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# State Bar of Texas

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H.B. 599 Chisum, et al (Jackson)

## Summary

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The State Bar is a quasi-governmental agency of the judicial branch that operates outside the State's appropriations process as a public corporation funded primarily by membership dues and professional development program fees. While the Supreme Court exercises primary oversight of the State Bar in approving the agency's budget, promulgating agency rules, and appointing public members to the Board, the Legislature also maintains oversight through the State Bar Act and the Sunset review process.

House Bill 599 continues the State Bar for 12 years, and requires increased accountability through strategic planning and performance-based budgeting. The bill streamlines the State Bar's unnecessarily complex committee structure to make it more responsive to the State Bar's needs. In addition, H.B. 599 establishes in statute a framework for the State Bar's grievance system that simplifies the process to promote consistency and reduce resolution time. The bill also provides for more effective rulemaking by repealing the 51 percent participation requirement in rulemaking and dues referenda. The Legislature adopted all of the Sunset Commission's recommendations, and modified one by reinstating the district court option for grievances. The Legislature added a provision to increase funding for legal services to the indigent by approximately \$2.5 million annually for the next four years. The Legislature also added language regarding potential conflicts of interest by county judges and county commissioners. The list below summarizes the major provisions of H.B. 599, and a more detailed discussion follows.

## Sunset Provisions

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1. Continue the State Bar, but Require Increased Accountability Through Strategic Planning and Performance-Based Budgeting.
2. Streamline the State Bar's Unnecessarily Complex Committee Structure to Make It More Responsive to the Bar's Needs.
3. Establish a Framework for the State Bar's Grievance System in Statute and Simplify the Process to Promote Consistency and Reduce Resolution Time.
4. Require the State Bar to Maximize Services Offered Through Its Client-Attorney Assistance Program Through Increased Coordination With the Grievance System and Other Bar Programs.
5. Provide for More Efficient Rulemaking by Repealing the 51 Percent Participation Requirement in Rulemaking and Dues Referenda.

## **Provisions Added by the Legislature**

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6. Require the Supreme Court to Collect Fees to Fund Legal Services.
7. Address Conflicts of Interest Regarding County Judges and County Commissioners.

## Sunset Provisions

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### **1. Continue the State Bar, but Require Increased Accountability Through Strategic Planning and Performance-Based Budgeting.**

House Bill 599 continues the State Bar for the standard 12-year period until 2015. Similar to executive branch state agencies, the State Bar will develop a formal strategic plan each even-numbered year, covering a period of five years, beginning with the next odd-numbered year. The plan must include goals and a system for measuring performance, concentrating on results and outcomes of Bar operations and services. For increased accountability, the Bar must annually report its performance measures to the Supreme Court and in the *Texas Bar Journal*, and it must use this information in its budgeting process. After implementation of the budget, the Bar must report its performance to facilitate the revision of performance projections when needed, and inform the Supreme Court.

### **2. Streamline the State Bar's Unnecessarily Complex Committee Structure to Make It More Responsive to the Bar's Needs.**

The bill specifies in statute the composition of the State Bar Executive Committee and charges it with the authority to approve the creation of new standing and special committees, upon the recommendation of the President. Before approval, the Executive Committee must require a fiscal impact study, a poll of each chair of existing committees, and a review to determine if the matter can be undertaken by an existing committee. The Executive Committee must also oversee or direct a comprehensive review of standing or special committees at least biennially to examine the continued necessity of each existing committee and determine any overlap of activities among the committees. The State Bar Board may assign other responsibilities to the Executive Committee, as it determines appropriate.

### **3. Establish a Framework for the State Bar's Grievance System in Statute and Simplify the Process to Promote Consistency and Reduce Resolution Time.**

The bill revises the State Bar's grievance system and establishes the major elements of this system in statute. While specific implementation provisions for the grievance process, including time limits, will remain in rules promulgated by the Supreme Court, H.B. 599 contains the following provisions.

- At intake, an investigator of the chief disciplinary counsel (CDC) will classify the grievance as either a complaint or an inquiry. Inquiries will be dismissed and referred to the Client-Attorney Assistance Program (CAAP) to attempt resolution, on a voluntary basis, outside the grievance system. The complainant will be able to appeal the classification of the grievance to the Board of Disciplinary Appeals, and may amend and resubmit the grievance to the CDC. The respondent will not be able to appeal classification decisions since, unlike the current process, more thorough investigation will occur before a hearing takes place.
- Grievances classified as complaints will be thoroughly investigated by the local CDC to determine if the complaint should be dismissed or if just cause exists to believe that misconduct occurred. This CDC investigation serves to streamline the process by reducing the number of administrative hearings necessary in the current process. Chief disciplinary counsel recommendations for dismissal will go to a dismissal docket, in which a district grievance

committee, at a closed hearing without the complainant or the respondent attorney present, will consider denying the dismissal and setting the case for a hearing, or approving the dismissal and possibly referring the matter to CAAP. In cases in which CDC finds just cause, the Legislature did not adopt the Sunset recommendation that would have removed the respondent attorney's ability to opt for a trial de novo in district court in lieu of the Bar's administrative process. Instead, H.B. 599 allows the respondent attorney to continue to request a trial in district court. In the absence of such a request, CDC shall place the complaint on a hearing docket.

- In the hearing docket, a district grievance committee panel will review cases found to have just cause to believe misconduct occurred. At this stage, the Commission for Lawyer Discipline, presenting the complainant's case, and the respondent attorney are parties to the hearing. The panel may dismiss the matter and refer it to CAAP, find a disability and refer to a district disability committee, or issue sanctions. The Commission or the respondent attorney may appeal the finding of a district grievance committee to the Board of Disciplinary Appeals and then to the Supreme Court. The Legislature added language to authorize the Board of Disciplinary Appeals to affirm, modify, or reverse a finding of the grievance committee, or to remand the complaint for rehearing by the grievance committee or a statewide grievance committee panel.
  - The panel hearing will be closed to the public to allow the district grievance committee panel to address confidential matters and issue private reprimands. However, if any sanction other than a private reprimand is issued, all hearing documentation shall be made public upon request.
- 4. Require the State Bar to Maximize Services Offered Through Its Client-Attorney Assistance Program Through Increased Coordination With the Grievance System and Other Bar Programs.**

The bill requires dismissals of client-filed grievances to be referred to CAAP as a voluntary alternative for further resolution. Addressing non-disciplinary issues, CAAP will remain separate from CDC, yet will maintain the confidentiality of the disciplinary system to allow full cooperation of the client and the attorney in resolving non-grievable issues.

**5. Provide for More Efficient Rulemaking by Repealing the 51 Percent Participation Requirement in Rulemaking and Dues Referenda.**

House Bill 599 allows State Bar members to continue voting in referenda concerning proposed rule changes and dues increases, but eliminates the requirement for 51 percent of registered members to vote for a referendum to be considered valid. Instead, a simple majority will determine the outcome of a referendum. Under Supreme Court direction, the State Bar will continue to promote and track member participation in elections, and must report participation levels to the Supreme Court and in the *Texas Bar Journal*. The bill also authorizes the State Bar, with Supreme Court approval, to distribute and receive referendum ballots and related materials electronically, if it can provide assurance that members have secure access to information and voting.

## Provisions Added by the Legislature

### 6. Require the Supreme Court to Collect Fees to Fund Legal Services.

The Legislature added this provision to require the Supreme Court to remit to the Comptroller an annual \$65 legal services fee collected from active members of the State Bar, with certain exceptions. The bill requires the Comptroller to credit 50 percent of the fees to the Judicial Fund for indigent civil legal services programs approved by the Supreme Court, and the remaining 50 percent to a General Revenue account established by the Comptroller for funding indigent defense. The bill also provides for the provision establishing the fee to expire in four years.

### 7. Address Conflicts of Interest Regarding County Judges and County Commissioners.

The Legislature added this provision to allow county judges and commissioners to practice law in courts located in counties in which they serve, if they comply with requirements for disclosing a substantial interest in a business entity. Judges may not enter a court appearance or sign court pleadings as an attorney in a matter before the judge's own court or any Texas court over which the judge's court exercises appellate jurisdiction.

## Fiscal Implication Summary

The provisions in H.B. 599 will increase revenue to the State as a result of making the \$65 legal services fee mandatory. This fee is expected to generate approximately \$3.5 million annually, based on the number of attorneys and the exemptions from having to pay the fee. Half of the revenue goes to the Fair Defense Account in the General Revenue Fund to provide grants to counties for indigent defense services. The other half of the revenue goes to the Judicial Fund for programs approved by the Supreme Court to provide basic legal services to the indigent. However, making this fee mandatory will likely cause the loss of voluntary contributions for access to justice, which totaled approximately \$1 million in 2002. As a result, the net effect of this mandatory fee is a \$750,000 annual increase to the Judicial Fund. These provisions funding indigent legal services will expire on September 1, 2007, and are summarized in the table below.

Other provisions of H.B. 599 have fiscal implications, but because the State Bar does not receive General Revenue appropriation, the provisions would have no fiscal impact to the State. For example, the elimination of unnecessary disciplinary hearings will generate savings to the State Bar totaling \$600,800 annually. In addition, the requirement for all client-driven complaints dismissed in the grievance system to be referred to CAAP will result in an annual increase in program costs of \$365,650, resulting in an overall net savings to the Bar of approximately \$235,000.

Fiscal Year	Gain to the Fair Defense Account (Dedicated Account in General Revenue Fund)	Gain to the Judicial Fund (Account Held Outside State Treasury)	Savings to the State Bar
2004	\$1,750,000	\$750,000	\$235,150
2005	\$1,750,000	\$750,000	\$235,150
2006	\$1,750,000	\$750,000	\$235,150
2007	\$1,750,000	\$750,000	\$235,150
2008	\$0	\$0	\$235,150

