

SUBJECT: Continuing the Board of Law Examiners

COMMITTEE: Judicial Affairs —committee substitute recommended

VOTE: 8 ayes — Hartnett, T. Smith, Alonzo, Corte, Hughes, Rodriguez, Telford, Wilson
0 nays
1 absent — Solis

SENATE VOTE: On final passage, April 15 — voice vote

WITNESSES: For — None
Against — None
On — Michelle Luera, Sunset Advisory Commission; Jack Marshall, Jack Strickland, and Julia Vaughn, Texas Board of Law Examiners

BACKGROUND: The Board of Law Examiners (BLE) is a judicial agency created by the Legislature in 1919 to examine eligible candidates' qualifications to practice law, and to determine the eligibility of candidates to sit for the bar exam. The BLE's activities are governed by the rules adopted by the Texas Supreme Court and include considering the moral character, fitness, and legal study background of examinees and out-of-state attorneys seeking admission to the State Bar, and examining eligible candidates and providing analyses to persons failing the examination. Although the BLE certifies applicants to the Supreme Court as being eligible for licensure to practice law, only the Supreme Court has the authority to issue a law license. Once applicants are certified to the Supreme Court as eligible for regular licensure, the BLE's jurisdiction over these individuals ends.

The BLE is administered by a board, appointed by the Supreme Court, composed of nine attorneys who must be 35 years of age and have practiced law for 10 years. Members serve two-year terms that expire on August 31 of each odd-numbered year and may serve up to five terms. The board interprets

and implements rules adopted by the Supreme Court, considers policy and budgetary matters, develops, administers, and grades bar examinations, and meets with persons who failed the exam to provide analysis.

A person has five years from the date of beginning law school to complete all of the graduation requirements. In certain circumstances, such as impending military deployment, persons may be eligible to take the bar exam when they have four or fewer semester credit hours remaining in their law school education, but are not eligible to be licensed until after completion of graduation requirements.

DIGEST:

CSSB 266 would continue the BLE until 2015 and provide that board members serve staggered six-year terms, with the terms of one-third of the members expiring on August 31 of each odd-numbered year.

The bill would require that BLE deliberations, hearings, and determinations relating to moral character and fitness of an applicant be closed to the public and that related records be confidential. This also would apply to a request that the BLE provide testing accommodations for an applicant with physical, mental, or developmental disability who wished to take the bar exam. In any case, an applicant could request that a hearing be open to persons designated by the applicant.

CSSB 266 would allow a person who had studied law at an approved law school and who had satisfied all requirements for a law degree, other than completing the final 12 semester hours or the equivalent required for graduation, to be eligible to take the bar exam. Any person qualified to take the bar exam under this provision, could not be licensed to practice law until graduation or until satisfying all graduation requirements. Such a person would have two years from the date of satisfactorily completing all parts of the bar exam to satisfy all requirements of graduating from law school. This provision would expire on September 1, 2004.

The bill would allow, upon a showing of good cause or to prevent financial hardship, the BLE to permit an applicant to file an application not later than the 60th day after the deadline for payment of applicable late fees. These provisions would not apply to an applicant who failed the preceding bar exam.

CSSB 266 would require the BLE to provide to a requesting law school for research purposes information on the results of the bar exam and identifying information of particular applicants on the examination, including results separated by sections of the exam and any relevant statistics. An applicant could request, prior to taking the bar exam, that the BLE not release this information. The information provided to the law school would be confidential and subject to any restrictions imposed by state or federal law.

The bill would require the BLE to compile a report indicating the number of applicants who fail the July 2004 bar examination. The BLE would aggregate the data by gender, ethnicity, and race. The report also would include an analysis of any identifiable causes of failure and recommendations to address the causes of failure. The BLE would deliver the report to the Legislature by December 31, 2004. This section would expire on January 1, 2005.

The bill would abolish the District Committee on Admissions and the District Committee on Investigation.

CSSB 266 would allow the BLE, on request, to coordinate with the State Bar to inform a member of the public whether a particular person held a probationary license, and would specify that the Supreme Court had the ultimate authority to define “chemical dependency.”

The bill also would add standard sunset language governing conflicts of interest, training and removal of board members, separation of staff and policy functions, equal employment opportunity and policy, the state employee incentive program, technology policy, and information maintenance.

The bill would take effect on September 1, 2003.

**SUPPORTERS
SAY:**

CSSB 266 would continue the BLE until 2015 while clarifying and modernizing the laws that govern it.

The bill would help law schools obtain bar exam data necessary to improve their curricula, thereby enabling them to produce better lawyers. Currently, law schools get information relating to their students’ scores on the exam, but are not told which scores belong to which students. By requiring the BLE to

provide law schools information on which of their students failed the bar exam, schools could identify what course work the failing students took, how they studied, and any other factors that might have led them to not passing. This information would be an efficient means of helping law schools to improve their programs and would better allow schools to help these graduates to pass the bar exam the next time they took it. Because students could opt out of having their information released, and law schools and the BLE would be required to keep this information confidential, the bill would protect student's privacy rights. However, creating an opt-in provision for students would impose too great an administrative burden on the BLE.

Requiring the BLE to perform a statewide study of the bar results for the July 2004 exam would provide broad, impartial data to determine disparities of passage rates in various classes of individuals. The BLE is in the best position to provide a broad statewide report so that law schools could dig more into detail on these issues. Although this report could require the BLE to hire outside expertise, the benefit associated with obtaining information for this one-time report would outweigh any burden involved.

The bill would make it easier for those called for military duty to take the bar exam early. Current law requires law students to complete school within five years of starting, and allows only students who are within four semester credit hours of graduating to take the bar exam, which only helps students who attend schools on a quarter system. The bill would allow military personnel who were nearly finished with law school to take the bar exam before leaving for active duty and give them enough time when they returned to complete their educations and become licensed. This provision would be effective until September 1, 2004, to ensure that military personnel involved in current conflicts could benefit from this provision.

**OPPONENTS
SAY:**

By requiring the BLE to release student-specific bar exam results to law schools, this bill could raise privacy concerns. Rather than placing the burden on students to opt out of this system, the bill should allow BLE to release information only for students who specifically indicated their approval to participate.

The BLE is in the business of administering and grading the bar exams, not performing broad-based analyses and recommendations on why a population

of students failed. Law schools would be in a much better position to pool their resources to put together this kind of report, preventing the BLE from having to hire outside experts to produce it. Further, most studies look at more than one data set, but this bill would require that only one set be evaluated. Compiling data from only one test would not be reliable or helpful enough to outweigh the burden and cost of collecting it.

NOTES:

The House committee substitute differs from the Senate engrossed version in that it would allow a person who was 12 or fewer semester credit hours short of graduating to take the bar examination early and be licensed under certain conditions.

It would require the BLE to release student-specific bar examination results to law schools and would allow students to opt-out of the process while requiring all parties to keep the information confidential.

The House substitute also would require the BLE to perform an analysis of applicants who failed the July 2004 bar exam and to deliver it to the Legislature by December 31, 2004. It also would specify that the Supreme Court had the ultimate authority to define chemical dependency.

CSSB 266 deleted a provision in the Senate engrossed version that would have placed the BLE under the general revenue and appropriations process. It also deleted a provision involving fees collected and the transfer of funds from a reserve fund established by the Supreme Court to general revenue.