsel.

24 The appointment of the chief trial counsel is subject to  
25 confirmation by the Senate, and the time limits prescribed in  
26 Section 1774 of the Government Code for Senate confirmation  
27 and for service in office are applicable to the appointment.

28 He or she shall report to and serve under the Regulation,  
29 Admissions, and Discipline Oversight Committee of the Board of  
30 ~~Governors Trustees~~ of the State Bar or its successor committee on  
31 attorney discipline, and shall not serve under the direction of the  
32 chief executive officer.

33 (b) The chief trial counsel shall have the following  
34 qualifications:

35 (1) Be an attorney licensed to practice in the State of California,  
36 be in good standing and shall not have committed any disciplinary  
37 offenses in California or any other jurisdiction.

38 (2) Have a minimum of five years of experience in the practice  
39 of law, including trial experience, with law practice in broad areas  
40 of the law.

1 (3) Have a minimum of two years of prosecutorial experience  
2 or similar experience in administrative agency proceedings or  
3 disciplinary agencies.

4 (4) Have a minimum of two years of experience in an  
5 administrative role, overseeing staff functions.

6 The board may except an appointee from any of the above  
7 qualifications for good cause upon a determination of necessity to  
8 obtain the most qualified person.

9 On or after July 1, 1987, the chief trial counsel may, as prescribed  
10 by the Supreme Court, petition the court for a different disposition  
11 of a matter than the recommendations of the review department  
12 or the board to the court.

13 *SEC. 39. Section 6086 of the Business and Professions Code*  
14 *is amended to read:*

15 6086. The board of ~~governors~~ *trustees*, subject to the provisions  
16 of this chapter, may by rule provide the mode of procedure in all  
17 cases of complaints against members.

18 *SEC. 40. Section 6086.5 of the Business and Professions Code*  
19 *is amended to read:*

20 6086.5. The board of ~~governors~~ *trustees* shall establish a State  
21 Bar Court, to act in its place and stead in the determination of  
22 disciplinary and reinstatement proceedings and proceedings  
23 pursuant to subdivisions (b) and (c) of Section 6007 to the extent  
24 provided by rules adopted by the board of ~~governors~~ *trustees*  
25 pursuant to this chapter. In these proceedings the State Bar Court  
26 may exercise the powers and authority vested in the board of  
27 ~~governors~~ *trustees* by this chapter, including those powers and that  
28 authority vested in committees of, or established by, the board,  
29 except as limited by rules of the board of ~~governors~~ *trustees* within  
30 the scope of this chapter.

31 For the purposes of Sections 6007, 6043, 6049, 6049.2, 6050,  
32 6051, 6052, 6077 (excluding the first sentence), 6078, 6080, 6081,  
33 and 6082, “board” includes the State Bar Court.

34 Nothing in this section shall authorize the State Bar Court to  
35 adopt rules of professional conduct or rules of procedure.

36 The Executive Committee of the State Bar Court may adopt  
37 rules of practice for the conduct of all proceedings within its  
38 jurisdiction. These rules may not conflict with the rules of  
39 procedure adopted by the board, unless approved by the Supreme  
40 Court.

1     *SEC. 41. Section 6086.14 of the Business and Professions Code*  
2     *is amended to read:*

3     6086.14. (a) The Board of ~~Governors~~ *Trustees* of the State  
4     Bar is authorized to formulate and adopt rules and regulations  
5     necessary to establish an alternative dispute resolution discipline  
6     mediation program to resolve complaints against attorneys that do  
7     not warrant the institution of formal investigation or prosecution.  
8     The program should identify sources of client dissatisfaction and  
9     provide a mediation process to resolve those complaints or disputes  
10    unless the client objects to mediation. The refusal of an attorney  
11    to participate in the State Bar's alternative dispute resolution  
12    discipline mediation program established pursuant to this section,  
13    or the failure of an attorney to comply with any agreement reached  
14    in the State Bar's alternative dispute resolution discipline mediation  
15    program may subject that attorney to discipline. The rules may  
16    authorize discipline mediation under this article to proceed under  
17    discipline mediation programs sponsored by local bar associations  
18    in this state. The rules shall authorize a local bar association to  
19    charge a reasonable administrative fee for the purpose of offsetting  
20    the costs of maintaining the discipline mediation programs.

21    (b) The board of ~~governors~~ *trustees* shall have the authority to  
22    formulate and adopt standards and guidelines to implement the  
23    alternative dispute resolution discipline mediation program. The  
24    standards and guidelines formulated and adopted by the board, as  
25    from time to time amended, shall be effective and binding on all  
26    members, and may encompass any discipline mediation programs  
27    sponsored by local bar associations.

28    (c) It is the intent of the Legislature that the authorization of an  
29    alternative dispute resolution discipline mediation program not be  
30    construed as limiting or altering the powers of the Supreme Court  
31    of this state or the State Bar to disbar or discipline members of the  
32    State Bar. The records relating to the alternative dispute resolution  
33    discipline mediation program may be made available in any  
34    subsequent disciplinary action pursuant to any rule, standard, or  
35    guideline adopted by the Board of ~~Governors~~ *Trustees* of the State  
36    Bar.

37    **SECTION 1.**

38    *SEC. 42. Section 6140 of the Business and Professions Code*  
39    *is amended to read:*

1 6140. (a) The board shall fix the annual membership fee for  
2 active members for 2012 at a sum not exceeding three hundred  
3 fifteen dollars (\$315).

4 (b) The annual membership fee for active members is payable  
5 on or before the first day of February of each year. If the board  
6 finds it appropriate and feasible, it may provide by rule for payment  
7 of fees on an installment basis with interest, by credit card, or other  
8 means, and may charge members choosing any alternative method  
9 of payment an additional fee to defray costs incurred by that  
10 election.

11 (c) This section shall remain in effect only until January 1, 2013,  
12 and, as of that date, is repealed, unless a later enacted statute, that  
13 is enacted before January 1, 2013, deletes or extends that date.

14 *SEC. 43. Section 6140.05 of the Business and Professions Code*  
15 *is amended to read:*

16 6140.05. (a) The invoice provided to members for payment  
17 of the annual membership fee shall provide each member the option  
18 of deducting five dollars (\$5) from the annual fee if the member  
19 elects not to support lobbying and related activities by the State  
20 Bar outside of the parameters established by the United States  
21 Supreme Court in *Keller v. State Bar of California* (1990) 496 U.S.  
22 1.

23 (b) For the support or defense of lobbying and related activities  
24 conducted by the State Bar on or after January 1, 2000, outside of  
25 the parameters of *Keller v. State Bar of California*, and in support  
26 or defense of any litigation arising therefrom, the Board of  
27 ~~Governors~~ *Trustees* of the State Bar shall not expend a sum  
28 exceeding the following: the product of the number of members  
29 paying their annual dues who did not elect the optional deduction  
30 multiplied by five dollars (\$5).

31 Moneys collected pursuant to this section shall not be deemed  
32 voluntary fees or funds for the purpose of subdivision (c) of Section  
33 6031.5.

34 (c) As used in this section, “lobbying and related activities by  
35 the State Bar” includes the consideration of measures by the Board  
36 of ~~Governors~~ *Trustees* of the State Bar that are deemed outside  
37 the parameters established in *Keller v. State Bar*, the purview  
38 determination, lobbying and the preparation for lobbying of the  
39 measures, and any litigation in support or defense of that lobbying.

1 The determination of these costs shall include, but not be limited  
2 to, overhead and administrative costs.

3 *SEC. 44. Section 6140.12 is added to the Business and*  
4 *Professions Code, to read:*

5 *6140.12. The board shall complete and implement a five-year*  
6 *strategic plan to be updated every two years. In conjunction with*  
7 *the submission of the board's proposed final budget as required*  
8 *by Section 6140.1, the president shall report to the Supreme Court,*  
9 *the Governor, and the Senate and Assembly Judiciary Committees*  
10 *on the measures the board has taken to implement the strategic*  
11 *plan and shall indicate the measures the board will need to take*  
12 *in the remaining years of the strategic plan to address the projected*  
13 *needs contained in the plan.*

14 *SEC. 45. Section 6140.5 of the Business and Professions Code*  
15 *is amended to read:*

16 6140.5. (a) The board shall establish and administer a Client  
17 Security Fund to relieve or mitigate pecuniary losses caused by  
18 the dishonest conduct of active members of the State Bar, Foreign  
19 Legal Consultants registered with the State Bar, and attorneys  
20 registered with the State Bar under the Multijurisdictional Practice  
21 Program, arising from or connected with the practice of law. Any  
22 payments from the fund shall be discretionary and shall be subject  
23 to regulation and conditions as the board shall prescribe. The board  
24 may delegate the administration of the fund to the State Bar Court,  
25 or to any board or committee created by the board of ~~governors~~  
26 *trustees.*

27 (b) Upon making a payment to a person who has applied to the  
28 fund for payment to relieve or mitigate pecuniary losses caused  
29 by the dishonest conduct of an active member of the State Bar, the  
30 State Bar is subrogated, to the extent of that payment, to the rights  
31 of the applicant against any person or persons who, or entity that,  
32 caused the pecuniary loss. The State Bar may bring an action to  
33 enforce those rights within three years from the date of payment  
34 to the applicant.

35 (c) Any attorney whose actions have caused the payment of  
36 funds to a claimant from the Client Security Fund shall reimburse  
37 the fund for all moneys paid out as a result of his or her conduct  
38 with interest, in addition to payment of the assessment for the  
39 procedural costs of processing the claim, as a condition of  
40 continued practice. The reimbursed amount, plus applicable interest

1 and costs, shall be added to and become a part of the membership  
2 fee of a publicly reprovved or suspended member for the next  
3 calendar year. For a member who resigns with disciplinary charges  
4 pending or a member who is suspended or disbarred, the  
5 reimbursed amount, plus applicable interest and costs, shall be  
6 paid as a condition of reinstatement of membership.

7 (d) Any assessment against an attorney pursuant to subdivision  
8 (c) that is part of an order imposing a public reprovval on a member  
9 or is part of an order imposing discipline or accepting a resignation  
10 with a disciplinary matter pending, may also be enforced as a  
11 money judgment. This subdivision does not limit the power of the  
12 Supreme Court to alter the amount owed or to authorize the State  
13 Bar Court, in the enforcement of a judgment under this subdivision,  
14 to approve an agreement for the compromise of that judgment.

15 *SEC. 46. Section 6161 of the Business and Professions Code*  
16 *is amended to read:*

17 6161. An applicant for registration as a law corporation shall  
18 supply to the State Bar all necessary and pertinent documents and  
19 information requested by the State Bar concerning the applicant's  
20 plan of operation, including, but not limited to, a copy of its articles  
21 of incorporation, certified by the Secretary of State, a copy of its  
22 bylaws, certified by the secretary of the corporation, the name and  
23 address of the corporation, the names and addresses of its officers,  
24 directors, shareholders, members, if any, and employees who will  
25 render professional services, the address of each office, and any  
26 fictitious name or names which the corporation intends to use. The  
27 State Bar may provide forms of application. If the Board of  
28 ~~Governors~~ *Trustees* or a committee authorized by it finds that the  
29 corporation is duly organized and existing or duly qualified for  
30 the transaction of intrastate business pursuant to the General  
31 Corporation Law, or pursuant to subdivision (b) of Section 13406  
32 of the Corporations Code, that each officer (except as provided in  
33 Section 13403 of the Corporations Code), director, shareholder  
34 (except as provided in subdivision (b) of Section 13406 of the  
35 Corporations Code), and each employee who will render  
36 professional services is a licensed person as defined in the  
37 Professional Corporation Act, or a person licensed to render the  
38 same professional services in the jurisdiction or jurisdictions in  
39 which the person practices, and that from the application it appears  
40 that the affairs of the corporation will be conducted in compliance

1 with law and the rules and regulations of the State Bar, the State  
2 Bar shall upon payment of the registration fee in such amount as  
3 it may determine issue a certificate of registration. The applicant  
4 shall include with the application, for each shareholder of the  
5 corporation licensed in a foreign country but not in this state or in  
6 any other state, territory, or possession of the United States, a  
7 certificate from the authority in the foreign country currently  
8 having final jurisdiction over the practice of law, which shall verify  
9 the shareholder's admission to practice in the foreign country, the  
10 date thereof, and the fact that the shareholder is currently in good  
11 standing as an attorney or counselor at law or the equivalent. If  
12 the certificate is not in English, there shall be included with the  
13 certificate a duly authenticated English translation thereof. The  
14 application shall be signed and verified by an officer of the  
15 corporation.

16 *SEC. 47. Section 6168 of the Business and Professions Code*  
17 *is amended to read:*

18 6168. The State Bar may conduct an investigation of the  
19 conduct of the business of a law corporation.

20 Upon such investigation, the Board of ~~Governors~~ *Trustees*, or a  
21 committee authorized by it, shall have power to issue subpoenas,  
22 administer oaths, examine witnesses, and compel the production  
23 of records, in the same manner as upon an investigation or formal  
24 hearing in a disciplinary matter under the State Bar Act. Such  
25 investigation shall be private and confidential, except to the extent  
26 that disclosure of facts and information may be required if a cease  
27 and desist order is thereafter issued and subsequent proceedings  
28 are had.

29 *SEC. 48. Section 6169 of the Business and Professions Code*  
30 *is amended to read:*

31 6169. (a) When there is reason to believe that a law corporation  
32 has violated or is about to violate any of the provisions of this  
33 article or the Professional Corporation Act or of any other pertinent  
34 statute, rule, or regulation, the State Bar may issue a notice  
35 directing the corporation to show cause why it should not be  
36 ordered to cease and desist from specified acts or conduct or its  
37 certificate of registration should not be suspended or revoked. A  
38 copy of the notice shall be served upon the corporation in the  
39 manner provided for service of summons upon a California  
40 corporation.

1 (b) A hearing upon the notice to show cause shall be held before  
2 a standing or special committee appointed by the board of  
3 ~~governors trustees~~. Upon the hearing, the State Bar and the  
4 corporation shall be entitled to the issue of subpoenas, to be  
5 represented by counsel, to present evidence, and examine and  
6 cross-examine witnesses.

7 (c) The hearing committee shall make findings in writing and  
8 shall either recommend that the proceeding be dismissed or that a  
9 cease and desist order be issued or that the certificate of registration  
10 of the corporation be suspended or revoked. The determination  
11 may be reviewed by the board of ~~governors trustees~~ or by a  
12 committee authorized by the Board of ~~Governors Trustees~~ to act  
13 in its stead, upon written petition for review, filed with the State  
14 Bar by the corporation or the State Bar within 20 days after service  
15 of the findings and recommendation. Upon review, the board of  
16 ~~governors trustees~~ or the committee may take additional evidence,  
17 may adopt new or amended findings, and make such order as may  
18 be just, as to the notice to show cause.

19 (d) Subdivisions (a), (b), and (c) shall not apply to the  
20 suspension or revocation of the certificate of registration of a  
21 corporation in either of the following cases:

22 (1) The death of a sole shareholder, as provided in Section  
23 6171.1.

24 (2) Failure to file the annual report and renew the certificate of  
25 registration, as provided in Sections 6161.1 and 6163.

26 *SEC. 49. Section 6170 of the Business and Professions Code*  
27 *is amended to read:*

28 6170. Any action of the State Bar or the Board of ~~Governors~~  
29 ~~Trustees~~ or a committee of the State Bar, or the chief executive  
30 officer of the State Bar or the designee of the ~~the~~ chief executive  
31 officer, provided for in this article, may be reviewed by the  
32 Supreme Court by petition for review pursuant to rules prescribed  
33 by the Supreme Court.

34 *SEC. 50. Section 6190.1 of the Business and Professions Code*  
35 *is amended to read:*

36 6190.1. (a) An application for assumption by the court of  
37 jurisdiction under this article shall be made to the superior court  
38 for the county where the attorney maintains or most recently has  
39 maintained his or her principal office for the practice of law or  
40 where such attorney resides. The court may assume jurisdiction

1 over the law practice of an attorney to the extent provided in Article  
2 11 (commencing with Section 6180) of Chapter 4 of Division 3.

3 (b) Where an attorney consents to the assumption by the court  
4 of jurisdiction under the article, the State Bar, a client, or an  
5 interested person or entity may apply to the court for assumption  
6 of jurisdiction over the law practice of the attorney. In any  
7 proceeding under this subdivision, the State Bar shall be permitted  
8 to intervene and to assume primary responsibility for conducting  
9 the action.

10 (c) Where an attorney does not consent to the assumption by  
11 the court of jurisdiction under this article, only the State Bar may  
12 apply to the court for assumption of jurisdiction over the law  
13 practice of the attorney.

14 (d) The chief trial counsel may appoint, pursuant to rules  
15 adopted by the board of ~~governors~~ *trustees*, an examiner or  
16 ~~co-examiner~~ *coexaminer* from among the members of the State  
17 Bar in an investigation or formal proceeding under this article.

18 *SEC. 51. Section 6200 of the Business and Professions Code*  
19 *is amended to read:*

20 6200. (a) The board of ~~governors~~ *trustees* shall, by rule,  
21 establish, maintain, and administer a system and procedure for the  
22 arbitration, and may establish, maintain, and administer a system  
23 and procedure for mediation of disputes concerning fees, costs, or  
24 both, charged for professional services by members of the State  
25 Bar or by members of the bar of other jurisdictions. The rules may  
26 include provision for a filing fee in the amount as the board may,  
27 from time to time, determine.

28 (b) This article shall not apply to any of the following:

29 (1) Disputes where a member of the State Bar of California is  
30 also admitted to practice in another jurisdiction or where an  
31 attorney is only admitted to practice in another jurisdiction, and  
32 he or she maintains no office in the State of California, and no  
33 material portion of the services were rendered in the State of  
34 California.

35 (2) Claims for affirmative relief against the attorney for damages  
36 or otherwise based upon alleged malpractice or professional  
37 misconduct, except as provided in subdivision (a) of Section 6203.

38 (3) Disputes where the fee or cost to be paid by the client or on  
39 his or her behalf has been determined pursuant to statute or court  
40 order.

1 (c) Unless the client has agreed in writing to arbitration under  
2 this article of all disputes concerning fees, costs, or both, arbitration  
3 under this article shall be voluntary for a client and shall be  
4 mandatory for an attorney if commenced by a client. Mediation  
5 under this article shall be voluntary for an attorney and a client.

6 (d) The board of ~~governors~~ *trustees* shall adopt rules to allow  
7 arbitration and mediation of attorney fee and cost disputes under  
8 this article to proceed under arbitration and mediation systems  
9 sponsored by local bar associations in this state. Rules of procedure  
10 promulgated by local bar associations are subject to review by the  
11 board or a committee designated by the board to ensure that they  
12 provide for a fair, impartial, and speedy hearing and award.

13 (e) In adopting or reviewing rules of arbitration under this  
14 section, the board shall provide that the panel shall include one  
15 attorney member whose area of practice is either, at the option of  
16 the client, civil law, if the attorney's representation involved civil  
17 law, or criminal law, if the attorney's representation involved  
18 criminal law, as follows:

19 (1) If the panel is composed of three members the panel shall  
20 include one attorney member whose area of practice is either, at  
21 the option of the client, civil or criminal law, and shall include one  
22 lay member.

23 (2) If the panel is composed of one member, that member shall  
24 be an attorney whose area of practice is either, at the option of the  
25 client, civil or criminal law.

26 (f) In any arbitration or mediation conducted pursuant to this  
27 article by the State Bar or by a local bar association, pursuant to  
28 rules of procedure approved by the board of ~~governors~~ *trustees*,  
29 an arbitrator or mediator, as well as the arbitrating association and  
30 its directors, officers, and employees, shall have the same immunity  
31 which attaches in judicial proceedings.

32 (g) In the conduct of arbitrations under this article the arbitrator  
33 or arbitrators may do all of the following:

34 (1) Take and hear evidence pertaining to the proceeding.

35 (2) Administer oaths and affirmations.

36 (3) Issue subpoenas for the attendance of witnesses and the  
37 production of books, papers, and documents pertaining to the  
38 proceeding.

39 (h) Participation in mediation is a voluntary consensual process,  
40 based on direct negotiations between the attorney and his or her

1 client, and is an extension of the negotiated settlement process.  
2 All discussions and offers of settlement are confidential and may  
3 not be disclosed in any subsequent arbitration or other proceedings.

4 *SEC. 52. Section 6201 of the Business and Professions Code*  
5 *is amended to read:*

6 6201. (a) The rules adopted by the board of ~~governors~~ *trustees*  
7 shall provide that an attorney shall forward a written notice to the  
8 client prior to or at the time of service of summons or claim in an  
9 action against the client, or prior to or at the commencement of  
10 any other proceeding against the client under a contract between  
11 attorney and client which provides for an alternative to arbitration  
12 under this article, for recovery of fees, costs, or both. The written  
13 notice shall be in the form that the board of ~~governors~~ *trustees*  
14 prescribes, and shall include a statement of the client's right to  
15 arbitration under this article. Failure to give this notice shall be a  
16 ground for the dismissal of the action or other proceeding. The  
17 notice shall not be required, however, prior to initiating mediation  
18 of the dispute.

19 The rules adopted by the board of ~~governors~~ *trustees* shall  
20 provide that the client's failure to request arbitration within 30  
21 days after receipt of notice from the attorney shall be deemed a  
22 waiver of the client's right to arbitration under the provisions of  
23 this article.

24 (b) If an attorney, or the attorney's assignee, commences an  
25 action in any court or any other proceeding and the client is entitled  
26 to maintain arbitration under this article, and the dispute is not one  
27 to which subdivision (b) of Section 6200 applies, the client may  
28 stay the action or other proceeding by serving and filing a request  
29 for arbitration in accordance with the rules established by the board  
30 of ~~governors~~ *trustees* pursuant to subdivision (a) of Section 6200.  
31 The request for arbitration shall be served and filed prior to the  
32 filing of an answer in the action or equivalent response in the other  
33 proceeding; failure to so request arbitration prior to the filing of  
34 an answer or equivalent response shall be deemed a waiver of the  
35 client's right to arbitration under the provisions of this article if  
36 notice of the client's right to arbitration was given pursuant to  
37 subdivision (a).

38 (c) Upon filing and service of the request for arbitration, the  
39 action or other proceeding shall be automatically stayed until the  
40 award of the arbitrators is issued or the arbitration is otherwise

1 terminated. The stay may be vacated in whole or in part, after a  
2 hearing duly noticed by any party or the court, if and to the extent  
3 the court finds that the matter is not appropriate for arbitration  
4 under the provisions of this article. The action or other proceeding  
5 may thereafter proceed subject to the provisions of Section 6204.

6 (d) A client's right to request or maintain arbitration under the  
7 provisions of this article is waived by the client commencing an  
8 action or filing any pleading seeking either of the following:

9 (1) Judicial resolution of a fee dispute to which this article  
10 applies.

11 (2) Affirmative relief against the attorney for damages or  
12 otherwise based upon alleged malpractice or professional  
13 misconduct.

14 (e) If the client waives the right to arbitration under this article,  
15 the parties may stipulate to set aside the waiver and to proceed  
16 with arbitration.

17 *SEC. 53. Section 6203 of the Business and Professions Code*  
18 *is amended to read:*

19 6203. (a) The award shall be in writing and signed by the  
20 arbitrators concurring therein. It shall include a determination of  
21 all the questions submitted to the arbitrators, the decision of which  
22 is necessary in order to determine the controversy. The award shall  
23 not include any award to either party for costs or attorney's fees  
24 incurred in preparation for or in the course of the fee arbitration  
25 proceeding, notwithstanding any contract between the parties  
26 providing for such an award or costs or attorney's fees. However,  
27 the filing fee paid may be allocated between the parties by the  
28 arbitrators. This section shall not preclude an award of costs or  
29 attorney's fees to either party by a court pursuant to subdivision  
30 (c) of this section or of subdivision (d) of Section 6204. The State  
31 Bar, or the local bar association delegated by the State Bar to  
32 conduct the arbitration, shall deliver to each of the parties with the  
33 award, an original declaration of service of the award.

34 Evidence relating to claims of malpractice and professional  
35 misconduct, shall be admissible only to the extent that those claims  
36 bear upon the fees, costs, or both, to which the attorney is entitled.  
37 The arbitrators shall not award affirmative relief, in the form of  
38 damages or offset or otherwise, for injuries underlying the claim.  
39 Nothing in this section shall be construed to prevent the arbitrators

1 from awarding the client a refund of unearned fees, costs, or both  
2 previously paid to the attorney.

3 (b) Even if the parties to the arbitration have not agreed in  
4 writing to be bound, the arbitration award shall become binding  
5 upon the passage of 30 days after service of notice of the award,  
6 unless a party has, within the 30 days, sought a trial after arbitration  
7 pursuant to Section 6204. If an action has previously been filed in  
8 any court, any petition to confirm, correct, or vacate the award  
9 shall be to the court in which the action is pending, and may be  
10 served by mail on any party who has appeared, as provided in  
11 Chapter 4 (commencing with Section 1003) of Title 14 of Part 2  
12 of the Code of Civil Procedure; otherwise it shall be in the same  
13 manner as provided in Chapter 4 (commencing with Section 1285)  
14 of Title 9 of Part 3 of the Code of Civil Procedure. If no action is  
15 pending in any court, the award may be confirmed, corrected, or  
16 vacated by petition to the court having jurisdiction over the amount  
17 of the arbitration award, but otherwise in the same manner as  
18 provided in Chapter 4 (commencing with Section 1285) of Title  
19 9 of Part 3 of the Code of Civil Procedure.

20 (c) Neither party to the arbitration may recover costs or  
21 attorney's fees incurred in preparation for or in the course of the  
22 fee arbitration proceeding with the exception of the filing fee paid  
23 pursuant to subdivision (a) of this section. However, a court  
24 confirming, correcting, or vacating an award under this section  
25 may award to the prevailing party reasonable fees and costs  
26 incurred in obtaining confirmation, correction, or vacation of the  
27 award including, if applicable, fees and costs on appeal. The party  
28 obtaining judgment confirming, correcting, or vacating the award  
29 shall be the prevailing party except that, without regard to  
30 consideration of who the prevailing party may be, if a party did  
31 not appear at the arbitration hearing in the manner provided by the  
32 rules adopted by the board of ~~governors~~ *trustees*, that party shall  
33 not be entitled to attorney's fees or costs upon confirmation,  
34 correction, or vacation of the award.

35 (d) (1) In any matter arbitrated under this article in which the  
36 award is binding or has become binding by operation of law or  
37 has become a judgment either after confirmation under subdivision  
38 (c) or after a trial after arbitration under Section 6204, or in any  
39 matter mediated under this article, if: (A) the award, judgment, or  
40 agreement reached after mediation includes a refund of fees or

1 costs, or both, to the client and (B) the attorney has not complied  
2 with that award, judgment, or agreement the State Bar shall enforce  
3 the award, judgment, or agreement by placing the attorney on  
4 involuntary inactive status until the refund has been paid.

5 (2) The State Bar shall provide for an administrative procedure  
6 to determine whether an award, judgment, or agreement should  
7 be enforced pursuant to this subdivision. An award, judgment, or  
8 agreement shall be so enforced if:

9 (A) The State Bar shows that the attorney has failed to comply  
10 with a binding fee arbitration award, judgment, or agreement  
11 rendered pursuant to this article.

12 (B) The attorney has not proposed a payment plan acceptable  
13 to the client or the State Bar.

14 However, the award, judgment, or agreement shall not be so  
15 enforced if the attorney has demonstrated that he or she (i) is not  
16 personally responsible for making or ensuring payment of the  
17 refund, or (ii) is unable to pay the refund.

18 (3) An attorney who has failed to comply with a binding award,  
19 judgment, or agreement shall pay administrative penalties or  
20 reasonable costs, or both, as directed by the State Bar. Penalties  
21 imposed shall not exceed 20 percent of the amount to be refunded  
22 to the client or one thousand dollars (\$1,000), whichever is greater.  
23 Any penalties or costs, or both, that are not paid shall be added to  
24 the membership fee of the attorney for the next calendar year.

25 (4) The board shall terminate the inactive enrollment upon proof  
26 that the attorney has complied with the award, judgment, or  
27 agreement and upon payment of any costs or penalties, or both,  
28 assessed as a result of the attorney's failure to comply.

29 (5) A request for enforcement under this subdivision shall be  
30 made within four years from the date (A) the arbitration award  
31 was mailed, (B) the judgment was entered, or (C) the date the  
32 agreement was signed. In an arbitrated matter, however, in no  
33 event shall a request be made prior to 100 days from the date of  
34 the service of a signed copy of the award. In cases where the award  
35 is appealed, a request shall not be made prior to 100 days from the  
36 date the award has become final as set forth in this section.

37 *SEC. 54. Section 6204 of the Business and Professions Code*  
38 *is amended to read:*

39 6204. (a) The parties may agree in writing to be bound by the  
40 award of arbitrators appointed pursuant to this article at any time

1 after the dispute over fees, costs, or both, has arisen. In the absence  
2 of such an agreement, either party shall be entitled to a trial after  
3 arbitration if sought within 30 days, pursuant to subdivisions (b)  
4 and (c), except that if either party willfully fails to appear at the  
5 arbitration hearing in the manner provided by the rules adopted  
6 by the board of ~~governors~~ *trustees*, that party shall not be entitled  
7 to a trial after arbitration. The determination of willfulness shall  
8 be made by the court. The party who failed to appear at the  
9 arbitration shall have the burden of proving that the failure to  
10 appear was not willful. In making its determination, the court may  
11 consider any findings made by the arbitrators on the subject of a  
12 party's failure to appear.

13 (b) If there is an action pending, the trial after arbitration shall  
14 be initiated by filing a rejection of arbitration award and request  
15 for trial after arbitration in that action within 30 days after service  
16 of notice of the award. If the rejection of arbitration award has  
17 been filed by the plaintiff in the pending action, all defendants  
18 shall file a responsive pleading within 30 days following service  
19 upon the defendant of the rejection of arbitration award and request  
20 for trial after arbitration. If the rejection of arbitration award has  
21 been filed by the defendant in the pending action, all defendants  
22 shall file a responsive pleading within 30 days after the filing of  
23 the rejection of arbitration award and request for trial after  
24 arbitration. Service may be made by mail on any party who has  
25 appeared; otherwise service shall be made in the manner provided  
26 in Chapter 4 (commencing with Section 413.10) of Title 5 of Part  
27 2 of the Code of Civil Procedure. Upon service and filing of the  
28 rejection of arbitration award, any stay entered pursuant to Section  
29 6201 shall be vacated, without the necessity of a court order.

30 (c) If no action is pending, the trial after arbitration shall be  
31 initiated by the commencement of an action in the court having  
32 jurisdiction over the amount of money in controversy within 30  
33 days after service of notice of the award. After the filing of such  
34 an action, the action shall proceed in accordance with the  
35 provisions of Part 2 (commencing with Section 307) of the Code  
36 of Civil Procedure, concerning civil actions generally.

37 (d) The party seeking a trial after arbitration shall be the  
38 prevailing party if that party obtains a judgment more favorable  
39 than that provided by the arbitration award, and in all other cases  
40 the other party shall be the prevailing party. The prevailing party

1 may, in the discretion of the court, be entitled to an allowance for  
2 reasonable attorney’s fees and costs incurred in the trial after  
3 arbitration, which allowance shall be fixed by the court. In fixing  
4 the attorney’s fees, the court shall consider the award and  
5 determinations of the arbitrators, in addition to any other relevant  
6 evidence.

7 (e) Except as provided in this section, the award and  
8 determinations of the arbitrators shall not be admissible nor operate  
9 as collateral estoppel or res judicata in any action or proceeding.

10 *SEC. 55. Section 6206 of the Business and Professions Code*  
11 *is amended to read:*

12 6206. The time for filing a civil action seeking judicial  
13 resolution of a dispute subject to arbitration under this article shall  
14 be tolled from the time an arbitration is initiated in accordance  
15 with the rules adopted by the board of ~~governors~~ trustees until (a)  
16 30 days after receipt of notice of the award of the arbitrators, or  
17 (b) receipt of notice that the arbitration is otherwise terminated,  
18 whichever comes first. Arbitration may not be commenced under  
19 this article if a civil action requesting the same relief would be  
20 barred by any provision of Title 2 (commencing with Section 312)  
21 of Part 2 of the Code of Civil Procedure; provided that this  
22 limitation shall not apply to a request for arbitration by a client,  
23 pursuant to the provisions of subdivision (b) of Section 6201,  
24 following the filing of a civil action by the attorney.

25 *SEC. 56. Section 6222 of the Business and Professions Code*  
26 *is amended to read:*

27 6222. A recipient of funds allocated pursuant to this article  
28 annually shall submit a financial statement to the State Bar,  
29 including an audit of the funds by a certified public accountant or  
30 a fiscal review approved by the State Bar, a report demonstrating  
31 the programs on which they were expended, a report on the  
32 recipient’s compliance with the requirements of Section 6217, and  
33 progress in meeting the service expansion requirements of Section  
34 6221.

35 The Board of ~~Governors~~ Trustees of the State Bar shall include  
36 a report of receipts of funds under this article, expenditures for  
37 administrative costs, and disbursements of the funds, on a  
38 county-by-county basis, in the annual report of State Bar receipts  
39 and expenditures required pursuant to Section 6145.

1     *SEC. 57. Section 6225 of the Business and Professions Code*  
2     *is amended to read:*

3     6225. The Board of ~~Governors~~ *Trustees* of the State Bar shall  
4     adopt the regulations and procedures necessary to implement this  
5     article and to ensure that the funds allocated herein are utilized to  
6     provide civil legal services to indigent persons, especially  
7     underserved client groups such as but not limited to the elderly,  
8     the disabled, juveniles, and non-English-speaking persons.

9     In adopting the regulations the Board of ~~Governors~~ *Trustees*  
10    shall comply with the following procedures:

11    (a) The board shall publish a preliminary draft of the regulations  
12    and procedures, which shall be distributed, together with notice  
13    of the hearings required by subdivision (b), to commercial banking  
14    institutions, to members of the State Bar, and to potential recipients  
15    of funds.

16    (b) The board shall hold at least two public hearings, one in  
17    southern California and one in northern California where affected  
18    and interested parties shall be afforded an opportunity to present  
19    oral and written testimony regarding the proposed regulations and  
20    procedures.

21    *SEC. 58. Section 6226 of the Business and Professions Code*  
22    *is amended to read:*

23    6226. The program authorized by this article shall become  
24    operative only upon the adoption of a resolution by the Board of  
25    ~~Governors~~ *Trustees* of the State Bar stating that regulations have  
26    been adopted pursuant to Section 6225 which conform the program  
27    to all applicable tax and banking statutes, regulations, and rulings.

28    *SEC. 59. Section 6231 of the Business and Professions Code*  
29    *is amended to read:*

30    6231. (a) The board shall establish and administer an Attorney  
31    Diversion and Assistance Program, and shall establish a committee  
32    to oversee the operation of the program. The committee shall be  
33    comprised of 12 members who shall be appointed as follows:

34    (1) Six members appointed by the Board of ~~Governors~~ *Trustees*,  
35    including the following:

36    (A) Two members who are licensed mental health professionals  
37    with knowledge and expertise in the identification and treatment  
38    of substance abuse and mental illness.

1 (B) One member who is a physician with knowledge and  
2 expertise in the identification and treatment of alcoholism and  
3 substance abuse.

4 (C) One member of the board of directors of a statewide  
5 nonprofit organization established for the purpose of assisting  
6 lawyers with alcohol or substance abuse problems, which has been  
7 in continuous operation for a minimum of five years.

8 (D) Two members who are attorneys, at least one of which is  
9 in recovery and has at least five years of continuous sobriety.

10 (2) Four members appointed by the Governor, including the  
11 following:

12 (A) Two members who are attorneys.

13 (B) Two members of the public.

14 (3) One member of the public appointed by the Speaker of the  
15 Assembly.

16 (4) One member of the public appointed by the Senate Rules  
17 Committee.

18 (b) Committee members shall serve terms of four years, and  
19 may be reappointed as many times as desired. The board shall  
20 stagger the terms of the initial members appointed.

21 (c) Subject to the approval of the board, the committee may  
22 adopt reasonable rules and regulations as may be necessary or  
23 advisable for the purpose of implementing and operating the  
24 program.

25 *SEC. 60. Section 6238 of the Business and Professions Code*  
26 *is amended to read:*

27 6238. The committee shall report to the Board of ~~Governors~~  
28 *Trustees* and to the Legislature not later than March 1, 2003, and  
29 annually thereafter, on the implementation and operation of the  
30 program. The report shall include, but is not limited to, information  
31 concerning the number of cases accepted, denied, or terminated  
32 with compliance or noncompliance, and annual expenditures related  
33 to the program.



**SENATE JUDICIARY COMMITTEE**  
**Senator Noreen Evans, Chair**  
**2011-2012 Regular Session**

SB 163 (Evans)  
As Introduced  
Hearing Date: May 10, 2011  
Fiscal: No  
Urgency: No  
SK

**SUBJECT**

State Bar Act

**DESCRIPTION**

This bill would authorize the State Bar of California (State Bar or the Bar) to collect active membership dues of up to \$410 for the year 2012, which would continue the current active dues amount of \$410. Consistent with existing law, those dues would fund only mandatory programs of the State Bar, and members can deduct \$5 if they did not wish to support lobbying and other legislative activities. Members can also deduct an additional \$5 if they did not wish to fund access and elimination of bias programs. Existing law also directs \$10 of membership dues to legal services purposes unless a member elects not to support those activities.

**BACKGROUND**

The State Bar of California is a public corporation. Attorneys who wish to practice law in California generally must be admitted and licensed in this state and must be a member of the State Bar. (Cal. Const. art. VI, Sec. 9.) The State Bar of California is the largest state bar in the country. As of February 2011, the State Bar had 170,986 active members and 49,034 inactive members, which represents a slight annual increase in both active members and inactive members. Total State Bar membership is listed at 231,982, which includes 2,098 Judge members and 9,864 members who are "Not Eligible to Practice Law."

The Bar's programs are financed mostly by annual membership dues paid by attorneys as well as other fees paid by applicants seeking to practice law. At the end of 2010, the State Bar had a fund balance of \$11.9 million in its General Fund; the Bar is projecting a continued surplus through at least 2013 of \$10.7 million (projected 2012) and \$9.3 million (projected 2013).

### CHANGES TO EXISTING LAW

Existing law requires all attorneys who practice law in California to be members of the State Bar and establishes the State Bar for the purpose of regulating the legal profession. Pursuant to the State Bar Act, the annual mandatory membership fee set by the State Bar's Board of Governors to pay for discipline and other functions must be ratified by the Legislature. (Bus. & Prof. Code Sec. 6000 et seq.)

Existing law provides that the State Bar shall be governed by a 23-member Board of Governors (the Board), comprised of 16 lawyers elected by members of the Bar from nine specified districts for three-year staggered terms, and six public non-lawyer members, four of whom are appointed by the governor, one who is appointed by the Senate Rules Committee, and one who is appointed by the Speaker of the Assembly. The 23<sup>rd</sup> member of the Bar Board is its president, who is elected by the other board members to serve a fourth single year. (Bus. & Prof. Code Sec. 6010 et seq.)

Existing law provides for the Governance in the Public Interest Task Force in the State Bar and requires that task force to submit a report by May 15, 2011, and every three years thereafter, to the Supreme Court, the Governor, and the Senate and Assembly Judiciary Committees containing recommendations for enhancing the protection of the public, as specified. (Bus. & Prof. Code Sec. 6001.2.)

Existing law authorizes the State Bar to collect \$315 in annual membership fees from active members for a total annual dues bill of \$410 for the year 2011. (Bus. & Prof. Code Sec. 6140.) The other \$95 is pursuant to statutory authorization to assess annually the following fees: \$40 for the Client Security Fund (Bus. & Prof. Code Sec. 6140.55); \$25 for disciplinary activities (Bus. & Prof. Code Sec. 6140.6); \$10 to fund the Lawyer Assistance Program (Bus. & Prof. Code Sec. 6140.9); \$10 special assessment to fund information technology upgrades (expires January 1, 2014) (Bus. & Prof. Code Sec. 6140.35); and \$10 for the Building Fund (expires January 1, 2014) (Bus. & Prof. Code Sec. 6140.3).

Existing law authorizes the State Bar to collect \$75 in annual membership fees from inactive members for a total annual dues bill of \$125. (Bus. & Prof. Code Sec. 6141.) The other \$50 is pursuant to statutory authorization to assess annually the following fees: \$10 for the Client Security Fund (Bus. & Prof. Code Sec. 6140.55); \$25 for disciplinary activities (Bus. & Prof. Code Sec. 6140.6); \$5 to fund the Lawyer Assistance Program (Bus. & Prof. Code Sec. 6140.9); and \$10 for the Building Fund (expires January 1, 2014) (Bus. & Prof. Code Sec. 6140.3).

Existing case law, *Keller v. State Bar of California* (1990) 496 U.S. 1, prohibits the use by the State Bar of mandatory dues to fund political and ideological activities, as a violation of a member's First Amendment freedom of speech rights, where such expenditures were not necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the quality of the legal services available to the people of the state. Existing law allows members to deduct up to \$10 from the mandatory dues

if the member does not wish to fund legislative activities and non-*Keller* lobbying and activities with his or her dues. (Bus. & Prof. Code Sec. 6140.05, *Keller v. State Bar of California* (1990) 496 U.S. 1.)

Existing law directs \$10 of membership dues to legal services purposes unless a member elects not to support those activities. (Bus. & Prof. Code Sec. 6140.01.)

This bill would authorize the State Bar to collect active membership dues of up to \$410 for the year 2012.

### COMMENT

#### 1. Stated need for the bill

In support of the bill, the sponsor, State Bar of California, writes that it is "pleased to support Senate Bill 163 . . . Existing law requires the Board of Governors to charge annual membership dues for members. SB 163 will extend for one year (2012) the State Bar's authority to collect the dues needed to keep it operating in order to ensure public protection and the proper regulation of attorneys. The bill simply extends this authority and the amount is not increased by this legislation."

#### 2. Governance in the Public Interest Task Force

Last year, AB 2764 (Committee on Judiciary, Chapter 476, Statutes of 2010) created within the State Bar the Governance in the Public Interest Task Force to be made up of 11 members appointed by the President of the State Bar. Seven of the members must be attorney members of the board and three must be public members. The president must also be a member of the Task Force and preside over its meetings.

AB 2764 required the Task Force, on or before May 15, 2011, and every three years thereafter, to submit a report to the Supreme Court, the Governor, and the Senate and Assembly Judiciary Committees containing recommendations for enhancing the protection of the public and ensuring that protection of the public is the highest priority in the licensing, regulation, and discipline of attorneys. This report is to be reviewed by the Senate and Assembly Judiciary Committees in their regular consideration of the annual bar dues bill.

The Task Force was created in response to concerns that actions by the State Bar Board of Governors did not sufficiently take into account the protection of the public. Several examples demonstrating the concern were included in this committee's analysis of AB 2764, including the Board's action to approve a scaled-back online "Find a Lawyer" program that critics argued left out important helpful consumer information in response to opposition from local bar associations. The Board decision not to reappoint Scott Drexel as Chief Trial Counsel was also highlighted in the analysis which noted legal press at the time that described allegations that Drexel was not reappointed

because he aggressively pursued attorney misconduct and suggested that the Board's decision was based on internal profession-protection politics and not public interest issues. The Bar Board also nearly voted to oppose two important consumer protection measures (SB 94 (Calderon, Ch. 630, Stats. 2009) and AB 764 (Nava, 2009)) which addressed attorney participation in foreclosure-related scams. Finally, the malpractice insurance disclosure rules ultimately approved by the Board were felt by many to be considerably scaled back.

The Task Force began meeting in October 2010 and, after regularly and diligently holding a number of meetings around the state, the Task Force voted on May 5, 2011 to submit its reports and recommendations to the Supreme Court, Governor, and Legislature. AB 2764 provided that, if the task force does not reach a consensus on all recommendations, the dissenting members may prepare and submit a dissenting report. Although the Committee has not yet received the final reports, it appears that there will in fact be two reports from the Task Force – a majority and a minority report.

A recent article in the *Recorder* legal newspaper bore this out, stating:

The minority group on the task force – which includes State Bar President William Hebert – says the board should be smaller, with members appointed by the state Supreme Court. The minority members contend that elected board members tend to represent the provincial interests of their constituents to the detriment of a broader public interest. They also argue that the State Bar shouldn't be the only professional oversight body in California that governs itself.

"If we had appointees who were screened for their qualifications and appointed by the Supreme Court, we would have a higher-quality board that better understood the mission of the board and better understood its public protection mission," Hebert said after today's vote.

The majority sees the elected system as a good vehicle to give Bar members a voice in their own governance, said board member Jon Streeter.

Streeter said the attempt to reduce the size of the board and throw out the election system is "little more than a power grab by certain public members on the board," adding that "the absence of any evidence to support the abandonment of a system that we have had for 84 years suggests that there are some private agendas going on here." ("Over protest, Bar task force says structural changes aren't needed," *The Recorder*, May 5, 2011.)

Summaries of both of these draft reports are available on the Task Force’s website. While the final reports have not yet been submitted to the Committee, the following chart briefly summarizing the draft proposals that are available online is provided to the Committee as background:

	Existing law	“Comprehensive Governance Reform Proposal”	“All-appointed Proposal”
<b>Total Board of Governors</b>	23	22 + president	Reduce to 15
<b>Attorney members</b>	17	17	Reduce to 9
<b>Public members</b>	6	6	6
<b>Make-up</b>	15 attorney members elected from 9 districts  1 CYLA* attorney member  1 president  6 public members = 4 by Governor 1 by Senate Rules 1 by Speaker  *California Young Lawyers Association	12 attorney members elected from 5 districts (based on District Courts of Appeal)  3 attorney members appointed by the Supreme Court  1 CYLA attorney member  1 president  Permit Supreme Court to create a Merit Screening Committee to vet attorney applicants  No change to the number and method of selecting public members	Attorney members appointed by the Supreme Court  Permit the Supreme Court to create a Merit Screening Committee to vet attorney applicants  No change to the number and method of selecting public members

The proposals also contain other provisions relating to the State Bar; the following highlights a few of these provisions:

“Comprehensive Governance Reform Proposal”

- Include public protection charge
- Re-name the Board of Governors to the Board of Trustees

- Require 50 percent public member participation on Regulations, Admission, and Discipline Committee and Member Oversight Committee
- Make changes designed to increase transparency and complement alignment with the Bagley-Keene Open Meetings Act
- Create new Public Information and Outreach Committee
- Create new Legislative Liaison committee

“All-appointed Proposal”

- Include public protection charge
- Re-name the Board of Governors to the Board of Trustees
- Provide that the Supreme Court appoints president
- Apply Bagley-Keene Open Meetings Act to the Board
- Require the State Bar to make available at least 25 hours of continuing legal education in the field of ethics at no charge
- Recommend evaluation of whether the unified Bar structure advances public protection and require a report containing steps to disunify the Bar

As this bill moves through the process, the author may wish to consider amending the bill to incorporate recommendations from the Task Force which enhance the protection of the public.

3. State Bar’s fiscal status

a. State Bar General Fund projections

At the end of 2010, the State Bar had a fund balance of \$11.9 million in its General Fund. The Bar is projecting a continued surplus through at least 2013 of \$10.7 million (projected 2012) and \$9.3 million (projected 2013) (See chart below). These amounts assume that the Bar continues with the salary freeze that has been in place since 2008 and no unanticipated significant cost increases occur. The following chart illustrates these figures:

	Forecast 2011	Projected 2012	Projected 2013
Revenues	\$62.9	\$62.5	63.4
Baseline expenditures	\$62.0	\$63.7	\$64.9
Surplus (Deficit)	\$0	(\$1.2)	(\$1.5)
Ending retained savings	\$12	\$10.7	\$9.3

\*\$ millions

In addition to the \$11.9 million fund balance in its General Fund, the State Bar also has another \$6.4 million in the “Public Protection Reserve Fund” which is designed as its “rainy-day” fund to allow the Bar to continue operations should its dues authority not be continued, as occurred when Governor Wilson vetoed the Bar’s

dues bill in 1997 and in 2009 when Governor Schwarzenegger did the same.

At the end of 2010, the Bar's Public Protection Reserve Fund contained \$6.4 million. That amount represents 10.7 percent of 2010 General Fund operating expenses, 6.4 percent of total agency-wide operating expenses, and 4.9 percent of total agency-wide operating revenues. These percentages are consistent with the recommendations of the Government Finance Officers Association which suggests a "minimum GF reserve of 5% to 15% of operating revenues." The Bar states that the Public Protection Fund is needed because it is "exposed to an unusual financial risk not experienced by most state and local governments: the risk of an abrupt 100% loss of its dominant source of operating revenue – mandatory member dues . . . . Mandatory member dues account for over 95% of the State Bar's General Fund revenues, financing operating costs exceeding \$1.1 million per week. If the State Bar were to lose the authority to collect mandatory dues, the Public Protection Reserve would provide a small but crucial window of time for the organization to react in a manner that best protects the interests of the public."

b. History of General Fund activity

Bar documents indicate the history of the Bar's General Fund activity. Over the past few years, the Bar has generally taken in more money than it has spent. As illustrated below, 2006 and 2007 revenues were higher than expenditures. In 2008, however, expenditures outpaced revenues. For 2009, revenues and expenditures were essentially equal. In 2010, the General Fund's actual expenditures were at their lowest level since 2007. According to the State Bar:

[t]he significant reduction in costs was the result of circumstances unique to 2010 that aren't representative of the Bar's typical expenditure levels. During 2010, six of the Bar's executive staff positions, including Chief Trial Counsel, General Counsel, Chief Information Officer, Director of Media & Information Services, Web Editor, and Senior Executive of Member Services, were vacant for all or a significant part of the year. These executive positions, along with higher than anticipated turnover in other staff positions combined with lower than anticipated benefit costs, resulted in approximately \$2.8 million in savings. Additionally, the print version of the CalBar Journal was eliminated during the first quarter, resulting in over \$800,000 in reduced postage and printing costs. Due to the delay in the adoption of the 2010 dues bill, many non-critical expenditures were postponed to later years. Significant savings were also realized from lower audit and outside counsel costs. In total, actual expenditures for 2010 were 11% lower than the adopted budget.

The following chart compares the budgeted annual expenses to actual annual expenses:

Year	Budget	Actual	% Variance
2007	\$61.4*	\$58.1	5.4%
2008	\$65.2	\$62.3	4.4%
2009	\$65.2	\$62.8	3.6%
2010	\$67.4	\$59.8	11.2%

\*\$ millions

The State Bar indicates: "Typically, the State Bar's actual annual expenses are between 4 percent and 5 percent lower than budget - usually attributable to salary savings that occur due to staff turnover. 2010 was an extraordinary year due to the delay in passage of the 2010 fee bill and the transition of executive director. The timing of filling several vacant executive staff positions was affected by the October 2010 veto and recruitments were put on hold."

c. Temporary Emergency Legal Services Voluntary Assistance Option

Last year's dues bill, AB 2764 (Committee on Judiciary), created the Temporary Emergency Legal Services Voluntary Assistance Option, directing, until January 1, 2014, \$10 of membership dues to legal services purposes unless a member elects not to support those activities. The State Bar indicates that this direction has resulted in a \$2 million revenue loss in member dues to the General Fund. Staff notes that had the \$2 million not been redirected either to members if they chose or to the State Bar's Legal Services Trust Fund Program for distribution to nonprofit organizations that provide free civil legal services to low-income Californians, that money would have gone to the General Fund.

The Bar indicates that it is addressing this revenue loss by redirecting a significant portion (\$1.3 million) of its sponsored insurance programs - primarily the general liability and group insurance policies administered through Marsh - to the General Fund. According to the Bar, the sponsorship revenue generated from these policies is approximately \$1.8 million annually. In previous years, the Bar states that approximately \$1 million was allocated to the Lawyers Assistance Program (LAP) with the remaining proceeds allocated to covering the administrative costs of the insurance programs and setting aside funding for future additional membership benefit programs. The Bar indicates that, in 2011, the allocation to LAP was discontinued and \$1.3 million of the \$1.8 million of annual sponsorship revenues has been directed to the General Fund. The Bar indicates that the \$500,000 difference is being used for insurance program expenses. Also, in 2011, there was a one-time case transfer from the Certification Fund of \$1.2 million to help cover the loss of revenue.

d. Salaries

As the Bar has indicated previously, there have not been salary or step increases since 2008. The chart below shows the relevant figures over the last ten years. According to the Bar, its staff is divided into three categories: represented staff, confidential staff, and executive staff. Represented staff are covered by a Memorandum of Understanding that includes a table of step increases by job class. A similar structure exists for confidential staff who are not covered by the bargaining unit and are not executive staff. Additionally the Bar states that employees at the top step generally only receive increases when a cost of living adjustment is made and, in some years, employees who are topped out may receive a lump sum payment that does not affect their base salary. Below is the history of step and merit increases since 2001:

Category	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Represented	3.5%	5% step; 9% cola	2.5% step	0%	4.5%	4.5%	5%	5% step; 3% cola	0%	0%	0%
Confidential	3.5%	5% step; 9% cola	2.5% step	0%	4.5%	4.5%	5%	5% step; 3% cola	0%	0%	0%
Executive	5.71%	4.48%	0%	5.34%	3.2%	5.57%	5.11%	0%	0%	0%	0%

4. State Bar's annual discipline report

On April 30, 2011, the State Bar released its annual discipline report for the year ending December 31, 2010. Required by Business and Professions Code Section 6086.15, the report describes the "performance and condition of [the Bar's] attorney discipline system in the previous calendar year." This year's report notes that the figures show a significant rise in both the backlog and caseload. Under existing law, investigations of complaints should be completed within six months or, for complex cases, within 12 months. Complaints that are open more than six months from receipt without disciplinary charges filed are considered part of the "backlog."

The State Bar indicates that it made major changes in the format, organization, and content of this year's report in part to respond to recommendations from the State Auditor. As a result, the Bar acknowledges that it is difficult to make meaningful comparisons with reports from prior years. For example, some of the numbers in this year's report are higher than in years' past because they were previously excluded from prior counts. Despite this challenge, the following key figures are notable:

- The overall backlog at the end of 2010 is 4,193 cases, an increase of over 60 percent from the numbers for the previous year, under the adjusted methodology used in

the report. The report notes, however, that these figures are substantially increased by the inclusion of more than 2,000 cases, which are either held or in abeyance because of other pending criminal, civil, or State Bar proceedings. Excluding these cases would yield a backlog of 1,901 complaints, an increase of over five percent from the previous year.

- As of December 31, 2010, the investigative backlog stood at 350 cases, down from 409 at the end of 2009.
- During 2010, 712 investigations were completed more than six months after receipt of the original complaint, or, in designated complex cases, more than 12 months. This figure was up from 546 in 2009.
- During 2010, 3,866 cases were filed or closed more than six months after the receipt of the original complaint, up from 1,971 in 2009.
- The Intake Unit received 17,904 written complaints in 2010. This is roughly equal to the 2009 level, but sharply higher than the levels experienced in 2007 and 2008 (under 13,600 complaints each year).
- The Intake Unit closed 13,325 cases and forwarded 6,028 complaints to the investigations unit. In contrast, 10,603 cases were closed and 5,378 cases were advanced to investigation in 2009.
- The Investigations Unit in turn closed 3,024 cases – up almost 50 percent from the 2009 levels. That unit forwarded 1,362 cases to the Trial Unit, an increase of more than one-third from the prior year.
- The Trial Unit closed 719 cases in 2010, up from 238 cases the year before. The unit formally filed 636 cases with the State Bar Court, a 50 percent increase from the previous year's level.

The Executive Summary also noted that the sharp rise in caseload appears to be connected to the large number of complaints received by the State Bar against lawyers involved in home loan modification scams in 2009 and 2010.

##### 5. State Auditor's biennial report on State Bar's performance

The State Auditor is required by law to conduct a performance audit every two years of the State Bar's operations during the prior fiscal year. This year, the Auditor's staff indicates that the audit will likely be completed in late May. At the request of this committee, the audit will review the Lawyers Assistance Program (LAP) to better understand whether LAP is meeting its mission and, importantly, whether it is protecting clients and the public from substance-abusing attorneys.

In the past, the State Auditor's biennial report has helped to inform this committee's oversight responsibilities. For example, in 2007 the report raised questions regarding how the Bar prepared its budget. The State Auditor noted that the Bar's "budget preparation methodology does not ensure that all resources are identified and properly allocated so that the State Bar effectively and efficiently accomplishes its statutory mandates." The Bar agreed with the Auditor's recommendation on the issue and made changes to its methodology to address the concern.

The 2007 State Auditor's report also brought to light the Bar's action in collecting the assessment of the \$10 building fund fee for the potential purchase of a State Bar facility in Los Angeles. That action was taken without notice to the Legislature and without any opportunity for legislative review. The Auditor's report played a critical role in highlighting the issue.

As a result, it will be especially helpful to this committee's work over the next two years to have the benefit of the expertise and reporting of the State Auditor.

Support: None Known

Opposition: None Known

### HISTORY

Source: State Bar of California

Related Pending Legislation: AB 572 (Wieckowski), which is identical to this bill, has been referred to the Assembly Judiciary Committee.

Prior Legislation:

AB 2764 (Judiciary, Chapter 476, Statutes of 2010)

SB 55 (Corbett, Chapter 2, Statutes of 2010)

SB 641 (Corbett, 2009) vetoed

AB 3049 (Judiciary, Chapter 165, Statutes of 2008)

SB 686 (Corbett, Chapter 474, Statutes of 2007)

AB 1529 (Jones, Chapter 341, Statutes of 2005)

SB 1490 (Judiciary, Chapter 384, Statutes of 2004)

AB 1708 (Judiciary, Chapter 334, Statutes of 2003)

SB 352 (Kuehl, Chapter 24, Statutes of 2001)

SB 1367 (Schiff, Chapter 118, Statutes of 2000)

SB 144 (Schiff, Chapter 342, Statutes of 1999)

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