

SUBJECT: Revising the composition of the State Bar of Texas board of directors

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Smithee, Farrar, Gutierrez, Hernandez, Laubenberg, Murr
2 nays — Rinaldi, Schofield
1 absent — Neave

SENATE VOTE: On final passage, April 17 — 30 - 1 (Hall), on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 3199:*
For — Gloria Leal, Mexican-American Bar Association of Texas; Frank Stevenson, State Bar of Texas; (*Registered, but did not testify:* Laura Sharp)
Against — None
On — (*Registered, but did not testify:* John Sirman, State Bar of Texas)

BACKGROUND: Government Code, sec. 81.020, governs the composition of the State Bar of Texas Board of Directors. Included among the 46 voting members are four minority member directors appointed by the president of the state bar. The president is required to attempt to appoint members of different minority groups: female; African-American; Hispanic-American; Native American; or Asian-American.

DIGEST: SB 416 would amend the composition of the State Bar of Texas Board of Directors by replacing the four minority member directors with four outreach directors. The president of the state bar would be required to appoint outreach directors who demonstrated the sensitivity and knowledge gained from experience in the legal profession and community necessary to ensure the board represented the interests of attorneys from the varied backgrounds that composed the membership of the state bar, including members of historically underrepresented groups.

The bill would repeal the definition of "minority member" and would make certain conforming changes.

A minority member director serving on the effective date would continue to serve his or her term, and the president would appoint an outreach director as required by the bill on the expiration of the term.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

**SUPPORTERS
SAY:**

SB 416 would address concerns that the minority member requirements for the state bar's board of directors are unconstitutional. Recently, a lawsuit was filed alleging that reserving four board positions for minorities violates the equal protection clause of the U.S. Constitution. By replacing the current minority director members with outreach directors who met certain criteria, the bill would alleviate any constitutional concerns while still ensuring that the state bar remained representative of its full membership.

Although the outreach directors would not be limited by race, ethnicity, or gender, the state bar president would be required to appoint directors from the varied backgrounds that compose the membership of the state bar, including members of historically underrepresented groups. By leaving "historically underrepresented groups" undefined, the bill would allow the state bar to identify any group that has not received adequate representation, including those based on race, ethnicity, gender, geographic area, and practice area, and move forward on other aspects of diversity to further inclusion.

SB 416 simply would be a way to preserve efforts to increase the board's diversity regardless of how the issue is resolved by the court.

**OPPONENTS
SAY:**

Although the selection criteria for the outreach directors proposed by SB 416 would be similar to the minority member directors, removing the

defined gender and ethnic requirements could make the state bar's governing board less reflective of the diverse attorneys it regulates. Such an action should be taken only if the court finds the current minority member requirements to be unconstitutional. The current minority member requirement has been essential to maintaining diversity on the board.

**OTHER
OPPONENTS
SAY:**

A pending lawsuit would likely result in the current system being found unconstitutional. The bill does not take the necessary action to alleviate constitutional concerns as it would simply replace the current minority member requirements with a similar outreach director.

NOTES:

The companion bill, HB 3199 by Smithee, was left pending following a public hearing in the House Committee on Judiciary and Civil Jurisprudence on May 2.