

**Written Testimony of Susan Henricks
Executive Director, Texas Board of Law Examiners to
Texas Sunset Advisory Commission**

I, Susan Henricks, Executive Director, Texas Board of Law Examiners, submit the following written statement as testimony to be considered by the Texas Sunset Advisory Commission, in conducting its review of the agency's operations. The following proposed revisions to Texas Government Code, Chapter 82, are intended to improve the agency's ability to accomplish its mission of qualifying applicants for admission to the State Bar of Texas by the Texas Supreme Court, in a fair, timely and effective manner.

PROPOSAL ONE: INCREASE FEE CEILINGS

Although fees charged by the Board are set by the Supreme Court, Government Code Sec. 82.033 establishes the maximum fee amounts. All fees are capped by statute at \$150 other than the application fee for foreign attorney Applicants that cannot exceed \$700. The maximum amounts have not been increased since 1985.¹ Although the Supreme Court has not set all fees at the maximum amount, many of the current fees are at or near the statutory maximum, limiting the Court's ability to set fair and appropriate fees needed for adequate revenue. Importantly, application fees for attorneys applying for admission from other states and foreign nations are now set at the maximum amounts.

Since 1985, the cost of administering the Texas Bar Exam has increased in several significant aspects, primarily relating to the cost of renting examination sites in large urban areas of the state, the cost to accommodate persons with disabilities who receive special accommodations, and the cost to purchase exam materials from the National Conference of Bar Examiners (NCBE).

Texas Law Students Pay More

The fees charged to law student examination applicants are not set at the maximum amount, but Texas law students currently pay more than out-of-state law students because Texas law students are required to file both a Declaration of Intention to Study Law (\$190) and an updated Application for the Bar Exam (\$320). The sum of these fees (\$510) is greater than the fees charged to out-of-state students for the bar exam (\$435).²

Board staff is proposing adoption of a revised fee schedule that would increase the out-state-student examination fee by \$55 and decrease the Texas law student examination fee by \$20. This adjustment will equalize the total fee charged to applicants of both groups. If this revised fee schedule is adopted, however, the current fee ceilings will not allow for any further increase

¹ Acts 1985, 69th Leg., Ch. 524, Sec. 4.

² Only students enrolled at a Texas law school are required to file a Declaration of Intention to Study Law. *Tex. Government Code §82.023 and Rule VI, Rules Governing Admission to the Bar of Texas.*

of any fee, except those charged to Texas law students. All other fees would then be at the maximum allowed by statute.

Increasing Examination Costs

The Texas Supreme Court requires all Applicants for the Bar to take the Multi-State Bar Exam (MBE) and the Multi-State Practice Skills Test (MPT) as part of the Bar Exam administered twice a year.³ These examinations are nationally standardized, copyrighted products created and sold by the NCBE. There is no competing source for bar examination materials. NCBE also grades the MBE, a 200 question multiple-choice test, which is used to scale all final scores on the Texas Bar Exam and has been in use since 1974. The MBE is required by 48 other states for admission to the bar. (Louisiana is the only state that does not administer the MBE). Texas began using the MPT in 1997.

The total cost to purchase the NCBE multi-state bar examination materials has increased five-fold since 1985. In 1985, the Board spent \$65,840 to purchase the MBE. In 2015, the Board's combined cost to purchase the MBE and MPT was \$332,436. Per examinee, the cost has increased from \$19 to \$77. It is reasonable to assume that the cost for these examinations will continue to increase.

Rental rates for commercial event space in Texas' urban areas have also increased dramatically in the past 30 years. In 1985, the Board budgeted \$20,000 for rental expenses to administer the bar exam in six locations. In 2015, the budgeted amount was \$114,000, more than a five-fold increase. Rental expense for tables and chairs at the Austin site this year cost \$14,000. Rental expenses are expected to continue to increase.

Accommodations for Persons with Disabilities

In 2008, Congress amended the Americans with Disabilities Act (ADA), finding that judicial interpretation of the original 1990 enactment resulted in narrowing of the "broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect."⁴ Congress directed that the definition of disability be construed in favor of broad coverage of the ADA. State licensing agencies must provide accommodations to applicants with disabilities seeking admission to any licensed profession. During the period from 2006 to 2009, when the amendments first took effect, accommodation requests received by the Board for the July exam ranged from a low of 38 to a high of 52. From 2010 to 2014, the number of requests received for the July exam went from a low of 51 to a high of 90. In 2014, a total of 115 accommodation requests for both exams were received. These figures indicate a definite increase in such requests since the ADA was amended and the U.S. Department of Justice enacted new regulations on accommodations in 2010.

As required by the ADA, the Board provides accommodations to persons who apply for the Bar examination and who demonstrate a mental or physical disability. Government Code Sec.

³ Rule 11, *Rules Governing Admission to the Bar of Texas*.

⁴ U.S. Congressional Record, S.3406, Sec. 2, September 17, 2008.

82.004(e) requires the Board to make accommodations for examinees with disabilities at every examination site. These accommodations may require rental of separate exam rooms, court reporters hired to record the examinees' answers and extra payroll expense for additional proctors to monitor examinees for extended hours in separate examination rooms. The Applicant is required to submit documentation to support the claimed disability and requested accommodation. Increasingly, the requests are based on assertions of behavioral or learning disabilities. In many of those cases, the Board seeks review of this documentation by expert psychology consultants. The cost for consultant review is the Board's expense. In FY 2014, the Board spent \$16,200 for accommodation review consultations and approximately \$5,000 to provide test site accommodations. In FY 2015, the cost for consultants was \$13,500, the cost for court reporting services was \$7,950, and the cost for test site accommodations was \$9,600.

When the current fee limitations were set in 1985, the ADA had not yet been enacted and disability accommodations were rarely, if ever, provided. The Board has seen an increasing number of accommodation requests since the ADA amendments took effect in 2009 and anticipates continued expansion of the need for and cost of making accommodations available as required by law.

Proposed Solution

Due to these increasing costs for administration of the Bar Exam, an increase in the 30 year old limit on fees charged by the Board is warranted. Improved efficiency in processing applications through technological innovations, together with an increased number of Applicants has allowed the Board to operate within the current fee limitations despite significant cost increases. Continued increases in the number of bar Applicants cannot be assumed. In fact, the number of persons attending U.S. law schools has reportedly decreased by 27% since 2010⁵, although the reduction in law school matriculation has been countered by increased numbers of out of state and foreign trained applicants. This is due, at least partly, to a recent relatively healthy Texas job market, and other market forces that are neither predictable nor within the Board's control.

The Board recommends a \$100 increase in all fees across the board to \$250 from \$150 or to \$800 from \$700, as provided for in Government Code, Sec. 82.033. In addition, if the Supreme Court is authorized to set deadlines for filing applications for the Bar Exam, the Board proposes to establish a "Very Late" no fault filing deadline that would allow Applicants to file as late as 60 days before the exam date, upon payment of a significant late fee. This would eliminate the need for requests to waive the filing deadline on demonstration of good cause, because any Applicant could file late upon payment of the "Very Late" filing fee.

All fees are subject to waiver by the Board based on evidence of the Applicant's indigent status so that an Applicant who convincingly demonstrates lack of financial means or other extreme, exigent circumstances will not be prohibited from taking the exam for such reasons. Any fee increases would require approval by the Texas Supreme Court by revision to Rule XVIII.

⁵ American Bar Association Section of Legal Education and Admission to the Bar.

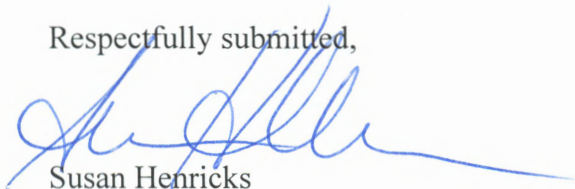
PROPOSAL TWO: ADJUST BOARD MEMBER TERM EXPIRATION DATE

As provided by Government Code §82.001(b), Board members serve staggered terms of six years with two members' terms expiring on August 31 of each odd-numbered year. The August 31 expiration date falls in the middle of the examination grading period for July exam. Board members work on examination grading from August through October. Board members whose terms expire on August 31 have not finished grading exams and new members beginning terms on September 1 must immediately begin drafting questions for the next July exam before any training or orientation can be accomplished. A term expiration date of May 31, occurring after February exam grade release and before question drafting begins for the following year's July exam would greatly facilitate the transition for all concerned. New board members would then have an opportunity to complete orientation before question drafting and grading duties begin. Both of these tasks are sensitive, time consuming and of great importance to the applicants. This adjustment would therefore facilitate improved performance of those tasks by new Board members.

CONCLUSION

Consideration of these proposed statutory revisions to facilitate improved operation of the Board is appreciated.

Respectfully submitted,



Susan Henricks
Executive Director

June 24, 2016