

- SUBJECT:** Continuing the Board of Law Examiners
- COMMITTEE:** Judiciary and Civil Jurisprudence — favorable, without amendment
- VOTE:** 8 ayes — Smithee, Farrar, Gutierrez, Laubenberg, Murr, Neave, Rinaldi, Schofield
- 0 nays
- 1 absent — Hernandez
- SENATE VOTE:** On final passage, April 4 — 30-1 (Hall)
- WITNESSES:** *On House companion bill, HB 2103:*
For — Rich Robins, TexasBarSunset.com; (*Registering, but not testifying:* Steve Bresnen, Texas Family Law Foundation; Gloria Leal, Mexican American Bar Association of Texas)
- Against — None
- On — Susan Henricks, Board of Law Examiners; Bob Bennett; (*Registering, but not testifying:* Lori Adelman and Nahdiah Hoang, Board of Law Examiners; Kathryn Hricik, Sunset Commission)
- BACKGROUND:** The Board of Law Examiners (BLE) is a judicial agency created to qualify applicants for admission to the State Bar of Texas under rules governing attorney licensure promulgated by the Texas Supreme Court, which is the licensing entity.
- Functions.** The BLE has three main tasks:
- reviewing the qualifications of applicants;
 - evaluating the character and fitness to practice law of applicants; and
 - administering the Texas Bar Exam.

Board. The BLE's board members are nine attorneys appointed by the Texas Supreme Court to serve staggered six-year terms.

Funding. The BLE's primary source of revenue is from the fees it collects from applications, investigations, and examinations. The agency receives no state appropriations. In fiscal 2015, the board collected about \$3.4 million in fee revenue and investment and interest income and spent about \$3.3 million.

Staffing. In fiscal 2015, the board employed 18 people, all of whom were located in Austin.

The BLE would be discontinued on September 1, 2017, if not continued in statute.

DIGEST:

SB 303 would continue the Board of Law examiners (BLE) until September 1, 2029, and would make changes to requirements for applicants to the state bar as well as those for BLE board members.

Applicant requirements. The bill would remove a provision allowing the BLE to require applicants who may have a chemical dependency to submit to a treatment facility for evaluation. Instead, the BLE could require the applicant to be evaluated by a licensed mental health professional designated by the board.

SB 303 would remove a provision of current law requiring applicants for the state bar examination to attest that they are not mentally ill. The bill would require applications for the exam to include a statement, rather than a verified affidavit, certifying certain information.

BLE guidelines. The bill would require the BLE to develop specific licensing guidelines for:

- determining the moral character and fitness of license applicants;
- overseeing probationary license holders; and
- granting waiver requests.

The board would develop guidelines based on past decisions and any other criteria it considered necessary.

Deadlines. SB 303 would remove certain statutory application deadlines and instead would provide for deadlines based on rules adopted by the Texas Supreme Court. The Supreme Court would have to adopt rules setting the deadlines and establishing certain application fees as soon as practicable after the bill's effective date.

Board member requirements. The bill would revise the required training program for board members. The program would have to include information about:

- the law governing board operations;
- the functions, rules, and budget of the board;
- the results of the most recent audit;
- laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and
- other laws applicable to members of a state policymaking body performing their duties.

The executive director of the BLE would be required to create a training manual that would include the information from the training program to be distributed to each member annually. The members would have to sign a statement acknowledging receipt. Board members appointed before September 1, 2017, who had not completed the additional training required in the bill would not be allowed to vote, deliberate, or be counted as a member in attendance at a meeting of the board after December 1, 2017, until they had completed the additional training.

SB 303 also would change the expiration date of board member terms from August 31 to May 31 of odd-numbered years.

Subject to Supreme Court rules, the BLE would be authorized to delegate routine decisions to the executive director of the board, including waiver

requests.

Effective date. The bill would take effect September 1, 2017, and would apply only to applications filed on or after that date.

SUPPORTERS
SAY:

SB 303 appropriately would continue the Board of Law Examiners (BLE) for 12 years. Despite some administrative issues, the BLE's mission remains important to ensuring Texas attorneys are well qualified to protect the people of Texas.

While the State Bar of Texas performs a similar function for currently licensed attorneys, there is no apparent benefit to consolidating the two entities. Texas is one of many states that maintains two separate agencies for licensing and enforcement.

Applicant requirements. The bill would update some anachronistic practices and requirements. Requiring applicants to affirm that they are not mentally ill does comport with modern medical views and may violate the Americans with Disabilities Act, subjecting the state to expensive lawsuits. Qualifications should pertain to applicants' conduct relating to their fitness to practice law, not a condition or diagnosis.

In addition, there is no need to require a notarized verification of certain information, as the application already is sworn to, making intentional misstatements subject to prosecution for perjury. The notary requirement is an additional burden for applicants that adds no value for the reviewers or the public.

The provision of the bill allowing the BLE to require applicants with a potential chemical dependency to submit to an evaluation by a licensed mental health professional would be less onerous than current law, which allows the agency to require an applicant to submit to a treatment facility for evaluation.

BLE guidelines. SB 303 would add clarity for applicants and increase confidence in the fairness of the BLE by requiring it to develop licensing

guidelines. The BLE currently does not have specific guidelines for how it makes character and fitness decisions. This vagueness can cause uncertainty and anxiety among applications and may lead to inconsistent and unfair decisions.

Deadlines. Currently, there are filing deadlines in both statute and rules, creating additional confusion and inefficiency for the BLE and applicants. One source for deadlines would be easier to track and would give the BLE and the Texas Supreme Court flexibility to adapt to changing circumstances.

Board member requirements. While the Supreme Court has authorized the BLE to delegate responsibilities, the agency has not fully implemented that authority, and the board members still take on too many routine tasks, which consumes time that could be spent making final application decisions. The bill would allow the executive director to handle waiver requests and other routine decisions without having to wait for the full board to meet.

OPPONENTS
SAY:

SB 303 could force applicants to subject themselves to a mental health evaluation before they could be licensed if the BLE was concerned about chemical dependency. While substance abuse issues should create reservations about an applicant, the authority to require such evaluations could be undertaken without sufficient guidance or control.

NOTES:

A companion bill, HB 2103 by S. Thompson, was considered in a public hearing of the House Committee on Judiciary and Civil Jurisprudence on March 21 and left pending.