



DEPARTMENT OF CONSUMER AFFAIRS
CALIFORNIA BOARD OF ACCOUNTANCY
2000 EVERGREEN STREET, SUITE 250
SACRAMENTO, CA 95815-3832
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**CALIFORNIA BOARD OF ACCOUNTANCY (CBA)
PUBLIC MEETING NOTICE FOR THE CBA MEETING**

DATE: Thursday, January 27, 2011 **TIME:** 1:00 p.m. to 5:00 p.m.

DATE: Friday, January 28, 2011 **TIME:** 9:00 a.m. to 4:30 p.m.

PLACE: Crowne Plaza Irvine
17941 Von Karman Ave.
Irvine, CA 92614
Telephone: (949) 863-1999
Facsimile: (949) 474-7236

Enclosed for your information is a copy of the agenda for the CBA meeting on January 27-28, 2011. For further information regarding this meeting, please contact:

Veronica Daniel, Board Relations Analyst
(916) 561-1716, or vdaniel@cba.ca.gov
California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815

An electronic copy of this notice can be found at <http://www.dca.ca.gov/cba/calendar.shtml>

The next CBA meeting is scheduled for March 24-25, 2011 in San Diego, CA.

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Veronica Daniel at (916) 561-1718, or email vdaniel@cba.ca.gov, or send a written request to the Board Office at 2000 Evergreen Street, Ste. 250, Sacramento, CA 95815. Providing your request is at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.



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**DEPARTMENT OF CONSUMER AFFAIRS (DCA)
 CALIFORNIA BOARD OF ACCOUNTANCY (CBA)**

**CBA MEETING
 AGENDA**

**Revised
 1/19/2011**

**Thursday, January 27, 2011
 1:00 p.m. – 5:00 p.m.**

**Friday, January 28, 2011
 9:00 a.m. – 4:30 p.m.**

Important Notice to the Public

All agenda times other than those identified as "time certain" are approximate. Agenda items may be discussed, and action taken, earlier or later than the time noted on the agenda. Time permitting, agenda items scheduled for Friday, January 28, 2011 may be discussed and action taken on Thursday, January 27, 2011.

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- January 27, 2011**
- I. Roll Call and Call to Order (**Sally Anderson**).
 Introduction of Newly Appointed CBA Members.
 - II. Educational Presentation on Accountancy Without Borders.
 - 1:00-1:05 A. Comprehensive Mobility Timeline (**Dan Rich**).
 - 1:05-1:15 B. Temporary and Incidental Practice (**Matthew Stanley**).
 - 1:15-1:30 C. CBA's Practice Privilege Program.
 - 1. Overview of the Practice Privilege Program (**Liza Walker**).

2. Consideration of Options for Reinstating the Safe Harbor Period for Practice Privilege in CBA Regulation Section 30 **(Matthew Stanley)**.
- 1:30-1:45 D. Cross Border Practice Legislation **(Matthew Stanley)**.
1. Practice Privilege; SB 1543 (2004), SB 229 (2005), and AB 1868 (2006).
 2. Mobility; AB 2473 (2008).
 3. Elimination of Pathway 1; SB 819 (2009).
- 1:45-2:00 E. Mobility for California CPAs **(Ed Howard)**.
- 2:00-2:15 F. NASBA's Concept of Mobility and Other States' Practice **(Stacey Grooms)**.
- 2:15-2:30 G. Who, What, Where, and When; Accountancy Licensee Database **(Stacey Grooms)**.
- 2:30-2:45 H. California Research Bureau – Accountancy Project **(Brian Sala)**.
- 2:45-3:00 **BREAK**
- 3:00-4:55 I. Open Discussion and Identification of Agenda Items for Future CBA Meetings Related to Mobility and Cross Border Practice.
- 4:55-5:00 III. Public Comments.
- January 28, 2011** IV. Roll Call and Call to Order **(Sally Anderson)**.
- 9:00-9:30 V. Report of the President **(Sally Anderson)**.
- A. Update on Peer Review Implementation **(Rafael Ixta)**.
 - B. Resolutions for Retiring CBA Members.
 - C. Announcement of New Committee and Liaison Appointments.
 - D. Discussion on Amendments to the CBA Guidelines and Procedures Manual **(Veronica Daniel)**.
- 9:30-9:45 VI. Report of the Vice President **(Marshal Oldman)**.

- A. Resolution for Retiring Enforcement Advisory Committee (EAC) Member.
 - B. Recommendation for Appointments to the EAC.
- 9:45-10:15 VII. Report of the Secretary/Treasurer (**Leslie LaManna**).
 - A. Discussion of Governor's Budget.
 - B. Repayment Schedule for Loans to the General Fund (**Dan Rich**).
- 10:15-10:45 VIII. Report of the Executive Officer (**Patti Bowers**).
 - A. Update on 2010/2012 CBA Communications and Outreach Plan (**Lauren Hersh**).
 - B. DCA Director's Report (**DCA Representative**).
 - 1. Update on Hiring Freeze.
 - 2. Performance Measures.
 - 3. Update on BreEze.
 - 4. Expert Consultants.
 - 5. \$1 Million CBA Budget Reduction (BCP).
 - 6. \$10 Million Loan to the General Fund.
 - C. Consideration of Revised Legislative Language to Extend the Sunset Date on Peer Review (**Matthew Stanley**).
 - D. Amendments to the Bagley Keene Open Meeting Act (**Laura Freedman**).
 - E. Update on Current Projects List (Written Report Only).
- 10:45-11:15 IX. Report of the Licensing Chief (**Deanne Pearce**).
 - A. Report on Licensing Division Activity.
 - B. Discussion on International Delivery of the Uniform CPA Examination.
- 11:15-11:45 X. Report of the Enforcement Chief (**Rafael Ixta**).

- A. Enforcement Case Activity and Status Report.
- B. Aging Inventory Report.
- C. Report on Citations and Fines.
- D. Reportable Events Report.

11:45-1:00

LUNCH

**1:00-3:00
TIME CERTAIN**

- XI. Petitions, Stipulations, and Proposed Decisions [Closed Session Government Code Section 11126(c)(3)]. Petition Hearings are Public Before the CBA with a Subsequent Closed Session.
 - A. Kathleen M. Schmidt – Petition for Reinstatement of Revoked Certificate.
 - B. James D. Sharpe – Petition for Reinstatement of Revoked Certificate.
- XII. Committee and Task Force Reports.
 - A. Enforcement Program Oversight Committee (EPOC) **(Michelle Brough, Chair)**.
No Report.
 - B. Committee on Professional Conduct (CPC) **(Marshal Oldman, Chair)**.
No Report.
 - C. Legislative Committee (LC) **(Diana Bell, Chair)**.
No Report.
 - D. Accounting Education Committee (AEC) **(Ruben Davila)**.
No Report.
- E. Ethics Curriculum Committee (ECC) **(Don Driftmier)**.
 - 1. Report of the January 26, 2011 ECC Meeting.
 - 2. Proposed 2011 ECC Meeting Dates.
- F. Peer Review Oversight Committee (PROC) **(Nancy Corrigan, Chair)**.

3:00-3:10

3:10-3:35

1. Report of the January 20, 2011 PROC Meeting.
 2. AICPA Peer Review Exposure Draft, June 1, 2010.
- 3:35-3:45 G. Enforcement Advisory Committee (EAC) (**Cheryl Gerhardt, Chair**).
Report of the November 4, 2010 EAC Meeting.
- 3:45-3:55 H. Qualifications Committee (QC) (**Fausto Hinojosa, Chair**).
1. Report of the January 26, 2011 QC Meeting.
 2. Proposed 2011 QC Meeting Dates.
- 3:55-4:00 XIII. Adoption of Minutes
- A. Draft Minutes of the September 22-23, 2010 CBA Meeting.
 - B. Draft Minutes of the November 17-18, 2010 CBA Meeting.
 - C. Draft Minutes of the July 29, 2010 QC Meeting.
 - D. Draft Minutes of the September 21, 2010 ECC Meeting.
 - E. Draft Minutes of the November 9, 2010 PROC Meeting.
- 4:00-4:20 XIV. Other Business.
- A. American Institute of Certified Public Accountants (AICPA).
Update on AICPA State Board Committee (**Donald Driftmier**).
 - B. National Association of State Boards of Accountancy (NASBA).
 1. Update on NASBA Committees.
 - a. Accountancy Licensee Database Task Force (**Patti Bowers/Sally Anderson**).
 - b. Board Relevance & Effectiveness Committee (**Marshal Oldman**).
 - c. Global Strategies Committee (**Rudy Bermúdez**).
 - d. Uniform Accountancy Act Committee (UAA) (**Donald Driftmier**).

e. UAA Mobility Implementation (**David Swartz**).

2. Discussion of Exposure Draft Regarding UAA Section 3 and UAA Rules Article 14 (**Matthew Stanley**).

4:20-4:30

XV. Closing Business.

A. CBA Member Comments.

B. Comments from Professional Societies.

C. Public Comments.

D. Agenda Items for Future CBA Meetings.

E. Press Release Focus (**Lauren Hersh**).

Recent Press Releases.

XVI. Adjournment.

Please note: Action may be taken on any item on the agenda. The time and order of agenda items are subject to change at the discretion of the CBA President and may be taken out of order. In accordance with the Bagley-Keene Open Meetings Act, all meetings of the CBA are open to the public. While the CBA intends to webcast this meeting, it may not be possible to webcast the entire open meeting due to limitations on resources. Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the CBA prior to the CBA taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the CBA, but the CBA President may, at his or her discretion, apportion available time among those who wish to speak.

Memorandum

CBA Agenda Item II.A
January 27-28 2011

To : CBA Members

Date : January 3, 2011

Telephone : (916) 561-1713

Facsimile : (916) 263-3675

E-mail : drich@cba.ca.gov

From : Daniel Rich
Assistant Executive Officer

Subject : Comprehensive Mobility Timeline

In order to assist the CBA members with their deliberation of previous relevant discussions and actions related to cross-border practice, staff has created the following chronology of events pulled from six years of CBA minutes and meeting materials. The document, noted on the Agenda as the "Comprehensive Mobility Timeline", reflects CBA deliberations from when "temporary and incidental" was the practice of the day, follows CBA actions through development of the Practice Privilege Program, and then outlines the CBA's consideration of AB 2473 – a piece of legislation developed based on the National Association of State Boards of Accountancy concept of "no notice, no fee, no escape."

While the Comprehensive Mobility Timeline reflects staff's efforts at culling approximately 30 CBA meetings worth of materials down into a manageable summary, the full Agenda Items and CBA meeting minutes from which this information was pulled are available on the CBA Web site with the other Meeting Materials, and will be at the January 2011 CBA meeting as resource materials should you need to reference any source documents.

If you have any questions regarding the enclosed materials, please contact Vincent Johnston at (916) 561-4344.

The following is a list of participants that may be referenced in the attached timeline. The list is simply a guide, and is in no way comprehensive. A complete listing of meeting participants may be found on the first few pages of the minutes of that meeting. All relevant meeting minutes and agenda items are available on the CBA Web site, on the CBA Calendar.

Board Members:

Sally Anderson
Ronald Blanc
Rudy Bermudez
Richard Charney
Angela Chi
Ruben Davila
Donald Driftmier
Charles Drott
Herschel Elkens
Sally A. Flowers
Lorraine Hariton
Sara Heintz
Gail Hillebrand
Thomas Iino
Clifton Johnson
Louise Kirkbride
Leslie LaManna
Bill MacAloney
Olga Martinez
Marcus McDaniel
Marshal Oldman
Wendy S. Perez
Robert Petersen
Manuel Ramirez
Michael Schneider
Renata Sos
David Swartz
Lenora Taylor
Ian Thomas
Joseph Tseng
Stuart Waldman
David Walton

Staff and Legal Council

Albert Balingit, Legal Counsel
Kevin Bush, DAG
Don Chang, Senior Legal Counsel, DCA
Mary Crocker, Assistant Executive Officer
Gary Duke, Legal Counsel

Staff and Legal Council (cont.)

Patti Franz (Bowers) Licensing Chief/Executive Officer
Mary Gale, Communications/Planning Manager
Michael Granen, Deputy Attorney General, Board Liaison
Aronna Granick (Wong), Legislation/Regulation Analyst
Scott Harris, DAG, Board Liaison
Robert Miller, Legal Council
Greg Newington, Chief, Enforcement
Nicholas Ng, Practice Privilege Analyst
LaVonne Powell, Legal Council
Dan Rich, Assistant Executive Officer
George Ritter, Legal Counsel
Carol Sigmann, Executive Officer
Liza Walker, CBA Staff
Jeanne Werner, Deputy Attorney General, Board Liaison

Other Participants:

Bruce Allen, CalCPA
Noel Allen, NASBA Legal Council
Sheri Bango, AICPA
Ed Barnicott, NASBA Mobility Project Manager
Ken Bishop, NASBA
James Brackens, AICPA
Courtney Bolin Nash, CPIL
Don Chang, DCA
Susan Coffee, AICPA
Melanie Choy, Big Four Accounting Firms
David Costello, President and CEO of NASBA
Julie D'Angelo Fellmeth, CPIL
Mike Duffey, Ernst & Young, LLP
Michelle Elder, SCA
Del Exeter, SCA
Ed Howard, CPIL
Wesley Johnson, NASBA
Rich Jones, Washington Society of CPAs
Al Kroeger, SCA
David Link, Senator Liz Figueroa's staff
Craig Miller, AICPA
Carl Olson
Richard Robinson, Big Four Accounting Firms
Peggy Ford Smith, SCA
Hal Schultz, CalCPA
Phil Skinner, CPIL
Rick Sweeney, Washington Board of Accountancy
Jeannie Tindel, CalCPA
Michael Ueltzen, CalCPA
Ross Warren, Asm. Business & Professions Committee
Michael Weatherwax, Chair, NASBA committee

Comprehensive Mobility Timeline

September 2003

XI.C. - Background of the Uniform Accountancy Act (UAA) Related to Substantial Equivalency

Presentation to the CBA by Michael Granen and Mary Crocker, outlines differences in the UAA and the California Accountancy Act, and Licensure Requirements across states.

November 2003

XI.A. 2. NASBA's Presentation Related to the UAA

NASBA presents to the CBA changes to the UAA, including the addition of Section 23. Mr. Weatherwax from NASBA informs the CBA that Section 23 was included into the UAA in order to accomplish two things: simplify the process in which practitioners can move between states to become licensed and to enhance and facilitate compliance for those people who are practicing across state borders. He added that the definition of substantially equivalent is that the exam, education, and experience are comparable to or exceed the requirements of another state.

Mr. Weatherwax noted that in 2002 the AICPA and NASBA adopted rules for a notification process, and provided a sample form. He also indicated that NASBA's UAA Committee would like for states to adopt all, or as much of Section 23 as possible, but will accept whatever the states adopt.

XI.B. Board Discussion Related to the UAA

It was moved and unanimously carried to direct the UAA Task Force (UAATF) to consider whether it is appropriate to pursue cross border practice, and if so, how to implement Section 23 and report back to the Board in February.

February 2004

VII.H.6 Recommendation Related to the Implementation of Substantial Equivalency in California

Uniform Accountancy Act (UAA) Chair Renata Sos indicated the UAATF started by looking at the 23 states with substantial equivalency regarding the notification forms used, statutes, and their experiences regarding the entire process. It was clear there was no uniformity between the states. Ms. Sos indicated that the UAATF had developed a process that was innovative in two ways: 1) Practice privileges can be revoked without notice and hearing, 2) Development of an optional blanket notification form by firms. At the time, California was the only state considering such a notification form. The UAATF had also agreed on a fee structure based upon the size of a firm. Ms. Sos requested the CBA direct the UAATF finalize a notification form and draft implementation statutes, to be presented at the May 2004 CBA meeting. **It was moved, and carried unanimously to approve the recommendations of the UAATF.**

February 19, 2004 SB 1543 (Figueroa)

Created to extend the Sunset date of the CBA, and to address issues as defined in the Sunset Review Process.

May 2004

VIII.D.3.g SB 1543 Figueroa – California Board of Accountancy.

Mr. Waldman reported that SB 1543 by Senator Figueroa is the Board's Sunset Bill, and our UAA proposal and other proposed statutory revisions will be amended into it. The hearing before the Sunset Review Committee is scheduled for June 1, 2004.

Mr. Waldman noted that at that hearing, DCA and legislative committee staff will be making recommendations related to this Board. Draft statutory changes will be in print by June 15, 2004. Mr. Waldman noted that there will also be a hearing before the Assembly Business and Professions Committee on June 22, 2004

VIII.G.5. Proposed Statutory Language to Implement Substantial Equivalency in California

Ms. Sos reported that the original charge of the UAATF was to determine whether, and if so how, to implement a cross border practice process based on the UAA Section 23 model for substantial equivalency.

Ms. Sos reported that the UAATF's recommendation is to implement a process for cross border practice that is not based on the UAA. The UAATF voted unanimously to bring to the Board a proposal that was both an improvement over the current state in California related to cross-border practice and also could become a national model.

Ms. Sos reported on the current situation for out-of-state licensees who want to practice in California and what it would look like if this proposal were enacted. This information is articulated in the cover memo for the draft statutes.

Ms. Sos additionally indicated that the UAATF was contemplating an alternative track to individual notification that would be available to firms to provide notice covering multiple employees. She noted that the UAATF unanimously voted to recommend to the Board that it defer the firm notification process indefinitely. **It was moved and carried to defer work on the firm notification process. Ms. Perez was temporarily absent.**

Ms. Sos noted that there were several minor changes to the statutory language that the UAATF approved yesterday and she proceeded to identify the changes [Editor's Note: The changes were minor, and are omitted for brevity. Please see May 2004 Minutes]. **It was moved and carried to adopt the language with the amendments noted. Ms. Perez was temporarily absent.**

Ms. Sos reported that the statute for cross-border practice calls for an implementation date of January 1, 2006, which is very aggressive given what needs to be done. Ms. Sos proposed leaving the UAATF in place to begin the process of drafting regulations. **It was moved and carried to have the UAATF remain in place and begin drafting implementing regulations. Ms. Perez was temporarily absent**

July 2004

VIII.D.3.g – SB 1543 Figueroa – California Board of Accountancy.

Mr. Waldman reported that SB 1543 by Senator Figueroa is the Board's sunset bill, and it has been amended to include the practice privilege proposal, the laws on administrative fines, and other law changes related to the Enforcement Program. It also places in statute our regulation on the disclosure of confidential information, Section 54.1. This bill is scheduled for hearing before the Assembly Appropriations Committee on August 4, 2004. This bill was amended to clarify that the Board shall permit notification to be provided electronically. Staff have been working on assessing the fiscal impact in preparation for the August 4, 2004 hearing.

VIII.F. - Practice Privilege Task Force (PPTF) (Formerly the Uniform Accountancy Act Task Force – UAA TF.

Ms. Sos reported that the PPTF had been charged with developing implementing regulations. She noted that since the PPTF last met, the statutory language [drafted by

the UAATF, and presented at the May 2004 meeting] had gone into SB 1543. Hearings were held on June 1, 2004, before the Joint Legislative Sunset Review Committee and June 22, 2004, before the Assembly Business and Professions Committee. Both hearings went well. Ms. Sos indicated that the agenda items listed were discussed; however, no policy decisions had been made at this point. [Referenced items are included in the July 2004 Agenda Items]

September 2004

VIII.D.2.h. - SB 1543 Figueroa – California Board of Accountancy.

Mr. Waldman reported that SB 1543 (Figueroa) has passed the Legislature and is now awaiting the Governor's signature. This is the Board's Sunset Review bill that includes Practice Privileges and other important law changes. The Board has written to the Governor communicating its support and requesting his signature on this bill.

VIII.F.4. - Consideration of Whether the Board Should Accept NASBA's Designation of States as Substantially Equivalent (Subject to Board Review) or Develop its Own List.

Ms. Sos reported that there are three ways for an individual to qualify for a practice privilege: qualify under the "4 of 10" rule, hold a license in a "substantially equivalent" jurisdiction, or be deemed "substantially equivalent" as an individual, for example through a review by CredentialNet. Ms. Sos noted that the legislation gives the Board the authority to determine what "substantially equivalent" means and to decide whether it will make those determinations or accept the determinations made by an entity such as NASBA.

After discussion, **it was moved and unanimously carried to accept NASBA's designation of states as substantially equivalent while continuing to monitor and add or subtract states as necessary. The motion also included accepting NASBA's CredentialNet certification of individuals as substantially equivalent with the flexibility to reject or deny individuals if the Board determines that they are not substantially equivalent.**

VIII.F. 6. - Consideration of Whether There Should be a "Safe Harbor" Period for Providing Notification to the Board.

Ms. Sos reported that the practice privilege commences upon valid notification. However, issues came up as to whether there should be a period of time after practice begins and when the notification could still be submitted to the Board without penalty. Ms. Sos indicated that the Board wants to encourage compliance and notification, but also wants to ensure that no consumer harm could occur.

It was moved and carried that notice is due on or before commencing to practice but there will be no penalty if the notice is given within five business days of commencing practice. This regulation will remain in effect for two years for transition purposes. There will be a question added to the notification form asking for the reason for the late notification. The form will also require the date of notification and the date the practice privilege commenced. This information will be used to assess whether the "safe harbor" period should be continued, modified, or eliminated after the two-year transition period. If a notice is submitted after the five-business day "safe harbor" period, a fine will be imposed. The amount of the fine and the process for imposing it would be the subject of further staff review and recommendation.

Ms. Hillebrand requested that the minutes reflect that this recommendation was not a unanimous decision of the PPTF. She appreciates the creative thinking done by the public participants but still believes that, as a matter of policy, the concept that makes practice privilege acceptable in lieu of a license is that the Board is aware of who intends

to practice in California before they begin. She indicated that she remained in dissent.

VIII.F.7. - Consideration of the Procedure if the Individual's Fee is not Received on Time or the Check is Dishonored.

Ms. Sos reported that the PPTF recommended the following procedure to address payment issues: at such time as it is determined that the payment has not been received, is late, or the check is dishonored and these circumstances are not the result of an administrative error by the Board, the Board shall issue an administrative suspension and a fine for failure to pay timely. When the fee and the fine are paid, the administrative suspension will be lifted and the practice privilege will continue. The amount of the fine will vary depending upon whether it is the first occurrence or a repeat occurrence. Ms. Sos indicated that staff would recommend the fine levels and the process for imposing the fine.

It was moved and unanimously carried to adopt the PPTF's recommendations.

VIII.F.8. - Consideration of the Standards and Process for Determining how the Disqualifying Conditions may Result in Denial of the Practice Privilege

Ms. Sos reported that the PPTF concurred with Mr. Newington's recommendation and directed staff to proceed as outlined in the memo provided for this agenda item using criteria consistent with the way Licensing and Enforcement staff address similar issues related to applications for licensure. The Board concurred with the PPTF's recommendation.

VIII.F.9. - Consideration of What, if any, Additional Disqualifying Conditions Should be Specified by Regulations.

Ms. Sos reported that the PPTF recommended that the Board adopt a regulation to clarify that it is a "disqualifying condition" to have an unresolved administrative suspension. **It was moved and unanimously carried to adopt the PPTF's recommendation.**

VIII.F.10. - Consideration of What Minor Infractions Related to Licensing Should be Exempted From the Disqualifying Conditions.

Ms. Sos reported that the PPTF recommended that two categories of minor infractions: infractions resulting in administrative citations with fines of \$5,000 or less and infractions in which the only penalty is additional continuing professional education, should be exempted from the disqualifying conditions. The PPTF also recommended that staff study the specific dollar amount and bring a recommendation back to the Board for its consideration. **It was moved and unanimously carried to adopt the PPTF's recommendation.**

VIII.F.11. - Consideration of What Should be the Criteria and Level of Discretion for Administrative Suspension.

Ms. Sos reported that the PPTF recommended that the following items identify the criteria for administrative suspension.

- False representations made in the notice.
- The individual's lack of competence or qualifications to practice under the practice privilege in question.
- The individual's failure to timely respond to a Board inquiry or request for information or documents.

It was moved and unanimously carried to adopt the PPTF's recommendation.

September 30, 2004, SB 1543 (Figueroa)

Containing the provisions for the CBA's new Practice Privilege Program, SB 1543 is signed into law.

November 2004

VIII.D.1. – Update on Legislation

Mr. Waldman reported that SB 1543 by Senator Figueroa was the Board's Sunset Review bill and included the practice privilege provisions and the Board's expanded fine authority. SB 1543 will go into effect on January 1, 2005; however, the practice privilege provisions will not become operative until January 1, 2006.

VIII.F.3.a. - Recommendation Regarding a Process to Address Changes in Reported Information That Occur During the Term of the Practice Privilege.

As background, Ms. Sos reported that under the usual practice privilege process, an individual provides the notification and fee to the Board and then may begin practicing under the privilege. However, there are certain disqualifying conditions which will prevent the individual from getting a privilege without approval by the Board. Ms. Sos indicated that the PPTF developed a procedure to address the situation in which a disqualifying condition occurs during the one-year term of the practice privilege. Ms. Sos noted that the PPTF was recommending Board approval of this procedure which is outlined in Ms. Granick's November 5, 2004, memo [Available in November 2004 Agenda Items] with one modification: if a disqualifying condition occurs during the term of the practice privilege, the individual is obligated to cease the practice of public accountancy in California immediately. **It was moved and unanimously carried to adopt the PPTF's recommendation.**

VIII.F.3.b. - Recommendation Regarding Whether it Should be a Disqualifying Condition to Have an Unpaid Fine Related to Practice Privileges.

Ms. Sos reported that the Board is empowered by statute to impose by regulation disqualifying conditions in addition to the ones specified in statute. Ms. Sos noted that this Board has already specified that it is a disqualifying condition to have an unresolved administrative suspension and to fail to respond to a Board inquiry. The PPTF is recommending to the Board that it also be a disqualifying condition to have an unpaid fine related to a prior practice privilege. **It was moved and unanimously carried to adopt the PPTF's recommendation.**

January 2005

VIII.F.3.a. - Payment not Received or Returned for Insufficient Funds.

Ms. Hillebrand indicated that the factors listed in Section 95.3 will be given consideration in determining the fine amounts:

- First-Time Offenders.
Ms. Hillebrand reported that staff recommended a fine range of \$100 to \$500 for individuals who do not submit the practice privilege notification fee either within the 30 days, or if the check is dishonored.
- Repeat Offenders.
Ms. Hillebrand reported that a fine range of \$250 to \$1,000 was recommended by staff for any subsequent occurrence of failure to pay or attempting to pay with a check that is dishonored.

It was moved and carried to adopt the PPTF's recommendation with a cross-reference to Section 95.3 of the current Accountancy Regulations on Citation Factors. Ms. Flowers was temporarily absent.

VIII.F.3.b. - Late Notification Submission.

Ms. Hillebrand reported that staff provided a recommendation of a fine range of \$250 to \$5,000 for late notification submissions and that the Citation Factors in Section 95.3 also be used in determining these fine amounts.

VIII.F.3.c. - Failure to Report Changes to the Information in the Notification Timely.

Ms. Hillebrand reported that staff provided a recommendation of a fine range of \$250 to \$5,000 for failure to report changes to the information in the notification timely, and that the Citation Factors in Section 95.3 also be used in determining these fine amounts.

VIII.F.3.d. - Failure to Respond to Board Inquiry.

Ms. Hillebrand reported that staff provided a recommendation of a fine range of \$250 to \$5,000 for failure to respond to Board inquiry, and that the Citation Factors in Section 95.3 also be used in determining these fine amounts. **It was moved and carried to adopt the PPTF's recommendation related to agenda items VIII.F.3.b-d. Ms. Flowers was temporarily absent.**

VIII.F.4. - Proposal Specifying a Fine Amount for the Disqualifying Condition Exemption.

Ms. Hillebrand indicated that the PPTF recommended deleting the reference to administrative fines as an exception to the disqualifying conditions, but retaining the reference to continuing education. Only one state reported that they issue any type of administrative fine for minor violations.

This recommendation was included in the motion under Agenda Item VIII.F.5.

VIII.F.5. - Consideration of Final Regulations.

Ms. Hillebrand reported that the PPTF was recommending the version of the regulations that appears in the agenda packet as Attachment 2 [January 2005 Agenda Items]. It is a streamlined version that includes the Notification Form, and includes language to allow the Board to have an electronic on-line form as well as the paper form. Ms. Hillebrand indicated that the PPTF made the following edits.

- Section 28 should include a statement that the text of the electronic and the hardcopy notification forms are identical.
- A provision will be added to Section 29 to indicate that the submission date of the notification form will be the date of the on-line submission or the postmark date for the hardcopy form submitted by mail.
- Section 32(c)(2)(A) will be updated to reflect the action of the PPTF determining not to exempt violations resulting in a fine of a specified amount from being a disqualifying condition.
- Fine amounts will be added to the regulations with a cross-reference to Section 95.3.

Ms. Hillebrand noted that a section of the regulations related to the procedure for administrative suspension was not written yet. Mr. Granen indicated that, in light of due-process concerns, consideration needs to be given to formalize the process so there are clear procedural safeguards.

Mr. Robinson agreed with Mr. Granen that the administrative suspension piece should be in regulation. He indicated that it would be non-controversial and could proceed as an emergency regulation. The current temporary practice provisions will sunset on January 1, 2006, so it is important to have all of the practice privilege regulations in place by then.

Ms. Powell indicated that the Board could approve a regulation mirroring the language in the statute in order to include it with the other proposed regulations. Then the Board could refine it at the March Board meeting and issue a 15-day re-notice providing the revised text. Ms. Crocker suggested delegating the responsibility to Mr. Granen and Ms. Hillebrand to draft the language and incorporate it into the current draft regulations prior to February 18, 2005.

Ms. Hillebrand indicated that it was important for the Board to understand the concept. The concept was to develop a simple procedure to provide for due process while

retaining the Executive Officer's authority to issue an administrative suspension. **It was moved and carried to adopt the draft regulations as described in Attachment 2 [available in the January 2005 Agenda Items] with the modifications described above plus the addition of language to be developed by the Task Force Chair, staff, and legal counsel to create an administrative suspension procedure. In addition, the regulations would include the fine amounts and cross-reference to the existing Section 95.3. Ms. Flowers was temporarily absent.**

VIII.F.5.a. - Report Findings from OAL Regarding the Form in the Regulations.

Ms. Hillebrand reported that at the last meeting an issue had come up regarding whether the actual form needed to be included in the regulations or whether it could be incorporated by reference. There were also issues as to how to reference the electronic form. OAL indicated that language can be included in the regulations referencing the electronic form as long as that form is identical in content to the paper form.

VIII.F.6. - Consideration of Final Notification Form.

Ms. Hillebrand reported that there were several versions of the form in the agenda packet, and it had been revised to include modifications made at the Task Force meeting the previous day.

The recommended revisions consisted of:

- Placing boxes on Qualification Requirements 1 and 3.
- Removing the specified fine amount from disqualifying condition B(1).
- Adding disqualifying condition language to be consistent with Regulation Section 32(c)(7), which was placed before the last disqualifying condition statement.
- Adding the statement "*An answer of No to any of the following statements does not disqualify you from proceeding with the California practice privilege process.*" to ensure practice privilege holders understand the questions included on the Notification form are for statistical purposes and will not preclude them from the practice privilege.
- The Required Additional Information section was moved below the Disqualifying Conditions section.
- The ending statement was edited to read "*Your practice privilege expires at the end of one year.*" and remove the wording from the date of this notice to reflect the changes made to the regulations regarding the submission date.

This recommendation was included in the motion under Agenda Item VIII.F.5.

VIII.F.6.a. - Licensee Comments and Responses to Evaluation of Notification Form.

Ms. Hillebrand reported that with the assistance of Ms. Tindel of CalCPA, the form was sent out for evaluation and the responses from licensees have been incorporated to make the form clearer and easier to use.

VIII.F.7. - Discussion of Possible Questions for Q&A Related to Practice Privilege.

Ms. Hillebrand requested that Board members and members of the public provide their questions to staff. This item will be discussed at the March Board meeting.

March 2005

VIII.F.3. - Consideration of Q&As Related to Practice Privilege.

Ms. Hillebrand indicated that during the discussion of those minor changes, an unanticipated policy issue surfaced. There was a long discussion regarding signing attest reports on behalf of a firm and whether the firm must be registered in California. Under the current statute, a practice privilege holder does not entitle a firm to register in California, firms may only register in California if one partner is licensed in California.

Ms. Hillebrand reported that the policy issue raised is whether some consideration be given to identifying a way for an individual who holds a practice privilege to sign on behalf of the firm.

Ms. Hillebrand indicated that the input from the Enforcement Program was that if the individual were signing on behalf of the firm, the Board would need jurisdiction over the firm.

Ms. Hillebrand reported that since any modification would require a statute change, the Task Force is recommending that staff carefully consider all aspects of this issue, and report back to the Task Force and the Board on the pros and cons of any solution before a legislative proposal is considered.

Ms. Hillebrand noted that this issue of a practice privilege holder not being able to sign on behalf of a firm for work done in California on behalf of a California client will probably still be an issue on January 1, 2006. She indicated that there is a substantial amount of staff work necessary in order to meet the January 1, 2006, deadline and the Task Force is not asking for a delay in the start date.

Ms. Hillebrand reported that the Task Force requested staff to research and make a recommendation at a future Task Force meeting what firm licensure requirements, if any, will be required under the practice privilege.

It was moved and carried to approve the Q&As as modified by the Task Force and to direct staff to work with Ms. Hillebrand and Ms. Sos to consider possible solutions that would allow persons holding a practice privilege to sign on behalf of their firms. Mr. Blanc abstained.

VIII.F.4. - Consideration of What Practice Privilege Information Should be Available on the Board's Web Site.

Ms. Hillebrand reported that the Task Force considered what information should be available to the public regarding who has a practice privilege in California and the recommendation is modeled on the information that is now available. The Task Force recommended the following changes to the proposed agenda item:

- The statuses "Administrative Suspension" and "Revoked" will be included under "Practice Privilege Status" as opposed to "Disciplinary Actions."
- The field "Disciplinary Actions" will be renamed "Enforcement Actions" and provide guidance to the consumer regarding the possible enforcement actions that can occur under a practice privilege.

It was moved and carried to approve the information provided in the agenda packet with the modifications noted above. Mr. Blanc was temporarily absent.

VII.F.5. - Consideration of Practice Privilege Communication and Outreach Plan.

Ms. Hillebrand reported that the Task Force considered an excellent outreach plan that detailed how this information would be communicated to practitioners in other states, licensees, and members of the public. The Task Force recommended adding the following items to the Communication and Outreach Plan:

- Send a communication to NASBA encouraging them to collect and compile the information about practice privilege requirements in all states so that practitioners have a resource to identify other states' requirements.
- Add a line item to include any future policy issues that may need to be addressed by the Task Force and/or Board.

It was moved and carried to adopt the proposed outreach plan with the modifications identified above. Mr. Blanc was temporarily absent.

VII.F.6. - Consideration of Draft Instructions for Notification Form.

Ms. Hillebrand reported that during discussion, the following edits to the Notification Form were identified:

- Statement 2 under Qualification Requirements will be changed to read "My principal place of business is not in California, and I do not have an office in California other than through a firm that is registered in California and of which I am an employee or an employee/owner."
- A space for name and unique identifier will be added to Attachment X [Available in the Agenda Item].

It was moved by Ms. Flowers, seconded by Ms. Heintz, and carried to adopt the notification form with the modifications noted above. Mr. Blanc was temporarily absent.

Ms. Hillebrand reported that the instructions were very well done and the Task Force had the following few minor modifications:

- Fax Notification Forms are acceptable.
 - Any modifications that may be necessary specific to the electronic filing process related to the Notification Form.
 - Disqualifying Conditions – First paragraph – Delete the word “automatically”
- It was moved by Ms. Flowers, seconded by Dr. Charney, and carried to approve the instructions to the notification form with the minor modifications identified above. Mr. Blanc was temporarily absent.**

May 2005

VIII.D.9.a. - Adopt Sections 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 35.1 and Amend Section 70 of Title 16 of the California Code of Regulations Related to Practice Privilege.

Ms. Wong reported that staff had additional amendments that were provided in the May 10, 2005, memo in the agenda packet.

Ms. Hillebrand indicated that these revisions all either reflect prior decisions of the PPTF and were approved by the Board or are fully consistent with those decisions. Ms. Sos noted that the changes also reflect the incredible attention to detail that the staff have devoted to this project and she indicated her appreciation for their work.

It was moved and unanimously carried to adopt the proposed Sections 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 35.1 and to adopt the proposed amendments to Section 70 with the additional revised language in Agenda Item VIII.D.9.a. The motion included issuing a 15-day re-notice and delegating the authority to the Executive Officer to finalize the adoption of the changes if no negative comments are received.

VIII.D.9.b. - Amend Section 98 of Title 16 of the California Code of Regulations Related to the Disciplinary Guidelines.

It was moved and unanimously carried to adopt the amendments to Section 98 as proposed.

VIII.F.3. - Adoption of Appendix 1 to the Practice Privilege Notification Form.

Ms. Hillebrand reported that the Practice Privilege is available to two categories of licensees of other states. One option is for licensees who are licensed in a state that NASBA has deemed to be substantially equivalent. The current list of 46 states is provided as Appendix 1 [See May 2005 Agenda Items] Ms. Hillebrand indicated that the PPTF recommended that the Board adopt this list of substantially equivalent states, and to further delegate to the Executive Officer the responsibility to update this list as changes occur. **It was moved and unanimously carried to adopt NASBA's current list of substantially equivalent states and to delegate the responsibility to the**

Executive Officer to revise the list as necessary.

VIII.F.4. - Consideration of an Approach to Address Issuance of Reports Under the Name of Non-Registered Firms.

Ms. Hillebrand reported that at the last Board meeting, an issue surfaced regarding whether an individual holding a practice privilege would be entitled to sign on behalf of their firm. A firm must be registered in California in order to serve California clients on behalf of the firm. Ms. Hillebrand indicated that the PPTF appointed Ms. Sos and herself to work with staff to evaluate whether there was a solution that would not create more problems than it solved.

Ms. Hillebrand noted that there were a number of very serious issues that were considered by the working group. They noted that registered firms have a variety of obligations and it would be inappropriate for these obligations to be waived simply because the individual held the practice privilege.

However, it was recognized that there is a potentially significant problem for out-of-state tax practitioners who are serving clients that need to file a California tax return. She indicated that the working group chose to recommend to the PPTF and the Board a very limited exception to the requirement to hold a license, practice privilege, or firm registration. The exception would apply to tax returns for natural persons and estate tax returns for persons who were clients at the time of the individual's death. Preparation of those types of returns would not require the practitioner to hold a license or a practice privilege and would not require the firm to hold a California registration if:

- The individual or firm does not physically enter California to practice public accountancy pursuant to Section 5051,
- Does not solicit California clients, and
- Does not assert or imply that the individual or firm is licensed or registered to practice public accountancy in California.

Ms. Hillebrand noted that the PPTF recommended the following change to the language in proposed Section 5054:

On line three, remove the word "individual," and add the following after "California residents:" "or estate tax returns for the estate of natural persons who were clients at the time of death."

Ms. Hillebrand reported that the PPTF unanimously recommended this language to the Board, however, she wanted to disclose that after the PPTF meeting she received a note from Mr. Iino, who could not attend the Board meeting, indicating that upon further reflection, he would favor expanding the exception to make it broader than just for natural persons. Ms. Hillebrand indicated that this would be inconsistent with the action taken by the PPTF and with the idea that any exception should be as narrowly crafted as possible.

Ms. Sos indicated that the reason that this exception is one that the PPTF is comfortable with is because 99 percent of the comments that the Board has received from the profession and the public is related to this issue. There is a need because of a prior relationship between the practitioner and the client. This very narrow exception is in response to real evidence of potentially unintended burdens that would otherwise be created.

Ms. Hillebrand noted that this is being presented to the Board in the form of a recommendation for a statutory change. Staff advised the PPTF that if this exception is approved today, there is a possibility that the change may be in place with the same effective date as the beginning of Practice Privilege.

It was moved and unanimously carried to adopt the PPTF's recommendation with the changes noted above.

July 2005

VIII.G. - The minutes of the May 19, 2005, PPTF meeting were adopted on the Consent Agenda.

November 2005

III.C. - Dissolution of the Practice Privilege and Peer Review Task Forces.

Ms. Sos reported that she was officially disbanding both the Practice Privilege and Peer Review Task Forces. She indicated that the Practice Privilege Task Force had been chaired very ably and with great commitment by Ms. Hillebrand. She thanked the Task Force members and the interested parties for their involvement in the work. She noted that it was a truly remarkable amount of work completed in a short period of time.

Ms. Hillebrand extended her personal thanks to the former Chair of the Task Force, Ms. Sos, the members of the Task Force and representatives from the industry who brought forward their ideas. She also thanked the staff.

VI.B. - Report on the Status of the Practice Privilege Regulations.

Ms. Wong reported that the practice privilege regulations have been at the Office of Administrative Law (OAL) since October 21, 2005, receiving a final review. She noted that part of the rulemaking file consists of a fiscal analysis that needed to be reviewed and approved by DCA, State and Consumer Services Agency (Agency) and the Department of Finance. There was concern that there would not be enough time to complete the process in order to meet the January 1, 2006, implementation deadline, and if not approved, out-of-state CPAs would have no legal way to practice in California. Ms. Wong reported that DCA arranged for Board staff to meet directly with Agency to discuss the regulation package and its fiscal impact statement. She noted that this was an unusual event that had not previously occurred.

Ms. Wong reported that the Board was represented by Ms. Sigmann, Ms. Franz, Mr. Granen and herself. DCA was represented by the Director, Chief Deputy Director, and the Deputy Director for Legislation. The parties met with Agency's Special Assistant to the Agency Secretary and the Chief Legal Counsel. Ms. Wong indicated that it was a very successful meeting and she complimented Ms. Franz and her staff for being prepared with answers to all potential implementation questions. At the end of the meeting, the Agency representatives asked DCA to forward the fiscal impact statement to them for approval and they volunteered to expedite it through the Department of Finance.

On behalf of the Board, Ms. Sos thanked Ms. Sigmann, Ms. Franz, Ms. Wong, Ms. Crocker and any staff involved in this effort for the creativity and tenacity they displayed.

January 17, 2006 – AB 1868 (Bermudez)

AB 1868 exempts foreign accountants from obtaining a practice privilege, and creates a sunset date for the program.

January 2006

VI. - Report of the Executive Officer.

Ms. Franz reported that the Practice Privilege Program went into effect January 1, 2006, and as of January 18, 2006, the Board had received 1,168 notices. She indicated that not all of these notices had been approved, 884 individuals had an actual practice

privilege by January 18, 2006. Ms. Franz noted that the Board was receiving an average of 50 new notices each day. The original staffing levels were based on receiving approximately 1,000 notices per year.

IX.C. 2. - Report on the January 19, 2006, CPC Meeting.

Ms. Hillebrand reported that the CPC met the previous day and discussed the items on its agenda. There was also a discussion on an issue related to domestic accountants that was not on the agenda. She indicated that the CPC had a preliminary discussion in order to understand the issues and, because of the urgency and importance of those issues to the industry, it was agreed to schedule a separate one-day CPC meeting in order to discuss those issues. The special CPC meeting was tentatively scheduled for February 22, 2006.

IX.C.3. - Consideration of Incidental/Temporary Practice in California by Accountants Practicing in Other Countries.

Ms. Hillebrand reported that Board staff were approached in late December by the profession regarding an issue related to foreign accountants. Practice Privilege provides for people who have substantially equivalent qualifications or are licensed in a substantially equivalent state to come into California to practice. However, there is no provision under Practice Privilege that addresses foreign accountants. Ms. Hillebrand indicated that the profession reported that there are foreign accountants who need to come into California for the purpose of doing work as part of engagement that they have in foreign countries. With the repeal of temporary and incidental practice, a question was raised regarding about whether foreign accountants could lawfully do that work. She noted that yesterday the CPC had a presentation from the profession regarding the type of work that foreign accountants do in California.

Ms. Hillebrand noted that there was a level of concern and uncertainty regarding whether these activities are permitted under current law. Ms. Hillebrand reported that the CPC considered a number of proposals to address the foreign accountant issue. These proposals address specifically the issue of foreign accountants who are coming into California to do work incident to a foreign engagement.

Ms. Hillebrand reminded the Board that the problem represented to the Legislature was that under the temporary and incidental practice provisions, the Board had no way of determining who was practicing in California, what they were doing, and the Board had no jurisdiction over them. Practice Privilege was designed to eliminate those problems in addition to its other goals. Ms. Hillebrand indicated that the CPC recommends that the Board approve the language distributed this morning. It is carefully structured to permit a person who has a foreign authorization to practice to come into California incident to an engagement in that country, working under the accounting and auditing standards of that country, and not holding himself or herself out as being licensed by the state of California.

Mr. Blanc indicated that the statutory language the Board is considering today is an urgent matter. The profession has indicated that this is a very serious problem and foreign accountants need to know their status and that this statute provides clarification.

Mr. Blanc indicated that the Board has made this its priority and will do everything it can to move the proposed statute as quickly as possible. He also noted that the Board was privileged to have Mr. Tseng, former Board member, appear at the CPC meeting yesterday and that the information he provided was very helpful. **It was moved and unanimously carried to approve the proposed statutory changes to Business and Professions Code Section 5050 as provided in the agenda item distributed that morning.**

February 14, 2006 – SB 503 (Figueroa)

SB 503 is gut and amended to address problems with the Practice Privilege Program, and to create a peer review program.

February 2006

II.B.1. - Consideration and Approval of Statutory Amendments Related to Temporary Practice and/or Implementation of Practice Privilege.

Ms. Hillebrand indicated that her report would cover the discussion from the CPC meeting, the recommended statutory amendments, identification of issues for further action and study, and the CPC's recommended positions on pending legislative proposals

Ms. Hillebrand thanked the staff for the extraordinary amount of work that went into preparing for the meetings. She had requested staff to review Mr. Robinson's letter and provide point by point comments, as to what the law currently requires and where a different result is sought. She noted that this could have involved a different interpretation of the current law, a possible statute change, evaluation of any potential harm to the public, any unintended consequences, and equity between CPAs in California and out-of-state. Ms. Hillebrand noted that as staff began to perform that work, it became clear that there were several overarching policy issues. The CPC meeting was helpful in identifying those matters which could be resolved within a short timeframe. Ms. Hillebrand thanked those who provided public comment at that meeting.

Ms. Hillebrand expressed that the goal of the CPC and the Board was to look at possible temporary statutory changes of the shortest duration related to practice privilege based on the identified and alleged problems while allowing adequate time for a full vetting of the issues. She indicated that she believed it would be a mistake to propose something now that had not been fully considered with respect to any unintended consequences. Ms. Hillebrand reported that the criteria used for the proposals was whether it would interfere with the protection of the California public, whether it would create inequities with California CPAs, and whether it would create other unintended consequences. She noted that the CPC and the Board were very aware of the urgency of the matter, especially in relation to the tax season.

Ms. Hillebrand reported that the CPC developed the following proposals for statutory changes:

- Proposed Business and Professions (B&P) Code Section 5050.1 – A statutory amendment that would include a statement that regardless of what statutory authorization is being acted under, if a person or a firm is engaged in any act which is the practice of public accountancy in California for a California client, the Board has jurisdiction over that person or firm.
- Proposed B&P Code Section 5096.12 – A statutory amendment to address the problem experienced by a person who qualifies for and receives a practice privilege but cannot sign on behalf of the firm because the firm is not registered in California. She noted that there are a series of hurdles to registering a firm in California, so the CPC chose not to pursue a firm practice privilege, but instead recommends a waiver of the registration requirement solely for the purpose of the individual holding the practice privilege to be able to sign on behalf of the firm.
- B&P Code Section 5054 – There was significant correspondence from tax practitioners around the country regarding the issue of why the practice privilege was necessary if practitioners are only preparing tax returns and never physically enter California.

Ms. Hillebrand indicated that the Board's view has consistently been that this is the

practice of public accountancy in California. She reminded the Board that a narrow exception was developed last year for the preparation of tax returns for individuals and for the estates of persons residing in California at the time of death. She indicated that the CPC's recommendations to the Board, with the dissent of the Chair, is that the exception be broadened to tax services. Expanding the exception to tax services would eliminate the problems that have been identified by the profession. Ms. Hillebrand reported that the CPC recommended the following language as a permanent statutory change as B&P Code Section 5050.1.

“Any person who engages in any act which is the practice of public accountancy in this state consents to the personal, subject matter, and disciplinary jurisdiction of the Board; and is deemed to have appointed the regulatory agency of the state or foreign jurisdiction that issued the person’s permit, certificate, license or other authorization to practice as the person’s agent on whom notice, subpoenas, or other process may be served in any action or proceeding by or before the Board against or involving that person.”

It was moved and unanimously carried to adopt the language above as B&P Code Section 5050.1.

Ms. Hillebrand reported that the CPC proposed B&P Code Section 5096.12 to address the issue of a person who qualifies for and receives a practice privilege, but cannot sign on behalf of the firm because the firm is not registered in California.

Mr. Granen recommended the following changes to proposed B&P Code Section 5096.12.

“(a) A CPA firm that is authorized to practice in another state and which does not have an office in this state may engage in the practice of public accountancy in this state through the holder of a practice privilege provided that the practice of public accountancy by the firm is limited to authorized practice by the holder of the practice privilege.

(b) Any firm practicing under this provision consents to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this chapter.

(c) The board may revoke, suspend, or otherwise restrict or discipline the firm for any act which would be ground for discipline against a holder of a practice privilege through which the firm practices.”

It was moved and unanimously carried to adopt the proposed B&P Code Section 5096.12 with the changes identified above.

Ms. Hillebrand reported that it was the view of the CPC that these temporary statutory revisions have the shortest sunset timeframe possible while still allowing a full vetting of the issues. She requested staff to identify the time necessary for the Board to complete the entire review process. Ms. Hillebrand noted that this would be a substantial process, and the focus of the Board for the next two years, and would therefore require extending the current peer review date.

Ms. Sigmann reported that she was recommending January 1, 2011, as the sunset date for the temporary provisions being proposed. Between March and early summer of this year she would anticipate implementing the changes in the legislation currently being developed. Meetings during 2007 would address procedural changes, and if all goes well, the changes could be enacted in 2008. That would provide a year to notify all interested parties of the impending changes. Ms. Sigmann noted that the Board was up for Sunset Review in 2009 and it would be providing a progress report to the Legislature related to this issue. Ms. Hillebrand indicated that although the CPC did not have this date to consider yesterday, she was satisfied that it was ambitious but reasonable.

Mr. Robinson requested that the provision for the exception on tax services move forward without a sunset date. If that was not possible, he believed that the sunset date should be the same as the practice privilege sunset date, January 1, 2011, for consistency purposes.

Mr. Swartz questioned the benefits of having a sunset date of January 1, 2010, versus the practice privilege sunset date of January 1, 2011. Ms. Hillebrand believed that the earlier date provided a clear statement that these are not ultimate solutions, however, it is a temporary fix designed to create a window of opportunity for the Board to consider all of these issues.

Mr. Robinson restated that he was requesting that the sunset date be January 1, 2011, so that practitioners can be aware of the requirements prior to beginning a new tax season. He indicated that if there are different sunset dates, it may require the profession to pursue a different bill, and he would prefer not to do that.

Ms. Hillebrand indicated that she wanted to send a message that the Board would accomplish the work in the shortest amount of time possible.

It was moved and carried for the sunset date for B&P Code Sections 5050(b), 5054, and 5096.12 to be January 1, 2011. Ms. Hillebrand was opposed.

Ms. Hillebrand indicated that there had been significant correspondence from tax practitioners around the country regarding the issue of practice privilege. She reported that the CPC was recommending to the Board, with the dissent of the Chair, that the exception in B&P Code Section 5054 be broadened to include tax services on a temporary basis. It was noted that expanding the exception to include tax services would eliminate many of the problems that have been identified by the profession.

Ms. Hillebrand indicated that she was not sufficiently informed at this stage to be comfortable that there would be no harm to the California public from the expansion from tax returns to tax services, and for that reason she was in dissent. She additionally expressed her concern that expanding beyond tax returns was substantial and would create gray areas about things that you no longer need a licensed individual or firm to do. Ms. Sos indicated that she favored this amendment because in the extensive discussion yesterday, she was persuaded that the phrase "tax services" is well understood by the profession and also heavily regulated by the Internal Revenue Service (IRS) and the Franchise Tax Board (FTB).

Mr. Robinson indicated that all of his firms are registered in California; however, tax practitioners outside of California want to be able to sign a tax return under this exemption. The language with the use of the term "firm" in B&P Code Section 5054 may deprive practitioners who do not physically enter California who work for a firm that is registered in California from using this exception.

Mr. Duffey believed that a clause was necessary to clarify that the exception would apply to either an individual or a person in a California registered firm, thereby, treating out-of-state practitioners, registered and unregistered firms the same.

Ms. Wong indicated that she believed that Mr. Robinson's concern was addressed through the temporary and incidental practice provision proposed for B&P Code Section 5050(b). Mr. Robinson indicated he believed that B&P Code Section 5054 should include the clarification as well.

Mr. Iino indicated that B&P Code Section 5054 only applied to the profession and there is more than enough guidance to what tax services represents.

Ms. Hillebrand reported that the CPC recommended the following language for B&P Code Section 5054.

“(a) Notwithstanding any other provision of this chapter, an individual or firm holding a valid and current license, certificate, or permit to practice public accountancy from another state may provide tax services without obtaining a permit to practice public accountancy issued by the board under this chapter or a practice privilege pursuant to Article 5.1 (commencing with Section 5096) provided that the individual or firm does not physically enter California to practice public accountancy pursuant to Section 5051, does not solicit California clients, and does not assert or imply that the individual or firm is licensed or registered to practice public accountancy in California.

(b) The board may, by regulation, limit the number of tax returns that may be prepared pursuant to subdivision (a).

(c) This section shall become inoperative on January 1, 2011, and as of that date is repealed.”

It was moved and carried to approve the above language for B&P Code Section 5054. Ms. Hillebrand was opposed.

Ms. Hillebrand reported that the CPC had an extensive discussion regarding temporary and incidental practice. She noted that the restrictions approved by the Board at its last meeting related to the foreign accountants provided an excellent model for similar restrictions on temporary and incidental practice by out-of-state CPAs. The restrictions included not holding out as a California CPA, not soliciting of clients in California, and submitting to the jurisdiction of the Board.

Ms. Sos explained why the Board still needed some form of temporary and incidental practice. The tax services issue was resolved by B&P Code Section 5054, and the triggering of firm registration was resolved by B&P Code Section 5096.12. However, staff could still receive questions regarding what exactly is the practice of public accountancy in California, whether it included litigation support, consulting, and expert witness testimony. Ms. Sos indicated that in order to resolve the additional inadvertent barriers created by practice privilege, the CPC wanted to recreate a limited version of temporary and incidental practice on a temporary basis to provide the Board with the time and the opportunity to address the serious and difficult issues related to the definition of the practice of public accountancy in California before adopting a permanent solution.

Ms. Hillebrand indicated that the Board was in a difficult position because one of the benefits of practice privilege as described by those who advocated for it meant the elimination of temporary and incidental practice allowing the Board to know who was in California practicing.

Ms. Sos believed that it was imperative to communicate to everyone that the limited and very clearly defined restoration of temporary and incidental practice was temporary and solely for the purpose of giving the Board time to resolve some very serious issues in the application of Practice Privilege.

Ms. Hillebrand reported that the CPC recommended that the Board approve the following language for B&P Code Section 5050.

“(a) Except as provided in subdivisions (b) and (c) of this section, subdivision (a) of Section 5054, and Section 5096.12, no person shall engage in the practice of public accountancy in this state unless the person is the holder of a valid permit to practice public accountancy issued by the board or a holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096).

(b) Nothing in this chapter shall prohibit a certified public accountant, a public

accountant, or public accounting firm lawfully practicing in another state from temporarily practicing in this state incident to practice in another state provided that the individual or firm does not solicit California clients and does not assert or imply that the individual or firm is licensed or registered to practice public accountancy in California. This subdivision shall become inoperative on January 1, 2011, and as of that date is repealed.

(c) Nothing in this chapter shall prohibit a person who holds a valid and current license, registration, certificate, permit or other authority to practice public accountancy from a foreign country, and lawfully practicing therein, from temporarily engaging in the practice of public accountancy in this state incident to an engagement in that country provided that:

(1) The temporary practice is regulated by the foreign country and is performed under accounting or auditing standards of that country.

(2) The person does not hold himself or herself out as being the holder of a valid California permit to practice public accountancy or the holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096)."

Note: The language in subdivision (c) was previously approved by the Board, recommended to the Legislature, and is currently contained in SB 503.

It was moved and unanimously carried to approve the proposed changes to Business and Professions Code Section 5050.

Ms. Hillebrand reported that the CPC discussed and was recommending proposed changes to B&P Code Section 5088 that would not require an individual who is the holder of a current and valid license from any state to obtain a practice privilege during the time that he or she has a pending application for licensure in California. She noted that prior to practice privilege, these applicants were permitted to practice while their applications for licensure were pending and that staff had tracked them through a manual system.

Ms. Hillebrand added that since practice privilege has been implemented, the manual tracking system had been abolished and these applicants must obtain a practice privilege while pending licensure in California. She indicated that the CPC had developed the proposed changes with incomplete information. Further discussion with staff identified that this would impact a small number of applicants and the manual tracking system had been eliminated.

Ms. Hillebrand indicated that based on this additional information, it was her opinion as CPC Chair that this recommendation was no longer a viable option. She did note that the CPC had not yet considered this additional information.

Ms. Franz added that the staff originally responsible for the manual tracking system have since been redirected and are focused on processing applications for individual and firm licensure. She indicated that the Board had received no negative comments from applicants regarding this change and that it does not seem an appropriate use of staff resources to re-implement the manual system versus processing applications more quickly. Based on this information, the Board concurred that no change should be made to the current B&P Code Section 5088.

Ms. Hillebrand indicated that the language proposed for B&P Code Section 5054.1 is complimentary language to the consent to jurisdiction language in proposed B&P Code Section 5050.1. She noted that it is the procedural piece on how the Board would assert its jurisdiction.

Ms. Hillebrand reported that the CPC recommends that the Board approve the following language for B&P Code Section 5054.1.

“The board may revoke, suspend or otherwise restrict or discipline the authorization to practice under subdivisions (b) or (c) of Section 5050, or subdivision (a) of Section 5054, or Section 5096.12 for any act which would be a violation of this chapter or ground for discipline against a licensee or practice privilege holder, or ground for denial of a license or practice privilege under the Code. The provisions of the Administrative Procedure Act, including, but not limited to, the commencement of a disciplinary proceeding by the filing of an accusation by the board shall apply to this Section. Any person whose authorization to practice under subdivisions (b) or (c) of Section 5050, or subdivision (a) of Section 5054, or Section 5096.12 has been revoked may apply for reinstatement of the authorization to practice under subdivisions (b) or (c) of Section 5050, or subdivision (a) of Section 5054, or Section 5096.12 not less than one year after the effective date of the board’s decision revoking the temporary practice authorization unless a longer time, not to exceed three years, is specified in the board’s decision revoking the temporary practice authorization.”

It was moved and unanimously carried to approve the above language for B&P Code Section 5054.1.

Ms. Hillebrand reported that due to the urgency of the work related to Practice Privilege, the peer review report date would also need to be delayed to January 1, 2011.

Ms. Hillebrand identified the following issues that would require further study:

- Whether additional exemptions should be added to B&P Code Section 5054.
- Continued study of the temporary exemption adopted regarding tax services.
- Whether any of the temporary statutory changes should become permanent.
- The balancing of public protection and knowing who is practicing in this state through practice privilege, while not creating barriers to entry for licensed out-of-state practitioners.
- Interplay between firm registration and the individual holding a practice privilege.

Ms. Hillebrand wanted the ability to amend the minutes to include any issues for further study that she failed to mention previously.

Ms. D’Angelo Fellmeth requested to reopen the discussion regarding necessity of obtaining a California license is not a new issue. The profession has always had to consider that. She noted that prior to January 1, 2006, individuals and firms engaged in work that brought them in contact with the state of California had to determine whether that work was temporary and incidental or whether it required licensure. Ms. D’Angelo Fellmeth noted that the new answer was practice privilege. She urged the Board not to reopen this gaping offensive loophole that had been closed.

Ms. Hillebrand indicated that she believed that this is a very close question. She noted that she did not believe that waiving substantial equivalency was a viable solution.

Mr. Robinson reported that there were many areas in question that would need to be defined as exceptions to the practice of public accountancy. He appreciated the work of the Board in resolving these issues and urged the Board to maintain its earlier position.

Mr. Blanc reiterated that what the Board has brought back in with temporary and incidental practice are important restrictions, notifications and expansion of the Board’s jurisdiction. Mr. Blanc noted that it was a very difficult decision for Ms. Hillebrand, Ms. Sos, and himself, although, he was somewhat comforted by the restrictive provisions that had been added.

Ms. Sigmann reported that it was very difficult for staff to be in this position of not being

able to answer questions regarding practice privilege. She indicated that the Board has a broad definition of the practice of public accountancy in B&P Code Section 5051 and staff have been struggling with its application to practice privilege ever since implementation.

Ms. Sigmann reported that the reason staff supported this proposed change is that it is necessary until there is further clarity to B&P Code Section 5051 as it relates to practice privilege.

Ms. D'Angelo Fellmeth commented that Board members are not sitting at this table as practitioners. The role of a Board member is to protect the public interest. She indicated that it is the primary priority of Board members to protect the public and she believed that practice privilege provided much more consumer protection than temporary and incidental practice. Ms. D'Angelo Fellmeth believed that the practice privilege program with the other changes discussed could move forward without reinstating temporary and incidental practice. Ms. D'Angelo Fellmeth urged the Board to consider her thoughts.

There was no action taken by the Board to reconsider its previous decision regarding the implementation of limited temporary and incidental practice. The Board would be studying this issue over the next several months.

Ms. Hillebrand indicated that the revised language to Section 5054 had just been distributed to address the concern communicated by Mr. Robinson. This language reads:

*“(a) Notwithstanding any other provision of this chapter, an individual or firm holding a valid and current license, certificate, or permit to practice public accountancy from another state may provide tax services without obtaining a permit to practice public accountancy issued by the board under this chapter or a practice privilege pursuant to Article 5.1 (commencing with Section 5096) subject to the restrictions that the individual or firm does not physically enter California to practice public accountancy pursuant to Section 5051, does not solicit California clients, and does not assert or imply that the individual or firm is licensed or registered to practice public accountancy in California.
(b) Notwithstanding subdivision (a), any firm which is licensed to practice public accountancy in this state may provide the services set forth in subdivision (a) through individuals qualified to practice under subdivision (a) however the restrictions of subdivision (a) shall not apply to the firm.
(c) The board may, by regulation, limit the number of tax returns that may be prepared pursuant to subdivision (a).
(d) This section shall become inoperative on January 1, 2011, and as of that date is repealed.”*

Mr. Granen indicated that the purpose of these changes was to remove the unintended restrictions current B&P Code Section 5054 places on CPAs employed by registered firms and put them on equal footing with CPAs employed by unregistered firms. Mr. Robinson indicated that he strongly supported the changes.

It was moved and unanimously carried to approve the revised language to Business and Professions Code Section 5054.

II.B.2. - Consideration of Legislation Related to Temporary Practice and/or Implementation of Practice Privilege.

a. Report and Recommended Position on SB 503, Figueroa.

Ms. Hillebrand reported that SB 503 contained the following statutory changes that had been previously approved by the Board: 1) the fee change language, 2) the peer review language which needed to be modified with the date as January 1, 2011, and 3) the

foreign accountant exception language.

Ms. Hillebrand noted that legislative counsel recommended removing the word “primarily” from the language approved by the Board at its January 20, 2006, meeting. Ms. Hillebrand indicated that the CPC determined that even with the changes that the Board adopted today, it was necessary to move forward with the foreign accountant language.

Ms. Hillebrand reported that the CPC recommended that the Board adopt a SUPPORT position on SB 503.

Mr. Robinson requested that SB 503 be amended to include all of the language that had been approved at this meeting.

Ms. Hillebrand indicated that the CPC did discuss that idea and had no policy objections to it; however, it was the view of the committee that the strategic decision on how to present this information to the Senator and other members of the Legislature was within the Executive Officer’s discretion. Mr. Robinson indicated that he supported the work product and wanted to move it expeditiously, and that his colleague, Mr. Allen, would not support SB 503 unless the language that was adopted by the Board today is amended into that bill. Ms. Sigmund indicated that it was her intention to include the language in SB 503.

Mr. Allen indicated that on behalf of CalCPA, it had no issue with anything currently in SB 503, but its position is that the bill is incomplete. He reported that with the proposed changes adopted today amended into the bill, CalCPA would support it.

It was moved and unanimously carried to adopt a SUPPORT position on the current language in SB 503.

b. Report and Recommendation Position on AB 1868, Bermudez, Accountancy: Licensure.

Ms. Hillebrand reported that the Board had been provided with draft amendments to AB 1868, dated February 13, 2006. She noted that this bill was currently a “work in progress,” however, the Board needed to look at the text currently available. Ms. Hillebrand indicated that there was a report from Deputy Attorney General Granen that suggested this language would create serious issues regarding the Board’s jurisdictional ability, particularly in its ability to prohibit unlicensed practice. The amendments would also broaden B&P Code Section 5054 beyond the proposed amendments adopted by the Board today. Also, it proposed a later sunset date than what the Board adopted.

Ms. Hillebrand reported that for those reasons, the CPC was recommending that the Board adopt an OPPOSE UNLESS AMENDED position on AB 1868. She indicated that if the bill begins to move forward, staff could then communicate the Board’s position to the Legislature. She added that she was hopeful that it would not be necessary for the Board to use this position.

It was moved by Ms. Hillebrand, seconded by Mr. Swartz, and carried to adopt a position of OPPOSE UNLESS AMENDED on AB 1868. Ms. Sos was opposed.

Mr. Allen indicated that it was CalCPA’s intention to request that the author hold this bill and not move it forward in its current form. He noted that as SB 503 makes progress, this bill could become a vehicle to assist in moving SB 503 forward.

Mr. Robinson indicated that the fee issue might be controversial to the Republicans in the Legislature. If that happens, Mr. Allen had agreed to put the Board’s fee provisions in a bill that the profession would support.

March 2006

III.A. - Consideration of Modifications to the Proposed Statutory Language Adopted by the Board at its February 23, 2006, Meeting Related to Practice Privilege.

Mr. Blanc reported that he was going to turn the meeting over to Ms. Sos to present to the Board the various proposed statutory changes to address the concerns identified during implementation of the Practice Privilege Program.

Ms. Sos reported that after extensive testimony from all of the stakeholders, deliberation and consideration of all of the issues at the Board's February meeting, the Board approved a four-part statutory change to address on a temporary basis the unintended consequences from the implementation of the Board's Practice Privilege Program.

After that meeting, Mr. Blanc designated Ms. Hillebrand and Ms. Sos to work with staff to study any technical drafting related to the proposed statutory changes to ensure that the language was consistent with other provisions in the Accountancy Act.

Ms. Sos reported that she and Ms. Hillebrand met with staff and interested parties the previous week to address possible technical changes but not to revisit or reconsider the policy decisions that underpinned the proposed statutes. She noted that it was not a public meeting. Ms. Sos reported that Assembly Member Bermudez' bill, AB 1868, would incorporate the Board's proposed statutes in their entirety and a copy of the latest version had been provided at this meeting.

Ms. Sos indicated that in the agenda packet was a memo from Ms. Wong dated March 8, 2006. Attachment 1 [Available in the Agenda Item] of that document provided the language adopted by the Board at its February 23, 2006, meeting and the proposed technical revisions to that language were indicated by bold print. Ms. Sos reported that the cover memo identified the changes being recommended and explained why they were necessary.

Ms. Sos reported that the change to Section 5050 restored a limited version of temporary and incidental practice in California on a temporary basis. One of the issues that arose after the February Board meeting was whether the provision as written would prohibit firms that were registered in California from soliciting clients in California. Ms. Sos noted that the proposed changes in Section 5050(b) clarified that California registered firms were not prohibited by this section from soliciting California clients.

It was moved and carried to adopt the proposed changes to Section 5050. Ms. Flowers and Ms. Heintz were temporarily absent.

Ms. Sos then described Sections 5050.1 and 5050.2 as key building blocks to ensure that the Board has full disciplinary jurisdiction and authority over any firm or individual that practices public accountancy in California. She noted that these sections were being proposed to be implemented on a permanent basis. Ms. Sos indicated that language in Section 5050.1 was added to make it declarative of existing law.

It was moved and carried to adopt the changes to Section 5050.1. Ms. Flowers and Ms. Heintz were temporarily absent.

Ms. Sos reported that Section 5050.2 was intended to make clear that any practice that occurs pursuant to the proposed statutory revisions would be subject to the Board's disciplinary authority, including but not limited to, the ability of the Board to impose fines. She indicated that subdivision (b) clarified that this Board's administrative suspension provision which is part of the practice privilege provisions would also extend to firms.

Ms. D'Angelo Fellmeth welcomed Ms. Chi and Mr. Petersen. She indicated that the Board had added the authority to issue a fine pursuant to Article 6.5 and that Article limits

the Board to fining licensees or applicants for licensure. Ms. D'Angelo Fellmeth noted that this created confusion and she did not believe that the language was sufficient.

Mr. Granen agreed that there was a need for clarification of the language if there was doubt regarding the fine provision. He noted that he would work on the language after the meeting and present his suggested changes to the Board tomorrow, March 17, 2006. **It was moved and carried to adopt the proposed changes to Section 5050.2 with the understanding that technical revisions related to the fining authority would be presented later in the meeting. Ms. Flowers and Ms. Heintz were temporarily absent.**

Ms. Sos reported that Section 5050.3 was a proposed new section that related to a provision in current Section 5054, which gave the Board the authority, by regulation, to limit the number of tax returns that could be prepared under the exemption. Ms. Sos indicated that after discussion by the working group, it was decided that it would be beneficial for the Board to have express statutory authority to implement, interpret or make specific provisions of the Board's proposed statute by regulation. She noted that as statutes are implemented, there can be unintended consequences, and the Board should have the ability to fine-tune the statute by regulation.

Ms. Sos indicated that Mr. Ritter had some concerns regarding whether this provision would give the Board the ability to limit the scope of exempted tax services in Section 5054. Mr. Ritter indicated that Section 5050.3 is restating what is already in the law, that the Board has the authority to adopt regulations to implement the Accountancy Act. He noted that existing Section 5054 explicitly permits the Board to limit the number of tax returns by regulation. He believed that the proposed Section 5054 should have an equivalent provision with that type of specificity to match the current amendments. Otherwise, one could argue that the Board does not have the authority to restrict what is already provided for in the statute. Mr. Ritter reported that the Board could instead adopt the following language change to Section 5054. "The Board may, by regulation, limit the nature and quantity of tax services provided under this section."

It was moved and carried to not adopt Section 5050.3. The motion included adding a subdivision in Section 5054 that would state: "The Board may, by regulation, limit the nature or quantity of tax services that may be provided pursuant to subdivision (a)." Ms. Heintz was temporarily absent and Ms. Hillebrand abstained.

Ms. Sos reported that Section 5054(a) was split into two subsections to clarify what the obligations were with respect to individuals, firms, and non-registered firms.

Ms. D'Angelo Fellmeth inquired as to whether the Board was amenable to revisiting the issue of expanding Section 5054 to exempt all tax services. Mr. Blanc indicated that the Board would consider her request after it had acted on all of the proposed changes. **It was moved by Mr. Johnson, seconded by Mr. Swartz, and carried to approve the changes to Section 5054. Ms. Heintz was temporarily absent and Ms. Hillebrand was opposed.**

Ms. Sos reported that the principal change to Section 5096.12 was to ensure that the provision was self-executing. If a firm was engaging in the practice of public accountancy through a practice privilege holder, it was consenting to the jurisdiction of the Board. **It was moved by Ms. Sos, seconded by Mr. Iino, and carried to approve the changes to Section 5096.12. Ms. Heintz was temporarily absent.**

Ms. Sos then listed the outstanding issues that were identified during and after the working group meeting.

The first issue related to Section 5096.12. This section currently applies to attest and non-attest services and the question was raised whether it should be limited to non-attest services. Ms. Sos indicated that this was a policy decision to be addressed by the entire Board.

The second issue was the ability of staff to identify with precision and accuracy which firms are practicing through a practice privilege holder. Ms. Sos noted that the Board currently requires firm names to be provided on the notification form. However, the names are not being provided in a precise way and there is no unique identifier to distinguish between firms with similar names. The issue is whether the Board needs statutory authority to require an identifier for the firm being reported on the notification form. A suggestion was made to use the Federal Tax Payer ID number.

The third issue related to the definition of firm in the context of Section 5096.12. Ms. Sos reported that legal counsel had concerns that there are inconsistencies or ambiguities in the statutory provisions where that term is used.

The final issue related to the tax services provision.

Ms. Sos reported that at the Board's February meeting, Section 5096.12 was discussed mostly in the context of tax services. It was possible that some Board members were under the impression that the exemption in 5096.12 was limited to non-attest services, however, that is not how the statute is drafted. Ms. Hillebrand indicated that she believed that since there was no volume restriction on practice privilege, it is important that firms doing attest work be registered in California

Mr. Newington reported that there are features in Section 5096.12 that disfavor California CPAs. If you are a CPA working in California, your firm would have to be registered in California and would have to comply with all California firm requirements. He indicated that the disparity is that practice privilege holders would have a lesser challenge than individual California licensees with regard to their ability to practice in California through a firm that is not registered in California.

Mr. Newington additionally noted that firms practicing through a practice privilege holder could do so as a Limited Liability Company (LLC), while California licensed firms cannot. He indicated that California licensed firms have extensive requirements including reportable events and non-licensee ownership.

Mr. Shultz indicated that he was concerned about barriers that other states may decide to duplicate. He noted that there was no question that the regulation of attest services should be robust. He indicated that the problem is that attest defines the entire engagement which is made up of many tiny steps that lead to a conclusion. He indicated that he believed that restricting Section 5096.12 to non-attest services would be regulatory overkill.

Ms. Tindel encouraged the Board to hold to the concept of the UAA, which was ease of mobility and increased consumer protection. California should not be in a position where it is prohibiting consumer choice with regard to the selection of an auditor. Mr. Blanc indicated that the Board had decided to apply the practice privilege concept without making a limitation on attest services. He encouraged the Board to stay with its previous decision. Mr. Swartz indicated that he was comfortable with the concept of substantial equivalency and that firms are licensed and regulated in their home states.

Ms. Hillebrand reported that the Board had studied practice privilege as it applied to individuals for two years and had only studied the firm exception concept for two days. She believed that was not enough time to complete a full evaluation of what it means for

a firm not to have to register in California and practice through a practice privilege holder.

Ms. Sos reported that when the Practice Privilege Task Force began, one of the motivations was the GAO report that stated that the inability of qualified CPAs to move seamlessly across state lines was having an adverse effect on small firms' ability to compete with the big firms for business, particularly in the area of audits. She believed that it was imprudent for the Board to put hurdles up that will affect the small firms. She further indicated that she believed that the other disciplinary and jurisdictional provisions would protect California's consumers.

Mr. Link of Senator Figueroa's staff indicated that the rule in the policy area has been that attest services require licensure. He added that it was important to address mandatory auditor rotation as required by the Sarbanes-Oxley Act through practice privilege; however, to no longer require California licensure for attest services is a large policy change and something that should be decided with more than a couple of days of discussion.

It was moved to amend the proposed language in Section 5096.12 below to add "This section does not apply to attest services" and to cross-reference the definition of attest services in the peer review statute. There was no second on the motion.

It was then moved and carried to adopt the proposed language to Section 5096.12 as stated below. Ms. Hillebrand was opposed.

Section 5096.12 – (a) A CPA firm that is authorized to practice in another state and which does not have an office in this state may engage in the practice of public accountancy in this state through the holder of a practice privilege provided that:

(1) The practice of public accountancy by the firm is limited to authorized practice by the holder of the practice privilege; and

(2) The firm that engages in practice under this section is deemed to consent to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this section.

(b) The board may revoke, suspend, issue a fine pursuant to Article 6.5 of this chapter, or otherwise restrict or discipline the firm for any act which would be grounds for discipline against a holder of a practice privilege through which the firm practices.

(c) This section shall become inoperative on January 1, 2011, and as of that date is repealed.

Ms. Sos reported that staff is recommending requiring a federal taxpayer identification number for firms and the firm's address and telephone number on the practice privilege notification form to more clearly identify firms. The proposed language is provided below. It was noted that the notification forms are not public record.

"Section 5096.13 – The notification of intent to practice under a practice privilege pursuant to Section 5096 shall include the name of the firm, its address and telephone number, and its Federal Tax Payer Identification Number."

It was moved and unanimously carried to adopt the proposed statutory language in Section 5096.13.

Mr. Ritter reported that the term "firm" is defined in Section 5035.1 as a sole proprietorship, corporation, or partnership. Section 5035 defines "person" as a number of entities including LLCs. Mr. Ritter indicated that under California law, LLCs cannot practice accountancy in California. The new statutory amendments refer to a firm that is lawfully practicing in another state. He indicated that the term "firm" is ambiguous as to whether it would include LLCs if they were authorized to practice accountancy in another state. The language in amended Sections 5050(b) states that "nothing in this chapter

shall prohibit a firm from lawfully practicing in another state” and that increases the ambiguity. Mr. Ritter noted that this was a policy discussion for the Board to address.

Mr. Robinson indicated that one of the driving forces behind practice privilege was the UAA and seamless practice across state lines. He noted that lawfully practicing in another state means being lawfully regulated and every state has a different legal scheme.

Mr. Ritter indicated that the policy issue was one thing but the ambiguity and interpretation of the term “firm” needed to be addressed and the Board may choose to adopt some clarifying language. Mr. Blanc suggested that the Board adopt the policy change and legal counsel could work on proposed language for the next day’s meeting. **It was moved by Ms. Sos, seconded by Mr. Swartz, and carried that the Board would not prohibit out-of-state LLCs from practicing in California through a practice privilege holder. Legal counsel was directed to work on clarifying language to implement that policy if needed. Ms. Hillebrand was opposed.**

[Editor’s Note: There is a very lengthy discussion by Ms. D’Angelo Fellmeth and the CBA, with input from Mr. Robinson, requesting the CBA re-consider proposed revisions to Section 5054. They have been omitted due to space constraints, but are included in the March 2006 Minutes.]

It was moved to reconsider the proposed revisions to Section 5054. Mr. Blanc, Mr. Swartz, Dr. Charney, Ms. Chi, Mr. Driftmier, Ms. Flowers, Mr. Iino, Mr. Johnson, Mr. Petersen, Ms. Sos and Mr. Waldman were opposed. The motion failed.

Ms. Sos reported that a new document had been provided that addressed three issues that were identified in the meeting the previous day, March 16, 2006. The first issue was the definition of licensee for the purposes of the fining authority in Article 6.5. Mr. Ritter reported that Section 5116.6 defines “licensee” for the purposes of Article 6.5 broadly enough to include all forms of authorized practice and consequently no change to Section 5116.6 was recommended. The Board concurred with the recommendation.

Ms. Sos indicated that Mr. Ritter had identified a potential ambiguity that may cause confusion in the Board’s proposed statute regarding the meaning of the term “firm.” The Board previously voted as a policy not to exclude out-of-state firms that were LLCs from practicing in California through a practice privilege holder. The following language was proposed.

“Section 5035.3 – For purposes of subdivision (b) of Sections 5050, 5054, and 5096.12, firm includes any entity which is authorized or permitted to practice public accountancy as a firm under the laws of another state.”

It was and carried to approve the revised language to Section 5035.3. Ms. Heintz was temporarily absent.

Ms. Sos reported that the Board discussed the need to have a specific authorization in Section 5054 to authorize the Board, by regulation, to limit the nature and quantity of tax services that are permitted pursuant to subdivision (a) of Section 5054. The following language was proposed.

“Section 5054(b) – The board may, by regulation, limit the nature and quantity of tax services provided pursuant to subdivision (a) of Section 5054.”

It was moved and carried to adopt the changes to Section 5054(b). Ms. Hillebrand was opposed and Ms. Heintz was temporarily absent.

Mr. Blanc thanked both Ms. Sos and Ms. Hillebrand for their tireless efforts to address these difficult implementation issues and achieve resolution. Mr. Blanc requested that Ms. Hillebrand, as Chair of the CPC, add a discussion of the parameters of tax services

to the Committee's May agenda. He noted that the Board has had a spirited discussion over the last two months on the concept of tax services, and from the presentation yesterday, it is clear that it was an evolving concept. He indicated that he believed that it was the Board's obligation to study to what degree tax services should be subject to any exemptions, and if so, how the Board would define it.

Ms. Hillebrand indicated that she believed that it would be helpful if members of the public and the profession would forward the existing definitions of tax services, the definitions that are under consideration by other bodies, and information about the nature of the regulation offered by those bodies for consideration by the CPC, in addition to the background provided by staff. It would also be helpful to have information presented regarding whether other entities engage in any competency screening as opposed to complaint based activity.

Mr. Blanc directed Ms. Sigmann to issue a communication to interested parties and other regulatory entities to respond to the questions posed.

IX.D.2.f. - AB 1868 (Bermudez) – Accountancy: Licensure.

Mr. Waldman reported that AB 1868 is sponsored by CalCPA. It was discussed by the CPC and the Board at the February 22-23, 2006, meetings. At the February 2006 meeting, the Board adopted an "oppose unless amended" position on this bill. It is anticipated that AB 1868 will be heard by the Assembly Business and Professions Committee on April 4, 2006.

Mr. Waldman reported that AB 1868 was amended on March 15, 2006, to contain the language approved by the Board at its February 23, 2006, meeting and the language for Section 5050(b) that was approved by the Board earlier at this meeting. He added that CalCPA indicated that it is their intent that all of the Board-approved language be included in AB 1868. Mr. Waldman indicated that the Legislative Committee recommended that the Board adopt a position supporting this bill if it is amended to include all of the Board's language.

Ms. Tindel indicated that this bill contained critical issues for consumers and CalCPA would appreciate the Board's strong support and testimony when it is heard on April 4, 2006. Mr. Blanc indicated that he was planning to attend the hearing.

It was moved and carried to adopt a "support if amended" position on AB 1868. Ms. Hillebrand was opposed and Ms. Sos was temporarily absent.

IX.D.2.g. - SB 503 (Figueroa) – Accountants.

Mr. Waldman reported that SB 503 contains the Board's proposed statute changes related to foreign accountants, fees, and peer review. At its February 2006 meeting, the Board adopted a "support" position on SB 503. Last week Ms. Sigmann was informed that Senator Figueroa does not intend to move forward with SB 503 at this time, and another bill will have to be found for the language on peer review and fees. The Legislative Committee recommended no change to the Board's position on this bill. The Board concurred with the recommendation.

May 2006

IX.D.3.f. - AB 1868 (Bermudez) – Accountancy: Licensure.

Mr. Waldman reported that the Legislative Committee recommended that the Board not change its "support" position that was adopted at a previous meeting. The Board concurred with the Committee's recommendation.

IX.D.3.h. - SB 503 (Figueroa) – Accountants.

Mr. Waldman reported that the Legislative Committee recommended that the Board not change its “support” position that was adopted at a previous meeting. The Board concurred with the Committee’s recommendation.

July 2006

III.A. - Update on AB 1868 (Bermudez) – Accountancy: Licensure.

Mr. Blanc reported that since the Board’s last meeting, AB 1868 had been considered by the Senate Committee on Business, Professions and Economic Development. He noted that there were some major changes to the bill that came out of that committee. He proceeded to provide a brief summary of the changes.

- The provision that would have permitted an out-of-state CPA or an out-of-state firm to provide tax services without obtaining a California license or practice privilege was removed from the bill.
- Regulations are to be revised so the safe harbor provision that allows late practice privilege notification will remain in effect until December 31, 2010.
- A provision for a reduced fee for practice privilege applicants who do not sign attest reports was added.

Mr. Blanc reported that AB 1868 was on its way to the Senate Appropriations Committee. He noted that the following provisions were still in the bill: 1) the allowance of practice privilege holders to practice in California and sign on behalf of his or her firm; 2) out-of-state CPAs and firms have the ability to temporarily practice in California incident to a practice in another state subject to the conditions that the out-of-state firm does not solicit California clients or assert or imply that they are a practitioner or a firm licensed in California; 3) that foreign accountants are permitted to engage in temporary and incidental practice related to engagements in the foreign country and regulated by that foreign country; and 4) the Board has disciplinary authority over any individual or firm that performs any act which is the practice of public accountancy in California.

Mr. Blanc identified some amendments to AB 1868 that required formal Board action. Ms. Sigmann indicated that these changes were identified in Attachment 2 [Available in the Agenda Item] of the agenda item. She noted that the proposed amendments addressed the fee differential between practitioners authorized to sign attest reports versus those who are not. The fee for practice privilege holders authorized to sign attest reports was not to exceed \$125 and the annual fee for practice privilege holders not authorized to sign attest reports could not exceed 80 percent of that amount.

Ms. Wong reported that the language also gives the Board the authority to accomplish this by emergency regulations. Ms. Wong indicated that by using the emergency rulemaking process, the fee structure could be in place within two weeks of the Governor signing the bill. Ms. Crocker pointed out that the \$125 fee identified was half of the Board’s maximum amount for licensure renewal.

It was moved and unanimously carried to adopt the proposed changes to Business & Professions Code Sections 5096.15 and 5134.

Mr. Blanc reported that the provision that allowed accountants to practice in California under the temporary/incidental provision was an exemption from registration or notification to the Board. He noted that the proposed language before the Board for consideration, Attachment 3 of the agenda item indicated that the exemption did not allow anyone to engage in the development or marketing to California consumers of any abusive tax avoidance transactions as defined in the provision of the Revenue and Taxation Code. He indicated that he believed that it was important that the Board make

this policy clear. Ms. Werner indicated that the Board might consider adding the word “implementing” so the language would read “Developing, marketing or implementing...”

Mr. Petersen questioned whether a firm that was involved in the development of a tax plan in New York could have their employees in California participate because the firm was involved in the development of a plan that might ultimately prove to be an abusive tax shelter. He expressed concern that it would not be identified as an abusive tax shelter until after the fact.

Ms. Sos indicated that under the proposed provision the practice has to occur in California and it contemplates people coming into California to solicit and market California clients and does not extend its reach to other states. Mr. Petersen reiterated that an abusive tax shelter is not defined on the front end; it meets that definition when challenged by the Internal Revenue Service or the Franchise Tax Board. Ms. Sos indicated that this proposed section simply reiterates the fact that the California Board would have jurisdiction over these types of situations. Mr. Petersen questioned why the Board was specifically focusing on abusive tax shelters when it was admittedly redundant, hard to determine, and imposing a jurisdictional issue where there had not been an identification of an abusive tax shelter. He indicated that he believed that this language was overreaching.

Ms. Tindel indicated that CalCPA had its Committee on Taxation review this language and it had no objection to including it in the bill. She noted that the committee did believe that it was redundant language, but it was acting to protect consumers in California. Mr. Petersen indicated that he believed that many of the criticisms and questions about tax shelters and the process of AB 1868 had been very misplaced. It was his perception that tax shelters today are primarily being marketed by law and investment banking firms. He further added that the CPA community had been negatively affected so that most, if not all, of the CPA community was out of the business of affirmatively designing and marketing tax shelters, and he believed that should be recognized.

It was moved and carried to adopt the proposed changes to Business & Professions Code Section 5050(b) with the addition of the word “implementation” to be added after “development.” Mr. Petersen and Mr. Driftmier were opposed, and Mr. MacAloney was temporarily absent.

III.B. - Update on SB 503 (Figueroa).

Mr. Blanc reported that SB 503 had been totally gutted and was currently a MediCal bill. Ms. Sigmann indicated that it had been done by mistake and the bill will be amended to re-include the Board’s language. Once the bill is amended, it would be heard in the Assembly Appropriations Committee.

VIII.B. - Proposed Amendments to Section 70 of Title 16 of the California Code of Regulations Regarding Practice Privilege Fees.

Ms. Wong reported that the proposed language changes to Section 70 were provided as Attachment 2 [Available in the Agenda Item] of the agenda item. The proposed language is provided for adoption on an emergency basis. Ms. Wong indicated that the proposal provided for a fee of \$100 for practice privilege holders who signed attest reports and a \$50 fee for those who do not sign attest reports. The \$50 fee was chosen because it would allow the program to be self-supporting.

It was moved and unanimously carried to adopt the proposed changes to Section 70.

September 2006

III.C. - Update on and Implementation of AB 1868 (Bermudez).

Mr. Blanc indicated he was pleased to report that AB 1868 had passed the Assembly by a 71 to 7 vote however, it had not yet been enrolled and sent to the Governor. Mr. Blanc reported that the language the Board adopted at its last meeting is currently in the bill. With these amendments the bill will clean up practice privilege issues, confirm the Board's jurisdiction for out-of-state practitioners, restore temporary and incidental practice with strict limitations, and allow international accountants to come into California without notice or restrictions with certain limitations. Mr. Blanc reported that the Board is now invited by the Legislature to reconsider the whole concept of practice privilege and cross-border practice over the next five years. Mr. Blanc expressed his thanks to Ms. Sos, Ms. D'Angelo Fellmeth, Mr. Robinson, and Ms. Tindel who had worked tirelessly to craft a practice privilege concept in an innovative effort to deal with cross-border practice. Mr. Blanc indicated that he appreciated the Board's and staff's work and Ms. Sigmann's leadership.

III.D. - Update on SB 503 (Figueroa).

Mr. Blanc was pleased to report that SB 503 had passed both the Assembly and the Senate after several special hearings at the Legislature. Ms. Sigmann and Ms. Wong had spent several days working this piece of legislation. Ms. Sigmann indicated that this was one of the more challenging and unique legislative experiences she has had in state government. She indicated that she worked closely with the Republicans to communicate the importance of the legislation, which resulted in aye votes from the Republicans in the Senate. Ms. Sigmann reported that the language in the bill will allow the Board the option of not raising costs for new licensees. The Board wanted to eliminate barriers to entry into the profession, and cost was the key. She noted that there was additional language in the bill that parallels the language in AB 1868. SB 503 also extends the deadline for the Board's report on peer review until September 1, 2011. The bill is awaiting the Governor's signature

IX.C.3. - Policy Issues for Future Consideration Related to AB 1868 and Practice Privilege.

Mr. Swartz reported that the CPC met yesterday and heard comments from a number of stakeholders regarding temporary/incidental practice and related issues. [Editor's note: The minutes of the CPC meeting will provide a complete summary of these comments. This report provides a brief overview.]

Comments from Mary Crocker, Board staff: She indicated that staff proposed temporary/incidental practice in February to address confusion related to practice privilege. It was not intended to be a permanent solution. She also indicated that perhaps the other issues on the issues list (firm practice, tax services, and practice privilege for licensees from non-substantially equivalent states) should be discussed before temporary/incidental practice. Resolution of those issues might clarify if temporary/incidental practice is even needed.

Mr. Swartz indicated that the CPC will continue its discussion of these important issues at its next meeting.

Ms. Sos apologized for not attending the meeting yesterday, and explained that she wanted to provide a historical perspective. She indicated that the urgency legislation was developed due to unanticipated issues that arose due to the intersection between Practice Privilege, the definition of the practice of public accountancy in California, and firm registration requirements. Ms. Sos indicated that the Board received extensive testimony regarding the unintended barriers to entry that related to three major issues; tax practice, firm registration requirements, and the issue of what happens to people from

non-substantially equivalent states. There was also discussion related to people who are providing litigation support services and other gray areas with respect to the definition of the practice of public accountancy in California.

Ms. Sos indicated that she believed that temporary and incidental practice as it was put into the statute was intended to be provisional and temporary. The objective was to create a place holder that would eliminate barriers to entry while this Board had an opportunity to meaningfully, and thoroughly deliberate on some very substantive issues that the Board did not believe it could address on an emergency basis. Ms. Sos reported that those issues were: 1) what to do with people from non-substantially equivalent states; and 2) how does the Board look at the definition of the practice of public accountancy in Section 5051 of the statutes. There could be two perspectives; 1) there should be some exceptions for activities such as litigation support and expert witness testimony, with the understanding that the definition of the practice of public accountancy in California is fairly broad; and 2) there should be some consideration of what it means to be present in California, and what qualifies as the practice of public accountancy in this state, particularly when the services are being provided from outside of the state.

Ms. Sos indicated that this is her recollection of the purpose of putting in this very limited version of temporary and incidental practice into statute.

Ms. Sos suggested that the focus should be on the bigger issues first. Then it was her hope that by extending the umbrella of Practice Privilege and dealing these substantive issues around what is the practice of public accountancy in California, temporary and incidental practice will not be needed. Ms. Sos indicated that she did not believe that the Board should be spending its resources at this time on trying to define temporary and incidental practice because the resources would be better spent looking at these substantive issues. She concluded her comments by indications that she hopes that consideration of the main substantive issue would ultimately result in the elimination of the need for temporary and incidental practice.

Mr. Swartz indicated that Ms. Sos' comments were not inconsistent with many made the previous day.

September 25, 2006 – AB 1868 (Bermudez) and SB 503 (Figueroa)

On September 25, both AB 1868 and SB 503 are signed and chaptered.

November 2006

VIII.B.4. - Proposed Amendments to Section 70 of Title 16 of the California Code of Regulations Regarding Practice Privilege Fees.

After discussion, it was moved by Mr. Driftmier, seconded by Mr. Swartz, and unanimously carried to adopt the proposed amendments to Section 70.

IX.C.6. - Discussion Regarding Cross Border Practice Issues.

Mr. Swartz reported that the CPC discussed and expressed support for the "Next Steps" and time frame provided in Attachment 1 of this agenda item. One addition would be to request that an AICPA representative come to the March 2007 Board meeting to discuss the Mobility Committee's recommendations. He added that while all of these new developments are being considered, staff would like to have a generic e-mail to send in response to inquiries regarding California practice privilege. The language for that e-mail that was recommended by the CPC was distributed that morning for consideration and Board approval. The CPC also considered a staff request that one or two Board members work with staff to review and analyze these e-mailed inquiries and provide feedback to the CPC and the Board.

It was moved and unanimously approved to approve the generic email in response to inquiries regarding practice privilege.

IX.D.1. - Update on Legislation.

Mr. Waldman reported that the Legislature is no longer in session. He indicated that since the Board's last meeting, the two bills that relate directly to this Board, AB 1868 and SB 503, were both signed by the Governor.

March 2007

XIII.B.1. - NASBA and AICPA Presentation Related to Cross-Border Practice.

Mr. David Costello, President and CEO of NASBA, Mr. Ken Bishop, Chair of the NASBA Mobility Task Force, Mr. Wesley Johnson, Chair of NASBA, and Mr. Michael Ueltzen from the AICPA Mobility Task Force made a presentation detailing the differences and similarities in the way NASBA and the AICPA viewed Cross-Border Practice. The presentation is extremely lengthy, and is [Please see March 2007 Agenda Items/Minutes] as opposed to detailed for brevity. No CBA policy decisions were made.

XIII.B.2. - Discussion Related to Cross-Border Issues

The CBA discussed the merits and disadvantages to Cross-Border Practice, with substantial input from Julie D'Angelo Fellmeth of the Center for Public Interest Law and Hal Schultz of CalCPA. The discussion is lengthy, and is [Please see March 2007 Minutes] for brevity. No CBA policy decisions were made, except to designate the CPC to deliberate the matter.

May 2007

VIII.C.1. - Proposed Amendments to Section 30 of Title 16 of the California Code of Regulations Regarding Practice Privilege "Safe Harbor".

Mr. Ritter reported that the proposed language changes to Section 30 was provided in the agenda packet. Mr. Ritter reported that no oral or written comments had been received.

Mr. Ritter reported that an individual who properly submits the Notification Form to the Board within the five-day period provided for in this Section shall be deemed to have a practice privilege from the first day of practice in California unless the individual fails to timely submit the required fee. Mr. Ritter reported that this proposal would modify Section 30 to extend the operative period of the "safe harbor" provision in compliance with a statutory mandate.

It was moved and unanimously carried to adopt the proposed amendment to Section 30.

IX.C.3 - Discussion Related to Cross-Border Practice and the Amended Exposure Draft, Proposed Revisions to AICPA/NASBA Uniform Accountancy Act Sections 23, 7, and 14.

Mr. Swartz reported that the CPC held an in-depth discussion of the issues related to cross-border practice covered in the UAA Exposure Draft. One purpose of that discussion was to identify comments on the Exposure Draft for the Board to communicate to NASBA and the AICPA. The CPC recommended that the Board approve and communicate the following points to NASBA:

- The Board supports modifying the UAA to provide for cross-border practice with no notification.

It was moved and unanimously carried to adopt the proposed comment.

- The Board supports NASBA's efforts to develop its national licensee database and believes it will be useful to both state boards and consumers.

It was moved and unanimously carried to adopt the proposed comment.

- The Board recommends that the UAA embrace the overarching principle that state boards should trust one another to appropriately license and appropriately discipline.

Ms. Hariton stated that she supported the UAA requirement that mandates the 150 hours of education in order to be considered substantially equivalent and does not support licensure with only an AA degree. She expressed concern that the CPC had not discussed this area enough to accept this broad of a statement. **It was moved and carried to adopt the proposed comment. Ms. Hariton was opposed.**

- The Board is aware that the UAA contemplates a future in which an individual would be licensed only in the state of principal place of business. However, the current reality is that many practitioners are licensed in multiple states. Within this framework, the Board is concerned that the UAA does not address how discipline by a state other than the state of principal place of business affects a practitioner's right to engage in cross-border practice. **It was moved and unanimously carried to adopt the proposed comment.**
- The Board is concerned regarding terminology which may be used inconsistently in the UAA. The Board recommends that the meaning of terms such as "home office," "home state," and "state of principal place of business" be clarified and that the UAA be reviewed to ensure that these and other terms are used consistently throughout. **It was moved and unanimously carried to adopt the proposed comment.**
- The Board is concerned about the complexity of the firm registration provisions. The Board believes that the sheer complexity of these provisions may make them difficult for state boards to understand and state legislatures to enact. **It was moved and unanimously carried to adopt the proposed comment.**
- The Board does not support separating audits and reviews in the firm registration requirements and believes the same requirements should apply to both of these attest services. **It was moved and unanimously carried to adopt the proposed comment.**

Mr. Swartz stated that the CPC would discuss allowing cross-border practice in California with no notification and would address problems related to substantial equivalency in more detail at an upcoming Board meeting.

July 2007

IX.C.3. - Timeframes for Addressing Cross-Border Practice and Peer Review.

Mr. Driftmier reported that with regard to the timeframes for addressing Cross-Border Practice and mandatory Peer Review, the CPC recommended that the Board approve the timeframes in the memorandum provided for this agenda item. The CPC notes that the timeframes for addressing mandatory Peer Review may change depending on the outcome of the August 3, 2007, meeting of Board leadership with legislative staff. **It was moved and unanimously carried to adopt the proposed timeframes for addressing Cross-Border Practice and mandatory Peer Review.**

IX.C.4. - Policy Decisions to Provide Direction for Drafting Statutory Language to Address Cross-Border Practice Issues.

Mr. Driftmier reported that with regard to cross-border practice issues, the CPC has the following recommendations related to the following key issues.

With regard to notification, the CPC recommended Option 5 in the staff analysis which is to eliminate the requirement for notification and the fee associated with California practice privilege but only permit a practitioner to perform the same services he or she is legally authorized to perform in his or her state of principal place of business. Also, the CPC

recommended the elimination of the temporary/incidental practice provision in current law for United States practitioners. **It was moved and carried to adopt the CPC recommendation. Mr. Waldman abstained.**

With regard to substantial equivalency, the CPC recommended Option 4 in the staff analysis which is to not modify the practice privilege laws related to substantial equivalency. Instead, the Board would pursue a law change to sunset Pathway 1 at a specified future date. Pathway 1 required a baccalaureate degree and two years of experience for licensure. It was noted that this law change would make California a substantially equivalent state.

Mr. Petersen stated that there was no discussion during the CPC meeting on how substantial equivalency would be achieved. For instance, a number of states have a requirement of 120 hours in order to sit for the CPA exam and a requirement of 150 hours for licensure. He indicated that California's Legislature had a concern that the 150-hour requirement would be punitive toward the economically disadvantaged. He further suggested that the Board adopt as a policy a requirement of a bachelor's degree to sit for the CPA exam and a requirement of 150 hours for licensure. Mr. Petersen indicated that this would still enable California to be considered a substantially equivalent state. Ms. Wong stated that these same requirements are in Pathway 2 which would remain in California law.

It was moved and unanimously carried to adopt the CPC recommendation

With regard to cross-border practice by firms, the CPC recommended a modified version of Option 4 of the staff analysis. The recommendation is that the Board provide an alternative form of firm registration as described in Option 3, but only for firms performing audits of entities with a home office in California. The alternative firm registration would require that one partner or shareholder who qualifies for practice privilege provide the Board with his/her name, state of principal place of business, license number, and the identifying information about the firm currently required for the firm to practice through a practice privilege holder. That partner or shareholder would serve as the contact person for the firm's practice in California.

Mr. Petersen inquired if the term "home office" would be defined by regulation. Ms. Wong stated that Mr. Bishop indicated that a definition of "home office" has been developed and would be included in the proposal to the Legislature.

It was moved and unanimously carried to adopt the CPC recommendation

November 2007

IX.C.4. - Consideration of Revised Statutory Language Related to Cross-Border Issues Discussed at July 2007 CPC Meeting.

Mr. Driftmier stated that the CPC recommended that the Board accept the proposed revisions as presented with the following exceptions:

- Section 5096(a)(3): substitute the word "are" for the language "have been determined by the Board" in reference to out-of-state licensees individual substantial equivalency.
- Section 5096: use the second "(e)" from the language revised on November 13, 2007.
- Section 5096.3 related to "Discipline of Cross-Border Practice": Add subsection (e) to read "In the event the Board takes disciplinary action against a person with Cross-Border Practice, the Board shall notify each state in which that person holds a license, certificate, or permit to practice."
- Section 5096.4: staff will be working with legal counsel to draft language related to "Administrative Suspension of Cross-Border Practice" as well as considering other enforcement options available to the Board under cross-border practice.

- Section 5096.12 will be redrafted to address attest services as defined in subsections 1, 3, and 4 of Attachment 4 [Available in the Agenda Item] and presented for consideration at the January 2008 CPC and Board meetings.
- Section 5050 entitled "Practice Without Permit, Temporary Practice for an Individual or Firm With a License from a Foreign Country" will be redrafted to separate the specific statutes related to foreign practitioners. The language will be presented for consideration at the January 2008 CPC and Board meetings.
- Section 5050.2 will be redrafted for consideration at the January 2008 CPC and Board meetings.
- Section 5092: the CPC voted to retain the sunset date of January 1, 2012, in the section, "Pathway 1."

The recommendations were followed by discussion from Mr. Ed Howard of CPIL and Mr. Ken Bishop of NASBA. [The complete discussion is quite lengthy, and is available in the November 2007 Minutes.]

It was moved and carried to approve the CPC's recommendations. Mr. Bermúdez was temporarily absent.

February 21, 2008 – AB 2473(Niello and Ma) – Accountancy: licensure

AB 2473 is introduced, which significantly modifies the Practice Privilege provisions, and allows Cross-Border Practice.

February 2008

III.A. - Mobility Resolution.

Mr. Driftmier talked about the reasons he developed the *Mobility Resolution*. He stated that there is not a lot of positive media attention given to CPAs as there is to doctors and lawyers. He added that he is a member of a Board of Directors of a major southern California hospital. As a corporate Board, they hire auditors to audit the hospital. Due to Sarbanes-Oxley rules, he indicated that he is often called upon as a licensed CPA to be the financial professional on the audit committee. Although his peers on the Board are intelligent individuals, they defer to the CPAs on the Board the in-depth discussions about the audit report. The non-CPA members do not understand what that report does and how it affects the hospital. He indicated that he believes that the members of the Legislature have similar issues. Unless they are a licensee, or in a business that regularly interfaces with an accountant, there is not a lot of interplay about what CPAs do. Mr. Driftmier stated that CPAs make the headlines if they make mistakes, but beyond that, he believes that the resolution approach to what the Board is trying to accomplish in legislation would be a simple way to historically layout where the Board was, where it has been, and what it is trying to accomplish.

Mr. Driftmier explained that all CPAs have to proceed through an education process, which is universal and the movement is toward substantial equivalency. The Board has a long history of accepting educational credits from institutions outside of California. He noted that the issue is accreditation and the Board had addressed that. Mr. Driftmier additionally stated that all boards offer the computer-based examination that is offered many times each year by the AICPA.

Mr. Driftmier reported that after the Board had looked at what other states have done, and at the National Association of State Boards of Accountancy (NASBA) along with the Uniform Accountancy Act (UAA), it appeared that there can be a uniform way to operate as a licensed professional that is similar to the education and examination processes. He noted that these issues summarize what the Board is trying to do with non-notification for all states, and have all jurisdictions perform their professional diligence and work with consumers and licensees to have multi-state and global practices. Mr. Driftmier indicated

that this is the basic preface for the resolution to be put before the Board.

It was moved and carried unanimously to adopt the Mobility Resolution. Mr. Bermúdez was temporarily absent.

The action was followed by discussion by Mr. Ed Howard, Senior Counsel for the Center of Public Interest Law (CPIL) and Mr. Swartz. [The entire discussion is lengthy, so is available in the February 2008 Minutes.]

March 2008

IX.C.3. - Discussion of Administrative Suspension and Other Enforcement Options Related to Cross-Border Practice.

Mr. Ramirez reported that the CPC discussed issues related to California's reliance on other states' enforcement practices, and the possibility that felony convictions that would result in automatic cancellation of cross-border privileges may be overturned.

Mr. Ramirez reported that the CPC recommended that the Board adopt the language as presented in 5096, 5096.1, and 5096.4 with the following changes:

- For 5096 (c)(2), delete the wording "and ethics examination requirements."
- For 5096.1 (f), have language redrafted to address convictions overturned on appeal and automatic reinstatement of cross-border privileges.
- In addition to the felonies found in Section 5096.1 (b)(2), draft language to allow the Board to adopt through regulations additional felonies that would result in termination of cross-border practice.
- For 5096.4 (d), amend language to allow hearings to be conducted within 90 days as opposed to 45 days.

It was moved and unanimously carried to adopt the CPC's recommendation

IX.C.4 - Consideration of Revised Statutory Language Related to Cross-Border Practice.

Mr. Ramirez reported that the CPC members discussed information available from other states and NASBA. Mr. Ken Bishop of NASBA provided an update on CPA mobility and NASBA's Accountancy Licensee Database. The CPC heard recommendations from Ms. Sigmann and from Mr. Howard, Senior Counsel from the Center for Public Interest Law (CPIL).

Mr. Ramirez reported that the CPC recommended that the Board adopt proposed revisions to B&P Code Section 5096 related to cross-border practice and related code sections as prepared by staff with the following addition:

- Incorporate language that will reflect the Board's intent to provide access to other state boards' Web sites for consumer protection purposes.

It was moved and unanimously carried to adopt the CPC's recommendations.

IX.D.3.d. - AB 2473 (Niello and Ma) – Accountancy: Licensure.

Ms. Hariton reported that AB 2473 is the Board's cross-border practice legislation.

Ms. Hariton reported that the Legislative Committee recommended that the Board adopt a "support" position on this bill.

It was moved and unanimously carried to adopt the Legislative Committee's recommendations on Agenda Items IX.D.3.b – g.

Mr. Petersen stated that AB 2473 (Agenda Item IXD.3.d.), which is this Board's bill for purposes of mobility and other licensing provisions, is scheduled to be heard by the Assembly B&P Committee on April 15, 2008. He requested that every possible member of the Board and the public attend the hearing in support of the bill.

April 9, 2008 – AB 2473 (Niello and Ma)

Bill removed from committee at author's request.

May 2008

IX.D.3. AB 2473 (Niello and Ma) – Accountancy: Licensure.

Ms. Hariton reported this bill is “dead.”

The Legislative Committee recommended that the Board attempt to re-introduce this bill in the next legislative session, and take a “support” position.

It was moved and unanimously carried to approve the Legislative Committee's recommendations on Agenda Items IX.D.3.a.-i., and IX.D.4.b.

November 2008

IX.D.3.e. - Consideration of Possible Legislative Language for 2009 (Mobility)

Mr. Stanley presented draft statutory language to implement mobility in California. He also presented alternative language that would create a study bill to allow an outside entity to examine the topic of mobility and report its findings and recommendations to the Legislature. He also outlined three options. The first option would be to introduce the study bill language. The second would be to not sponsor legislation, but to have the Board re-examine all of its policy decisions. The third option would be to not pursue legislation at this time.

The Legislative Committee recommended that the Board adopt Option 3 to not pursue legislation at this time.

It was moved by Ms. Hariton, seconded by Mr. Elkins, and carried with two abstentions to approve the Legislative Committee's recommendations, as well as direct Ms. Bowers to collaborate with DCA to determine an appropriate avenue to work with labor unions in order to highlight the issues surrounding the ICPA salary increase legislation and to garner support for this legislation. Ms. Kirkbride and Ms. Hariton abstained from this vote.

January 2009

X.C.4. - Update on Mobility and the Elimination of Pathway 1

The Legislative Committee recommended that the Board approve sending a clarifying letter that more accurately depicts the Board's objective related to mobility to Assembly Members Niello and Ma.

It was moved by Ms. Kirkbride, seconded by Mr. Elkins, and unanimously carried by those present to send Assembly Members Niello and Ma a letter clarifying the Board's objective related to mobility.

Mr. Swartz stated his belief that the letter should include language reflecting that the Board had taken steps to show it will support legislation.

Mr. Ramirez directed Board staff to collaborate with Mr. Petersen and Mr. Swartz to ensure the letter represents the intention of the Board, and the letter should be mailed no later than two weeks from the date of the Board meeting.

July 2009

XIII.D. - Further Clarification on Cross-Border Practice and Mobility.

Ms. Pearce requested further clarification on what information the Board members wish to review to assist them in the consideration of cross-border practice and mobility.

Mr. Bermúdez requested scheduling a study session in the Legislative Committee to dissect the issue of mobility as soon as possible. Mr. Petersen stated he would like to focus on formulating other options and did not wish to place focus on Section 23 of the Uniform Accountancy Act (UAA).

Ms. Kirkbride suggested assessing the impact of inbound mobility and under what circumstances the Board grants inbound mobility.

Ms. Anderson inquired as to NASBA's position on the issue.

Ms. Taylor suggested re-visiting the objections and criticisms of the original bill related to mobility, and Mr. Petersen suggested pulling together historical significance and the latest changes.

Ms. Kirkbride suggested focusing on the enforcement issue and options the Board has in addressing those licensees which the Board has no jurisdiction over.

Mr. Petersen emphasized the importance of accumulating information, and once the information is gathered presentations conducted by NASBA may prove beneficial.

Ms. Hariton stressed the necessity of the Accountancy Licensee Database.

September 10, 2009 – SB 819 (Yee)

SB 819 is amended to make Pathway 1 inoperative as on January 1, 2014, create the Ethics Curriculum Committee and the Accounting Education Committees, and remove the sunset date of the practice privilege program

Memorandum

CBA Agenda Item II.B.
January 27-28, 2011

To : CBA Members

Date : January 7, 2011

Telephone: (916) 561-1792

Facsimile : (916) 263-3675

E-mail : mstanley@cba.ca.gov

From : Matthew Stanley
Legislation/Regulation Analyst

Subject : Temporary and Incidental Practice

At its November 2010 meeting, the California Board of Accountancy (CBA) was informed of the sunset date on temporary and incidental practice in California (**Attachment 1**). At that time, staff was directed to prepare an appropriate notice to the public. In December, staff, in conjunction with other interested parties, prepared a notice (**Attachment 2**) and posted it on the CBA's Web site. Out-of-state licensees were notified of the posting via E-news.

To clarify what was discussed in November, only Section 5050(b) of the Business and Professions Code, which allowed other states' licensees to practice on a temporary and incidental basis, was made inoperative. Section 5050(c), which allows foreign licensees to practice on a temporary and incidental basis, is still in effect.

Staff are researching and preparing a more detailed discussion of the topics that were identified in the November 2010 discussion and will place it on the March 2011 agenda for either the CPC or the full CBA to discuss.

At this time, it is anticipated that stakeholders will be providing the CBA with a written statement regarding their concerns with the elimination of temporary and incidental practice. Should this information be obtained prior to the CBA meeting, it will be provided to CBA members.

Attachments

Memorandum

CBA Agenda Item VIII.E.
November 17-18, 2010

ATTACHMENT 1

To : CBA Members

Date : October 27, 2010

Telephone: (916) 561-1792

Facsimile : (916) 263-3675

E-mail : mstanley@cba.ca.gov

From : Matthew Stanley
Legislation/Regulation Analyst

Subject : Sunset of Section 5050(b) – Temporary and Incidental Practice

During recent preparations of materials regarding cross-border practice, it was brought to staff's attention that on January 1, 2011, Section 5050(b) of the Business & Professions Code will become inoperative. This section of the code is quoted below:

(b) Nothing in this chapter shall prohibit a certified public accountant, a public accountant, or a public accounting firm lawfully practicing in another state from temporarily practicing in this state incident to practice in another state, provided that an individual providing services under this subdivision may not solicit California clients, may not assert or imply that the individual is licensed to practice public accountancy in California, and may not engage in the development, implementation, or marketing to California consumers of any abusive tax avoidance transaction, as defined in subdivision (c) of Section 19753 of the Revenue and Taxation Code. A firm providing services under this subdivision that is not registered to practice public accountancy in California may not solicit California clients, may not assert or imply that the firm is licensed to practice public accountancy in California, and may not engage in the development, implementation, or marketing to California consumers of any abusive tax avoidance transaction, as defined in subdivision (c) of Section 19753 of the Revenue and Taxation Code. This subdivision shall become inoperative on January 1, 2011.

For many decades prior to the implementation of the Practice Privilege Program in 2006, statutes governing the practice of public accountancy in California by individuals licensed in other states were not clear. The statutes were permissive in terms of stating that "out-of-state" licensees could temporarily practice in California incident to their practice in another state or country, but there was no direction regarding the amount and nature of work that might be conducted in California before it was no longer "temporary and incidental."

On January 1, 2006, with the implementation of the Practice Privilege Program, the temporary and incidental language was removed from the law requiring all out-of-state licensees to obtain a practice privilege or a California license in order to practice here. However, questions were soon raised as to what, exactly, the "practice of public accountancy" entailed.

Sunset of Section 5050(b) – Temporary and Incidental Practice
Page 2 of 3

In 2006, the CBA worked with Assemblyman Rudy Bermudez on AB 1868 to, among other things, add the temporary and incidental language above into the law. The purpose for the addition was to give the CBA time to examine the question of the practice of public accountancy. It was also supposed to be a temporary solution and was not meant to continue beyond 2010. Renata Sos, CBA Member, made comments on the matter at the February 2006 CBA meeting, which are recorded in the minutes as follows:

“Ms. Sos explained why the Board still needed some form of temporary and incidental practice. The tax services issue was resolved by B&P Code Section 5054, and the triggering of firm registration was resolved by B&P Code Section 5096.12. However, staff could still receive questions regarding what exactly is the practice of public accountancy in California, whether it included litigation support, consulting, and expert witness testimony. Ms. Sos indicated that in order to resolve the additional inadvertent barriers created by practice privilege, the CPC wanted to recreate a limited version of temporary and incidental practice on a temporary basis to provide the Board with the time and the opportunity to address the serious and difficult issues related to the definition of the practice of public accountancy in California before adopting a permanent solution. “

The minutes continue:

“Ms. Sos believed that it was imperative to communicate to everyone that the limited and very clearly defined restoration of temporary and incidental practice was temporary and solely for the purpose of giving the Board time to resolve some very serious issues in the application of Practice Privilege.”

At its September 2006 meeting, Ms. Sos again addressed the issue following the passage of AB 1868; again, quoting from the minutes:

“Ms. Sos indicated that she believed that temporary and incidental practice as it was put into the statute was intended to be provisional and temporary. The objective was to create a place holder that would eliminate barriers to entry while this Board had an opportunity to meaningfully, and thoroughly deliberate on some very substantive issues that the Board did not believe it could address on an emergency basis. Ms. Sos reported that those issues were: 1) what to do with people from non-substantially equivalent states; and 2) how does the Board look at the definition of the practice of public accountancy in Section 5051 of the statutes. There could be two perspectives; 1) there should be some exceptions for activities such as litigation support and expert witness testimony, with the understanding that the definition of the practice of public accountancy in California is fairly broad; and 2) there should be some consideration of what it means to be present in California, and what qualifies as the practice of public accountancy in this state, particularly when the services are being provided from outside of the state.”

Six months later, at its March 2007 meeting, the issue of mobility was raised by NASBA, and, as the CBA began focusing on that issue, the issues of Practice Privilege, temporary and incidental and defining the practice of public accountancy were no longer pursued.

When Business & Professions Code Section 5050(b) becomes inoperative on January 1, 2011, thereby requiring out-of-state licensees, who might otherwise have used such

Sunset of Section 5050(b) – Temporary and Incidental Practice
Page 3 of 3

provisions, to provide notice through the Practice Privilege Program, it is anticipated that some of the issues that originally lead to the creation of this limited “temporary and incidental” provision will again surface. However, time may have blunted some of the issues to a degree – such as fewer states are now considered “non-substantially equivalent.”

Staff would like to bring this issue forward in 2011 for further discussion. Staff will be researching several topics within this issue for further discussion by the CBA. These topics could legitimately be placed before the full CBA, or referred to the CPC or EPOC. Depending on the research staff will be conducting, possible topics may include the following:

1. Define “the practice of public accountancy.”
2. Exceptions to the Practice Privilege law.
3. Define “in this state.”
4. Temporarily reinstate “temporary and incidental.”

With direction from the CBA, staff will prepare these items for presentation to the CBA, CPC or EPOC in 2011.



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ATTACHMENT 2

NOTICE TO OUT-OF-STATE LICENSEES

On January 1, 2011, Section 5050(b) of the Business and Professions Code on temporary and incidental practice became inoperative. As a result, non-California CPAs who may have practiced under Section 5050(b) should carefully evaluate whether their activities would require them to file a practice privilege to ensure they are practicing lawfully.

Additionally, California's Safe Harbor provision (CCR Title 16, Section 30), which allowed out-of-state CPAs five days in which to file a Practice Privilege Notification Form following the commencement of practicing in California, expired on December 31, 2010. Beginning on January 1, 2011, a Practice Privilege Notification Form must be filed with the California Board of Accountancy (CBA) prior to practicing public accountancy in the state.

For practice privilege information, or information on how to become licensed in California, please refer to the CBA's Web site at <http://www.cba.ca.gov>. For more information on this and other topics, please sign up for E-News on the Web site.

Memorandum

CBA Agenda Item II.C.1.
January 27-28, 2011

To : CBA Members
Date : January 13, 2011
Telephone : (916) 561-1754
Facsimile : (916) 263-3676
E-mail : lwalker@cba.ca.gov

From : Liza Walker, Manager
Practice Privilege and Examination Units

Subject : Overview of the Practice Privilege Program

Introduction

This informational paper is designed to provide an overview of the current Practice Privilege Program, the requirements, notification process, and the audit process utilized by the staff within the Practice Privilege Unit.

Background

Effective January 1, 2006, Practice Privilege provisions were implemented in California and notification of the practice of public accountancy in California by an out-of-state licensee was required pursuant to Sections 5096 through 5096.15 of the California Accountancy Act and Sections 26 through 35.1 of the California Board of Accountancy (CBA) Regulations.

The Practice Privilege unit receives approximately 2,500 Notification Forms annually, and staff review approximately 40 reported disqualifying conditions annually. Currently, there are 2,300 California Practice Privilege holders, including 1,000 with practice rights with the authority to sign attest reports.

Current Practice Privilege Requirements

To be eligible for a California Practice Privilege, an out-of-state licensee cannot have a principal place of business located in California and must meet one of the following three requirements:

- Possess a valid and active license, certificate, or permit from a state deemed by the CBA as substantially equivalent;
- Possess individual education, examination, and experience qualifications that have been determined by the CBA to be substantially equivalent;
- Have continually practiced public accountancy as a CPA under a current, valid license issued by any state for four of the last ten years.

Currently 51 jurisdictions, not counting California, have been deemed substantially equivalent and, therefore, most out-of-state licensees would qualify to apply for a California Practice Privilege under the first of the three requirements.

An out-of-state licensee can obtain a California Practice Privilege either with or without the authorization to sign attest reports. To sign an attest report, the California Practice Privilege holder must have completed a minimum of 500 hours of experience in attest services as required of California licensure applicants requesting licensure with the attest authority.

Notification Process

In order to practice under Practice Privilege in California, out-of-state licensees are required to submit the *Notification and Agreement to Conditions for the Privilege to Practice Public Accounting in California Pursuant to California Business and Professions Code Section 5096 and Title 16, Division 1, Article 4 of the California Code of Regulations* (Notification Form) (**Attachment 1**), which is available for submission on-line or via hardcopy. Practice rights under the California Practice Privilege are automatic upon submission of the Notification Form, unless prior CBA approval is required.

An out-of-state licensee may not practice under a California Practice Privilege without prior approval of the CBA if the individual has, or acquires at any time during the term of the California Practice Privilege, a disqualifying condition. An out-of-state licensee is required to report any of the following:

- Conviction of a crime other than a minor traffic violation.
- Having a license or other authority to practice a profession issued by a state, federal, or local agency or court or the Public Company Accounting Oversight Board (PCAOB) revoked, suspended, denied, surrendered, put on probationary status, or otherwise sanctioned or limited, except for the following occurrences:
 - An action by a state board of accountancy, in which the only sanction was a requirement that the individual complete specified continuing education courses.
 - The revocation of a license in Item 3 of the Qualification Requirements on the Notification Form is solely because of failure to complete continuing education or failure to renew.
- Being the subject of an investigation, inquiry, or proceeding by or before a state, federal, or local court or agency (including the PCAOB) involving his or her professional conduct.

- Holding a California Practice Privilege that expired while under administrative suspension or with an unpaid fine.
- Failing to respond to the satisfaction of the CBA to a request for information from the CBA regarding a matter related to a current or prior California Practice Privilege.
- Notification by the CBA that prior CBA approval is required before practice under a new California Practice Privilege may commence.
- Having a judgment or arbitration award in an amount greater than \$30,000 entered against him or her in a civil matter involving the professional conduct of said individual.

A California Practice Privilege holder who acquires a disqualifying condition during the term of his or her California Practice Privilege must cease practicing immediately and must notify the CBA in writing of the disqualifying condition within 30 days of its occurrence.

A California Practice Privilege holder reporting a disqualifying condition that was previously reviewed and cleared by the CBA in a past California Practice Privilege must still report the previously cleared disqualifying condition on any subsequent Notification Forms that are submitted. To expedite the review process, the reported information must include details of the disqualifying condition as well as details of the item that was cleared by the CBA.

CBA staff query the Practice Privilege Notification System daily for reported information related to disqualifying conditions to determine whether it is necessary to have the out-of-state licensee provide additional documentation for review purposes or whether the disqualifying condition can be cleared without further action. Once determination has been made regarding whether practice rights are granted, CBA staff notify the out-of-state licensee in writing.

The fee for a California Practice Privilege is due within 30 days of submission of the Notification Form. The privilege is valid for a maximum of one year from the date of submission of the form, at which time the holder can either let the privilege expire or submit a new Notification Form.

Audit Process

As previously mentioned, a practice privilege holder is not required to provide any supporting documentation at the time the Notification Form is submitted. However, the CBA has the authority to request documentation from the out-of-state licensee and verify any of the information that was provided on the Notification Form, including whether the attest experience requirement has been fulfilled.

Staff verify the following information during an audit:

- Licensee name and address of record;
- License information and status;
- Qualification requirements;
- Disciplinary actions;
- Qualification of attest authority

For practice privilege holders who request the attest authority, staff also mail a *California Practice Privilege Holder Certification of Attest Experience* form (**Attachment 2**).

Staff have begun using the National Association of State Boards of Accountancy (NASBA) Accountancy Licensee Database (ALD) to verify practice privilege holders are actually licensed, and do not have any enforcement action in the state of licensure. When information is not available on ALD, staff attempt to verify licensure information on other state boards' of accountancy Web sites. However, due to inadequate information available on some Web sites, especially enforcement information, staff must contact the other state board directly to verify some or all of the information provided above.

Under the Practice Privilege provisions, the CBA is authorized to take immediate action against anyone who violates the notification requirements or applicable laws. Specifically, the CBA may administratively suspend, without notice or hearing, an individual's practice privilege pursuant to Section 5096.4 of the California Accountancy Act. Since beginning the audit, staff have suspended 53 practice privileges for many reasons, including the following:

- The practice privilege holder did not meet one of the qualification requirements at the time of notification;
- Staff were unable to locate and verify the license identified on the Notification Form;
- The practice privilege holder did not report disciplinary actions taken by their home state;
- The practice privilege holder did not respond to the CBA's request to verify the attest experience was fulfilled prior to obtaining the California Practice Privilege with the authority to sign attest reports.

Exemptions from the California Practice Privilege

There are situations in which out-of-state licensees are able to practice public accountancy in California without having to obtain a California Practice Privilege or license.

Section 5054

This provision provides an exception for certain tax preparers, and authorizes an out-of-state licensee to prepare individual or estate tax returns without obtaining a California Practice Privilege provided:

- The individual or firm does not physically enter California to practice public accountancy pursuant to Section 5051 of the California Accountancy Act.
- The individual or firm does not solicit California clients.
- The individual or firm does not assert or imply that the individual or firm is licensed or registered to practice public accountancy in California.

After the implementation of the Practice Privilege Program modifications of the provisions were made. Provided below are sections of law that were added to the California Accountancy Act:

Addition of Sections 5050.1 and 5050.2

These two provisions were added to affirm the CBA's disciplinary authority over any individual or firm performing any act considered the practice of public accountancy in California.

Addition of Sections 5096.12 and 5096.13

These provisions allow a practice privilege holder to practice in California and sign in the name of his or her firm without having to register the firm with the CBA. At the time the Notification Form is submitted the Practice Privilege holder is required to provide the name of the firm, its address and telephone number, and Federal Employer Identification Number.

Addition of Section 5096.15

This provision was added to the Accountancy Act to provide for a lower fee for out-of-state licensees who obtained the California Practice Privilege without the authorization to sign attest reports. Prior to the addition of this section all practice privilege holders were required to submit the \$100 fee to practice under the California Practice Privilege provisions regardless of services being provided.

Recent Changes to the Practice Privilege Program

As mentioned in Agenda Item II.B., the temporary and incidental provision became inoperative on January 1, 2011 (**Attachment 3**). Also, the safe harbor provision became inoperative on January 1, 2011. Additional information regarding the safe harbor provision will be provided in the next agenda item, which is being presented by Matthew Stanley.

I will be available at the meeting to answer any questions you may have.



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NOTIFICATION AND AGREEMENT TO CONDITIONS FOR THE PRIVILEGE TO
 PRACTICE PUBLIC ACCOUNTING IN CALIFORNIA PURSUANT TO CALIFORNIA BUSINESS AND
 PROFESSIONS CODE SECTION 5096 AND TITLE 16, DIVISION 1, ARTICLE 4 OF THE
 CALIFORNIA CODE OF REGULATIONS

Attachment 1

CONTACT INFORMATION

Individual Information

Name: _____ Prior Name(s): _____

Date of Birth: ____ / ____ / ____ Social Security Number: _____

Daytime Direct Telephone Number: _____ E-mail Address: _____
(optional)Certified Public Accounting Firm Information

Complete the Certified Public Accounting Firm Information **ONLY** if the certified public accounting firm name you
 are associated with is different from the individual name above.

Certified Public Accounting Firm Name: _____

Firm Address: _____

Firm Main Telephone Number: _____ Fax Number: _____ Firm Taxpayer ID Number: _____

Include additional certified public accounting firms you are associated with on Attachment 2, if necessary.

Other Contact Information

Address of Record (mailing address:
 fill out only if different from firm address
 or if no firm address is listed above): _____

QUALIFICATION REQUIREMENTS

I state as follows:

1. I am an individual.
2. a. My principal place of business is not in California; **OR**
 b. I have a pending application for licensure in California under Sections 5087 and 5088.
3. I qualify for a practice privilege based on my current, valid license to practice public
 accountancy in the following state:

State: _____ License Number: _____ Date Originally Issued: _____ Expiration Date: _____

4. a. The license identified in Item 3 is deemed substantially equivalent by the California Board of Accountancy; **OR**
- b. My individual qualifications have been determined by the National Association of State Boards of Accountancy (NASBA) to be substantially equivalent (NASBA file no. _____); **OR**
- c. I have continually practiced public accountancy as a certified public accountant under a valid license issued by any state for four of the last 10 years.
5. a. I am submitting this notice to the CBA at or before the time I begin the practice of public accountancy in California; **OR**
- b. I am submitting this notice after I began the practice of public accountancy in California on ___/___/__. My reason(s) for not providing notice on or before that date is(are) provided below. (The safe harbor provision is referenced in the California Code of Regulations, Title 16, Division 1, Article 4, Section 30.)
The safe harbor provision referenced in Box 5b expired on January 1, 2011. Notification must be submitted prior to the practice of public accountancy in California.
6. I have met the continuing education requirements and any exam requirements for the state of licensure identified in Item 3.

I consent and agree to the following:

7. To comply with the laws of the state of California, including the California Accountancy Act (Business and Professions Code Section 5000 et seq., accessible at http://www.dca.ca.gov/cba/acnt_act.htm) and the regulations thereunder (accessible at <http://www.dca.ca.gov/cba/regs.htm>).
8. To the personal and subject matter jurisdiction of the CBA including, but not limited to, the following:
- a. To suspend, without prior notice or hearing and in the sole discretion of the CBA or its representatives, the privilege to practice public accounting;
 - b. To impose discipline for any violation of the California Accountancy Act or regulations thereunder and recover costs for investigation and prosecution; and
 - c. To provide information relating to a practice privilege and/or refer any additional and further discipline to the board of accountancy of any other state and/or the Securities and Exchange Commission (SEC), the Public Company Accounting Oversight Board (PCAOB) or other relevant regulatory authorities.
9. To respond fully and completely to all inquiries by the CBA relating to my California practice privilege, including after the expiration of this privilege.
10. To the authority of the CBA to verify the accuracy and truthfulness of the information provided in this notification. I consent to the release of all information relevant to the CBA's inquiries now or in the future by:
- a. Contacting other state agencies;
 - b. Contacting the SEC, PCAOB or any other federal agency before which I am authorized to practice; and
 - c. Contacting NASBA.
11. In the event that any of the information in this notice changes, to provide the CBA written notice of any such change within 30 days of its occurrence.
12. To submit any applicable fees timely.

AUTHORITY TO SIGN ATTEST REPORTS

Choose **ONE** of the following options:

- I WISH** to be able to sign an attest report under this practice privilege, and I have at least 500 hours of experience in attest services. By checking this box, I agree to pay within 30 days of submission of this Notification Form, the \$100 Notification Fee which includes authorization to sign attest reports.

OR

- I DO NOT WISH** to be able to sign an attest report under this practice privilege. Under this choice, I may participate in attest engagements but may not sign an attest report. By checking this box, I agree to pay the \$50 Notification Fee, due within 30 days of submission of this Notification Form.

DISQUALIFYING CONDITIONS

Please respond to the following items. For any items checked "Yes" in (A) – (G), you must provide additional information as requested in Attachment 1, and you are not authorized to practice in California unless and until you receive notice from the CBA that the privilege has been granted.

Please check "Yes" for any items even if they were previously reviewed and cleared by the Board in a past California Practice Privilege. To expedite the review process, please include the details of all disqualifying conditions, including those previously reported in the additional information you provide.

- | | | | |
|--------------------------|--------------------------|-----|---|
| Y | N | A. | I have been convicted of a crime other than a minor traffic violation. |
| <input type="checkbox"/> | <input type="checkbox"/> | | |
| Y | N | B. | I have had a license, registration, permit or authority to practice a profession surrendered, denied, suspended, revoked, or otherwise disciplined or sanctioned except for the following occurrences: |
| <input type="checkbox"/> | <input type="checkbox"/> | | |
| | | (1) | an action by a state board of accountancy in which the only sanction was a requirement that the individual complete specified continuing education courses. |
| | | (2) | the revocation of a license or other authority to practice public accountancy, other than the license upon which the practice privilege is based, solely because of failure to complete continuing education or failure to renew. |
| Y | N | C. | I am currently the subject of an investigation, inquiry or proceeding by or before a state, federal, or local court or agency (including the PCAOB) involving my professional conduct. |
| <input type="checkbox"/> | <input type="checkbox"/> | | |
| Y | N | D. | I have an unresolved administrative suspension or an unpaid fine related to a prior California Practice Privilege. |
| <input type="checkbox"/> | <input type="checkbox"/> | | |
| Y | N | E. | I did not respond to a request for information from the CBA related to a prior California Practice Privilege. |
| <input type="checkbox"/> | <input type="checkbox"/> | | |
| Y | N | F. | I have been notified by the CBA that prior Board approval is required before practice under a new California Practice Privilege may commence. |
| <input type="checkbox"/> | <input type="checkbox"/> | | |
| Y | N | G. | I have had a judgment or arbitration award against me involving my professional conduct in the amount of \$30,000 or greater. |
| <input type="checkbox"/> | <input type="checkbox"/> | | |

REQUIRED ADDITIONAL INFORMATION

I currently hold a California Practice Privilege. Yes No

Expiration date: _____ Unique Identifier: _____

I have held a California CPA/PA license. Yes No License number: _____

In addition to the state of licensure identified in Item 3, I also am authorized to practice public accountancy in the following:

State: _____ License Number: _____

State: _____ License Number: _____

Include additional licenses on Attachment 2, if necessary.

An answer of "No" to any of the following statements does not disqualify you from a California Practice Privilege.

I am an associated person of a firm registered with the PCAOB. Yes No

My firm has undergone peer review within the last three years. Yes No

The state of licensure identified in Item 3 requires CE in fraud detection. Yes No
If yes, I have fulfilled this requirement. Yes No

I, _____, understand that any misrepresentation or omission in connection with this notification disqualifies me from the California Practice Privilege and is cause for termination. Further I authorize the California Board of Accountancy to act accordingly, including notifying other state or federal authorities. I certify under penalty of perjury under the laws of the state of California that the foregoing information is true and correct.

Signature: _____ Date: _____

Unless you have checked "Y" to any items under Disqualifying Conditions, your privilege to practice commences with the submission of your properly completed notification. Your fee must be received within 30 days. Your privilege expires one year from the date of submission of this notification.



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ATTACHMENT 1

Name: _____
Last First MI

1. If you checked "Yes" to any of items A – G under Disqualifying Conditions, please provide explanatory details:

2. If you checked "Yes" to Item G under Disqualifying Conditions, please also provide:

Date of Judgment/
Arbitration Award: _____ Jurisdiction/Court: _____ Docket No: _____

PERSONAL INFORMATION COLLECTION AND ACCESS: The information provided in this form will be used by the California Board of Accountancy to determine whether you qualify for practice privilege in California. Sections 5096 through 5096.15 of the California Business and Professions Code authorize the collection of this information. Failure to provide any of the required information is ground for rejection of the form as being incomplete. Information provided may be transferred to the Department of Justice, a District Attorney, a City Attorney, or to another government agency as may be necessary to permit the CBA, or the transferee agency, to perform its statutory or constitutional duties, or otherwise transferred or disclosed as provided in California Civil Code Section 1798.24. Each individual has the right to review his or her file, except as otherwise provided by the California Information Practices Act. Certain information provided may be disclosed to a member of the public, upon request, under the California Public Records Act. The Executive Officer of the California Board of Accountancy is responsible for maintaining the information in this form, and may be contacted at 2000 Evergreen Street, Suite 250, Sacramento, CA 95815, telephone number (916) 263-3680, regarding questions about this notice or access to records.



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ATTACHMENT 2

Name: Last First MI

Certified Public Accounting Firm Information

Certified Public Accounting Firm Name:

Firm Address:

Firm Main Telephone Number: Fax Number: Firm Taxpayer ID Number:

Certified Public Accounting Firm Name:

Firm Address:

Firm Main Telephone Number: Fax Number: Firm Taxpayer ID Number:

In addition to the state of licensure identified in Item 3, I am also authorized to practice public accountancy in the following:

- State: License Number:

PERSONAL INFORMATION COLLECTION AND ACCESS: The information provided in this form will be used by the California Board of Accountancy to determine whether you qualify for practice privilege in California. Sections 5096 through 5096.15 of the California Business and Professions Code authorize the collection of this information. Failure to provide any of the required information is ground for rejection of the form as being incomplete. Information provided may be transferred to the Department of Justice, a District Attorney, a City Attorney, or to another government agency as may be necessary to permit the CBA, or the transferee agency, to perform its statutory or constitutional duties, or otherwise transferred or disclosed as provided in California Civil Code Section 1798.24. Each individual has the right to review his or her file, except as otherwise provided by the California Information Practices Act. Certain information provided may be disclosed to a member of the public, upon request, under the California Public Records Act. The Executive Officer of the California Board of Accountancy is responsible for maintaining the information in this form, and may be contacted at 2000 Evergreen Street, Suite 250, Sacramento, CA 95815, telephone number (916) 263-3680, regarding questions about this notice or access to records.

User Name

Upon receipt of a paper Notification Form, a client account will be created that can be accessed via the Board's Web site at *www.dca.ca.gov.cba*. For the CBA to establish your client account, a User Name must be created. You have the option to select your own User Name by completing the space provided on the Remittance Form; however, the Remittance Form must be received concurrently with your Notification Form for you to select your own User Name. If you fail to submit the Remittance Form, a User Name will be created for you, and you will be informed of your User Name and password. You will have the option to change your password upon entering your client account; however, you will not be able to change your User Name.

Note: Please provide one alternative for your User Name in the event that your first preference is not available.

If you choose to create your own User Name, you must adhere to the following specifications:

- User Names cannot contain spaces or special characters.
- User Names must begin with an alpha letter and not a number.
- User Names can be no less than seven characters and no more than sixteen characters.
- User Names are case sensitive.

If you fail to follow these specifications a User Name will be selected for you.

User Name: _____

Alternative

User Name: _____

OFFICIAL USE ONLY	
Payment Amount	\$ _____
Postmark Date	____/____/____
To Cashier	____/____/____ Int: _____

PERSONAL INFORMATION COLLECTION AND ACCESS: The information provided in this form will be used by the California Board of Accountancy to determine whether you qualify for practice privilege in California. Sections 5096 through 5096.15 of the California Business and Professions Code authorize the collection of this information. Failure to provide any of the required information is grounds for rejection of the form as being incomplete. Information provided may be transferred to the Department of Justice, a District Attorney, a City Attorney, or to another government agency as may be necessary to permit the CBA, or the transferee agency, to perform its statutory or constitutional duties, or otherwise transferred or disclosed as provided in California Civil Code Section 1798.24. Each individual has the right to review his or her file, except as otherwise provided by the California Information Practices Act. Certain information provided may be disclosed to a member of the public, upon request, under the California Public Records Act. The Executive Officer of the California Board of Accountancy is responsible for maintaining the information in this form, and may be contacted at 2000 Evergreen Street, Suite 250, Sacramento, CA 95815, telephone number (916) 263-3680 regarding questions about this notice or access to records.



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**CALIFORNIA PRACTICE PRIVILEGE HOLDER
 CERTIFICATION OF ATTEST EXPERIENCE**

Attachment 2

PLEASE PRINT OR TYPE

FULL NAME (No Initials) (First)			(Middle)	(Last)	
SOCIAL SECURITY NUMBER		UNIQUE IDENTIFIER NUMBER			
FIRM NAME (if any)			CURRENT TITLE		
BUSINESS ADDRESS (Including City, State, and Zip Code)					
DAYTIME TELEPHONE NUMBER ()			Approximate Number of Years Practicing Public Accountancy		
<p>Pursuant to Section 5096.5, you may not sign an attest report unless you have 500 hours of experience in attest services (see Section 5095 of the California Business and Professions Code and Section 12.5 of the California Code of Regulations). For these purposes, experience is that which has enabled you to demonstrate an understanding of the requirements of planning and conducting an audit with minimum supervision which results in opinions on full disclosure financial statements.</p>					
			Yes	No	
I.	Have you participated in the planning of an audit, including the selection of the procedures to be performed?				
II.	Have you had experience in applying a variety of auditing procedures and techniques to the usual and customary financial transactions included in financial statements?				
III.	Have you had experience in the preparation of working papers in connection with the various elements of I and II above?				
IV.	Have you had experience in the preparation of written explanations and comments on the work performed and its findings?				
V.	Have you participated in the preparation of and reporting on full disclosure financial statements?				
VI.	Have you ever signed an attest report on behalf of your firm? (Collected for informational purposes only.)				
<p>I hereby certify, under penalty of perjury under the laws of the State of California, that I have met California's experience requirement, Section 5095, prior to the submission of the notification of practice privilege, and that all statements and representations on this form are true and correct.</p>					
SIGNATURE			DATE		



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Attachment 3

NOTICE TO OUT-OF-STATE LICENSEES

On January 1, 2011, Section 5050(b) of the Business and Professions Code on temporary and incidental practice became inoperative. As a result, non-California CPAs who may have practiced under Section 5050(b) should carefully evaluate whether their activities would require them to file a practice privilege to ensure they are practicing lawfully.

Additionally, California's Safe Harbor provision (CCR Title 16, Section 30), which allowed out-of-state CPAs five days in which to file a Practice Privilege Notification Form following the commencement of practicing in California, expired on December 31, 2010. Beginning on January 1, 2011, a Practice Privilege Notification Form must be filed with the California Board of Accountancy (CBA) prior to practicing public accountancy in the state.

For practice privilege information, or information on how to become licensed in California, please refer to the CBA's Web site at <http://www.cba.ca.gov>. For more information on this and other topics, please sign up for E-News on the Web site.



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Attachment 1

CBA Regulations Section 30

§ 30. Safe Harbor - Period of the Notice.

(a) Notwithstanding Section 29, during the period January 1, 2006, through December 31, 2010, an individual shall not be deemed to be in violation of this Article or Article 5.1 of the Accountancy Act (commencing with Business and Professions Code Section 5096) solely because he or she begins the practice of public accounting in California prior to submitting the Notification Form, provided the Notification Form is submitted within five business days of the date practice begins. An individual who properly submits the Notification Form to the Board within the five-day period provided for in this Section shall be deemed to have a practice privilege from the first day of practice in California unless the individual fails to timely submit the required fee pursuant to Section 31.

(b) Subsection (a) of this section does not apply in those instances in which prior approval by the Board is required pursuant to Section 32.

(c) In addition to any other applicable sanction, the Board may issue a fine of \$250 to \$5,000 for notifying the Board more than five business days after beginning practice in California. In assessing a fine amount, consideration shall be given to the factors listed in Section 95.3.

Note: Authority cited: Sections 5010 and 5096.9, Business and Professions Code. Reference: Sections 125.9, 5096, 5096.3 and 5096.14, Business and Professions Code.



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Attachment 2

5096.14.

~~The board shall amend Section 30 of Article 4 of Division 1 of Title 16 of the California Code of Regulations to extend the current "safe harbor" period from December 31, 2007, to December 31, 2010.~~

(a) An individual shall not be deemed to be in violation of this Article solely because he or she begins the practice of public accounting in California prior to notifying the board as indicated in Section 5096(c), provided the notice is given within five business days of the date practice begins. An individual who properly notifies the board within the five-day period provided for in this Section shall be deemed to have a practice privilege from the first day of practice in California unless the individual fails to timely submit the required fee pursuant to Section 5096(c).

(b) Subsection (a) of this section does not apply in those instances in which prior approval by the board is required pursuant to Section 5096(g).

(c) In addition to any other applicable sanction, the board may issue a fine pursuant to Section 5096.3 for notifying the board more than five business days after beginning practice in California.



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Attachment 3

§ 30. Safe Harbor - Period of the Notice.

(a) Notwithstanding Section 29, ~~during the period January 1, 2006, through December 31, 2010,~~ an individual shall not be deemed to be in violation of this Article or Article 5.1 of the Accountancy Act (commencing with Business and Professions Code Section 5096) solely because he or she begins the practice of public accounting in California prior to submitting the Notification Form, provided the Notification Form is submitted within five business days of the date practice begins. An individual who properly submits the Notification Form to the Board within the five-day period provided for in this Section shall be deemed to have a practice privilege from the first day of practice in California unless the individual fails to timely submit the required fee pursuant to Section 31.

(b) Subsection (a) of this section does not apply in those instances in which prior approval by the Board is required pursuant to Section 32.

(c) In addition to any other applicable sanction, the Board may issue a fine of \$250 to \$5,000 for notifying the Board more than five business days after beginning practice in California. In assessing a fine amount, consideration shall be given to the factors listed in Section 95.3.

Note: Authority cited: Sections 5010 and 5096.9, Business and Professions Code. Reference: Sections 125.9, 5096, 5096.3 and 5096.14, Business and Professions Code.

Memorandum

CBA Agenda Item II.C.2.
January 27-28, 2011

To : CBA Members

Date : January 7, 2011
Telephone: (916) 561-1792
Facsimile : (916) 263-3675
E-mail : mstanley@cba.ca.gov

From : Matthew Stanley
Legislation/Regulation Analyst

Subject : Consideration of Options for Reinstating the Safe Harbor Period for Practice Privilege in CBA Regulation Section 30

California's Safe Harbor provision (CCR Title 16, Section 30) (**Attachment 1**), which allowed out-of-state Certified Public Accountants (CPA) five business days in which to file a Practice Privilege Notification Form following the commencement of practicing in California, expired on December 31, 2010. Therefore, a Practice Privilege Notification Form must be filed with the California Board of Accountancy (CBA) prior to practicing public accountancy in the state.

In 2006, it was the original intent of this section to give an "introductory" period for out-of-state CPAs to gain familiarity with California's new Practice Privilege requirements. The Safe Harbor period was originally set to expire in 2007. However, absent specificity regarding what constitutes the practice of public accountancy, AB 1868 (Bermudez) of 2006 required the CBA to extend the Safe Harbor period to match the sunset date of the Practice Privilege Program in conjunction with Temporary and Incidental provisions which AB 1868 also reinstated. But, in 2009 when the Practice Privilege sunset date was removed, the Safe Harbor period was still seen as "introductory," and it was not addressed.

Since January 1, 2011, staff have received several comments expressing concern over the lack of a Safe Harbor period. At this time, it is anticipated that stakeholders will be providing the CBA with a written statement regarding their concerns with its elimination. Should this information be obtained prior to the CBA meeting, it will be provided to CBA Members.

Staff have prepared this memorandum to allow the CBA to deliberate whether it wishes to reinstate the Safe Harbor period. If it wishes to reinstate it, there are several options it may consider. Any of these options may be used to extend the Safe Harbor period to another set time, or the provision can be made permanent.

Consideration of Options for Reinstating the Safe Harbor Period for Practice Privilege in CBA Regulation Section 30

Page 2 of 2

OPTIONS

1. Codify the Safe Harbor period.

The CBA may elect to pursue a legislative change to Business and Professions Code §5096.14 to codify the Safe Harbor period (**Attachment 2**). This would be able to go into effect on January 1, 2012. With agreement from all parties, this could be done in the omnibus bill. The proposed language would make the Safe Harbor period permanent, but a sunset date could be added to make it temporary.

2. Pursue a Regular Rulemaking.

If a regular rulemaking were started in the next few weeks, it could be in effect sometime between December 2011 and February 2012. The proposed language (**Attachment 3**) would make the Safe Harbor period permanent. As an alternative, the existing sunset date could be amended to make it temporary.

3. Pursue an Emergency Rulemaking.

An emergency rulemaking could be in effect by the end of March or early April 2011. However, there is serious doubt that this particular rulemaking topic would fit the definition of "emergency" as provided in Government Code Section 11342.545 which states, "Emergency" means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare." Government Code Section 11346.1(b)(2) goes on to say, "A finding of emergency based only upon expediency, convenience, best interest, general public need, or speculation shall not be adequate to demonstrate the existence of an emergency."

Attachments



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Attachment 1

CBA Regulations Section 30

§ 30. Safe Harbor - Period of the Notice.

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(b) Subsection (a) of this section does not apply in those instances in which prior approval by the Board is required pursuant to Section 32.

(c) In addition to any other applicable sanction, the Board may issue a fine of \$250 to \$5,000 for notifying the Board more than five business days after beginning practice in California. In assessing a fine amount, consideration shall be given to the factors listed in Section 95.3.

Note: Authority cited: Sections 5010 and 5096.9, Business and Professions Code. Reference: Sections 125.9, 5096, 5096.3 and 5096.14, Business and Professions Code.



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5096.14.

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Attachment 3

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Note: Authority cited: Sections 5010 and 5096.9, Business and Professions Code. Reference: Sections 125.9, 5096, 5096.3 and 5096.14, Business and Professions Code.

Memorandum

CBA Agenda Item II.D.1.
January 27-28, 2011

To : CBA Members

Date : January 11, 2011

Telephone : (916) 561-1792

Facsimile : (916) 263-3678

E-mail : mstanley@cba.ca.gov


From : Matthew Stanley
Legislation & Regulation Analyst

Subject : Cross Border Practice Legislation: Practice Privilege; SB 1543 (2004), SB 229 (2005), and AB 1868 (2006).

Bill Number: SB 1543 of 2004 (**Attachment 1**)
Author: Figueroa
In Effect: January 1, 2005
Sponsor: Author

Provisions:

This bill did many things that can be found in the analysis of the bill (**Attachment 2**). However, for the purposes of this discussion, it instituted the provisions of the Practice Privilege Program which will be discussed in Agenda Item V.B.

Bill Number: SB 229 of 2005 (**Attachment 3**)
Author: Figueroa
In Effect: January 1, 2006
Sponsor: Author

Provisions:

This bill was an omnibus bill with only a small part affecting the California Board of Accountancy (CBA). The change made to the CBA allowed out-of-state CPAs to provide certain tax-related services for Californians without obtaining a practice privilege. (Analysis of SB 229 is **Attachment 4**).

Bill Number: AB 1868 of 2006 (**Attachment 5**)
Author: Bermudez
In Effect: September 25, 2006
Sponsor: CalCPA

Provisions:

This bill made numerous changes to the Accountancy Act and the Practice Privilege Program including allowing out-of-state firms to practice through the holder of a practice privilege, giving the CBA jurisdiction over practice privilege holders, and re-instituting a limited version of "temporary and incidental" practice. The remaining provisions can be found in the analysis (**Attachment 6**).

Attachments

Senate Bill No. 1543

CHAPTER 921

An act to amend Sections 5000, 5015.6, 5076, 5100, 5109, 5134, and 22253.2 of, to amend, repeal, and add Sections 5050 and 5088 of, to add Sections 5025.2, 5025.3, 5063.3, and 22252.1 to, and to add Article 5.1 (commencing with Section 5096) and Article 6.5 (commencing with Section 5116) to Chapter 1 of Division 3 of, the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.

[Approved by Governor September 29, 2004. Filed
with Secretary of State September 30, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1543, Figueroa. California Board of Accountancy: tax preparers.

(1) Existing law provides for the licensing and regulation of accountants by the California Board of Accountancy in the Department of Consumer Affairs. The provisions creating the board, specifying the board's composition, and authorizing the board to appoint an executive officer become inoperative on July 1, 2005, and are repealed on January 1, 2006.

This bill would change these dates to provide that the provisions become inoperative on July 1, 2011, and are repealed on January 1, 2012. The bill would require the Department of Finance, notwithstanding specified provisions in the Budget Act, to authorize up to \$2,000,000 dollars in additional expenditures for the board's enforcement and litigation activities. The bill would require funds for these expenditures to be payable from the Accountancy Fund. The bill would authorize funds to be encumbered in any fiscal year in which the board enters into a contract for litigation or enforcement purposes, as specified. The bill would require funds encumbered for these purposes to be continuously appropriated. The bill would enact provisions authorizing an individual whose principal place of business is not in this state, and who has a valid and current license, certificate, or permit to practice public accountancy from another state, to engage in the practice of public accountancy in this state under certain conditions. The bill would also prohibit a licensed accountant from disclosing confidential information concerning a client or a prospective client without obtaining the client's written permission with specified exceptions. The bill would authorize the board to assess

specified administrative penalties and would require fees from those penalties to be deposited in the Accountancy Fund.

(2) Existing law requires a tax preparer, prior to rendering any tax preparation service, to provide a customer with specified information in writing. A violation of the laws regulating tax preparers is a crime.

This bill would prohibit a tax preparer from disclosing confidential information concerning a client or a prospective client without obtaining the client's written permission.

Because a violation of the bill by a tax preparer would be a crime, it would impose a state-mandated local program.

(3) Existing law authorizes the Franchise Tax Board, when it identifies an individual who has violated specific provisions regulating tax preparers, to notify the California Tax Education Council, which is required to notify the Attorney General, a district attorney, or a city attorney. Existing law authorizes these entities to cite a violating individual, levy a fine of up to \$1,000 per violation, and issue a cease and desist order.

This bill would instead require that the Franchise Tax Board notify the California Tax Education Council when it identifies a violation. The bill would delete the requirement that the council notify the Attorney General, a district attorney, or a city attorney. The bill instead would authorize the Franchise Tax Board, pursuant to a reimbursement agreement with the California Tax Education Council, to cite a violating individual, levy a fine of up to \$5,000 per violation, and issue a cease and desist order. The bill would prohibit the Franchise Tax Board from incurring costs associated with citing, levying a fine, or issuing a cease and desist order unless certain conditions are satisfied.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 5000 of the Business and Professions Code is amended to read:

5000. There is in the Department of Consumer Affairs the California Board of Accountancy, which consists of 15 members, seven of whom shall be licensees, and eight of whom shall be public members who shall

not be licentiates of the board or registered by the board. The board has the powers and duties conferred by this chapter.

The Governor shall appoint four of the public members, and the seven licensee members as provided in this section. The Senate Rules Committee and the Speaker of the Assembly shall each appoint two public members. In appointing the seven licensee members, the Governor shall appoint members representing a cross section of the accounting profession with at least two members representing a small public accounting firm. For the purposes of this chapter, a small public accounting firm shall be defined as a professional firm that employs a total of no more than four licensees as partners, owners, or full-time employees in the practice of public accountancy within the State of California.

This section shall become inoperative on July 1, 2011, and as of January 1, 2012, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2012, deletes or extends the dates on which this section becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473). However, the review of the board shall be limited to reports or studies specified in this chapter and those issues identified by the Joint Committee on Boards, Commissions, and Consumer Protection and the board regarding the implementation of new licensing requirements.

SEC. 2. Section 5015.6 of the Business and Professions Code is amended to read:

5015.6. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 5025.2 is added to the Business and Professions Code, to read:

5025.2. (a) The Legislature finds that there are occasions when the California Board of Accountancy urgently requires additional expenditure authority in order to fund unanticipated enforcement and litigation activities. Without sufficient expenditure authority to obtain the necessary additional resources for urgent litigation and enforcement matters, the board is unable to adequately protect the public. Therefore, it is the intent of the Legislature that, apart from, and in addition to, the expenditure authority that may otherwise be established, the California

Board of Accountancy shall be given the increase in its expenditure authority in any given current fiscal year that is authorized by the Department of Finance pursuant to the provisions of subdivision (b) of this section, for costs and services in urgent litigation and enforcement matters, including, but not limited to, costs for professional and consulting services and for the services of the Attorney General and the Office of Administrative Hearings.

(b) Notwithstanding Control Section 27.00 of the annual Budget Act, Section 11006 of the Government Code, and the amount listed in the annual Budget Act for expenditure, the Department of Finance shall authorize up to two million dollars (\$2,000,000) in additional expenditures for the California Board of Accountancy upon a showing by the board that those funds are necessary for public protection and that the shortfall was not anticipated. These additional expenditures shall be payable from the Accountancy Fund for purposes of the board's litigation or enforcement activities in any given current fiscal year.

SEC. 4. Section 5025.3 is added to the Business and Professions Code, to read:

5025.3. (a) Whenever the board enters into a contract for litigation or enforcement purposes, including, but not limited to, contracts pursuant to Section 5025.1, funds may be encumbered in the fiscal year the contract is executed and expended at any time during the subsequent 24 months commencing with the last day of the fiscal year in which the contract is executed.

(b) Notwithstanding Section 13340 of the Government Code, funds encumbered for a contract pursuant to subdivision (a) of this section are continuously appropriated without regard to fiscal year, however, the appropriation is limited to the period for which funds are authorized to be encumbered under subdivision (a).

SEC. 5. Section 5050 of the Business and Professions Code is amended to read:

5050. (a) No person shall engage in the practice of public accountancy in this state unless such person is the holder of a valid permit to practice public accountancy issued by the board; provided, however, that nothing in this chapter shall prohibit a certified public accountant or a public accountant of another state, or any accountant of a foreign country lawfully practicing therein, from temporarily practicing in this state on professional business incident to his regular practice in another state or country.

(b) This section shall become inoperative on January 1, 2006, and as of that date is repealed.

SEC. 6. Section 5050 is added to the Business and Professions Code, to read:



5050. (a) No person shall engage in the practice of public accountancy in this state unless the person is the holder of a valid permit to practice public accountancy issued by the board or a holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096).

(b) This section shall become operative on January 1, 2006.

SEC. 7. Section 5063.3 is added to the Business and Professions Code, to read:

5063.3. (a) No confidential information obtained by a licensee, in his or her professional capacity, concerning a client or a prospective client shall be disclosed by the licensee without the written permission of the client or prospective client, except the following:

(1) Disclosures made by a licensee in compliance with a subpoena or a summons enforceable by order of a court.

(2) Disclosures made by a licensee regarding a client or prospective client to the extent the licensee reasonably believes it is necessary to maintain or defend himself or herself in a legal proceeding initiated by the client or prospective client.

(3) Disclosures made by a licensee in response to an official inquiry from a federal or state government regulatory agency.

(4) Disclosures made by a licensee or a licensee's duly authorized representative to another licensee in connection with a proposed sale or merger of the licensee's professional practice.

(5) Disclosures made by a licensee to either of the following:

(A) Another licensee to the extent necessary for purposes of professional consultation.

(B) Organizations that provide professional standards review and ethics or quality control peer review.

(6) Disclosures made when specifically required by law.

(7) Disclosures specified by the board in regulation.

(b) In the event that confidential client information may be disclosed to persons or entities outside the United States of America in connection with the services provided, the licensee shall inform the client in writing and obtain the client's written permission for the disclosure.

SEC. 8. Section 5076 of the Business and Professions Code is amended to read:

5076. (a) In order to renew its registration, a firm providing attest services, other than a sole proprietor or a small firm as defined in Section 5000, shall complete a peer review prior to the first registration expiration date after July 1, 2008, and no less frequently than every three years thereafter.

(b) For purposes of this article, the following definitions apply:

(1) "Peer review" means a study, appraisal, or review conducted in accordance with professional standards of the professional work of a licensee or registered firm by another licensee unaffiliated with the licensee or registered firm being reviewed. The peer review shall include, but not be limited to, a review of at least one attest engagement representing the highest level of service performed by the firm and may include an evaluation of other factors in accordance with requirements specified by the board in regulations.

(2) "Attest services" include an audit, a review of financial statements, or an examination of prospective financial information, provided, however, "attest services" shall not include the issuance of compiled financial statements.

(c) The board shall adopt regulations as necessary to implement, interpret, and make specific the peer review requirements in this section, including, but not limited to, regulations specifying the requirements for the approval of peer review providers, and regulations establishing a peer review oversight committee.

(d) The board shall review whether to implement the program specified in this section in light of the changes in federal and state law or regulations or professional standards, and shall report its findings to the Legislature and the department by September 1, 2005.

SEC. 9. Section 5088 of the Business and Professions Code is amended to read:

5088. (a) Any person who is the holder of a valid and unrevoked license as a certified public accountant issued under the laws of any state and who applies to the board for a license as a certified public accountant under the provisions of Section 5087 may, after application for licensure and after providing evidence of qualifying continuing education, perform the same public accounting services in this state as a certified public accountant licensed under Section 5092 or 5093 until the time his or her application for a license is granted or rejected.

(b) An applicant meeting the requirements of subdivision (a) who certifies that he or she has met the requirements of Section 5095 may perform attest services in this state until the time his or her application for a license is granted or rejected.

(c) This section shall remain operative until January 1, 2006, and as of that date is repealed.

SEC. 10. Section 5088 is added to the Business and Professions Code, to read:

5088. (a) Any individual who is the holder of a current and valid license as a certified public accountant issued under the laws of any state and who applies to the board for a license as a certified public accountant under the provisions of Section 5087 may, until the time the application

for a license is granted or denied, practice public accountancy in this state only under a practice privilege pursuant to the provisions of Article 5.1 (commencing with Section 5096), except that, for purposes of this section, the individual is not disqualified from a practice privilege during the period the application is pending by virtue of maintaining an office or principal place of business, or both, in this state. The board may by regulation provide for exemption, credit, or proration of fees to avoid duplication of fees.

(b) This section shall become operative on January 1, 2006.

SEC. 11. Article 5.1 (commencing with Section 5096) is added to Chapter 1 of Division 3 of the Business and Professions Code, to read:

Article 5.1. Practice Privileges

5096. (a) An individual whose principal place of business is not in this state and who has a valid and current license, certificate or permit to practice public accountancy from another state may, subject to the conditions and limitations in this article, engage in the practice of public accountancy in this state under a practice privilege without obtaining a certificate or license under this chapter if the individual satisfies one of the following:

(1) The individual has continually practiced public accountancy as a certified public accountant under a valid license issued by any state for at least four of the last ten years.

(2) The individual has a license, certificate, or permit from a state which has been determined by the board to have education, examination, and experience qualifications for licensure substantially equivalent to this state's qualifications under Section 5093.

(3) The individual possesses education, examination, and experience qualifications for licensure which have been determined by the board to be substantially equivalent to this state's qualifications under Section 5093.

(b) The board may designate states as substantially equivalent under paragraph (2) of subdivision (a) and may accept individual qualification evaluations or appraisals conducted by designated entities, as satisfying the requirements of paragraph (3) of subdivision (a).

(c) To obtain a practice privilege under this section, an individual who meets the requirements of subdivision (a), shall do the following:

(1) In the manner prescribed by board regulation, notify the board of the individual's intent to practice.

(2) Pay a fee as provided in Article 8 (commencing with Section 5130).

(d) Except as otherwise provided by this article or by board regulation, the practice privilege commences when the individual notifies the board, provided the fee is received by the board within 30 days of that date. The board shall permit the notification to be provided electronically.

(e) An individual who holds a practice privilege under this article:

(1) Is subject to the personal and subject matter jurisdiction and disciplinary authority of the board and the courts of this state.

(2) Shall comply with the provisions of this chapter, board regulations, and other laws, regulations, and professional standards applicable to the practice of public accountancy by the licensees of this state and to any other laws and regulations applicable to individuals practicing under practice privileges in this state except the individual is deemed, solely for the purpose of this article, to have met the continuing education requirements and ethics examination requirements of this state when such individual has met the examination and continuing education requirements of the state in which the individual holds the valid license, certificate, or permit on which the substantial equivalency is based.

(3) Shall not provide public accountancy services in this state from any office located in this state, except as an employee of a firm registered in this state. This paragraph does not apply to public accountancy services provided to a client at the client's place of business or residence.

(4) Is deemed to have appointed the regulatory agency of the state that issued the individual's certificate, license, or permit upon which substantial equivalency is based as the individual's agent on whom notices, subpoenas or other process may be served in any action or proceeding by the board against the individual.

(5) Shall cooperate with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand or subpoena for information or documents and timely provide to the board the identified information and documents.

(f) A practice privilege expires one year from the date of the notice, unless a shorter period is set by board regulation.

(g) (1) No individual may practice under a practice privilege without prior approval of the board if the individual has, or acquires at any time during the term of the practice privilege, any disqualifying condition under paragraph (2) of this subdivision.

(2) Disqualifying conditions include:

(A) Conviction of any crime other than a minor traffic violation.

(B) Revocation, suspension, denial, surrender or other discipline or sanctions involving any license, permit, registration, certificate or other authority to practice any profession in this or any other state or foreign

country or to practice before any state, federal, or local court or agency, or the Public Company Accounting Oversight Board.

(C) Pendency of any investigation, inquiry or proceeding by or before any state, federal or local court or agency, including, but not limited to, the Public Company Accounting Oversight Board, involving the professional conduct of the individual.

(D) Any judgment or arbitration award against the individual involving the professional conduct of the individual in the amount of thirty thousand dollars (\$30,000) or greater.

(E) Any other conditions as specified by the board in regulation.

(3) The board may adopt regulations exempting specified minor occurrences of the conditions listed in subparagraph (B) of paragraph (2) from being disqualifying conditions under this subdivision.

5096.1. (a) Any individual, not a licensee of this state, who is engaged in any act which is the practice of public accountancy in this state, and who has not given notice of intent to practice under practice privileges and paid the fee required pursuant to the provisions of this article, and who has a license, certificate or other authority to engage in the practice of public accountancy in any other state, regardless of whether active, inactive, suspended, or subject to renewal on payment of a fee or completion of an educational or ethics requirement, is:

(1) Deemed to be practicing public accountancy unlawfully in this state.

(2) Subject to the personal and subject matter jurisdiction and disciplinary authority of the board and the courts of this state to the same extent as a holder of a valid practice privilege.

(3) Deemed to have appointed the regulatory agency of the state that issued the individual's certificate or license as the individual's agent on whom notice, subpoenas, or other process may be served in any action or proceeding by the board against the individual.

(b) The board may prospectively deny a practice privilege to any individual who has violated this section or implementing regulations or committed any act which would be grounds for discipline against the holder of a practice privilege.

5096.2. (a) Practice privileges may be denied for failure to qualify under or comply with the provisions of this article or implementing regulations, or for any act that if committed by an applicant for licensure would be grounds for denial of a license under Section 480 or if committed by a licensee would be grounds for discipline under Section 5100, or for any act committed outside of this state that would be a violation if committed within this state.

(b) The board may deny practice privileges using either of the following procedures:

(1) Notifying the individual in writing of all of the following:

(A) That the practice privilege is denied.

(B) The reasons for denial.

(C) The earliest date on which the individual is eligible for a practice privilege.

(D) That the individual has a right to appeal the notice and request a hearing under the provisions of the Administrative Procedure Act if a written notice of appeal and request for hearing is made within 60 days.

(E) That, if the individual does not submit a notice of appeal and request for hearing within 60 days, the board's action set forth in the notice shall become final.

(2) Filing a statement of issues under the Administrative Procedure Act.

(c) An individual who had been denied a practice privilege may apply for a new practice privilege not less than one year after the effective date of the notice or decision denying the practice privilege unless a longer time period, not to exceed three years, is specified in the notice or decision denying the practice privilege.

5096.3. (a) Practice privileges are subject to revocation, suspension, fines or other disciplinary sanctions for any conduct that would be grounds for discipline against a licensee of the board or for any conduct in violation of this article or regulations implementing this article.

(b) Practice privileges are subject to discipline during any time period in which they are valid, under administrative suspension, or expired.

(c) The board may recover its costs pursuant to Section 5107 as part of any disciplinary proceeding against the holder of a practice privilege.

(d) An individual whose practice privilege has been revoked may apply for a new practice privilege not less than one year after the effective date of the board's decision revoking the individual's practice privilege unless a longer time period, not to exceed three years, is specified in the board's decision revoking the practice privilege.

(e) The provisions of the Administrative Procedure Act, including, but not limited to, the commencement of a disciplinary proceeding by the filing of an accusation by the board shall apply under this article.

5096.4. (a) The right of an individual to practice in this state under a practice privilege may be administratively suspended at any time by an order issued by the board or its executive officer, without prior notice or hearing, for the purpose of conducting a disciplinary investigation, proceeding, or inquiry concerning the representations made in the notice, the individual's competence or qualifications to practice under practice privileges, failure to timely respond to a board inquiry or request

for information or documents, or under other conditions and circumstances provided for by board regulation.

(b) The administrative suspension order is immediately effective when mailed to the individual's address of record or agent for notice and service as provided for in this article.

(c) The administrative suspension order shall contain the following:

(1) The reason for the suspension.

(2) A statement that the individual has the right, within 30 days, to appeal the administrative suspension order and request a hearing.

(3) A statement that any appeal hearing will be conducted under the provisions of the Administrative Procedure Act applicable to individuals who are denied licensure, including the filing of a statement of issues by the board setting forth the reasons for the administrative suspension of practice privileges and specifying the statutes and rules with which the individual must show compliance by producing proof at the hearing and in addition any particular matters that have come to the attention of the board and that would authorize the administrative suspension, or the denial of practice privileges.

(d) The burden is on the holder of the suspended practice privilege to establish both qualification and fitness to practice under practice privileges.

(e) The administrative suspension shall continue in effect until terminated by an order of the board or the executive officer or expiration of the practice privilege under administrative suspension.

(f) Administrative suspension is not discipline and shall not preclude any individual from applying for a license to practice public accountancy in this state or from applying for a new practice privilege upon expiration of the one under administrative suspension, except that the new practice privilege shall not be effective until approved by the board.

(g) Notwithstanding any administrative suspension, a practice privilege expires one year from the date of notice unless a shorter period is set by board regulation.

(h) Proceedings to appeal an administrative suspension order may be combined or coordinated with proceedings for denial or discipline of a practice privilege.

5096.5. Notwithstanding any other provision of this article, an individual may not sign any attest report pursuant to a practice privilege unless the individual meets the experience requirements of Section 5095 and completes any continuing education or other conditions required by the board regulations implementing this article.

5096.6. In addition to the authority otherwise provided for by this code, the board may delegate to the executive officer the authority to issue any notice or order provided for in this article and to act on behalf

of the board, including, but not limited to, issuing a notice of denial of a practice privilege and an interim suspension order, subject to the right of the individual to timely appeal and request a hearing as provided for in this article.

5096.7. Except as otherwise provided in this article, the following definitions apply:

(a) Anywhere the term “license,” “licensee,” “permit,” or “certificate” is used in this chapter or Division 1.5 (commencing with Section 475), it shall include persons holding practice privileges under this article, unless otherwise inconsistent with the provisions of the article.

(b) Any notice of practice privileges under this article and supporting documents is deemed an application for licensure for purposes of the provisions of this code, including, but not limited to, the provisions of this chapter and the provisions of Division 1.5 (commencing with Section 475) related to the denial, suspension and revocation of licenses.

(c) Anywhere the term “employee” is used in this article it shall include, but is not limited to, partners, shareholders, and other owners.

5096.8. In addition to the authority otherwise provided by this code, all investigative powers of the board, including those delegated to the executive officer, shall apply to investigations concerning compliance with, or actual or potential violations of, the provisions of this article or implementing regulations, including, but not limited to, the power to conduct investigations and hearings by the executive officer under Section 5103 and to issuance of subpoenas under Section 5108.

5096.9. The board is authorized to adopt regulations to implement, interpret, or make specific the provisions of this article.

5096.10. The provisions of this article shall only be operative if commencing July 1, 2005, and continuing during the period provided in Section 5096.11, there is an appropriation from the Accountancy Fund in the annual Budget Act to fund the activities in the article and sufficient hiring authority is granted pursuant to a budget change proposal to the board to provide staffing to implement this article.

5096.11. This article shall become operative on January 1, 2006. It shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2011, deletes or extends that date.

SEC. 12. Section 5100 of the Business and Professions Code is amended to read:

5100. After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for

unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

(a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant.

(b) A violation of Section 478, 498, or 499 dealing with false statements or omissions in the application for a license, in obtaining a certificate as a certified public accountant, in obtaining registration under this chapter, or in obtaining a permit to practice public accountancy under this chapter.

(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate a lack of competency in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.

(d) Cancellation, revocation, or suspension of a certificate or other authority to practice as a certified public accountant or a public accountant, refusal to renew the certificate or other authority to practice as a certified public accountant or a public accountant, or any other discipline by any other state or foreign country.

(e) Violation of Section 5097.

(f) Violation of Section 5120.

(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

(h) Suspension or revocation of the right to practice before any governmental body or agency.

(i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

(j) Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information.

(k) Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses.

(l) The imposition of any discipline, penalty, or sanction on a registered public accounting firm or any associated person of such firm, or both, or on any other holder of a permit, certificate, license, or other authority to practice in this state, by the Public Company Accounting Oversight Board or the United States Securities and Exchange Commission, or their designees under the Sarbanes-Oxley Act of 2002 or other federal legislation.

(m) Unlawfully engaging in the practice of public accountancy in another state.

SEC. 13. Section 5109 of the Business and Professions Code is amended to read:

5109. The expiration, cancellation, forfeiture, or suspension of a license, practice, privilege, or other authority to practice public accountancy by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license.

SEC. 14. Article 6.5 (commencing with Section 5116) is added to Chapter 1 of Division 3 of the Business and Professions Code, to read:

Article 6.5. Administrative Penalties

5116. (a) The board, after appropriate notice and an opportunity for hearing, may order any licensee or applicant for licensure or examination to pay an administrative penalty as provided in this article as part of any disciplinary proceeding or other proceeding provided for in this chapter.

(b) The board may assess administrative penalties under one or more provisions of this article. However, the total administrative penalty to be paid by the licensee shall not exceed the amount of the highest administrative penalty authorized by this article.

(c) The board shall adopt regulations to establish criteria for assessing administrative penalties based upon factors, including, but not limited to, actual and potential consumer harm, nature and severity of the violation, the role of the person in the violation, the person's ability to pay the administrative penalty, and the level of administrative penalty necessary to deter future violations of this chapter.

(d) Administrative penalties assessed under this article shall be in addition to any other penalties or sanctions imposed on the licensee or other person, including, but not limited to, license revocation, license suspension, denial of the application for licensure, denial of the petition for reinstatement, or denial of admission to the licensing examination. Payment of these administrative penalties may be included as a condition of probation when probation is ordered.

(e) All administrative penalties collected under this article shall be deposited in the Accountancy Fund.

5116.1. In accordance with Section 5116 and applicable regulations, except as provided in Section 5116.2, any licensee who violates any provision of this chapter may be assessed an administrative penalty of not more than five thousand dollars (\$5,000) for the first violation and not more than ten thousand dollars (\$10,000) for each subsequent violation.

5116.2. In accordance with Section 5116 and applicable regulations, any licensee who violates subdivision (a), (c), (i), (j) or (k) of Section 5100 may be assessed an administrative penalty of not more than one million dollars (\$1,000,000) for the first violation and not more than five million dollars (\$5,000,000) for any subsequent violation, except that a licensee who is a natural person may be assessed an administrative penalty of not more than fifty thousand dollars (\$50,000) for the first violation and not more than one hundred thousand dollars (\$100,000) for any subsequent violation.

5116.3. In accordance with Section 5116 and applicable regulations, any person who is found to have cheated or subverted or attempted to subvert or cheat on any licensing examination or who conspired with or aided or abetted any other person to cheat, subvert or attempt to subvert any examination may be assessed an administrative penalty of not more than five thousand dollars (\$5,000) for the first violation and not more than ten thousand dollars (\$10,000) for each subsequent violation.

5116.4. (a) The board's executive officer may request assessment of an administrative penalty in any disciplinary or other proceeding provided in this chapter or in any notice to an applicant pursuant to Section 5112.

(b) The administrative penalty pursuant to subdivision (a) shall become final unless contested within the time period provided for the filing of a notice of appeal, for the filing of a notice of defense, or for requesting a hearing in the proceeding.

(c) Nothing in this article shall prevent an administrative penalty from being included in a final contested or default decision of the board or in a notice issued pursuant to Section 5112 once the time period for requesting a hearing has expired.

5116.5. The board may obtain a judgment in any court of competent jurisdiction ordering the payment of any final administrative penalty assessed by the board pursuant to this article upon the filing of a certified copy of the board's final decision or notice issued pursuant to Section 5112.

5116.6. Anywhere the term "licensee" is used in the article it shall include certified public accountants, public accountants, partnerships, corporations, holders of practice privileges, other persons licensed, registered, or otherwise authorized to practice public accountancy under this chapter, and persons who are in violation of any provision of Article 5.1 (commencing with Section 5096).

SEC. 15. Section 5134 of the Business and Professions Code is amended to read:

5134. The amount of fees prescribed by this chapter is as follows:

(a) The fee to be charged to each applicant for the certified public accountant examination shall be fixed by the board at an amount to equal the actual cost to the board of the purchase or development of the examination, plus the estimated cost to the board of administering the examination and shall not exceed six hundred dollars (\$600). The board may charge a reexamination fee equal to the actual cost to the board of the purchase or development of the examination or any of its component parts, plus the estimated cost to the board of administering the examination and not to exceed seventy-five dollars (\$75) for each part that is subject to reexamination.

(b) The fee to be charged to out-of-state candidates for the certified public accountant examination shall be fixed by the board at an amount equal to the estimated cost to the board of administering the examination and shall not exceed six hundred dollars (\$600) per candidate.

(c) The application fee to be charged to each applicant for issuance of a certified public accountant certificate shall be fixed by the board at an amount equal to the estimated administrative cost to the board of processing and issuing the certificate and shall not exceed two hundred fifty dollars (\$250).

(d) The application fee to be charged to each applicant for issuance of a certified public accountant certificate by waiver of examination shall be fixed by the board at an amount equal to the estimated administrative cost to the board of processing and issuing the certificate and shall not exceed two hundred fifty dollars (\$250).

(e) The fee to be charged to each applicant for registration as a partnership or professional corporation shall be fixed by the board at an amount equal to the estimated administrative cost to the board of processing and issuing the registration and shall not exceed two hundred fifty dollars (\$250).

(f) The board shall fix the biennial renewal fee so that, together with the estimated amount from revenue other than that generated by subdivisions (a) to (e), inclusive, the reserve balance in the board's contingent fund shall be equal to approximately nine months of annual authorized expenditures. Any increase in the renewal fee made after July 1, 1990, shall be effective upon a determination by the board, by regulation adopted pursuant to subdivision (k), that additional moneys are required to fund authorized expenditures other than those specified in subdivisions (a) to (e), inclusive, and maintain the board's contingent fund reserve balance equal to nine months of estimated annual authorized expenditures in the fiscal year in which the expenditures will occur. The biennial fee for the renewal of each of the permits to engage in the practice of public accountancy specified in Section 5070 shall not exceed two hundred fifty dollars (\$250).

(g) The delinquency fee shall be 50 percent of the accrued renewal fee.

(h) The initial permit fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the permit is issued, except that, if the permit is issued one year or less before it will expire, then the initial permit fee is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the permit is issued. The board may, by regulation, provide for the waiver or refund of the initial permit fee where the permit is issued less than 45 days before the date on which it will expire.

(i) On and after January 1, 2006, the annual fee to be charged an individual for a practice privilege pursuant to Section 5096 shall be fixed by the board at an amount not to exceed 50 percent of the biennial renewal fee provided in subdivision (f).

(j) The fee to be charged for the certification of documents evidencing passage of the certified public accountant examination, the certification of documents evidencing the grades received on the certified public accountant examination, or the certification of documents evidencing licensure shall be twenty-five dollars (\$25).

(k) The actual and estimated costs referred to in this section shall be calculated every two years using a survey of all costs attributable to the applicable subdivision.

(l) Upon the effective date of this section the board shall fix the fees in accordance with the limits of this section and, on and after July 1, 1990, any increase in any fee fixed by the board shall be pursuant to regulation duly adopted by the board in accordance with the limits of this section.

(m) Fees collected pursuant to subdivisions (a) to (e), inclusive, shall be fixed by the board in amounts necessary to recover the actual costs of providing the service for which the fee is assessed, as projected for the fiscal year commencing on the date the fees become effective.

SEC. 16. Section 22252.1 is added to the Business and Professions Code, to read:

22252.1. (a) No confidential information obtained by a tax preparer, in his or her professional capacity, concerning a client or a prospective client shall be disclosed by the tax preparer without the written permission of the client or prospective client, except for the following:

(1) Disclosures made by a tax preparer in compliance with a subpoena or a summons enforceable by order of a court.

(2) Disclosures made by a tax preparer regarding a client or prospective client to the extent the tax preparer reasonably believes it is

necessary to maintain or defend himself or herself in a legal proceeding initiated by the client or prospective client.

(3) Disclosures made by a tax preparer in response to an official inquiry from a federal or state government regulatory agency.

(4) Disclosures made by a tax preparer or to a tax preparer's duly authorized representative to another tax preparer in connection with a proposed sale or merger of the tax preparer's professional practice.

(5) Disclosures made by a tax preparer to either of the following:

(A) Another tax preparer to the extent necessary for purposes of professional consultation.

(B) Organizations that provide professional standards review and ethics or quality control peer review.

(6) Disclosures made when specifically required by law.

(b) In the event that confidential client information may be disclosed to persons or entities outside the United States of America in connection with the services provided, the tax preparer shall inform the client in writing and obtain the client's written permission for the disclosure.

(c) It is the intent of the Legislature that this section complement and does not replace Section 17530.5 as applied to tax preparers by subdivision (f) of Section 1799.1a of the Civil Code.

SEC. 17. Section 22253.2 of the Business and Professions Code is amended to read:

22253.2. (a) The Franchise Tax Board shall notify the California Tax Education Council when it identifies an individual who has violated paragraph (1) of subdivision (a) of Section 22253.

(b) The Franchise Tax Board pursuant to an agreement with the California Tax Education Council, as authorized in subdivision (c), may do any of the following:

(1) Cite individuals preparing tax returns in violation of subdivision (a) of Section 22253.

(2) Levy a fine up to five thousand dollars (\$5,000) per violation.

(3) Issue a cease and desist order, which shall remain in effect until the individual has come into compliance with the provisions of paragraph (1) of subdivision (a) of Section 22253.

(c) The California Tax Education Council may enter into an agreement with the Franchise Tax Board to provide reimbursement to the Franchise Tax Board for any expenses incurred by the Franchise Tax Board to implement subdivision (a) of this section.

(d) The Franchise Tax Board shall not incur any costs associated with any of the activities authorized by subdivision (b) until either one of the following has occurred:

(1) Commencing January 1, 2006, and continuing each year thereafter, there is an appropriation in the Franchise Tax Board's annual budget to fund the activities authorized by subdivision (b).

(2) (A) An agreement has been executed between the California Tax Education Council and the Franchise Tax Board that provides that an amount equal to all first year costs necessary to implement and administer the activities authorized by subdivision (b) shall be received by the Franchise Tax Board. For purposes of this paragraph, first year costs include costs associated with, but not limited to, the development of processes or systems changes if necessary, and labor.

(B) An agreement has been executed between the California Tax Education Council and the Franchise Tax Board that provides that the annual costs incurred by the Franchise Tax Board as a result of the activities authorized by subdivision (b) shall be reimbursed by the California Tax Education Council to the Franchise Tax Board.

(C) Pursuant to the agreement described in subparagraph (A), the Franchise Tax Board has received an amount equal to the first year costs.

SEC. 18. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



BILL ANALYSIS

SENATE RULES COMMITTEE SB 1543
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

UNFINISHED BUSINESS

Bill No: SB 1543
Author: Figueroa (D)
Amended: 8/23/04
Vote: 21

SENATE BUSINESS & PROFESSIONS COMMITTEE : 5-0, 4/19/04
AYES: Aanestad, Cedillo, Machado, Murray, Figueroa
NO VOTE RECORDED: Brulte, Vincent

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SENATE FLOOR : 24-12, 5/17/04
AYES: Aanestad, Alarcon, Alpert, Burton, Cedillo, Chesbro,
Ducheny, Dunn, Escutia, Figueroa, Florez, Karnette,
Kuehl, Machado, Murray, Ortiz, Perata, Romero, Scott,
Sher, Soto, Speier, Torlakson, Vasconcellos
NOES: Ackerman, Ashburn, Battin, Brulte, Denham,
Hollingsworth, Margett, McClintock, McPherson, Morrow,
Oller, Poochigian
NO VOTE RECORDED: Bowen, Johnson, Vincent, Vacancy

ASSEMBLY FLOOR : 49-28, 8/24/04 - See last page for vote

SUBJECT : California Board of Accountancy: tax preparers

SOURCE : Author

DIGEST : Assembly amendments make numerous changes to the bill. As it left the Senate this bill merely deleted the sunset dates for the California Board of Accountancy (CBA) and changed to unspecified dates.

The bill now extends the repeal date of the CBA within the Department of Consumer Affairs and makes various changes to the Accountancy Act.

ANALYSIS : This bill:

1. Extends the repeal date of the CBA until January 1, 2012.
2. Requires the Department of Finance, notwithstanding specified provisions in the Budget Act, to authorize up to \$2 million in additional expenditures for the CBA's enforcement and litigation activities and:
 - A. Requires funds for these expenditures to be payable from the Accountancy Fund.
 - B. Authorizes funds to be encumbered in any fiscal year in which the CBA enters into a contract for litigation or enforcement purposes.
 - C. Requires funds encumbered for these purposes to be continuously appropriated.
3. Enacts provisions authorizing an individual whose principal place of business is not in this state, and who has a valid and current license, certificate, or permit to practice public accountancy from another state, to engage in the practice of public accountancy in this state under certain conditions.
4. Prohibits a licensed accountant from disclosing confidential information concerning a client or a prospective client without obtaining the client's written permission.
5. Authorizes the CBA to assess specified administrative penalties and requires fees from those penalties to be deposited in the Accountancy Fund.
6. Prohibits a tax preparer from disclosing confidential information concerning a client or a prospective client without obtaining the client's written permission, except

in specified circumstances, and:

A. Requires the Franchise Tax Board (FTB) to notify the California Tax Education Council when it identifies a violation of specific provisions regulating tax preparers.

B. Authorizes the FTB to cite a violating individual, levy a fine of up to \$5,000 per violation, and issue a cease and desist order.

7. Stipulates that the FTB shall not incur any costs associated with their cite and fine authority within this bill until either of the following has occurred:

A. There is an annual appropriation to fund these activities in the FTB's budget, commencing on January 1, 2006.

B. An agreement is executed between the California Tax Education Council (CTEC) to reimburse FTB for the first year costs, as defined.

1. Provides for a two-tiered fining structure for violations of the Accountancy Act, as follows:

A. The first tier provides for fines up to \$5,000 for the first violation and up to \$10,000 for subsequent violations. These fines could be imposed on individuals or firms for any violation of the Accountancy Act; and,

B. The second tier provides for significantly larger fines for violations such as criminal convictions, fraud, gross negligence, fiscal dishonesty, and embezzlement. For these violations, individuals could be fined up to \$50,000 for the first violation and up to \$100,000 for repeated violations. Firms could be fined up to \$1 million for the first violation and up to \$5 million for subsequent violations.

Comments

The CBA indicates that it is critical for it to obtain

multi-year funding flexibility for complex enforcement matters, and to have the ability to hire and retain a sufficient number of qualified Investigative Certified Public Accountants (Investigative CPAs). The CBA is unique in California insofar as it regulates both individuals and firms. The largest firms, known as the "Big Four," are some of the largest firms in this state and the United States, as well as the entire world.

Given the complex technical accounting issues that arise in large firm enforcement cases, the CBA must have a sufficient number of Investigative CPAs who are skilled in both accounting and the nuances of enforcement. Currently, due to the hiring freeze and budget control provisions, the CBA has an insufficient number of Investigative CPAs to pursue multiple large firm matters and simultaneously handle the increased workload created by reform legislation.

This bill provides for a two-tiered fining structure. The first tier provides for fines up to \$5,000 for the first violation and up to \$10,000 for subsequent violations. These fines could be imposed on individuals or firms for any violation of the Accountancy Act. The second tier provides for significantly larger fines for violations such as criminal convictions, fraud, gross negligence, fiscal dishonesty, and embezzlement. For these violations, individuals could be fined up to \$50,000 for the first violation and up to \$100,000 for repeated violations. Firms could be fined up to \$1 million for the first violation and up to \$5 million for subsequent violations. To ensure that fines are assessed in a judicious manner focused on consumer protection, this bill provides criteria for assessing fines, including the extent of consumer harm, severity of the violation, and the ability to pay.

FISCAL EFFECT : Appropriation: Yes Fiscal Com.: Yes
Local: Yes

According to the Assembly Third Reading analysis:

A.FTB will incur significant costs to assume mandated enforcement responsibilities with regard to tax preparers. These costs are unknown, but would probably

be at least several hundred thousand dollars annually.

B.Up to \$2 million in additional special fund expenditure authority to the CBA in any fiscal year for litigation or enforcement activities [Accountancy Fund].

C.The CBA will incur ongoing special fund costs of about \$100,000, for two staff to review applications from out-of-state CPAs seeking a practice privilege in California and unknown additional enforcement costs offset to some extent by penalty revenues.

SUPPORT : (Verified 8/26/04)

Deloitte & Touche LLP
Ernst & Young LLP
KPMG LLP
PricewaterhouseCoopers LLP

ARGUMENTS IN SUPPORT : Proponents state that failure to enact this bill will result in the dissolution of the California Board of Accountancy and the transfer of regulation of the accounting profession to the bureaucracy in the Department of Consumer Affairs.

ASSEMBLY FLOOR :

AYES: Berg, Bermudez, Calderon, Canciamilla, Chan, Chavez, Chu, Cohn, Corbett, Correa, Diaz, Dutra, Dymally, Firebaugh, Frommer, Goldberg, Hancock, Jerome Horton, Shirley Horton, Jackson, Kehoe, Laird, Leno, Levine, Lieber, Liu, Longville, Lowenthal, Maldonado, Matthews, Montanez, Mullin, Nakano, Nation, Negrete McLeod, Oropeza, Parra, Reyes, Richman, Ridley-Thomas, Salinas, Simitian, Steinberg, Vargas, Wesson, Wiggins, Wolk, Yee, Nunez

NOES: Aghazarian, Bates, Benoit, Bogh, Campbell, Cogdill, Cox, Daucher, Dutton, Garcia, Harman, Haynes, Houston, Keene, La Malfa, La Suer, Leslie, Maddox, Maze, McCarthy, Mountjoy, Nakanishi, Pacheco, Plescia, Samuelian, Spitzer, Strickland, Wyland

NO VOTE RECORDED: Koretz, Pavley, Runner

CP:nl 8/26/04 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

Senate Bill No. 229

CHAPTER 658

An act to amend Sections 25, 2909, 2911, 2912, 2914, 2920, 2933, 2936, 2942, 2946, 2983, 2987, 2988, 3751, 4980.03, 4980.40, 4980.43, 4982.05, 4982.26, 4986.71, 4990.1, 4990.8, 4992.31, 4992.33, 5079, 8000, 8005, 8010, 8025, 8030.2, 8030.4, 8030.6, 8030.8, 8520, 8528, and 22253.2 of, to add Section 5054 to, and to repeal Section 2945 of, the Business and Professions Code, and to amend Section 19167 of the Revenue and Taxation Code, relating to professions and vocations.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

SB 229, Figueroa. Professions and vocations.

(1) Existing law provides for the Board of Psychology to license and regulate psychologists. Under existing law, certain provisions relating to the board become inoperative on July 1, 2006, and are to be repealed on January 1, 2007.

This bill would extend those dates to July 1, 2008, and January 1, 2009, respectively.

(2) Existing law specifies the requirements for licensing as a psychologist, including educational and training requirements. Existing law exempts from licensing persons who meet certain criteria and who register with the board for up to 2 years from the date of registration. Existing law provides for the Board of Psychology to examine applicants by written or oral examination.

This bill would provide that those exempt persons shall be identified as "registered psychologists" and would extend the period of the exemption to up to 30 months. The bill would also delete the authorization for an oral examination, and would instead provide for a computer-assisted examination. The bill would make various other revisions to these and other related provisions.

(3) Existing law imposes various fees on applicants for licensure by the Board of Psychology and on licensees. Existing law provides that a licensee in ill health or absent from the state may apply for inactive status at a reduced rate.

This bill would also authorize a licensee in retirement to be placed on inactive status.

(4) Existing law authorizes a psychologist licensed by another state or foreign country to practice in this state for up to 30 days in a calendar year.

This bill would limit that authorization to a psychologist at the doctoral level licensed by another state or Canada.

(2) The date, subsequent to the original complaint or report, on which the board became aware of any additional acts or omissions alleged as the basis for disciplinary action against the same individual.

(3) The date the board receives from the complainant a written release of information pertaining to the complainant's diagnosis and treatment.

SEC. 25. Section 4992.33 of the Business and Professions Code is amended to read:

4992.33. The board shall revoke any license issued under this chapter upon a decision made in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 729, when that act is with a patient, or with a former patient when the relationship was terminated primarily for the purpose of engaging in that act. The revocation shall not be stayed by the administrative law judge or the board.

SEC. 26. Section 5054 is added to the Business and Professions Code, to read:

5054. (a) Notwithstanding any other provision of this chapter, an individual or firm holding a valid and current license, certificate, or permit to practice public accountancy from another state may prepare tax returns for natural persons who are California residents or estate tax returns for the estates of natural persons who were clients at the time of death without obtaining a permit to practice public accountancy issued by the board under this chapter or a practice privilege pursuant to Article 5.1 (commencing with Section 5096) provided that the individual or firm does not physically enter California to practice public accountancy pursuant to Section 5051, does not solicit California clients, and does not assert or imply that the individual or firm is licensed or registered to practice public accountancy in California.

(b) The board may, by regulation, limit the number of tax returns that may be prepared pursuant to subdivision (a).

SEC. 27. Section 5079 of the Business and Professions Code is amended to read:

5079. (a) Notwithstanding any other provision of this chapter, any firm lawfully engaged in the practice of public accountancy in this state may have owners who are not licensed as certified public accountants or public accountants if the following conditions are met:

(1) Nonlicensee owners shall be natural persons or entities, such as partnerships, professional corporations, or others, provided that each ultimate beneficial owner of an equity interest in that entity shall be a natural person materially participating in the business conducted by the firm or an entity controlled by the firm.

(2) Nonlicensee owners shall materially participate in the business of the firm, or an entity controlled by the firm, and their ownership interest shall revert to the firm upon the cessation of any material participation.

(3) Licensees shall in the aggregate, directly or beneficially, comprise a majority of owners, except that firms with two owners may have one owner who is a nonlicensee.

(4) Licensees shall in the aggregate, directly or beneficially, hold more than half of the equity capital and possess majority voting rights.

(5) Nonlicensee owners shall not hold themselves out as certified public accountants or public accountants and each licensed firm shall disclose actual or potential involvement of nonlicensee owners in the services provided.

(6) There shall be a certified public accountant or public accountant who has ultimate responsibility for each financial statement attest and compilation service engagement.

(7) Except as permitted by the board in the exercise of its discretion, a person may not become a nonlicensee owner or remain a nonlicensee owner if the person has done either of the following:

(A) Been convicted of any crime, an element of which is dishonesty or fraud, under the laws of any state, of the United States, or of any other jurisdiction.

(B) Had a professional license or the right to practice revoked or suspended for reasons other than nonpayment of dues or fees, or has voluntarily surrendered a license or right to practice with disciplinary charges or a disciplinary investigation pending, and not reinstated by a licensing or regulatory agency of any state, or of the United States, including, but not limited to, the Securities and Exchange Commission or Public Company Accounting Oversight Board, or of any other jurisdiction.

(b) (1) A nonlicensee owner of a licensed firm shall report to the board in writing of the occurrence of any of the events set forth in paragraph (7) of subdivision (a) within 30 days of the date the nonlicensee owner has knowledge of the event. A conviction includes the initial plea, verdict, or finding of guilt, pleas of no contest, or pronouncement of sentence by a trial court even though that conviction may not be final or sentence actually imposed until appeals are exhausted.

(2) A California nonlicensee owner of a licensed firm shall report to the board in writing the occurrence of any of the following events occurring on or after January 1, 2006, within 30 days of the date the California nonlicensee owner has knowledge of the events:

(A) Any notice of the opening or initiation of a formal investigation of the nonlicensee owner by the Securities and Exchange Commission or its designee, or any notice from the Securities and Exchange Commission to a nonlicensee owner requesting a Wells submission.

(B) Any notice of the opening or initiation of an investigation of the nonlicensee owner by the Public Company Accounting Oversight Board or its designee.

(C) Any notice of the opening or initiation of an investigation of the nonlicensee owner by another professional licensing agency.

(3) The report required by paragraphs (1) and (2) shall be signed by the nonlicensee owner and set forth the facts that constitute the reportable

event. If the reportable event involves the action of an administrative agency or court, the report shall identify the name of the agency or court, the title of the matter, and the date of occurrence of the event.

(4) Notwithstanding any other provision of law, reports received by the board pursuant to paragraph (2) shall not be disclosed to the public pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) other than (A) in the course of any disciplinary proceeding by the board after the filing of a formal accusation, (B) in the course of any legal action to which the board is a party, (C) in response to an official inquiry from a state or federal agency, (D) in response to a subpoena or summons enforceable by order of a court, or (E) when otherwise specifically required by law.

(5) Nothing in this subdivision shall impose a duty upon any licensee or nonlicensee owner to report to the board the occurrence of any events set forth in paragraph (7) of subdivision (a) or paragraph (2) of this subdivision either by or against any other nonlicensee owner.

(c) For purposes of this section, the following definitions apply:

(1) "Licensee" means a certified public accountant or public accountant in this state or a certified public accountant in good standing in another state.

(2) "Material participation" means an activity that is regular, continuous, and substantial.

(d) All firms with nonlicensee owners shall certify at the time of registration and renewal that the firm is in compliance with this section.

(e) The board shall adopt regulations to implement, interpret, or make specific this section.

SEC. 28. Section 8000 of the Business and Professions Code is amended to read:

8000. There is in the Department of Consumer Affairs a Court Reporters Board of California, which consists of five members, three of whom shall be public members and two of whom shall be holders of certificates issued under this chapter who have been actively engaged as shorthand reporters within this state for at least five years immediately preceding their appointment.

This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 29. Section 8005 of the Business and Professions Code is amended to read:

8005. The Court Reporters Board of California is charged with the executive functions necessary for effectuating the purposes of this chapter. It may appoint committees as it deems necessary or proper. The board may appoint, prescribe the duties, and fix the salary of an executive officer. Except as provided by Section 159.5, the board may also employ other employees as may be necessary, subject to civil service and other provisions of law.

BILL ANALYSIS

SENATE RULES COMMITTEE SB 229
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

UNFINISHED BUSINESS

Bill No: SB 229
Author: Figueroa (D)
Amended: 9/2/05
Vote: 21

SENATE BUSINESS, PROF. & ECON. DEV. COMM. : 6-0, 4/25/05
AYES: Figueroa, Campbell, Aanestad, Florez, Murray,
Simitian
NO VOTE RECORDED: Morrow

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SENATE FLOOR : 32-4, 5/16/05
AYES: Aanestad, Ackerman, Alarcon, Alquist, Battin, Bowen,
Campbell, Chesbro, Cox, Denham, Ducheny, Dunn, Dutton,
Figueroa, Florez, Kehoe, Kuehl, Lowenthal, Machado,
Maldonado, Margett, Migden, Murray, Ortiz, Perata,
Poochigian, Runner, Scott, Simitian, Soto, Torlakson,
Vincent
NOES: Ashburn, Hollingsworth, McClintock, Morrow
NO VOTE RECORDED: Cedillo, Escutia, Romero, Speier

ASSEMBLY FLOOR : Not available

SUBJECT : Professions and vocations

SOURCE : Author

DIGEST : This bill extends the sunset dates for the Board of Psychology, the Board of Behavioral Sciences, the Court Reporters Board, and the Structural Pest Control Board, and

implements recommendations made by the Joint Committee on Boards, Commissions and Consumer Protection.

Assembly Amendments (1) change the sunset date for the Board of Psychology, the Board of Behavioral Sciences and the Court Reporters Board from January 1, 2012 to January 1, 2009, (2) clarify that the Respiratory Care Board may charge a fee for the reinstatement of a surrendered license, (3) add language to reorganize and consolidate the provisions relating to experience requirements relative to the regulation of marriage and family therapists by the Board of Behavioral Sciences, (4) add language allowing an individual practitioner or public accounting firm holding a valid permit to practice in another state to provide specified tax-related services for Californians without a California license, a practice privilege, or a public accounting firm employer registered in California.

ANALYSIS :

Existing law:

1. Establishes the Joint Committee on Boards, Commissions and Consumer Protection (Joint Committee), subjects the various licensing boards of the Department of Consumer Affairs (DCA) to sunset review by the Joint Committee, and provides for the elimination of all DCA boards on a specified schedule. The law provides that when any board becomes inoperative and is repealed (sunsetting), the DCA shall succeed to and be vested with all duties and responsibilities of the board. It is the intent of the Legislature that all existing and proposed consumer-related boards or categories of licensed professionals be subject to a review on a four-year cycle, unless circumstances warrant a longer or shorter interval with respect to a given board.
2. Provides that the provisions relating to the Board of Psychology (BOP), the Board of Behavioral Sciences (BBS), the Court Reporters Board (CRB), and the Structural Pest Control Board (SPCB) become inoperative on July 1, 2006 and are to be repealed (sunset) on January 1, 2007.
3. Establishes BOP and provides for licensing and regulation of psychologists by BOP.

4. Specifies the requirements for licensing as a psychologist, including educational and training requirements.
5. Establishes the BBS and provides for licensing and regulation of clinical social workers.
6. Establishes the CRB to license and regulate certified shorthand reporters.
7. Prohibits the disclosure of certain information regarding complaints relative to a licensee of CRB unless an accusation has been filed.
8. Establishes the SPCB to license and regulate structural pest control operators.
9. Establishes a private non-profit organization, the California Tax Education Council (CTEC) to approve tax schools and certify the education of tax preparers, and sunsets the provisions which establish the CTEC and the tax preparer law on July 1, 2006.
10. Requires a tax preparer to register with the CTEC.
11. Requires the Franchise Tax Board (FTB) to notify the CTEC when the FTB identifies a tax preparer who has not registered as required, and authorizes the FTB to cite individuals for these violations, levy a fine of up to \$5,000 against the individual, or issue a cease and desist order against the individual until he/she has registered as required.
12. Authorizes the imposition of penalties against a tax preparer who fails to furnish copies of taxpayer returns, furnish an identifying number, or retain specified documents.

This bill extends the sunset dates from July 1, 2006, and January 1, 2007, for BOP, BBS, and CRB to July 1, 2008, and January 1, 2009, respectively, and implements other recommendations made by the Joint Committee as follows:

1. Makes the following change pertaining to BOP:

- A. Provides that those exempt persons, as determined by BOP, shall be identified as "registered psychologists" and extends the period of exemption up 30 months from two years.
 - B. Deletes an obsolete reference to the oral examination by BOP, and instead provides for a computer-assisted examination.
 - C. Authorizes a licensee in retirement to be placed on inactive status.
 - D. Limits authorization for a psychologist licensed by another state or country to practice in this state at the doctoral level licensed by another state or Canada.
2. Makes the following changes pertaining to the CRB:
- A. Provides that a licensee of the CRB may have his/her license suspended, revoked, denied, or other disciplinary action imposed if fraud, dishonesty, corruption, willful violation of duty, gross negligence or incompetence in practice, or unprofessional conduct in or directly related to the practice of shorthand reporting.
 - B. Allows letters of reprimand issued by the CRB relative to a licensee to be disclosed to the public.
3. Makes the following changes pertaining to the CTEC:
- A. Requires the CTEC, after receiving notification from the FTB regarding a violation of the registration requirements for a tax preparer, to notify the Attorney General, district attorney, or a city attorney, who would be authorized to cite individuals for these violations, levy a fine of up to \$5,000 against the violator, or issue a cease and desist order against the violator until he/she has registered, as required.
 - B. Authorizes the FTB to impose penalties against a tax preparer that fails to register with the CTEC, but only after the FTB an appropriation to fund any costs incurred in the imposition of those penalties,

and an agreement with the CTEC to annually provide monies to pay those costs.

4. Makes the following changes pertaining to the Respiratory Care Board (RCB): Imposes a processing fee, for reinstatement of a license that has been revoked, suspended, or surrendered, equal to the original application fee of \$300 plus RCB's costs to obtain and review documents pursuant to the reinstatement.
5. Makes the following changes pertaining to the Board of Accountancy: Allows an individual practitioner or public accounting firm holding a valid permit to practice in another state to provide specified tax-related services for Californians without a California license, a practice privilege, or a public accounting firm employer registered in California.
6. Makes the following changes pertaining to the BBS:
 - A. Reorganizes and consolidates provisions relating to experience requirements relative to the regulation of marriage and family therapists by BBS.
 - B. Clarifies existing law requiring BBS to revoke a license upon a decision by BBS that contains any finding that a licensee or registrant engaged in any sexual conduct, as defined, with a patient.
 - C. Defines the term "discovers" with regard to the date at which BBS is informed about an act or omission by a licensee that is grounds for disciplinary action, in order to better establish the time period for a complaint with respect to current statutory time limitations on filing such complaints.
7. Extends the inoperative and the repeal dates for the SPCB to July 1, 2011 and January 1, 2012, respectively.

Background . In 2004-05, the Joint Committee reviewed seven boards: the Acupuncture Board, the Board of Behavioral Sciences, the Court Reporters Board, the Board for Geologists and Geophysicists, the Osteopathic Medical Board, the Board of Psychology, and the Structural Pest Control Board. The Joint Committee also dealt with unresolved issues relating to previous reviews of three

boards and one commission: the Medical Board, the State Athletic Commission, the Dental Board, the California Tax Education Council, and the Board for Professional Engineers and Land Surveyors. The Joint Committee began its review of these licensing agencies in January with three days of hearings.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: No

SUPPORT : (Verified 5/10/05) (Unable to reverify)

Board of Behavioral Sciences
Board of Psychology
Structural Pest Control Board

OPPOSITION : (Verified >)

>

ARGUMENTS IN SUPPORT : >

ARGUMENTS IN OPPOSITION : >

JJA:mel 9/6/05 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

SUPPORT/OPPOSITION: NONE RECEIVED

Assembly Bill No. 1868

CHAPTER 458

An act to amend Sections 5050 and 5134 of, to add Sections 5035.3, 5050.1, 5050.2, 5096.13, 5096.14, and 5096.15 to, and to add and repeal Section 5096.12 of, the Business and Professions Code, relating to accountancy, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 2006. Filed with Secretary of State September 25, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1868, Bermudez. Accountancy: licensure.

Existing law provides for the licensing and regulation of accountants by the California Board of Accountancy in the Department of Consumer Affairs. Existing law prohibits a person from engaging in the practice of public accountancy in this state unless he or she holds either a valid permit issued by the board or a practice privilege, as specified. A violation of this provision is a crime.

This bill would provide that the prohibition against practicing accountancy in California without a license does not apply to a person who holds a valid and current license, registration, certificate, permit, or other authority to practice public accountancy from a foreign country to the extent that he or she is temporarily practicing in this state incident to an engagement in that country, provided that the temporary practice is regulated by the foreign country and performed under the accounting or auditing standards of that country and that the person does not hold himself or herself out as being the holder of a California license or practice privilege. The bill would also, until January 1, 2011, provide that the prohibition against practicing accountancy in California without a license does not apply to a certified public accountant, a public accountant, or a public accounting firm lawfully practicing in another state to the extent that the practice is temporary and incident to practice in that state, provided that the person or firm does not solicit clients in California, does not assert or imply licensure in California, and does not engage in the development, implementation, or marketing to California consumers of any abusive tax avoidance transaction.

Existing law authorizes an individual whose principal place of business is not in California and who has a valid and current license, certificate, or permit to practice public accountancy from another state to engage in the practice of public accountancy in California under a practice privilege if certain conditions are met, including notification to the board of intent to practice.

This bill would, until January 1, 2011, permit a certified public accounting firm authorized to practice in another state that does not have an office in this state to practice public accountancy in California through the holder of a practice privilege if certain conditions are met. The bill would require a notification of intent to practice under a practice privilege to include the name of the firm, its address and telephone number, and its federal taxpayer identification number.

This bill would provide that a person who engages in accountancy in California is deemed to have consented to the jurisdiction of the board and is deemed to have appointed the regulatory agency of his or her state or foreign jurisdiction as the person's agent for a service of process in actions or proceedings by or before the board. The bill would, until January 1, 2011, authorize the board to revoke, suspend, issue a fine, or otherwise restrict an authorization to practice granted to a foreign accounting firm or discipline the holder of that authorization for any act that would be a violation of, or would be grounds for discipline against a licensee or holder of a practice privilege or denial of an accountancy license or practice privilege under, the Business and Professions Code. The bill would allow an application for reinstatement to practice, as specified, and would allow the board to administratively suspend an authorization to practice. The bill would also require the board to amend certain regulations, as specified.

Existing law sets specified fees to be charged by the board, including an annual fee for a practice privilege to be fixed by the board at up to 50% of the biennial renewal fee for an accountant.

This bill would instead require an annual fee for a practice privilege with an authorization to sign attest reports to be set by the board at up to \$125, and for a practice privilege without an authorization to sign attest reports at up to 80% of that fee. The bill would declare the intent of the Legislature that the board adopt emergency regulations providing for a lower fee or no fee for out-of-state accountants who do not sign attest reports for California clients under the practice privilege, as long as the practice privilege program is adequately funded.

Because this bill may increase fees deposited into the Accountancy Fund, a continuously appropriated fund, it would make an appropriation.

Because this bill would subject additional persons to requirements within the accountancy licensing provisions, the violation of which are a crime, and because the bill would create new requirements and prohibitions within the licensing provisions, the violation of which would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

This bill would incorporate additional changes in Section 5134 of the Business and Professions Code proposed by SB 503, to be operative only if SB 503 and this bill are both chaptered and become effective on or before January 1, 2007, but this bill becomes operative first, both bills amend Section 5134 of the Business and Professions Code, and this bill is chaptered last.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 5035.3 is added to the Business and Professions Code, to read:

5035.3. For purposes of subdivision (b) of Section 5050 and Sections 5054 and 5096.12, "firm" includes any entity that is authorized or permitted to practice public accountancy as a firm under the laws of another state.

SEC. 2. Section 5050 of the Business and Professions Code is amended to read:

5050. (a) Except as provided in subdivisions (b) and (c) of this section, in subdivision (a) of Section 5054, and in Section 5096.12, no person shall engage in the practice of public accountancy in this state unless the person is the holder of a valid permit to practice public accountancy issued by the board or a holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096).

(b) Nothing in this chapter shall prohibit a certified public accountant, a public accountant, or a public accounting firm lawfully practicing in another state from temporarily practicing in this state incident to practice in another state, provided that an individual providing services under this subdivision may not solicit California clients, may not assert or imply that the individual is licensed to practice public accountancy in California, and may not engage in the development, implementation, or marketing to California consumers of any abusive tax avoidance transaction, as defined in subdivision (c) of Section 19753 of the Revenue and Taxation Code. A firm providing services under this subdivision that is not registered to practice public accountancy in California may not solicit California clients, may not assert or imply that the firm is licensed to practice public accountancy in California, and may not engage in the development, implementation, or marketing to California consumers of any abusive tax avoidance transaction, as defined in subdivision (c) of Section 19753 of the Revenue and Taxation Code. This subdivision shall become inoperative on January 1, 2011.

(c) Nothing in this chapter shall prohibit a person who holds a valid and current license, registration, certificate, permit, or other authority to practice public accountancy from a foreign country, and lawfully practicing therein, from temporarily engaging in the practice of public

accountancy in this state incident to an engagement in that country, provided that:

(1) The temporary practice is regulated by the foreign country and is performed under accounting or auditing standards of that country.

(2) The person does not hold himself or herself out as being the holder of a valid California permit to practice public accountancy or the holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096).

SEC. 3. Section 5050.1 is added to the Business and Professions Code, to read:

5050.1. (a) Any person that engages in any act that is the practice of public accountancy in this state consents to the personal, subject matter, and disciplinary jurisdiction of the board. This subdivision is declarative of existing law.

(b) Any person engaged in the practice of public accountancy under subdivision (a) is deemed to have appointed the regulatory authority of the state or foreign jurisdiction that issued the person's permit, certificate, license or other authorization to practice as the person's agent on whom notice, subpoenas, or other process may be served in any action or proceeding by or before the board against or involving that person.

SEC. 4. Section 5050.2 is added to the Business and Professions Code, to read:

5050.2. (a) The board may revoke, suspend, issue a fine pursuant to Article 6.5 (commencing with Section 5116), or otherwise restrict or discipline the holder of an authorization to practice under subdivision (b) or (c) of Section 5050, subdivision (a) of Section 5054, or Section 5096.12 for any act that would be a violation of this code or grounds for discipline against a licensee or holder of a practice privilege, or ground for denial of a license or practice privilege under this code. The provisions of the Administrative Procedure Act, including, but not limited to, the commencement of a disciplinary proceeding by the filing of an accusation by the board shall apply to this section. Any person whose authorization to practice under subdivision (b) or (c) of Section 5050, subdivision (a) of Section 5054, or Section 5096.12 has been revoked may apply for reinstatement of the authorization to practice under subdivision (b) or (c) of Section 5050, subdivision (b) of Section 5054, or Section 5096.12 not less than one year after the effective date of the board's decision revoking the authorization to practice unless a longer time, not to exceed three years, is specified in the board's decision revoking the authorization to practice.

(b) The board may administratively suspend the authorization of any person to practice under subdivision (b) or (c) of Section 5050, subdivision (a) of Section 5054, or Section 5096.12 for any act that would be grounds for administrative suspension under Section 5096.4 utilizing the procedures set forth in that section.

SEC. 5. Section 5096.12 is added to the Business and Professions Code, to read:

5096.12. (a) A certified public accounting firm that is authorized to practice in another state and that does not have an office in this state may engage in the practice of public accountancy in this state through the holder of a practice privilege provided that:

(1) The practice of public accountancy by the firm is limited to authorized practice by the holder of the practice privilege.

(2) A firm that engages in practice under this section is deemed to consent to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this section.

(b) The board may revoke, suspend, issue a fine pursuant to Article 6.5 (commencing with Section 5116), or otherwise restrict or discipline the firm for any act that would be grounds for discipline against a holder of a practice privilege through which the firm practices.

(c) This section shall become inoperative on January 1, 2011, and as of that date is repealed.

SEC. 6. Section 5096.13 is added to the Business and Professions Code, to read:

5096.13. The notification of intent to practice under a practice privilege pursuant to Section 5096 shall include the name of the firm, its address and telephone number, and its federal taxpayer identification number.

SEC. 7. Section 5096.14 is added to the Business and Professions Code, to read:

5096.14. The board shall amend Section 30 of Article 4 of Division 1 of Title 16 of the California Code of Regulations to extend the current "safe harbor" period from December 31, 2007, to December 31, 2010.

SEC. 8. Section 5096.15 is added to the Business and Professions Code, to read:

5096.15. It is the intent of the Legislature that the board adopt regulations providing for a lower fee or no fee for out-of-state accountants who do not sign attest reports for California clients under the practice privilege. These regulations shall ensure that the practice privilege program is adequately funded. These regulations shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and, for purposes of that chapter, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare.

SEC. 9. Section 5134 of the Business and Professions Code is amended to read:

5134. The amount of fees prescribed by this chapter is as follows:

(a) The fee to be charged to each applicant for the certified public accountant examination shall be fixed by the board at an amount to equal the actual cost to the board of the purchase or development of the examination, plus the estimated cost to the board of administering the examination and shall not exceed six hundred dollars (\$600). The board

may charge a reexamination fee equal to the actual cost to the board of the purchase or development of the examination or any of its component parts, plus the estimated cost to the board of administering the examination and not to exceed seventy-five dollars (\$75) for each part that is subject to reexamination.

(b) The fee to be charged to out-of-state candidates for the certified public accountant examination shall be fixed by the board at an amount equal to the estimated cost to the board of administering the examination and shall not exceed six hundred dollars (\$600) per candidate.

(c) The application fee to be charged to each applicant for issuance of a certified public accountant certificate shall be fixed by the board at an amount equal to the estimated administrative cost to the board of processing and issuing the certificate and shall not exceed two hundred fifty dollars (\$250).

(d) The application fee to be charged to each applicant for issuance of a certified public accountant certificate by waiver of examination shall be fixed by the board at an amount equal to the estimated administrative cost to the board of processing and issuing the certificate and shall not exceed two hundred fifty dollars (\$250).

(e) The fee to be charged to each applicant for registration as a partnership or professional corporation shall be fixed by the board at an amount equal to the estimated administrative cost to the board of processing and issuing the registration and shall not exceed two hundred fifty dollars (\$250).

(f) The board shall fix the biennial renewal fee so that, together with the estimated amount from revenue other than that generated by subdivisions (a) to (e), inclusive, the reserve balance in the board's contingent fund shall be equal to approximately nine months of annual authorized expenditures. Any increase in the renewal fee made after July 1, 1990, shall be effective upon a determination by the board, by regulation adopted pursuant to subdivision (k), that additional moneys are required to fund authorized expenditures other than those specified in subdivisions (a) to (e), inclusive, and maintain the board's contingent fund reserve balance equal to nine months of estimated annual authorized expenditures in the fiscal year in which the expenditures will occur. The biennial fee for the renewal of each of the permits to engage in the practice of public accountancy specified in Section 5070 shall not exceed two hundred fifty dollars (\$250).

(g) The delinquency fee shall be 50 percent of the accrued renewal fee.

(h) The initial permit fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the permit is issued, except that, if the permit is issued one year or less before it will expire, then the initial permit fee is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the permit is issued. The board may, by regulation, provide for the waiver or refund of the initial permit fee where the permit is issued less than 45 days before the date on which it will expire.

(i) (1) On and after the enactment of Assembly Bill 1868 of the 2005–06 Regular Session, the annual fee to be charged an individual for a practice privilege pursuant to Section 5096 with an authorization to sign attest reports shall be fixed by the board at an amount not to exceed one hundred twenty-five dollars (\$125).

(2) On and after enactment of Assembly Bill 1868 of the 2005–06 Regular Session, the annual fee to be charged an individual for a practice privilege pursuant to Section 5096 without an authorization to sign attest reports shall be fixed by the board at an amount not to exceed 80 percent of the fee authorized under paragraph (1).

(j) The fee to be charged for the certification of documents evidencing passage of the certified public accountant examination, the certification of documents evidencing the grades received on the certified public accountant examination, or the certification of documents evidencing licensure shall be twenty-five dollars (\$25).

(k) The actual and estimated costs referred to in this section shall be calculated every two years using a survey of all costs attributable to the applicable subdivision.

(l) Upon the effective date of this section the board shall fix the fees in accordance with the limits of this section and, on and after July 1, 1990, any increase in any fee fixed by the board shall be pursuant to regulation duly adopted by the board in accordance with the limits of this section.

(m) Fees collected pursuant to subdivisions (a) to (e), inclusive, shall be fixed by the board in amounts necessary to recover the actual costs of providing the service for which the fee is assessed, as projected for the fiscal year commencing on the date the fees become effective.

SEC. 10. Section 5134 of the Business and Professions Code is amended to read:

5134. The amount of fees prescribed by this chapter is as follows:

(a) The fee to be charged to each applicant for the certified public accountant examination shall be fixed by the board at an amount not to exceed six hundred dollars (\$600). The board may charge a reexamination fee not to exceed seventy-five dollars (\$75) for each part that is subject to reexamination.

(b) The fee to be charged to out-of-state candidates for the certified public accountant examination shall be fixed by the board at an amount not to exceed six hundred dollars (\$600) per candidate.

(c) The application fee to be charged to each applicant for issuance of a certified public accountant certificate shall be fixed by the board at an amount not to exceed two hundred fifty dollars (\$250).

(d) The application fee to be charged to each applicant for issuance of a certified public accountant certificate by waiver of examination shall be fixed by the board at an amount not to exceed two hundred fifty dollars (\$250).

(e) The fee to be charged to each applicant for registration as a partnership or professional corporation shall be fixed by the board at an amount not to exceed two hundred fifty dollars (\$250).

(f) The board shall fix the biennial renewal fee so that, together with the estimated amount from revenue other than that generated by subdivisions (a) to (e), inclusive, the reserve balance in the board's contingent fund shall be equal to approximately nine months of annual authorized expenditures. Any increase in the renewal fee shall be made by regulation upon a determination by the board that additional moneys are required to fund authorized expenditures and maintain the board's contingent fund reserve balance equal to nine months of estimated annual authorized expenditures in the fiscal year in which the expenditures will occur. The biennial fee for the renewal of each of the permits to engage in the practice of public accountancy specified in Section 5070 shall not exceed two hundred fifty dollars (\$250).

(g) The delinquency fee shall be 50 percent of the accrued renewal fee.

(h) The initial permit fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the permit is issued, except that, if the permit is issued one year or less before it will expire, then the initial permit fee is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the permit is issued. The board may, by regulation, provide for the waiver or refund of the initial permit fee where the permit is issued less than 45 days before the date on which it will expire.

(i) (1) On and after the enactment of Assembly Bill 1868 of the 2005–06 Regular Session, the annual fee to be charged an individual for a practice privilege pursuant to Section 5096 with an authorization to sign attest reports shall be fixed by the board at an amount not to exceed one hundred twenty-five dollars (\$125).

(2) On and after enactment of Assembly Bill 1868 of the 2005–06 Regular Session, the annual fee to be charged an individual for a practice privilege pursuant to Section 5096 without an authorization to sign attest reports shall be fixed by the board at an amount not to exceed 80 percent of the fee authorized under paragraph (1).

(j) The fee to be charged for the certification of documents evidencing passage of the certified public accountant examination, the certification of documents evidencing the grades received on the certified public accountant examination, or the certification of documents evidencing licensure shall be twenty-five dollars (\$25).

(k) The board shall fix the fees in accordance with the limits of this section and, on and after July 1, 1990, any increase in a fee fixed by the board shall be pursuant to regulation duly adopted by the board in accordance with the limits of this section.

(l) It is the intent of the Legislature that, to ease entry into the public accounting profession in California, any administrative cost to the board related to the certified public accountant examination or issuance of the certified public accountant certificate that exceeds the maximum fees authorized by this section shall be covered by the fees charged for the biennial renewal of the permit to practice.

SEC. 11. Section 10 of this bill incorporates amendments to Section 5134 of the Business and Professions Code proposed by both this bill and SB 503. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, but this bill becomes operative first, (2) each bill amends Section 5134 of the Business and Professions Code, and (3) this bill is enacted after SB 503, in which case Section 5134 of the Business and Professions Code, as amended by Section 9 of this bill, shall remain operative only until the operative date of SB 503, at which time Section 10 of this bill shall become operative.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 13. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that accountants licensed by another jurisdiction be permitted to lawfully provide services to their clients in California as soon as possible, it is necessary that this bill take effect immediately.

BILL ANALYSIS

SENATE RULES COMMITTEE AB 1868
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: AB 1868
Author: Bermudez (D), et al
Amended: 8/21/06 in Senate
Vote: 27 - Urgency

SENATE BUS., PROF. & ECON. DEV. COMMITTEE : 4-0, 6/26/06
AYES: Figueroa, Aanestad, Florez, Simitian
NO VOTE RECORDED: Morrow

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

ASSEMBLY FLOOR : 68-4, 5/11/06 - See last page for vote

SUBJECT : Accountancy: licensure

SOURCE : California Society of Certified Public
Accountants

DIGEST : This bill provides the California Board of Accountancy with time to resolve questions that have arisen regarding out-of-state accountants who provide services to California residents and businesses under a practice privilege and permits licensed certified public accountant from other countries to practice briefly in California with certain restrictions.

Senate Floor Amendments of 8/21/06 (1) provide that the Board may charge an annual fee of no more than \$125 for out-of-state practitioners to obtain a practice privilege, if they are authorized to sign attest reports; (2) provide that the Board may charge an annual fee of no more than 80

percent of the above annual fee for out-of-state practitioners to obtain a practice privilege if they are not authorized to sign attest reports; (3) for those practicing temporarily in California, prohibits any development, implementation or marketing of abusive tax shelters; (4) provide that the regulations be adopted on an emergency basis; (5) include chaptering-out language with respect SB 503 (Figueroa).

ANALYSIS :

Existing Law

1. Provides for the licensing and regulation of California accountants and accounting firms by the California Board of Accountancy (CBA).
2. Prohibits a person in California, whose home jurisdiction is in another state or foreign country, from engaging in the practice of public accountancy in this state unless:
 - A. He/she holds a license as a certified public accountant (CPA) issued by the CBA.
 - B. Holds a "practice privilege" issued by the CBA. (The "practice privilege" went into effect on January 1, 2006).
3. Requires a person who wishes to qualify for the CPA license to meet specified education, examination and experience requirements as prescribed.
4. Specifies that accountants from other states may obtain a "practice privilege" if:
 - A. The accountant has a valid license, certificate or permit to practice accountancy from another state or jurisdiction.
 - B. Is licensed in a state that the CBA deems to be "substantially equivalent" to California; or has practiced accountancy for 4 of the last 10 years in their home jurisdiction; or can prove to the CBA that they are otherwise qualified to practice accountancy with California clients.

- C. Makes an application to the CBA for a Practice Privilege.
 - D. Pays a \$100 fee for the Practice Privilege.
 - E. Has no disqualifying conditions, such as conviction of a crime, suspension or revocation of their license in their home jurisdiction, pending disciplinary proceedings, or other conditions the CBA may establish.
5. Makes a practice privilege good for a one year term and allows it to be renewed each year indefinitely.
 6. Allows an applicant from another state who applies to the CBA for a license as a CPA to obtain a practice privilege until the time the application for license is granted or denied.
 7. Provides a "safe harbor" if practice begins in California at a time when the CPA does not yet have a practice privilege.
 8. Prior to implementation of the practice privilege requirements on January 1, 2006, allowed an accountant from another state, or from a foreign country, who held a current and valid license to temporarily practice in California on professional business incident to his or her regular practice in another state or country.
 9. Provides that a licensed accountant from another state who does not hold a valid permit or practice privilege from the CBA, may prepare individual or estate tax returns for natural persons who are or were California residents, but only if the out-of-state accountant does not physically enter California, does not solicit California clients, and does not assert or imply licensure in California.

This bill:

1. Reinstates the provision which allowed an accountant from another state, or from a foreign country, who held a current and valid license to temporarily practice in California on professional business incident to his or

her regular practice in another state or country, provided the person does not engage in the development, implementation or marketing of any abusive tax shelter as defined.

2. Allows an out-of-state CPA firm that is not registered with the CBA to practice public accountancy in this state through the holder of a practice privilege.
3. Permits accountants licensed in a foreign country, and temporarily practicing in California incident to an engagement in that foreign country, to practice here without notification to the CBA, provided that the practice is regulated by the foreign country and the person does not hold him or herself out as being the holder of a California license.
4. Provides that a person's act of engaging in accountancy under these terms is deemed to be the person or firm's consent to the personal, subject matter and disciplinary jurisdiction of the CBA; this is declaratory of existing law.
5. Provides that the CBA may revoke, suspend, issue a fine, or take other disciplinary action against the person or firm for any act that would be grounds for discipline against a licensee.
6. Deems the regulatory agency of out-of-state persons practicing accountancy in California as that person's agent for service of legal process.
7. Requires CBA to extend the current "safe harbor" period, which is currently set to expire on December 31, 2007, to December 31, 2010.
8. Provides that the CBA may charge an annual fee of no more than \$125 for out-of-state practitioners to obtain a practice privilege, if they are authorized to sign attest reports, and provides the Board may charge out-of-state practitioners not authorized to sign attest reports 80 percent of the annual fee in order to obtain a practice privilege.
9. States legislative intent that CBA should adopt regulation to reduce or eliminate fees for practice

privilege holders if they agree not to sign attest reports for California clients and requires the CBA to adopt the necessary emergency regulations.

10. Provides that the CBA would have jurisdiction over, and would be able to discipline a practice privilege holder, if they violate California law.
11. Specifies that if a firm is registered in California but the individual CPA is not licensed, then the aforementioned limitations apply to the individual CPA and not the firm.
12. Redefines out-of-state "firm" to include any "entity" that is lawfully organized to practice accounting under the laws of any state.
13. Provides that the notice of intent to practice in California under the Practice Privilege shall include specified identification information.
14. Sunsets provisions related to the Practice Privilege on January 1, 2011, for the purpose of providing the CBA with three years to devise a comprehensive solution to the cross-border practice of accountancy across the nation.
15. Includes an urgency clause.
16. Contains double-jointing language with SB 503 (Figueroa).

Background

California's Practice Privilege . Prior to January 1, 2006, non-California licensed accountants were generally prohibited from practicing accounting in California. An exception was made for those whose practice within California was "temporary and incident" to some regular practice in another jurisdiction. In such cases, the "practice" in California will be permitted if the two requirements are met. "Temporary" is quite obviously "not repeated" or, at the very most, not regular; and "incident" to practice outside of California is self-evident, some form of authorized practice outside of California must be primary, and the unlicensed activity within California must

be related and secondary to that primary practice.

The CBA never promulgated regulations to specify what "temporary" and "incident" might mean. Therefore, it was up to each individual to determine if their practice was temporary and incident, the most lax form of self-regulation, personal self regulation, imaginable. More important, perhaps, the CBA had no indication whatsoever of how many people might be engaging in the practice of accountancy with California clients under their own, individual determination of the bounds of the temporary and incident language.

The problems were exacerbated when Congress passed the Sarbanes-Oxley Act. That act was passed in response to the massive and economically destabilizing scandals being revealed at companies like Enron, WorldCom, Adelphia Communications, and dozens of other headline-making cases. These scandals had mainly to do with audit failures, which, in California, the CBA is primarily charged with preventing in the first place, and prosecuting when warranted.

The Sarbanes-Oxley Act required a number of new procedures related to the auditing of publicly traded companies, including a requirement that partners in firms auditing publicly traded companies "rotate" through different offices in different states, in part to assure that no partner developed too-close relationships with members of firms they were auditing. Requiring every partner in every auditing firm to have a license in essentially every state would be burdensome at best and, in light of gradually evolving common standards among the states, potentially unnecessary.

The Legislature sought to resolve these two problems, people practicing in California without the CBA's knowledge and the partner rotation provisions of Sarbanes-Oxley, by creating the new "Practice Privilege." The practice privilege made it clear that anyone practicing accountancy in California has to be qualified, and must let the CBA know of their practice in California prior to engaging in that practice. It also made concessions to the problem of national practice by making the Practice Privilege as easy to obtain as possible, while still maintaining our state's interest in assuring that applicants are truly qualified. In the increasingly national and international economy,

cross-border practice, and specifically, interstate practice, as in the case of the Big Four accounting firms in particular, is to be expected. California's interest in consumer protection should not permit such practice to go on without the CBA's knowledge or oversight.

Under the new provisions, the practice privilege will be granted to any non-California licensee who had a license from a state that the CBA determined to be "substantially equivalent" to California for licensing purposes, or if the person seeking a practice privilege had continually practiced accountancy in another state for four of the last ten years, or if the CBA determined that an individual's experience, education or examination demonstrates they are qualified to practice in this state.

Anyone meeting any of these criteria, who is not otherwise subject to disqualification for misconduct or other reasons, need only notify the CBA of their intent to practice accountancy with California clients, and pay a fee of \$100 for the CBA to process their application. They will then be permitted to begin practicing accountancy in California.

The CBA determined that 46 of the 53 non-California jurisdictions are "substantially equivalent" to California, opening up the practice privilege to the vast majority of United States CPAs. However, even those CPAs who did not qualify under the substantially equivalent criterion could qualify for the practice privilege if they met the "four of ten" experience requirement. The very few accountants who do not meet either of the above requirements could still obtain a practice privilege if they demonstrated to the CBA that they had the experience or education that would assure the measure of consumer protection the CBA was established to enforce. This is not an unreasonable requirement, given that it does no more than permit them to show the CBA that, like any other non-Californians, and all California licensees, they have the minimum qualifications to practice accounting with California clients.

Problem with Implementation of the Practice Privilege .
Consequently, there is some initial question of where the problem with the practice privilege actually lies. Nearly all responsible out-of-state accountants will fall into one of the three categories listed above, the largest

proportion in the first category. It is reasonable to believe that anyone who cannot qualify under one of those groupings will pose a potential danger to California consumers, in exactly the way that someone in California who could not qualify under our education and examination requirements would.

Accountants from outside California should not be treated more favorably, or be given easier access to practice accountancy in California than California accountants are. The practice privilege provides more than ample opportunity for out-of-state accountants to demonstrate they are qualified without having to take California's exam.

However, when the practice privilege went into effect on January 1, 2006, it turned out that the number of people practicing in California under the temporary and incident provision (i.e., people practicing accounting with California clients "under the radar" of the CBA) was exponentially greater than anyone, including the CBA itself, had anticipated. The CBA estimated that it could expect about 2,000 applications per year for the practice privilege. However, as of April 24, 2006, the CBA had received well over 3,000 applications, and expected over 5,000 for the year; over 250 percent more than their estimate.

The CBA's estimate was based on their best guess of how many people had been practicing temporarily and incidentally in California. However, it is quite evident that far more unacknowledged accounting was being practiced than the CBA has been able to imagine.

The flood of work for the CBA processing these applications is one thing. But it is essential to point out that this is only because so many people have been practicing in California without the CBA's knowledge. This is the very problem the practice privilege was created to address. It simply proved to be far larger than anyone guessed which should not be a reason to abandon the solution.

It is clear that cross-border practice is a continuing issue, not just for California, but for every other state. There are currently national organizations working to see if some common solutions can be devised. And this is a problem for every state, not just California.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: Yes

SUPPORT : (Verified 8/11/06)

California Society of Certified Public Accountants (source)
California Board of Accountancy
Deloitte and Touche LLP
Ernst and Young LLP
KPMG LLP
PricewaterhouseCoopers LLP
The Ohio Society of CPAs
The Society of California Accountants

ARGUMENTS IN SUPPORT : The bill's sponsor argues that the bill removes some impediments to interstate and international commerce.

The CBA supported provisions in the prior version of the bill that remain in this version. CBA notes that those parts of the bill will clear up the unforeseen confusion that resulted from introduction of the Practice Privilege, and will provide immediate relief for these significant problems.

ASSEMBLY FLOOR :

AYES: Aghazarian, Arambula, Baca, Bass, Benoit, Berg, Bermudez, Bogh, Calderon, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Coto, Daucher, De La Torre, DeVore, Dymally, Emerson, Evans, Garcia, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Huff, Jones, Karnette, Keene, Klehs, La Malfa, La Suer, Laird, Leslie, Levine, Lieber, Lieu, Liu, Matthews, Maze, McCarthy, Montanez, Mountjoy, Nakanishi, Nation, Negrete McLeod, Niello, Parra, Plescia, Richman, Ridley-Thomas, Sharon Runner, Ruskin, Saldana, Salinas, Spitzer, Strickland, Torrico, Tran, Umberg, Villines, Walters, Wyland, Yee, Nunez
NOES: Blakeslee, Goldberg, Hancock, Wolk
NO VOTE RECORDED: Frommer, Koretz, Leno, Mullin, Nava, Oropeza, Pavley, Vargas

JJA:do 8/21/06 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

Memorandum

CBA Agenda Item II.D.2.
January 27-28, 2011

To : CBA Members

Date : January 11, 2011

Telephone : (916) 561-1792

Facsimile : (916) 263-3678

E-mail : mstanley@cba.ca.gov


From : Matthew Stanley
Legislation & Regulation Analyst

Subject : Cross Border Practice Legislation: Mobility; AB 2473 (2008).

Bill Number: AB 2473 of 2008 (**Attachment 1**)
Authors: Niello and Ma
Status: Failed to Pass
Sponsor: California Board of Accountancy (CBA)

Provisions:

This bill was sponsored by the CBA to eliminate Pathway 1 and to institute mobility. This was a complex bill that would have done several things. The major provisions of the bill included the elimination of Pathway 1 and the elimination of the Practice Privilege Program. In addition, it would have allowed the CBA to revoke an out-of-state CPA's ability to practice in California for violations of the law or CBA regulations; and it would have required the CBA to report any discipline to the CPA's state of licensure.

This measure was never brought to a vote due to its expected defeat. The arguments in favor and against the bill can be found in the attached analysis (**Attachment 2**) along with the list of support and opposition.

Attachments

ASSEMBLY BILL**No. 2473****Introduced by Assembly Members Niello and Ma**

February 21, 2008

An act to amend Sections 5035.3, 5050, 5050.2, 5088, 5096, 5096.2, 5096.3, 5096.4, 5096.6, 5096.7, 5096.10, 5096.12, 5109, 5116.6, and 5134 of, to amend and repeal Section 5092 of, to repeal Sections 5054, 5096.1, 5096.5, 5096.11, 5096.14, and 5096.15 of, and to repeal and add Section 5096.13 of, the Business and Professions Code, relating to accountancy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2473, as introduced, Niello. Accountancy: licensure.

Existing law provides for the licensure and regulation of accountants by the California Board of Accountancy in the Department of Consumer Affairs. Existing law prohibits a person from engaging in the practice of public accountancy in this state unless he or she holds either a valid permit issued by the board or a practice privilege, which the board may, until January 1, 2011, issue to an accountant licensed in another state who meets specified requirements, and a violation of this provision is a crime. Existing law exempts from the prohibition the temporary practice of accountancy in California incident to practice in another state or foreign country in which a person is licensed or authorized to practice accountancy, as specified, and the filing of specified tax returns by an accountant licensed in another state.

This bill would repeal on January 1, 2012, the provisions governing education, examination, and experience requirements for licensure as a certified public accountant. The bill would delete the exception from the practice prohibition for practice incidental to lawful practice in

another state and for the filing of the tax returns by a licensee of another state, and would revise the exception from the practice prohibition for practice incidental to lawful practice in a foreign country by imposing additional requirements in order for that exception to apply.

This bill would delete the practice privilege provisions for out of state accountants, including related fees, and would instead authorize an individual who has a valid and current license, certificate, or permit to practice public accountancy from another state and who meets specified requirements to engage in the cross-border practice of accountancy in this state without obtaining a certificate or license, subject to specified conditions and limitations. The bill would authorize an accounting firm or sole proprietor that performs nonattest services for entities headquartered in this state to engage in the practice of public accountancy in this state without a firm registration, and would authorize an accounting firm or sole proprietor that performs attest services for entities headquartered in this state to engage in the practice of accountancy through an alternative firm registration, subject to certain conditions. The bill would authorize the board to revoke or suspend the above authorizations to practice, and to take disciplinary action, as specified.

Because this bill would delete or revise certain exceptions to the accountancy licensing provisions, the violation of which are a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5035.3 of the Business and Professions
2 Code is amended to read:
3 5035.3. For purposes of ~~subdivision (b) of Section 5050 and~~
4 ~~Sections 5054 and 5096.12~~ Sections 5050.2, 5096.12, and 5096.13,
5 "firm" includes any entity that is authorized or permitted to practice
6 public accountancy as a firm under the laws of another state *or*
7 *country*.

1 SEC. 2. Section 5050 of the Business and Professions Code is
2 amended to read:

3 5050. (a) ~~Except as provided in subdivisions (b) and (c) of~~
4 ~~this section, in subdivision (a) of Section 5054, and in Section~~
5 ~~5096.12 Section 5050.2,~~ no person shall engage in the practice of
6 public accountancy in this state unless the person is the holder of
7 a valid permit to practice public accountancy issued by the board
8 ~~or a holder of a practice privilege practicing in this state under~~
9 ~~cross-border practice~~ pursuant to Article 5.1 (commencing with
10 Section 5096).

11 ~~(b) Nothing in this chapter shall prohibit a certified public~~
12 ~~accountant, a public accountant, or a public accounting firm~~
13 ~~lawfully practicing in another state from temporarily practicing in~~
14 ~~this state incident to practice in another state, provided that an~~
15 ~~individual providing services under this subdivision may not solicit~~
16 ~~California clients, may not assert or imply that the individual is~~
17 ~~licensed to practice public accountancy in California, and may not~~
18 ~~engage in the development, implementation, or marketing to~~
19 ~~California consumers of any abusive tax avoidance transaction, as~~
20 ~~defined in subdivision (c) of Section 19753 of the Revenue and~~
21 ~~Taxation Code. A firm providing services under this subdivision~~
22 ~~that is not registered to practice public accountancy in California~~
23 ~~may not solicit California clients, may not assert or imply that the~~
24 ~~firm is licensed to practice public accountancy in California, and~~
25 ~~may not engage in the development, implementation, or marketing~~
26 ~~to California consumers of any abusive tax avoidance transaction,~~
27 ~~as defined in subdivision (c) of Section 19753 of the Revenue and~~
28 ~~Taxation Code. This subdivision shall become inoperative on~~
29 ~~January 1, 2011.~~

30 ~~(c) Nothing in this chapter shall prohibit a person who holds a~~
31 ~~valid and current license, registration, certificate, permit, or other~~
32 ~~authority to practice public accountancy from a foreign country,~~
33 ~~and lawfully practicing therein, from temporarily engaging in the~~
34 ~~practice of public accountancy in this state incident to an~~
35 ~~engagement in that country, provided that:~~

36 ~~(1) The temporary practice is regulated by the foreign country~~
37 ~~and is performed under accounting or auditing standards of that~~
38 ~~country.~~

39 ~~(2) The person does not hold himself or herself out as being the~~
40 ~~holder of a valid California permit to practice public accountancy~~

1 ~~or the holder of a practice privilege pursuant to Article 5.1~~
2 ~~(commencing with Section 5096).~~

3 SEC. 3. Section 5050.2 of the Business and Professions Code
4 is amended to read:

5 5050.2. (a) *Nothing in this chapter shall prohibit a person or*
6 *firm that holds a valid and current license, registration, certificate,*
7 *permit, or other authority to practice public accountancy from a*
8 *foreign country, and lawfully practicing therein, from temporarily*
9 *engaging in the practice of public accountancy in this state incident*
10 *to an engagement in that country, provided that the individual or*
11 *firm:*

12 (1) *Is regulated by the foreign country and is performing the*
13 *temporary practice in this state under accounting or auditing*
14 *standards of that country.*

15 (2) *Does not represent or hold himself, herself, or itself out as*
16 *being the holder of a valid California permit to practice public*
17 *accountancy.*

18 (3) *Is authorized to practice in another country and does not*
19 *have an office in this state.*

20 (4) *Shall be deemed to consent to the personal, subject matter,*
21 *and disciplinary jurisdiction of the board with respect to any*
22 *practice under this section.*

23 (5) *Shall cooperate with any board investigation or inquiry and*
24 *shall timely respond to a board investigation, inquiry, request,*
25 *notice, demand, or subpoena for information or documents and*
26 *timely provide to the board the identified information and*
27 *documents.*

28 (6) *Shall not perform any services in this state that the individual*
29 *or firm is not legally authorized to perform in the country of*
30 *principal place of business.*

31 (a)

32 (b) ~~The board may revoke, suspend, issue a fine pursuant to~~
33 ~~Article 6.5 (commencing with Section 5116), or revoke, suspend,~~
34 ~~or otherwise restrict the right to practice in this state or otherwise~~
35 ~~discipline the holder of an authorization to practice under~~
36 ~~subdivision (b) or (c) of Section 5050, subdivision (a) of Section~~
37 ~~5054, or Section 5096.12 a person with a license, registration,~~
38 ~~certificate, permit, or other authority to practice public~~
39 ~~accountancy from a foreign country for any act that would be a~~
40 ~~violation of this code or grounds for discipline against a licensee~~

1 or holder of a practice privilege, or grounds for denial of a license
 2 ~~or practice privilege~~ under this code. The provisions of the
 3 Administrative Procedure Act, including, but not limited to, the
 4 commencement of a disciplinary proceeding by the filing of an
 5 accusation by the board shall apply to this section. Any person
 6 whose authorization to practice ~~under subdivision (b) or (c) of~~
 7 ~~Section 5050, subdivision (a) of Section 5054, or Section 5096.12~~
 8 has been revoked *under this section* may apply for reinstatement
 9 of the authorization to practice ~~under subdivision (b) or (c) of~~
 10 ~~Section 5050, subdivision (b) of Section 5054, or Section 5096.12~~
 11 not less than one year after the effective date of the board's decision
 12 revoking the authorization to practice unless a longer time, not to
 13 exceed three years, is specified in the board's decision revoking
 14 the authorization to practice.

15 (b)

16 (c) The board may administratively suspend the authorization
 17 of any person to practice ~~under subdivision (b) or (c) of Section~~
 18 ~~5050, subdivision (a) of Section 5054, or Section 5096.12~~ *this*
 19 *section* for any act that would be grounds for administrative
 20 suspension under Section 5096.4 utilizing the procedures set forth
 21 in that section.

22 SEC. 4. Section 5054 of the Business and Professions Code is
 23 repealed.

24 ~~5054. (a) Notwithstanding any other provision of this chapter,~~
 25 ~~an individual or firm holding a valid and current license, certificate,~~
 26 ~~or permit to practice public accountancy from another state may~~
 27 ~~prepare tax returns for natural persons who are California residents~~
 28 ~~or estate tax returns for the estates of natural persons who were~~
 29 ~~clients at the time of death without obtaining a permit to practice~~
 30 ~~public accountancy issued by the board under this chapter or a~~
 31 ~~practice privilege pursuant to Article 5.1 (commencing with Section~~
 32 ~~5096) provided that the individual or firm does not physically enter~~
 33 ~~California to practice public accountancy pursuant to Section 5051,~~
 34 ~~does not solicit California clients, and does not assert or imply that~~
 35 ~~the individual or firm is licensed or registered to practice public~~
 36 ~~accountancy in California.~~

37 (b) ~~The board may, by regulation, limit the number of tax returns~~
 38 ~~that may be prepared pursuant to subdivision (a).~~

39 SEC. 5. Section 5088 of the Business and Professions Code is
 40 amended to read:

1 5088. ~~(a) Any individual who is the holder of a current and~~
2 ~~valid license, certificate, or permit as a certified public accountant~~
3 ~~issued under the laws of any state and who applies to the board~~
4 ~~for a license as a certified public accountant under the provisions~~
5 ~~of Section 5087 may, until the time the application for a license~~
6 ~~is granted or denied, practice public accountancy in this state only~~
7 ~~under a the cross-border practice privilege pursuant to the~~
8 ~~provisions of Article 5.1 (commencing with Section 5096), except~~
9 ~~that, for purposes of this section, the individual is not disqualified~~
10 ~~from a cross-border practice privilege during the period the~~
11 ~~application is pending by virtue of maintaining an office or~~
12 ~~principal place of business, or both, in this state. The board may~~
13 ~~by regulation provide for exemption, credit, or proration of fees~~
14 ~~to avoid duplication of fees.~~

15 ~~(b) This section shall become operative on January 1, 2006.~~

16 SEC. 6. Section 5092 of the Business and Professions Code is
17 amended to read:

18 5092. (a) To qualify for the certified public accountant license,
19 an applicant who is applying under this section shall meet the
20 education, examination, and experience requirements specified in
21 subdivisions (b), (c), and (d), or otherwise prescribed pursuant to
22 this article. The board may adopt regulations as necessary to
23 implement this section.

24 (b) An applicant for the certified public accountant license shall
25 present satisfactory evidence that the applicant has completed a
26 baccalaureate or higher degree conferred by a college or university,
27 meeting, at a minimum, the standards described in Section 5094,
28 the total educational program to include a minimum of 24 semester
29 units in accounting subjects and 24 semester units in business
30 related subjects. This evidence shall be provided prior to admission
31 to the examination for the certified public accountant license,
32 except that an applicant who applied, qualified, and sat for at least
33 two subjects of the examination for the certified public accountant
34 license before May 15, 2002, may provide this evidence at the
35 time of application for licensure.

36 (c) An applicant for the certified public accountant license shall
37 pass an examination prescribed by the board pursuant to this article.

38 (d) The applicant shall show, to the satisfaction of the board,
39 that the applicant has had two years of qualifying experience. This
40 experience may include providing any type of service or advice

1 involving the use of accounting, attest, compilation, management
2 advisory, financial advisory, tax, or consulting skills. To be
3 qualifying under this section, experience shall have been performed
4 in accordance with applicable professional standards. Experience
5 in public accounting shall be completed under the supervision or
6 in the employ of a person licensed or otherwise having comparable
7 authority under the laws of any state or country to engage in the
8 practice of public accountancy. Experience in private or
9 governmental accounting or auditing shall be completed under the
10 supervision of an individual licensed by a state to engage in the
11 practice of public accountancy.

12 *(e) This section shall remain in effect only until January 1, 2012,*
13 *and as of that date is repealed, unless a later enacted statute, that*
14 *is enacted before January 1, 2012, deletes or extends that date.*

15 SEC. 7. Section 5096 of the Business and Professions Code is
16 amended to read:

17 5096. (a) An individual whose principal place of business is
18 not in this state and who has a valid and current license, certificate,
19 or permit to practice public accountancy from another state may,
20 subject to the conditions and limitations in this article, engage in
21 the practice of public accountancy in this state under a *cross-border*
22 ~~practice privilege~~ without obtaining a certificate or license under
23 this chapter if the individual satisfies one of the following:

24 (1) The individual has continually practiced public accountancy
25 as a certified public accountant under a valid license, *certificate,*
26 *or permit* issued by any state for at least four of the last ~~ten~~ 10
27 years.

28 (2) The individual has a license, certificate, or permit from a
29 state ~~which~~ *that* has been determined by the board to have
30 education, examination, and experience qualifications for licensure
31 substantially equivalent to this state's qualifications under Section
32 5093.

33 (3) The individual possesses education, examination, and
34 experience qualifications for licensure ~~which have been determined~~
35 ~~by the board to be~~ *that are* substantially equivalent to this state's
36 qualifications under Section 5093.

37 (b) The board may designate states as substantially equivalent
38 under paragraph (2) of subdivision (a) and may accept individual
39 qualification evaluations or appraisals conducted by designated

1 entities, as satisfying the requirements of paragraph (3) of
2 subdivision (a).

3 ~~(e) To obtain a practice privilege under this section, an~~
4 ~~individual who meets the requirements of subdivision (a), shall do~~
5 ~~the following:~~

6 ~~(1) In the manner prescribed by board regulation, notify the~~
7 ~~board of the individual's intent to practice.~~

8 ~~(2) Pay a fee as provided in Article 8 (commencing with Section~~
9 ~~5130).~~

10 ~~(d) Except as otherwise provided by this article or by board~~
11 ~~regulation, the practice privilege commences when the individual~~
12 ~~notifies the board, provided the fee is received by the board within~~
13 ~~30 days of that date. The board shall permit the notification to be~~
14 ~~provided electronically.~~

15 (e)

16 (c) An individual who holds a practice privilege under this article
17 *practices under cross-border practice in this state:*

18 (1) Is subject to the personal and subject matter jurisdiction and
19 disciplinary authority of the board and the courts of this state.

20 (2) Shall comply with the provisions of this chapter, board
21 regulations, and other laws, regulations, and professional standards
22 applicable to the practice of public accountancy by the licensees
23 of this state and to any other laws and regulations applicable to
24 individuals practicing under *cross-border* practice privileges in
25 this state, except the individual is deemed, solely for the purpose
26 of this article, to have met the continuing education requirements
27 and ethics examination requirements of this state when ~~such the~~
28 individual has met the ~~examination and~~ continuing education
29 requirements of the state in which the individual holds the valid
30 license, certificate, or permit on which the substantial equivalency
31 is based *as provided in subdivision (a)*.

32 (3) Shall not provide public accountancy services in this state
33 from any office located in this state, except as an employee of a
34 firm registered in this state. This paragraph does not apply to public
35 accountancy services provided to a client at the client's place of
36 business or residence.

37 (4) Is deemed to have appointed the regulatory agency of ~~the~~
38 ~~each state that issued the individual's in which he or she holds a~~
39 ~~certificate, license, or permit upon which substantial equivalency~~
40 ~~is based as the individual's agent on whom notices, subpoenas or~~

1 other process may be served in any action or proceeding by the
2 board against the individual.

3 (5) Shall cooperate with any board investigation or inquiry and
4 shall timely respond to a board investigation, inquiry, request,
5 notice, demand or subpoena for information or documents and
6 timely provide to the board the identified information and
7 documents.

8 *(6) Shall not perform any services in this state under*
9 *cross-border practice that he or she is not legally authorized to*
10 *perform in his or her state of principal place of business.*

11 ~~(f) A practice privilege expires one year from the date of the~~
12 ~~notice, unless a shorter period is set by board regulation.~~

13 ~~(g)~~

14 *(d) (1) No individual may practice under a cross-border practice*
15 *privilege without prior approval of the board if the individual has,*
16 *or acquires at any time during the term of the practice privilege,*
17 *any disqualifying condition under paragraph (2) of this subdivision.*

18 (2) Disqualifying conditions include:

19 (A) Conviction of any crime other than a minor traffic violation.

20 (B) Revocation, suspension, denial, surrender or other discipline
21 or sanctions involving any license, permit, registration, certificate
22 or other authority to practice any profession in this or any other
23 state or foreign country or to practice before any state, federal, or
24 local court or agency, or the Public Company Accounting Oversight
25 Board.

26 (C) Pendency of any investigation, inquiry or proceeding by or
27 before any state, federal or local court or agency, including, but
28 not limited to, the Public Company Accounting Oversight Board,
29 involving the professional conduct of the individual.

30 (D) Any judgment or arbitration award against the individual
31 involving the professional conduct of the individual in the amount
32 of thirty thousand dollars (\$30,000) or greater *within the last 10*
33 *years.*

34 (E) Any other conditions as specified by the board in regulation.

35 (3) The board may adopt regulations exempting specified minor
36 occurrences of the conditions listed in subparagraph (B) of
37 paragraph (2) from being disqualifying conditions under this
38 subdivision.

39 *(e) An individual who acquires any disqualifying condition*
40 *described in paragraph (2) of subdivision (d) while practicing*

1 *under cross-border practice in this state shall immediately notify*
2 *the board in writing of the nature and details of the disqualifying*
3 *condition.*

4 SEC. 8. Section 5096.1 of the Business and Professions Code
5 is repealed.

6 ~~5096.1. (a) Any individual, not a licensee of this state, who is~~
7 ~~engaged in any act which is the practice of public accountancy in~~
8 ~~this state, and who has not given notice of intent to practice under~~
9 ~~practice privileges and paid the fee required pursuant to the~~
10 ~~provisions of this article, and who has a license, certificate or other~~
11 ~~authority to engage in the practice of public accountancy in any~~
12 ~~other state, regardless of whether active, inactive, suspended, or~~
13 ~~subject to renewal on payment of a fee or completion of an~~
14 ~~educational or ethics requirement, is:~~

15 (1) ~~Deemed to be practicing public accountancy unlawfully in~~
16 ~~this state.~~

17 (2) ~~Subject to the personal and subject matter jurisdiction and~~
18 ~~disciplinary authority of the board and the courts of this state to~~
19 ~~the same extent as a holder of a valid practice privilege.~~

20 (3) ~~Deemed to have appointed the regulatory agency of the state~~
21 ~~that issued the individual's certificate or license as the individual's~~
22 ~~agent on whom notice, subpoenas, or other process may be served~~
23 ~~in any action or proceeding by the board against the individual.~~

24 (b) ~~The board may prospectively deny a practice privilege to~~
25 ~~any individual who has violated this section or implementing~~
26 ~~regulations or committed any act which would be grounds for~~
27 ~~discipline against the holder of a practice privilege.~~

28 SEC. 9. Section 5096.2 of the Business and Professions Code
29 is amended to read:

30 5096.2. (a) ~~Practice privileges~~ *An individual licensed out of*
31 *state may be denied cross-border practice in this state for failure*
32 *to qualify under or comply with the provisions of this article or*
33 *implementing regulations, or for any act that if committed by an*
34 *applicant for licensure would be grounds for denial of a license*
35 *under Section 480 or if committed by a licensee would be grounds*
36 *for discipline under Section 5100, or for any act committed outside*
37 *of this state that would be a violation if committed within this state.*

38 (b) The board may deny *cross-border practice privileges in this*
39 *state* using either of the following procedures:

40 (1) Notifying the individual in writing of all of the following:

- 1 (A) That the *cross-border practice privilege* is denied.
- 2 (B) The reasons for denial.
- 3 (C) The earliest date on which the individual is eligible for a
- 4 *cross-border practice privilege in this state*.
- 5 (D) ~~That the~~ *The* individual has a right to appeal the notice and
- 6 request a hearing under the provisions of the Administrative
- 7 Procedure Act if a written notice of appeal and request for hearing
- 8 is made within ~~60~~ 15 days.

9 (E) ~~That, if~~ *Should* the individual ~~does~~ not submit a notice of
10 appeal and request for hearing within ~~60~~ 15 days, the board's action
11 set forth in the notice shall become final.

12 (2) Filing a statement of issues under the Administrative
13 Procedure Act.

14 (c) An individual *licensed out of state* who had been denied a
15 *cross-border practice privilege in this state* may ~~apply~~ *petition* for
16 a ~~new~~ *board approval to practice under cross-border practice*
17 *privilege* not less than one year after the effective date of the notice
18 or decision denying ~~the practice privilege in this state~~, unless a
19 longer time period, not to exceed three years, is specified in the
20 notice or decision denying ~~the practice privilege in this state~~.

21 SEC. 10. Section 5096.3 of the Business and Professions Code
22 is amended to read:

23 5096.3. (a) ~~Practice privileges are~~ *The cross-border practice*
24 *of an individual licensed out of state, practicing or who practiced*
25 *in this state under cross-border practice, may be* subject to
26 revocation, suspension, fines, or other disciplinary sanctions for
27 any conduct that would be grounds for discipline against a licensee
28 of the board or for any conduct in violation of this article or
29 regulations implementing this article.

30 (b) ~~Practice privileges are subject to discipline during any time~~
31 ~~period in which they are valid, under administrative suspension,~~
32 ~~or expired.~~

33 (c)
34 (b) The board may recover its costs pursuant to Section 5107
35 as part of any disciplinary proceeding against ~~the holder of a~~
36 *practice privilege an individual who is licensed in another state*
37 *and who is practicing or has practiced under cross-border practice*
38 *in this state.*

39 (d)

1 (c) An individual *licensed out of state* whose *cross-border*
2 ~~practice privilege~~ has been revoked may ~~apply for a new practice~~
3 ~~privilege petition for board approval to practice in this state~~ not
4 less than one year after the effective date of the board's decision
5 revoking the individual's *cross-border practice privilege* unless a
6 longer time period, not to exceed three years, is specified in the
7 board's decision ~~revoking the practice privilege in this state~~.

8 (e)

9 (d) The provisions of the Administrative Procedure Act,
10 including, but not limited to, the commencement of a disciplinary
11 proceeding by the filing of an accusation by the board shall apply
12 under this article.

13 (e) *If the board takes disciplinary action against an individual*
14 *licensed in another state who is practicing or practiced in this*
15 *state under cross-border practice, the board shall notify each state*
16 *in which the individual holds a license, certificate, or permit of*
17 *that action.*

18 SEC. 11. Section 5096.4 of the Business and Professions Code
19 is amended to read:

20 5096.4. (a) The right of an individual ~~to practice in this state~~
21 ~~under a practice privilege~~ *engage in cross-border practice* may be
22 administratively suspended at any time by an order issued by the
23 board or its executive officer, without prior notice or hearing, for
24 the purpose of conducting a disciplinary investigation, proceeding,
25 or inquiry concerning the representations made in the notice, the
26 individual's competence or qualifications to practice ~~under practice~~
27 ~~privileges~~ *cross-border practice*, failure to timely respond to a
28 board inquiry or request for information or documents, or under
29 other conditions and circumstances provided for by board
30 regulation.

31 (b) The administrative suspension order is immediately effective
32 when mailed to the individual's address of record or agent for
33 notice and service as provided for in this article.

34 (c) The administrative suspension order shall contain the
35 following:

36 (1) The reason for the suspension.

37 (2) A statement that the individual has the right, within 30 days,
38 to appeal the administrative suspension order and request a hearing.

39 (3) A statement that any appeal hearing will be conducted under
40 the provisions of the Administrative Procedure Act applicable to

1 individuals who are denied licensure, including the filing of a
2 statement of issues by the board setting forth the reasons for the
3 administrative suspension of ~~practice privileges~~ *cross-border*
4 *practice* and specifying the statutes and rules with which the
5 individual must show compliance by producing proof at the hearing
6 and in addition any particular matters that have come to the
7 attention of the board and that would authorize the administrative
8 suspension, or the denial of ~~practice privileges~~ *cross-border*
9 *practice*.

10 (d) The burden is on the ~~holder of the suspended practice~~
11 ~~privilege~~ *individual whose cross-border practice is suspended* to
12 establish both qualification and fitness to practice under ~~practice~~
13 ~~privileges~~ *cross-border practice*.

14 (e) The administrative suspension shall continue in effect until
15 terminated by an order of the board or the executive officer ~~or~~
16 ~~expiration of the practice privilege under administrative suspension.~~

17 (f) Administrative suspension is not discipline and shall not
18 preclude any individual from applying for a license to practice
19 public accountancy in this state ~~or from applying for a new practice~~
20 ~~privilege upon expiration of the one under administrative~~
21 ~~suspension, except that the new practice privilege shall not be~~
22 ~~effective until approved by the board.~~

23 (g) ~~Notwithstanding any administrative suspension, a practice~~
24 ~~privilege expires one year from the date of notice unless a shorter~~
25 ~~period is set by board regulation.~~

26 (h)

27 (g) Proceedings to appeal an administrative suspension order
28 may be combined or coordinated with proceedings for denial of
29 *an individual's authority to engage in cross-border practice* or
30 discipline of a ~~practice privilege~~ *an individual who has engaged*
31 *in cross-border practice*.

32 SEC. 12. Section 5096.5 of the Business and Professions Code
33 is repealed.

34 ~~5096.5. Notwithstanding any other provision of this article, an~~
35 ~~individual may not sign any attest report pursuant to a practice~~
36 ~~privilege unless the individual meets the experience requirements~~
37 ~~of Section 5095 and completes any continuing education or other~~
38 ~~conditions required by the board regulations implementing this~~
39 ~~article.~~

1 SEC. 13. Section 5096.6 of the Business and Professions Code
2 is amended to read:

3 5096.6. In addition to the authority otherwise provided for
4 by this code, the board may delegate to the executive officer the
5 authority to issue any notice or order provided for in this article
6 and to act on behalf of the board, including, but not limited to,
7 issuing a notice of denial of ~~a cross-border practice privilege~~ and
8 an interim suspension order, subject to the right of the individual
9 *licensed in another state* to timely appeal and request a hearing as
10 provided for in this article.

11 SEC. 14. Section 5096.7 of the Business and Professions Code
12 is amended to read:

13 5096.7. Except as otherwise provided in this article, the
14 following definitions apply:

15 (a) ~~Anywhere the term~~ *The terms* “license,” “licensee,” “permit,”
16 or “certificate” ~~is as~~ used in this chapter or Division 1.5
17 (commencing with Section 475); ~~it shall include persons holding~~
18 ~~practice privileges, as defined in Section 5035, performing~~
19 ~~cross-border practice or practicing under an alternative firm~~
20 ~~registration under this article, unless otherwise inconsistent with~~
21 ~~the provisions of the article.~~

22 (b) ~~Any notice of practice privileges under this article and~~
23 ~~supporting documents is deemed an application for licensure for~~
24 ~~purposes of the provisions of this code, including, but not limited~~
25 ~~to, the provisions of this chapter and the provisions of Division~~
26 ~~1.5 (commencing with Section 475) related to the denial,~~
27 ~~suspension and revocation of licenses.~~

28 (c) ~~Anywhere the~~

29 (b) ~~The term~~ “employee” ~~is as~~ used in this article ~~it shall include,~~
30 but is not limited to, partners, shareholders, and other owners.

31 SEC. 15. Section 5096.10 of the Business and Professions
32 Code is amended to read:

33 5096.10. The provisions of this article shall only be operative
34 ~~if commencing July 1, 2005, and continuing during the period~~
35 ~~provided in Section 5096.11,~~ there is an appropriation from the
36 Accountancy Fund in the annual Budget Act to fund the activities
37 in the article and sufficient hiring authority is granted pursuant to
38 a budget change proposal to the board to provide staffing to
39 implement this article.

1 SEC. 16. Section 5096.11 of the Business and Professions
2 Code is repealed.

3 ~~5096.11. This article shall become operative on January 1,~~
4 ~~2006. It shall remain in effect only until January 1, 2011, and as~~
5 ~~of that date is repealed, unless a later enacted statute, which~~
6 ~~becomes effective on or before January 1, 2011, deletes or extends~~
7 ~~that date.~~

8 SEC. 17. Section 5096.12 of the Business and Professions
9 Code is amended to read:

10 5096.12. (a) ~~A certified public~~ *An accounting firm that is*
11 ~~authorized to practice in another state and that does not have an~~
12 ~~office in this state, as defined in Section 5035.3, or sole proprietor,~~
13 ~~that performs attest services for entities headquartered in this~~
14 ~~state, may engage in the practice of public accountancy in this~~
15 ~~state through the holder of a practice privilege~~ *an alternative firm*
16 *registration provided that the firm or sole proprietor:*

17 (1) ~~The practice of public accountancy by the firm is limited to~~
18 ~~Is authorized to practice by the holder of the practice privilege in~~
19 ~~another state and does not have an office in this state.~~

20 (2) *Has one partner, shareholder, or owner who qualifies for*
21 *cross-border practice in this state, and provides to the board his*
22 *or her name, state of principal place of business, license number,*
23 *and firm identifying information.*

24 (2) ~~A firm that engages in practice under this section is~~

25 (3) *Is deemed to consent to the personal, subject matter, and*
26 *disciplinary jurisdiction of the board with respect to any practice*
27 *under this section.*

28 (4) *Shall comply with the provisions of this chapter, board*
29 *regulations, and other laws, regulations, and professional*
30 *standards applicable to the practice of public accountancy by the*
31 *licensees of this state and to any other laws and regulations*
32 *applicable to cross-border practice.*

33 (5) *Is deemed to have appointed the regulatory agency of each*
34 *state in which the firm or sole proprietor holds a certificate,*
35 *license, or permit as the agent on whom notices, subpoenas, or*
36 *other process may be served in any action or proceeding by the*
37 *board against the firm or sole proprietor.*

38 (6) *Shall cooperate with any board investigation or inquiry and*
39 *shall timely respond to a board investigation, inquiry, request,*
40 *notice, demand, or subpoena for information or documents and*

1 *timely provide to the board the identified information and*
2 *documents.*

3 *(7) Shall not perform any services in this state under alternative*
4 *firm registration that the firm or sole proprietor is not legally*
5 *authorized to perform in its or his or her state of principal place*
6 *of business.*

7 *(b) "Attest services" include any audit or other engagement to*
8 *be performed in accordance with the Statements on Auditing*
9 *Standards, any examination of prospective financial information*
10 *to be performed in accordance with the Statements on Standards*
11 *for Attestation Engagements, and any engagement to be performed*
12 *in accordance with the standards of the Public Company*
13 *Accounting Oversight Board. "Attest services," for purposes of*
14 *this article, do not include any review of a financial statement to*
15 *be performed in accordance with the Statements on Standards for*
16 *Accounting and Review Services.*

17 ~~(b)~~

18 *(c) The board may revoke; or suspend an alternative firm*
19 *registration, issue a fine pursuant to Article 6.5 (commencing with*
20 *Section 5116), or otherwise restrict or discipline the firm or sole*
21 *proprietor for any act that would be grounds for discipline against*
22 *a holder of a practice privilege through which the firm practices*
23 *licensee or grounds for denial of a license.*

24 ~~(e) This section shall become inoperative on January 1, 2011,~~
25 ~~and as of that date is repealed.~~

26 SEC. 18. Section 5096.13 of the Business and Professions
27 Code is repealed.

28 ~~5096.13.—The notification of intent to practice under a practice~~
29 ~~privilege pursuant to Section 5096 shall include the name of the~~
30 ~~firm, its address and telephone number, and its federal taxpayer~~
31 ~~identification number.~~

32 SEC. 19. Section 5096.13 is added to the Business and
33 Professions Code, to read:

34 5096.13. (a) An accounting firm, as defined in Section 5035.3,
35 or sole proprietor that performs nonattest services for entities
36 headquartered in this state may engage in the practice of public
37 accountancy in this state without any form of firm registration
38 provided that the firm or sole proprietor:

39 (1) Is authorized to practice in another state and does not have
40 an office in this state.

1 (2) Is deemed to consent to the personal, subject matter, and
2 disciplinary jurisdiction of the board with respect to any practice
3 under this section.

4 (3) Shall comply with the provisions of this chapter, board
5 regulations, and other laws, regulations, and professional standards
6 applicable to the practice of public accountancy by the licensees
7 of this state and to any other laws and regulations applicable to
8 individuals practicing under cross-border practice.

9 (4) Is deemed to have appointed the regulatory agency of each
10 state in which the firm or sole proprietor holds a certificate, license,
11 or permit as the agent on whom notices, subpoenas, or other
12 process may be served in any action or proceeding by the board
13 against the firm or sole proprietor.

14 (5) Shall cooperate with any board investigation or inquiry and
15 shall timely respond to a board investigation, inquiry, request,
16 notice, demand, or subpoena for information or documents and
17 timely provide to the board the identified information and
18 documents.

19 (6) Shall not perform any services in this state under
20 cross-border practice that the firm or sole proprietor is not legally
21 authorized to perform in their state of principal place of business.

22 (b) The board may revoke or suspend authorization to practice
23 under this section, issue a fine pursuant to Article 6.5 (commencing
24 with Section 5116), or otherwise restrict or discipline the firm or
25 sole proprietor for any act that would be grounds for discipline
26 against a licensee or grounds for denial of a license.

27 SEC. 20. Section 5096.14 of the Business and Professions
28 Code is repealed.

29 ~~5096.14. The board shall amend Section 30 of Article 4 of~~
30 ~~Division 1 of Title 16 of the California Code of Regulations to~~
31 ~~extend the current "safe harbor" period from December 31, 2007,~~
32 ~~to December 31, 2010.~~

33 SEC. 21. Section 5096.15 of the Business and Professions
34 Code is repealed.

35 ~~5096.15. It is the intent of the Legislature that the board adopt~~
36 ~~regulations providing for a lower fee or no fee for out-of-state~~
37 ~~accountants who do not sign attest reports for California clients~~
38 ~~under the practice privilege. These regulations shall ensure that~~
39 ~~the practice privilege program is adequately funded. These~~
40 ~~regulations shall be adopted as emergency regulations in~~

1 ~~accordance with Chapter 3.5 (commencing with Section 11340)~~
2 ~~of Part 1 of Division 3 of Title 2 of the Government Code and, for~~
3 ~~purposes of that chapter, the adoption of the regulations shall be~~
4 ~~considered by the Office of Administrative Law to be necessary~~
5 ~~for the immediate preservation of the public peace, health and~~
6 ~~safety, and general welfare.~~

7 SEC. 22. Section 5109 of the Business and Professions Code
8 is amended to read:

9 5109. The expiration, cancellation, forfeiture, or suspension
10 of a license, practice, privilege, or other authority to practice public
11 accountancy by operation of law or by order or decision of the
12 board or a court of law, or the voluntary surrender of a license by
13 a licensee shall not deprive the board of jurisdiction to commence
14 or proceed with any investigation of or action or disciplinary
15 proceeding against the licensee, or to render a decision suspending
16 or revoking the license.

17 SEC. 23. Section 5116.6 of the Business and Professions Code
18 is amended to read:

19 5116.6. Anywhere the term "licensee" is used in the article it
20 shall include certified public accountants, public accountants,
21 partnerships, corporations, ~~holders of practice privileges~~ *individuals*
22 *licensed out of state practicing in this state under cross-border*
23 *practice, holders of alternative firm registrations*, other persons
24 licensed, registered, or otherwise authorized to practice public
25 accountancy under this chapter, and persons who are in violation
26 of any provision of Article 5.1 (commencing with Section 5096).

27 SEC. 24. Section 5134 of the Business and Professions Code
28 is amended to read:

29 5134. The amount of fees prescribed by this chapter is as
30 follows:

31 (a) The fee to be charged to each applicant for the certified
32 public accountant examination shall be fixed by the board at an
33 amount not to exceed six hundred dollars (\$600). The board may
34 charge a reexamination fee not to exceed seventy-five dollars (\$75)
35 for each part that is subject to reexamination.

36 (b) The fee to be charged to out-of-state candidates for the
37 certified public accountant examination shall be fixed by the board
38 at an amount not to exceed six hundred dollars (\$600) per
39 candidate.

1 (c) The application fee to be charged to each applicant for
2 issuance of a certified public accountant certificate shall be fixed
3 by the board at an amount not to exceed two hundred fifty dollars
4 (\$250).

5 (d) The application fee to be charged to each applicant for
6 issuance of a certified public accountant certificate by waiver of
7 examination shall be fixed by the board at an amount not to exceed
8 two hundred fifty dollars (\$250).

9 (e) The fee to be charged to each applicant for registration as a
10 partnership or professional corporation shall be fixed by the board
11 at an amount not to exceed two hundred fifty dollars (\$250).

12 (f) The board shall fix the biennial renewal fee so that, together
13 with the estimated amount from revenue other than that generated
14 by subdivisions (a) to (e), inclusive, the reserve balance in the
15 board's contingent fund shall be equal to approximately nine
16 months of annual authorized expenditures. Any increase in the
17 renewal fee shall be made by regulation upon a determination by
18 the board that additional moneys are required to fund authorized
19 expenditures and maintain the board's contingent fund reserve
20 balance equal to nine months of estimated annual authorized
21 expenditures in the fiscal year in which the expenditures will occur.
22 The biennial fee for the renewal of each of the permits to engage
23 in the practice of public accountancy specified in Section 5070
24 shall not exceed two hundred fifty dollars (\$250).

25 (g) The delinquency fee shall be 50 percent of the accrued
26 renewal fee.

27 (h) The initial permit fee is an amount equal to the renewal fee
28 in effect on the last regular renewal date before the date on which
29 the permit is issued, except that, if the permit is issued one year
30 or less before it will expire, then the initial permit fee is an amount
31 equal to 50 percent of the renewal fee in effect on the last regular
32 renewal date before the date on which the permit is issued. The
33 board may, by regulation, provide for the waiver or refund of the
34 initial permit fee where the permit is issued less than 45 days before
35 the date on which it will expire.

36 ~~(i) (1) On and after the enactment of Assembly Bill 1868 of~~
37 ~~the 2005-06 Regular Session, the annual fee to be charged an~~
38 ~~individual for a practice privilege pursuant to Section 5096 with~~
39 ~~an authorization to sign attest reports shall be fixed by the board~~
40 ~~at an amount not to exceed one hundred twenty-five dollars (\$125).~~

1 ~~(2) On and after enactment of Assembly Bill 1868 of the~~
2 ~~2005-06 Regular Session, the annual fee to be charged an~~
3 ~~individual for a practice privilege pursuant to Section 5096 without~~
4 ~~an authorization to sign attest reports shall be fixed by the board~~
5 ~~at an amount not to exceed 80 percent of the fee authorized under~~
6 ~~paragraph (1).~~

7 ~~(j)~~

8 (i) The fee to be charged for the certification of documents
9 evidencing passage of the certified public accountant examination,
10 the certification of documents evidencing the grades received on
11 the certified public accountant examination, or the certification of
12 documents evidencing licensure shall be twenty-five dollars (\$25).

13 ~~(k)~~

14 (j) The board shall fix the fees in accordance with the limits of
15 this section and, on and after July 1, 1990, any increase in a fee
16 fixed by the board shall be pursuant to regulation duly adopted by
17 the board in accordance with the limits of this section.

18 ~~(l)~~

19 (k) It is the intent of the Legislature that, to ease entry into the
20 public accounting profession in California, any administrative cost
21 to the board related to the certified public accountant examination
22 or issuance of the certified public accountant certificate that
23 exceeds the maximum fees authorized by this section shall be
24 covered by the fees charged for the biennial renewal of the permit
25 to practice.

26 SEC. 25. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.

BILL ANALYSIS

AB 2473

Date of Hearing: April 9, 2008

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Mike Eng, Chair

AB 2473 (Niello) - As Amended: April 1, 2008

SUBJECT : Accountancy: licensure.

SUMMARY : Eliminates the experience-based pathway for qualification to take the certified public accountant examination (CPA) , and the requirement that out-of-state and foreign CPAs hold a practice privilege from the California Board of Accountancy (CBA) prior to practicing public accountancy in California. Specifically, this bill :

- 1)Eliminates the experience-based pathway for qualification to take the CPA examination that allows individuals to substitute 2 years of accounting or financial work experience instead of 1 year of additional college level courses in any subject and 1 year of accounting or financial work experience, effective January 1, 2012.
- 2)Eliminates the requirement that out-of-state and foreign CPAs hold a practice privilege from the California Board of Accountancy (CBA) prior to practicing public accountancy in California , unless they have one or more specified disqualifying conditions .
- 3)Eliminates provisions of law that restrict out-of-state CPAs ability to practice public accountancy in California without holding a practice privilege to only circumstances that of a temporary nature and incidental to their practice in another state.
- 4)Adds additional restrictions on the ability of foreign CPAs to practice public accountancy in California without a practice privilege on a "temporary and incidental" basis, as follows :
 - a) Does not have an office in this state.
 - b) Is deemed to consent to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this section.

- c) Cooperates with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand, or subpoena for information or documents and timely provide to the board the identified information and documents.
- 5) Makes various changes related to CBA's ability to enforce California laws against out-of-state CPAs practicing public accountancy in California, including the ability to revoke cross border practice privileges for violation of California or the CPAs home state accountancy laws, and provides for due process and reinstatement rights.
- 6) Reduces the timeframe for appeal of denial of cross border practice privilege from 60 days to 15 days.
- 7) Makes provisions for alternative registration for firms providing attest services.
- 8) Requires CBA to notify the home state of CPA against who it has taken disciplinary action.
- 9) Makes a Legislative declaration that it is the intent of CBA to provide consumers of accounting services from out-of-state CPAs with access to licensing information for each of the 54 licensing jurisdiction through CBA's website.

EXISTING LAW :

- 1) Establishes two pathways to qualify for the CPA examination, as follows:
 - a) A baccalaureate degree with 24 semester units in both accounting and business subjects and one year of college level courses that are not required to be related to the practice of accountancy and one year of work experience in accounting, attest, compilation, management advising , financial advising , tax, or consulting.
 - b) A baccalaureate degree with 24 semester units in both accounting and business subjects and two years of work experience related to accounting, attest, compilation, management advising , financial advising , tax, or consulting.
- 2) Requires individuals who seek to practice public accountancy in California be certified as a CPA or the holder of a

practice privilege by the CBA, except that out-of-state CPAs may practice in California on a temporary and incidental basis without a California certificate or practice privilege.

FISCAL EFFECT : Unknown

COMMENTS :

Purpose of this bill . According to the author's office: "AB 2473 will allow licensed CPAs from other states to provide services to California clients without being subject to an unnecessary and lengthy state notification process that provides no increased consumer protection. It also will allow California CPAs to service client needs in other states. In addition, AB 2473 will protect California consumers by allowing the California Board of Accountancy to take disciplinary action against out-of-state CPAs if needed, including imposing fines, barring them from practice and reporting them to their local boards of accountancy.

"AB 2473 is needed to bring California policy into the 21st century, to enhance our business climate and promote a global economy, to improve consumer choice and protection, and make our state accountancy policy consistent with that of other states. AB 2473 will eliminate roadblocks that needlessly hinder businesses and consumers from retaining the licensed CPA of their choice and provide no increased consumer protection.

"State and national accountancy regulators have recommended allowing qualified, licensed CPAs to practice in other states, but have sought to expand the authority of state boards of accountancy to discipline CPAs across state lines, if needed. This is what AB 2473 seeks to achieve in California as well. Just as they can now, consumers can check to see if their CPA of choice has a license in good standing through their CPA's state board of accountancy office or website."

Background . This bill is a continuation of a decade long effort by the accounting profession and the CBA to bring about uniformity in state licensing requirements in order to facilitate "cross-border practice." This conformity, or "substantial equivalency," is a reference to uniformity with the Uniform Accountancy Act (UAA), as developed by the American Society of Certified Public Accountants (AICPA), an organization that serves as a federation for state CPA societies.

This bill can be divided in to two parts: 1) eliminating the

experience-based pathway for qualification to take the CPA examination that allows individuals to substitute 2 years of accounting or financial work experience instead of the UAA-preferred pathway of 1 year of additional college level courses in any subject and 1 year of accounting-related coursework; and 2) eliminating the limitations on out-of-state CPAs practicing in California either through the "temporary and incidental" exemption or the requirement that they hold a practice privilege from the CBA .

1) Experience-based pathway . CBA first began pursuing uniformity with UAA as part of its 2000 sunset review by the Joint Committee on Boards, Commissions and Consumer Protection. The outcome of that effort was the development of the two pathways to qualify for the CPA examination that exist in current law today. Both pathways require a baccalaureate degree with the same specified coursework. However, Pathway 1, the "experience-based pathway" repealed by this bill, allows individuals to qualify to take the CPA examination with an additional two years of work experience in accounting or finance. Pathway 2, which this bill would retain as the only pathway to qualify to take the CPA examination and which is the CBA, and UAA preferred pathway, requires an additional one year of college coursework that does not need to be related to the accounting profession and one year of accounting related work experience. According to CBA, many states do not view California as a UAA "substantially equivalent" state and this impedes cross border practice.

2) Practice Privilege . CBA's second effort to achieve uniformity with UAA and facilitate cross-border practice began in 2003 and concluded with the development of the "practice privilege program," which this bill seeks to repeal. The practice privilege program filled a void in California law wherein out-of-state CPAs could practice accountancy in California without licensure or notification to CBA if it was "temporary" and "incidental" to their practice in their home state. However, "temporary and incidental" was never defined by CBA and this left a significant amount of accountancy work in California unregulated and created licensure uncertainty for out-of-state CPAs working in California. The practice privilege program requires out-of-state CPAs to provide notice of their intent to practice accountancy in California to CBA by filling out a four page form, that can be completed online, and paying a \$100 fee. The practice privilege form is four pages in length requires basic professional identifying

information such as name, address, CPA certificate, nature of their intended practice in California, etc. California's practice privilege program is open to CPAs from other states that are not "substantially equivalent" to UAA because of they allow individuals to qualify for their state's CPA examination with an "experienced-based" pathway similar to California's.

The practice privilege requirements were deemed to be "substantially equivalent" to UAA at the time they were adopted in 2004, and the UAA was revised to deem as "substantially equivalent" individuals licensed before 2012 (the year this bill would repeal the "experience-based pathway") through the "experience-based pathway."

In 2007, CBA began its most recent effort to enhance cross-border practice of CPAs and this effort is embodied in this bill, which repeals the "experience-based pathway" to qualify for the CPA examination, the practice privilege program, and the "temporary and incidental" limitation on the practice of accountancy in California by out-of-state CPAs that existed prior to the practice privilege program.

Support . The CBA, as sponsor of this bill, writes: "Unlike other professions, the accounting profession is near achieving national uniformity in the licensure requirements for Certified Public Accountants (CPA) in order to enhance practice mobility between jurisdictions. Currently, to become a CPA in any jurisdiction requires the passage of a uniform national examination. Prior to sitting for the national examination the candidate must have at least a baccalaureate degree and completion of 120-semester unit and, for licensure, 48 jurisdictions require completion of 150-semester units. Additionally, professional standards and rules that CPAs must follow are uniform across the country.

"The mobility concerns for this profession have also been recognized at the national level. On March 13, 2008, the Advisory Committee on the Auditing Profession of the Department of the Treasury released preliminary recommendations from its Firm Structure and Finances Subcommittee (Subcommittee), "designed to increase investor protection and enhance the sustainability of a strong and vibrant public company auditing profession." One of the recommendations was to "..encourage greater regulatory cooperation and oversight?" by encouraging all states to adopt the mobility provisions of the Uniform Accountancy Act (UAA). The Subcommittee placed such importance

on the mobility issue that it recommended "Congress pass a federal provision to require the adoption of the mobility provision of the UAA for those states failing to substantially adopt these provisions by December 31, 2010."

"The CBA believes strongly that AB 2473 will provide increased mobility to out-of-state CPAs by eliminating notification barriers created two years ago with the implementation of SB 1543 and allow out-of-state CPAs to continue to pursue a livelihood in their chosen profession California. AB 2473 will additionally preserve the ability of the board to provide consumer protection by providing enforcement procedures that CPAs automatically subject to the jurisdictions and discipline of the CBA and provide the authority to directly discipline any CPA or public accountancy firm that provides services in this state. Finally, this legislation brings the CBA's educational requirements into parity with other state boards of accountancy, thereby promoting mobility opportunities for California licensees."

The California Society of Certified Public Accountants writes: "The changes brought about by this bill are necessary for consumers, businesses and CPAs in the United States-and especially California-to remain competitive in the global marketplace. In today's economy, it is imperative that consumers and businesses be able to adjust strategies quickly by relying on CPAs to provide expert advice regarding tax laws and accounting issues around the world.

"AB 2473 would allow that seamless transition to take place in California by recognizing national accounting standards, approved by Federal and State governments across the United States, as a universal standard of practice for CPA's.

"This means that out-of-state CPA's with spotless records of performance, who meet California's highest educational qualifications, would be allowed to provide services they are licensed to provide in their domain state without a costly and redundant government bureaucracy.

"The Board would have complete authority to fine; seek full cost recovery; bar from future practice in California; and request license revocation in their own state against any CPA who violates California law.

"AB 2473 would replace the current ineffective and misleading process of requiring out-of-state CPAs to pay a fee and register

with the Board on its web site. This policy can be misleading because it implies that the California licensing board has approved a CPA from another state simply because they have paid a registration fee and are listed on a web site.

"Today, all CPAs are governed by the same rules. These rules are rarely defined by state or local jurisdictions. They are defined by the American Institute of Certified Public Accountants through the Code of Professional Conduct and professional standards. Additionally, National standards are set by the SEC, PCAOB, FASB and others. All CPAs practicing within the United States are required to follow these standards no matter where the CPA does business.

"Rules are further defined by the Internal Revenue Code as interpreted by the courts and the Department of Treasury-and must be followed in every state.

"AB 2473 would require every California CPA licensing applicant to have 150 hours of education including a bachelor's degree beginning in 2012 when the law is fully implemented. This is current law in all but five states-California, Colorado, Vermont, New Hampshire, and Delaware.

"AB 2473 is a necessary step so that California consumers and businesses can keep pace with a dynamic world economy and an ever-changing virtual world. California needs its CPAs to keep pace with the rest of the country and the world to meet their clients' needs."

Opposition . Writing in opposition to the bill, the Center for Public Interest Law writes: "Enron, Tyco, WorldCom, and the many other accounting fraud scandals were all at bottom failures of the accounting profession to abide by its essential role as independent auditors of the financial statements of publicly-traded companies.

"Having devastated the pensions of millions of working families, it now appears that the accounting profession has played a significant role in ruining the equity in their homes as well while pushing the nation into a credit-crunch driven recession.

"Against this tragic legacy of persistent, widespread and illegal conduct by the most prestigious accounting firms, there are three reasons why AB 2473 is poor public policy:

1)"It revives a proposal that disproportionately hurts people of color while erecting a barrier to entry into the profession that studies have found to be without merit. The Legislature in 2001 requested that the Board not bring this proposal back to the Legislature without first studying its impact. The study has never been done. The Board is pursuing legislation nevertheless.

2)"The proposals in AB 2473, in the words of the California Board of Accountancy's own staff, "would permit unrestricted practice [in California] by practitioners who have been convicted of a crime until the state of principal place of business takes appropriate discipline."

3)"And, while the proposal seeks to rely on the disclosure, enforcement policies, and enforcement vigor of the other 49 states in determining the fitness of out-of-state CPAs to practice here before they potentially harm Californians, the Board has not actually looked at the disclosure policies or enforcement record of even a single state, let alone 49. Not a single one.

"AB 2473 Hurts People Of Color And Needlessly Restrains Entry Into The Profession.

"There are two "pathways" in California by which a student who has completed required coursework and passed the licensing exam can become eligible for a CPA license. The "pathway" being sunsetted by Section 6 of your bill allows a potential licensee to qualify for the license with a bachelor's degree (usually 120 units) plus two years of general accounting experience.

"The second pathway (which will be the only one under your bill) requires only one year of general accounting experience. Instead of additional work experience, potential licensees are required to take an additional 30 units of education in any subject matter they select. (See B&P section 5093) This is called the "150-hour rule". Education in any subject matter is elevated over actual on-the-job experience by the 150-hour rule."

"both Dresnack and Strieter [William H. Dresnack, Esq., CPA, is an associate professor of accounting and law and is chair of the department of business administration and economics, and Jeffrey C. Strieter, PhD, is an associate professor of marketing and statistics, both at SUNY College at Brockport, Brockport,

N.Y.] and the Florida Institute of CPAs found that imposition of the 150-hour rule had a disproportionately harsh impact on people of color. In a 1999 article, the Florida Institute made the following observations:

- 1)"[O]ne side effect of this additional requirement was the financial burden placed on students seeking to become CPAs. In particular, minority students were hit the hardest."
- 2)"Florida CPA Today talked to several minority accounting majors who had considered switching at one time or another. All pointed to the extra financial burden of the fifth year as a major reason."
- 3)"The Florida article cites the experience of Texas and Ohio and states that "In each state the 150-hour requirement created discernable and measurable consequences for minority students."

"AB 2473's Proposals To Ease So-Called "Cross Border Practice" Address A Problem That Doesn't Exist In A Way That Imperils The Fiscal Lives Of California Families And Small Businesses.

"Under current law, if a CPA from another state, wants to practice here, he or she can fill out a four-page form (mostly consisting of check boxes), pay at most \$100, and they are allowed to practice here without limitation for a full year.

"It is this small form that is the supposed barrier to out-of-state CPAs providing services to Californians, justifying the so-called cross-border provisions of AB 2473. This requires emphasis: this simple form, less complex than a 1040EZ tax form, is supposedly so daunting to a CPA - a CPA! - that CPAs are en masse unwilling to seek opportunities in this, the world's sixth-largest economy.

"In sum, California law already provides many flexible options for out-of-state CPAs to practice here even assuming (incredibly) that the four-page form is daunting to a CPA:

- 1)An out-of-state firm has one of its employees file the four page form, the entire firm can practice in California through that one employee.
- 2)If an out-of-state CPA needs to be here temporarily incident to a service provided in their home state, nothing at all is required.

3) No notice is required if the out-of-state CPA is preparing tax returns for individuals and does not solicit business here.

4) And, of course, there is the four page form itself, which is hardly onerous.

"Under AB 2473, in contrast, California consumers will not be able to consult their own state regulator to distinguish between those who are here legally and those who are not because everyone will appear to be here legally. Felons, fakes, those with revoked licenses, and those with disciplinary proceedings pending will be invisible to the Board and hence the consumers the Board is supposed to protect.

"Licensed professions are those few professions where we seek to ensure the competence and ethics of professionals before they provide the services that can end lives and dissipate fortunes. Or, as the Board's own Web site observes, "Public accounting is now generally recognized in business to be of such importance that a standard should be set by public authority and no one allowed to practice without proper credentials."

Double-referral . This bill is double referred to the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION :

Support

California Board of Accountancy (sponsor)
Alex Accetta, CPA and Associates, Inc.
American Institute of Certified Public Accountants
Analysis Group, Economic, Financial and Strategy Consultants
Arizona Society of Certified Public Accountants
Ascend, San Francisco Bay Area Chapter
Baker, Peterson & Franklin, CPA, LLP
Britz Inc.
California Chamber of Commerce
California Society of Certified Public Accountants
CPA/SEA
Eckhoff Accountancy Corporation
Frank, Rimerman + Company. LLP
G. Scott Haislet, CPA
Hansen, Barnett & Maxwell, P.C.
Hedman & Associates

James M. Cha, CPA & Company
Illinois Certified Public Accountancy Society
KRM Risk Management Services, Inc.
Larry A. Coffin, CPA
Latino Business Professionals
National Association of Black Accountants, Inc.
National Association of State Boards of Accountancy
New Mexico Society of Certified Public Accountants
Ohio Society of Certified Public Accountants
Oregon Society of Certified Public Accountants
Paul C. Chen Accountancy Corporation
Renee Miller, CPA
Robert A. Perry, CPA
Small Business Action Committee
Texas Society of Certified Public Accountants
Uetzen & Company LLP
Utah Association of Certified Public Accountants
Virginia Society of Certified Public Accountants
VSP Vision Care
Washington Society of Certified Public Accountants
Wisconsin Institute of Certified Public Accountants

Opposition

Amalgamated Transit Union
California Alliance for retired Americans
California Nurses Association
California Teamsters Public Affairs Council
California Conference of Machinists
California Tax Reform Association
Center for Public Interest Law
City and County of San Francisco Assessor-Recorder Phil Ting
Communications Workers of America Local 9400
Consumer Attorneys of California
Consumers Union
Consumer Watchdog
Public Citizen
Engineers and Scientists of California
Eric Bradley, CPA
IFPTE Local 21
International Longshore and Warehouse Union
State Treasurer Bill Lockyer
United Food and Commercial Workers Union, Western States Council
UNITE HERE!

Analysis Prepared by : Ross Warren / B. & P. / (916) 319-3301

Memorandum

CBA Agenda Item II.D.3.
January 27-28, 2011

To : CBA Members

Date : January 11, 2011

Telephone : (916) 561-1792

Facsimile : (916) 263-3678

E-mail : mstanley@cba.ca.gov


From : Matthew Stanley
Legislation & Regulation Analyst

Subject : Cross Border Practice Legislation: Elimination of Pathway 1; SB 819 (2009).

Bill Number: SB 819 of 2009 (**Attachment 1**)
Authors: Yee
In Effect: January 1, 2010
Sponsor: CalCPA

Provisions:

This bill was an omnibus bill with several provisions affecting the California Board of Accountancy (CBA). Due to its length, the attached bill and its analysis (**Attachment 2**) have been modified to only show the parts affecting the CBA.

This bill will lead to the eventual elimination of Pathway 1 and has already created the Ethics Curriculum Committee and the Accounting Education Committee. The details of this bill and the compromise it represents will be discussed in Agenda Item V.D.

Attachments

Senate Bill No. 819

CHAPTER 308

An act to amend Sections 27, 101, 128.5, 144, 146, 149, 683, 733, 800, 801, 803, 1907, 2089.5, 2096, 2102, 2107, 2135, 2168.4, 2175, 2221, 2307, 2335, 2486, 2488, 2570.5, 2570.6, 2570.7, 2570.185, 2760.1, 3503, 3517, 3518, 3635, 3636, 3753.5, 4022.5, 4027, 4040, 4051, 4059.5, 4060, 4062, 4076, 4081, 4110, 4111, 4126.5, 4161, 4174, 4231, 4301, 4305, 4329, 4330, 4857, 4980.30, 4980.43, 4996.2, 4996.17, 4996.18, 5092, 5093, 5801, 6534, 6536, 6561, 7616, 7629, 8030.2, 8740, and 8746 of, to add Sections 2169, 2570.36, 2835.7, 4036.5, 4980.04, 4990.09, and 5094.6 to, to add and repeal Sections 5094.5 and 5094.7 of, to repeal Sections 2172, 2173, 2174, 4981, 4994.1, 4996.20, 4996.21, 5096.11, and 6761 of, and to repeal and amend Section 5094 of, the Business and Professions Code, to amend Section 8659 of the Government Code, to amend Sections 8778.5, 11150, and 11165 of the Health and Safety Code, and to amend Section 14132.100 of the Welfare and Institutions Code, relating to professions and vocations and making an appropriation therefor.

[Approved by Governor October 11, 2009. Filed with Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

SB 819, Yee. Professions and vocations.

(1) Existing law provides for the licensure and regulation of various professions and vocations by boards and bureaus within the Department of Consumer Affairs.

Existing law requires certain boards and bureaus to disclose on the Internet information on licensees.

This bill would require the Cemetery and Funeral Bureau to disclose on the Internet information on specified licensees.

(2) Under existing law, if, upon investigation, any of a list of specified state regulatory agencies has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by or registered with that agency, the agency is authorized to issue a specified citation.

This bill would add the Physical Therapy Board of California to those authorized agencies.

Existing law requires specified healing arts boards to report to the State Department of Health Care Services the name and license number of a person whose license has been revoked, suspended, surrendered, made inactive, or otherwise restricted, and requires specified healing arts boards to create and maintain a central file of the names of all persons who hold a

including, but not limited to, course requirements regardless of evaluation or accreditation.

(g) A registrant shall not provide clinical social work services to the public for a fee, monetary or otherwise, except as an employee.

(h) A registrant shall inform each client or patient prior to performing any professional services that he or she is unlicensed and is under the supervision of a licensed professional.

SEC. 70. Section 4996.20 of the Business and Professions Code is repealed.

SEC. 71. Section 4996.21 of the Business and Professions Code is repealed.

SEC. 72. Section 5092 of the Business and Professions Code is amended to read:

5092. (a) To qualify for the certified public accountant license, an applicant who is applying under this section shall meet the education, examination, and experience requirements specified in subdivisions (b), (c), and (d), or otherwise prescribed pursuant to this article. The board may adopt regulations as necessary to implement this section.

(b) An applicant for the certified public accountant license shall present satisfactory evidence that the applicant has completed a baccalaureate or higher degree conferred by a college or university, meeting, at a minimum, the standards described in Section 5094, the total educational program to include a minimum of 24 semester units in accounting subjects and 24 semester units in business related subjects. This evidence shall be provided prior to admission to the examination for the certified public accountant license, except that an applicant who applied, qualified, and sat for at least two subjects of the examination for the certified public accountant license before May 15, 2002, may provide this evidence at the time of application for licensure.

(c) An applicant for the certified public accountant license shall pass an examination prescribed by the board pursuant to this article.

(d) The applicant shall show, to the satisfaction of the board, that the applicant has had two years of qualifying experience. This experience may include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills. To be qualifying under this section, experience shall have been performed in accordance with applicable professional standards. Experience in public accounting shall be completed under the supervision or in the employ of a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy. Experience in private or governmental accounting or auditing shall be completed under the supervision of an individual licensed by a state to engage in the practice of public accountancy.

(e) This section shall become inoperative on January 1, 2014, but shall become or remain operative if either the educational requirements in ethics study and accounting study established by subdivision (b) of Section 5094, Section 5094.5, and Section 5094.6 are reduced or eliminated or if the

practice privilege requirements of Sections 5096 to 5096.15, inclusive, are amended or repealed.

SEC. 73. Section 5093 of the Business and Professions Code is amended to read:

5093. (a) To qualify for the certified public accountant license, an applicant who is applying under this section shall meet the education, examination, and experience requirements specified in subdivisions (b), (c), and (d), or otherwise prescribed pursuant to this article. The board may adopt regulations as necessary to implement this section.

(b) (1) An applicant for admission to the certified public accountant examination under the provisions of this section shall present satisfactory evidence that the applicant has completed a baccalaureate or higher degree conferred by a degree-granting university, college, or other institution of learning accredited by a regional or national accrediting agency included in a list of these agencies published by the United States Secretary of Education under the requirements of the Higher Education Act of 1965 as amended (20 U.S.C. Sec. 1001, et seq.), or meeting, at a minimum, the standards described in subdivision (c) of Section 5094. The total educational program shall include a minimum of 24 semester units in accounting subjects and 24 semester units in business related subjects. This evidence shall be provided at the time of application for admission to the examination, except that an applicant who applied, qualified, and sat for at least two subjects of the examination for the certified public accountant license before May 15, 2002, may provide this evidence at the time of application for licensure.

(2) An applicant for issuance of the certified public accountant license under the provisions of this section shall present satisfactory evidence that the applicant has completed at least 150 semester units of college education including a baccalaureate or higher degree conferred by a college or university, meeting, at a minimum, the standards described in Section 5094, the total educational program to include the units described in subdivision (b) of Section 5094 and a minimum of 24 semester units in accounting subjects and 24 semester units in business related subjects. This evidence shall be presented at the time of application for the certified public accountant license. Nothing herein shall be deemed inconsistent with Section 5094 or 5094.6.

(c) An applicant for the certified public accountant license shall pass an examination prescribed by the board.

(d) The applicant shall show, to the satisfaction of the board, that the applicant has had one year of qualifying experience. This experience may include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills. To be qualifying under this section, experience shall have been performed in accordance with applicable professional standards. Experience in public accounting shall be completed under the supervision or in the employ of a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy. Experience in private or governmental accounting or

auditing shall be completed under the supervision of an individual licensed by a state to engage in the practice of public accountancy.

(e) Applicants completing education at a college or university located outside of this state, meeting, at a minimum, the standards described in Section 5094, shall be deemed to meet the educational requirements of this section if the board determines that the education is substantially equivalent to the standards of education specified under this chapter.

SEC. 74. Section 5094 of the Business and Professions Code, as amended by Section 12 of Chapter 1079 of the Statutes of 2002, is repealed.

SEC. 75. Section 5094 of the Business and Professions Code, as amended by Section 13 of Chapter 1079 of the Statutes of 2002, is amended to read:

5094. (a) In order for education to be qualifying, it shall meet the standards described in subdivision (b) or (c) of this section.

(b) At a minimum, education must be from a degree-granting university, college, or other institution of learning accredited by a regional or national accrediting agency included in a list of these agencies published by the United States Secretary of Education under the requirements of the Higher Education Act of 1965 as amended (20 U.S.C. Sec. 1001, et seq.) and, after January 1, 2014, shall also, at minimum, include 10 units of ethics study consistent with the regulations promulgated pursuant to subdivision (b) of Section 5094.6 and 20 units of accounting study consistent with the regulations promulgated under subdivision (c) of Section 5094.6. The Accounting Education Advisory Committee established under Section 5094.5 may determine that a course or a portion of a course satisfies the ethics study requirement. Nothing herein shall be deemed inconsistent with prevailing academic practice regarding the completion of units.

(c) Education from a college, university, or other institution of learning located outside the United States may be qualifying provided it is deemed by the board to be equivalent to education obtained under subdivision (b). The board may require an applicant to submit documentation of his or her education to a credential evaluation service approved by the board for evaluation and to cause the results of this evaluation to be reported to the board in order to assess educational equivalency.

(d) The board shall adopt regulations specifying the criteria and procedures for approval of credential evaluation services. These regulations shall, at a minimum, require that the credential evaluation service (1) furnish evaluations directly to the board, (2) furnish evaluations written in English, (3) be a member of the American Association of Collegiate Registrars and Admission Officers, the National Association of Foreign Student Affairs, or the National Association of Credential Evaluation Services, (4) be used by accredited colleges and universities, (5) be reevaluated by the board every five years, (6) maintain a complete set of reference materials as specified by the board, (7) base evaluations only upon authentic, original transcripts and degrees and have a written procedure for identifying fraudulent transcripts, (8) include in the evaluation report, for each degree held by the applicant, the equivalent degree offered in the United States, the date the degree was granted, the institution granting the degree, an

English translation of the course titles, and the semester unit equivalence for each of the courses, (9) have an appeal procedure for applicants, and (10) furnish the board with information concerning the credential evaluation service that includes biographical information on evaluators and translators, three letters of references from public or private agencies, statistical information on the number of applications processed annually for the past five years, and any additional information the board may require in order to ascertain that the credential evaluation service meets the standards set forth in this subdivision and in any regulations adopted by the board.

SEC. 76. The Legislature hereby finds and declares that if California is to require an additional 30 hours of education of its accountancy students as a substitute for one year of accountancy experience, that education must be relevant to the practice of accountancy and must include ethical education for the protection of consumers.

SEC. 77. Section 5094.5 is added to the Business and Professions Code, to read:

5094.5. (a) There is hereby created within the jurisdiction of the board the Advisory Committee on Accounting Ethics Curriculum. For purposes of this section, "committee" means the advisory committee established under this section.

(b) The committee shall consist of the following 11 members:

(1) One member appointed by the California Public Employees Retirement System.

(2) Two members appointed by the Regents of the University of California. These members shall be professors of business ethics or accounting who have published works on the desirability and potential contents of accounting ethics education.

(3) Two members appointed by the California State University Board of Trustees. These members shall be professors of business ethics or accounting who have published works on the desirability and potential contents of accounting ethics education.

(4) Two members representing the California Community Colleges appointed by the Board of Governors of the California Community Colleges. These members shall be instructors of business ethics or accounting.

(5) The Senate Committee on Rules, the Speaker of the Assembly, and the board shall each appoint one member. The members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall be from organized labor or consumer advocacy organizations.

(6) The Governor shall appoint one California certified public accountant in public practice from a list provided by the California Society of Certified Public Accountants.

(c) The term of a member of the committee shall be at the pleasure of the appointing authority.

(d) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(e) (1) This section shall become inoperative on the later of the following:

(A) January 1, 2014.

(B) The day following the date on which the committee issues the final report required under subdivision (b) of Section 5094.6.

(2) This section shall be repealed on the later of the following:

(A) January 1, 2014.

(B) January 1 following the date described in subparagraph (B) of paragraph (1).

SEC. 78. Section 5094.6 is added to the Business and Professions Code, to read:

5094.6. (a) No later than June 1, 2012, the committee shall recommend to the board ethics study guidelines consisting of no less than 10 semester units to be included as a part of the education required under Section 5093. Ethics study may consist of academic courses, portions of courses, or independent study offered by degree-granting universities, colleges, or other institutions of learning accredited by a regional or national accrediting agency. Nothing herein shall be deemed inconsistent with prevailing academic practice regarding completion of units.

(b) No later than January 31, 2013, the board shall adopt, by regulation, the ethics study recommendations made by the committee pursuant to subdivision (a) without substantive changes. The committee shall issue a report during the public comment period and, no later than 30 days after the regulations are final, shall offer an opinion as to whether the regulations will implement its recommendations.

(c) The board shall, no later than January 1, 2012, by regulation, adopt guidelines for accounting study to be included as part of the education required under Section 5093. In promulgating these regulations, the board shall consider the views of the Accounting Education Advisory Committee established under Section 5094.7.

(d) No later than September 1, 2010, the board shall hold a hearing on the report by the California Research Bureau regarding the Uniform Accountancy Act's 150-hour rule. At the hearing, the board shall make recommendations, based on that report, to the National Association of State Boards of Accountancy and the American Institute of Certified Public Accountants for ensuring the relevancy of accountancy education to the modern practice of accounting and shall approve a plan for the board to seek the adoption of those recommendations and any others the board may recommend related to enforcement and Internet disclosure.

(e) For purposes of this section, the following definitions shall apply:

(1) Except as provided in subdivision (c), "committee" means the Advisory Committee on Accounting Ethics Curriculum established under Section 5094.5.

(2) "Ethics study guidelines" means the guidelines for the study of ethics adopted for California by the committee and the board consisting of a program of learning that provides students with a framework of ethical reasoning, professional values, and attitudes for exercising professional skepticism and other behavior that is in the best interest of the investing and consuming public and the profession. At minimum, it includes academic

work or independent study and shall include a foundation for ethical reasoning and the core values of integrity, objectivity, and independence consistent with the International Education Standards-4 of the International Accountants Education Standards Board, the International Federation of Accountants Code of Ethics, and the American Institute of Certified Public Accountants Code of Professional Conduct.

(3) "Accounting study" means independent study or other academic work in accounting, business, ethics, business law, or other academic work relevant to accounting and business, so as to enhance the competency of students as practitioners.

SEC. 79. Section 5094.7 is added to the Business and Professions Code, to read:

5094.7. (a) There is hereby created within the jurisdiction of the board an Accounting Education Advisory Committee for the purposes of subdivision (c) of Section 5094.6. The members of this committee shall be appointed by the board and shall be experts in accounting education. The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(b) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 80. Section 5096.11 of the Business and Professions Code is repealed.

SEC. 81. Section 5801 of the Business and Professions Code is amended to read:

5801. A certified interior designer may obtain a stamp from an interior design organization that shall include a number that uniquely identifies and bears the name of that certified interior designer. The stamp certifies that the interior designer has provided the interior design organization with evidence of passage of an interior design examination approved by that interior design organization and any of the following:

(a) He or she is a graduate of a four- or five-year accredited interior design degree program, and has two years of diversified interior design experience.

(b) He or she has completed a three-year accredited interior design certificate program, and has completed three years of diversified interior design experience.

(c) He or she has completed a two-year accredited interior design program and has completed four years of diversified interior design experience.

(d) He or she has at least eight years of interior design education, or at least eight years of diversified interior design experience, or a combination of interior design education and diversified interior design experience that together total at least eight years.

SEC. 82. Section 6534 of the Business and Professions Code is amended to read:

BILL ANALYSIS

SENATE RULES COMMITTEE SB 819
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 651-1520 Fax: (916) 327-4478

UNFINISHED BUSINESS

Bill No: SB 819
Author: Yee (D), et al
Amended: 9/12/09
Vote: 21

SENATE BUSINESS, PROF. & ECON. DEV. COMM. : 10-0, 4/27/09
AYES: Negrete McLeod, Wyland, Aanestad, Corbett, Correa,
Florez, Oropeza, Romero, Walters, Yee

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SENATE FLOOR : 38-0, 6/3/09
AYES: Aanestad, Alquist, Ashburn, Benoit, Calderon,
Cedillo, Cogdill, Corbett, Correa, Cox, Denham,
DeSaulnier, Ducheny, Dutton, Florez, Hancock, Harman,
Hollingsworth, Huff, Kehoe, Leno, Liu, Lowenthal,
Maldonado, Negrete McLeod, Oropeza, Padilla, Pavley,
Romero, Simitian, Steinberg, Strickland, Walters,
Wiggins, Wolk, Wright, Wyland, Yee
NO VOTE RECORDED: Runner, Vacancy

ASSEMBLY FLOOR : 72-0, 9/12/09 - See last page for vote

SUBJECT : Professions and vocations

SOURCE : California Society, Certified Public
Accountants

DIGEST : This bill makes several non-controversial,
minor, nonsubstantive or technical changes to various
provisions pertaining to the regulatory boards in the
Department of Consumer Affairs.

Assembly Amendments delete the portions of the bill which made changes to the Bureau of Electronic and Appliance Repair and the California Architects Board. In addition, the amendments deleted the portion of the bill which specified that medical malpractice actions have to be made in California because the Medical Board of California does not have jurisdiction to investigate actions made out of state. The amendments add new sections to the bill pertaining to Registered Dental Hygienists and the licensure and regulation of accountants by the Board of Accountancy, add double-jointing language, and make numerous other technical and clarifying changes.

ANALYSIS :

Existing law:

Provides for the licensing and regulation of various professions and businesses by some 26 boards, eight bureaus, and one commission within the Department of Consumer Affairs (DCA) under various licensing acts within the Business and Professions Code (BPC), and requires specified boards and bureaus to disclose information about licensees on the Internet, and to require applicants to furnish a full set of fingerprints for the purpose of conducting criminal history record checks.

This bill:

(References to non-CBA boards eliminated for brevity)

19. Makes the following changes related to the licensure and regulation of accountants by the Board of Accountancy:

- A. Makes the 120-hour pathway to licensure inoperative as of January 1, 2014, except as specified, and requires, on and after that date, the 150-hour pathway to include 10 units of ethics study, as defined, and 20 units of accounting study, as defined.
- B. Creates the Advisory Committee on Accounting Ethics within the jurisdiction of the Board of Accountancy to be composed of 11 members, as specified, and requires the Committee, on or before

January 1, 2012, to recommend guidelines for the ethics study requirement to the Board of Accountancy.

- C. Requires the Board of Accountancy to adopt those recommendations by January 31, 2013, and also requires the Board of Accountancy to adopt guidelines for the accounting study requirement by January 1, 2012, as specified.
- D. Requires the Board, by September 1, 2010, to hold a hearing on a specified report by the California Research Bureau and, at the hearing, to make recommendations on ensuring the relevancy of accountancy education to the modern practice of accounting, as specified.

Background

This bill is the annual omnibus Committee bill authored by the Senate Business, Professions and Economic Development Committee which consolidates a number of non-controversial provisions related to various regulatory programs and professions governed by the Business and Professions Code. Consolidating the provisions in one bill is designed to relieve the various licensing Boards, bureaus and professions from the necessity and burden of having separate measures for a number of non-controversial revisions.

FISCAL EFFECT : Appropriation: Yes Fiscal Com.: Yes
Local: Yes

SUPPORT : (Verified 9/11/09)

California Society, Certified Public Accountants (source)
American Institute of Certified Public Accountants
Ascend, San Francisco Bay Area Chapter
Asian Pacific Islander California Action Network
California Hispanic Chambers of Commerce
California Teachers Association
Federation of Schools of Accountancy
Latino Business Professionals of San Francisco
Latinos Professionals in Finance and Accounting
National Association of Black Accountants, Inc.
National Association of State Boards of Accountancy
Philippine American Society of Certified Public Accountants

ASSEMBLY FLOOR :

AYES: Adams, Ammiano, Anderson, Arambula, Beall, Bill Berryhill, Tom Berryhill, Block, Blumenfield, Bradford, Brownley, Buchanan, Caballero, Charles Calderon, Carter, Conway, Cook, Coto, Davis, De Leon, Emmerson, Eng, Evans, Feuer, Fletcher, Fong, Fuentes, Fuller, Furutani, Gaines, Galgiani, Garrick, Gilmore, Hagman, Hayashi, Hernandez, Hill, Huber, Huffman, Jeffries, Jones, Knight, Krekorian, Lieu, Logue, Bonnie Lowenthal, Ma, Mendoza, Monning, Nava, Nestande, Niello, Nielsen, John A. Perez, V. Manuel Perez, Portantino, Ruskin, Salas, Saldana, Silva, Skinner, Smyth, Solorio, Audra Strickland, Swanson, Torlakson, Torres, Torrico, Tran, Villines, Yamada, Bass
NO VOTE RECORDED: Blakeslee, Chesbro, De La Torre, DeVore, Hall, Harkey, Miller, Vacancy

JJA:mw 9/16/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE



SEVEN SUGGESTED THINGS TO THINK ABOUT WHEN THINKING ABOUT CPA "MOBILITY"

The following is respectfully submitted to the California Board of Accountancy ("CBA") by the Center for Public Interest Law ("CPIL"). CPIL is a nonprofit, nonpartisan academic and advocacy organization based at the University of San Diego School of Law. For twenty-seven years, CPIL has studied occupational licensing and monitored California agencies that regulate businesses, trades, and professions, including the CBA. To our knowledge, no other consumer group in the nation monitors the accounting profession or an accountancy licensing board on an ongoing basis.

CPIL's expertise in the regulation of licensed professions has long been relied upon by the Legislature, the executive branch, and the courts. For example, after numerous reports of California problems at the Medical Board were published in 2002, the Department of Consumer Affairs named CPIL Administrative Director Julie D'Angelo Fellmeth as the Medical Board's Enforcement Monitor, charged over a two-year period with an in-depth investigation and review of all of the Medical Board's practices, policies, and operations. Two major pieces of reform legislation were enacted mirroring the Monitor's many recommendations. CPIL staff also played similar outside monitoring roles at the State Bar, the Athletic Commission, and the Contractors' State Licensing Board.¹

1. THE BOARD'S FIRST PRIORITY

The CBA's first priority by binding statute is protection of the California consuming public. (Business & Professions Code section 5000.1: "Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.")

Convenience to licensees – let alone *out-of-state* licensees -- cannot legally be at the same level as or trump this priority.

¹ More about CPIL's background, its activities, its publications, and its positions on issues can be found at <http://www.cpil.org/index.htm>

2. HOW THE BOARD'S FIRST PRIORITY INTERSECTS WITH BEING LICENSED

A. Licensure is about harm prevention

We enact a government licensing program because a policymaking body has decided that a profession is so potentially and inherently harmful if practiced badly or dishonestly that after-the-fact lawsuits for damages cannot reliably make a damaged consumer whole.

Take two examples. A doctor's gross negligence causes the death of a loved one. No amount of money awarded in damages can make the family whole.

A CPA corruptly approves books of a publicly traded company that goes bankrupt. A lifetime of savings invested in the company cannot be recovered.

So, for these kinds of professions, we create a fairly elaborate government program the sole aim of which is to ***prevent the harm from ever occurring in the first place.***

Enforcement is not about making consumers whole and not about punishment. Revoking the license of a CPA does nothing to help the consumer already harmed by the CPA. ***Revoking a license is about preventing harm to the next potential victim.***

B. Licensure prevents harm through the active pre-screening and monitoring of people who will provide the potentially harmful professional service

Licensure is intended to pre-screen the honesty, education, and minimal competence of individuals providing a service before they provide the service.

Once someone is pre-screened and gets a license, ***enforcement*** is about making sure that the existing pool of people providing the service at any given time is honest, sufficiently educated, and minimally competent.

Disclosure (through the Internet and otherwise) assists licensure and enforcement in preventing harm by steering consumers toward the least risky professionals.

C. Enhancing consumer choice is always a good thing unless it undermines the methods licensing programs use to prevent consumer harm

One of the unhappy consequences of licensure is that it dramatically limits consumer choice only to those people who are licensed.

While enhancing consumer choice remains a good thing, steps taken to increase consumer choice cannot be accomplished if they might weaken the ability of a licensing board to carry out its core responsibilities: pre-screening and monitoring the honesty, minimal competence, and education of licensees practicing in California.

Increasing consumer choice is a good thing ***but it is not the way a licensing regulatory program protects consumers from being harmed in the first place.***

Hence, when the Business & Professions Code speaks of "protecting the public," it most centrally means ***preventing*** the public from being harmed in the first place through the (i) ***pre-screening***, (ii) ***active monitoring***, and (iii) ***weeding out*** of unqualified individuals who want to provide CPA services to Californians.

The CBA exists for but one purpose – to make sure that everyone offering CPA services to Californians is competent and trustworthy. No other government agency anywhere in the world is charged with protecting Californians in this way. The vigor and determination and thoroughness with which the CBA implements this core duty cannot vary depending upon whether the person offering services is located in San Diego or Florida.

3. CALIFORNIA IS NOT "IMMOBILE"—WHAT "MOBILITY" IS REALLY ABOUT

California law is already "mobile." That is, it is currently very easy for someone claiming to be a CPA licensed outside California to practice lawfully in California:

- An out-of-state CPA can simply go to the California Board of Accountancy's ("CBA") website, fill out a 4 page form, submit it on line, then pay \$50 or \$100 on-line within 30 days of filing the form. Upon filing the form, the CPA may then immediately and lawfully practice in California without restriction for a year. (This form is called the "Practice Privilege").
- An entire firm – *all* of its CPAs -- located outside California can lawfully practice here if just *one partner* fills out and submits a four page Practice Privilege form.

- No notice or form is required at all if the out-of-state CPA is simply preparing tax returns for individuals and does not solicit here.²

Thus, it is already very easy for a CPA from outside California to practice here. Nobody is arguing otherwise.

Indeed, and critically, **not a single CPA or firm has ever come forward to complain that the four page pre-screening form makes it hard for them to be "mobile" when it comes to practicing in California.** (This is unsurprising. Such a complaint would be embarrassing for a CPA because what is required is less complicated than filling out a 1040EZ form.)

For these reasons, *the "mobility" debate in California is not really about "mobility." It is not about whether California makes it easy or hard for out-of-state CPAs to be "mobile,"* i.e., practice in California.

The mobility debate in California is also not about whether the pre-screening Practice Privilege limits consumer choice. Because nobody has ever complained that the four-page form impedes any out-of-state CPA from practicing here, there is no evidence it limits California consumer choice.

Instead, the debate about "mobility" is entirely about whether California should adopt *the specific approach to mobility urged by the regulated CPA profession* (AICPA), as reflected its Uniform Accountancy Act.

Under the UAA's approach, *it would be illegal for the CBA to pre-screen* out-of-state individuals claiming to be CPAs who wish to practice in California.

Whether to get rid of even modest pre-screening by the CBA in the absence of any evidence that the current pre-screening prevents out-of-state CPAs from practicing here, that is what the current debate about "mobility" is about.

4. BOARD STAFF HAS IDENTIFIED THE CONSUMER PROTECTION VALUE OF PRE-SCREENING OUT-OF-STATE LICENSEES (THE PRACTICE PRIVILEGE)

To reiterate: eliminating the pre-screening Practice Privilege will not increase consumer choice for California consumers because there is no evidence that it is currently impairing consumer choice.

² In the spirit of compromise, CPIL opposed none of these reforms.

If the rationale of enhancing consumer choice is off the table, ***then there is no apparent advantage to eliminating the pre-screening Practice Privilege for California consumers.***

The only rationale remaining for the UAA's particular approach to mobility is the further convenience of out-of-state licensees of a uniform national system. While not something to be disregarded, this must be fairly low on the CBA's list of priorities. The convenience of either out-of-state licensees or the profession in some aggregated national sense cannot by law match (let alone overcome) the interests of protecting California's own consumers from coming to harm.

In contrast, staff in the CBA's Sunset Review Report (pp. 30-31) identifies two consumer-protecting features to the pre-screening Practice Privilege program. From that report:

"There are two key consumer protection elements of the California Practice Privilege provisions.

- **The CBA is authorized to take immediate action against anyone who runs afoul of the notification requirements or applicable laws: specifically, the CBA may suspend, without notice or hearing, an individual's practice privilege pursuant to Section 5096.4 of the Accountancy Act, Administrative Suspension of a Practice Privilege.**

A California Practice Privilege can be administratively suspended for the following reasons:

- **Conducting a disciplinary investigation, proceeding, or inquiry concerning representations made in the notice.**
- **An individual's competence or qualifications to practice under the California Practice Privilege.**
- **Non-payment of the Notification fee.**
- **Non-response to a CBA inquiry.**
- **The California Practice Privilege is subject to denial or discipline for any violation of the practice privilege provisions, as well as for any act that would be cause for discipline against a California licensee, such as a violation of the Accountancy Act or CBA Regulations.**

To ensure that these key consumer protection elements are effective, the CBA established a verification of qualifications procedure. To date staff issued 53 Administrative Suspension Orders to California practice

privilege holders not qualified to practice under the Practice Privilege Program.”

In sum, then, the pre-screening Practice Privilege – a pre-screen that has apparently dissuaded not a single CPA or single CPA firm from practicing in California – advances the CBA’s first priority of protecting and preventing harm to California consumers in the following three ways:

- It permits the CBA to check to make sure that out-of-state CPAs who claim to be CPAs in good standing ***in fact are in good standing***. This has in a short time prevented 53 out-of-state individuals from legally practicing here, according to staff.
- It allows Californians to go to the CBA’s website and ***with some modest confidence select out-of-state CPAs who are likely to have been checked as be in good standing in another state by the CBA that is supposed to protect the consumer by pre-screening licensees***, as opposed to those from out-of-state who may not even be CPAs, let alone CPAs in good standing.
- It allows California and the CBA to exercise ***their own independent judgment*** as to whether an out-of-state CPA who has been subject to discipline or convicted of a crime in another state should be permitted to practice in California. Thus, if an out-of-state CPA had been convicted of fraud but their home state did not revoke the license, California still has the ability to exercise its own judgment and block the out-of-state CPA from practicing in California. This is obviously lost if the CBA is not first notified of who from another state wants to practice here.³

³ The B&P Code (section 5096) and the CBA’s regulations (section 32(c)) lay out some of the conditions upon which the CBA may review and deny a Practice Privilege to an out-of-state CPA, even if the out-of-state CPA is still lawfully practicing in their home state:

- “(1) The individual is convicted of a crime other than a minor traffic violation ...
 - (3) The individual is the subject of an investigation, inquiry, or proceeding by or before a state, federal, or local court or agency (including the PCAOB) involving his or her professional conduct.
 - (4) The individual held a practice privilege in California that expired while under administrative suspension or with an unpaid fine.
 - (5) The individual has failed to respond to the satisfaction of the Board to a request for information from the Board regarding a matter related to a current or prior practice privilege.
 - (6) The individual has been notified by the Board that prior Board approval is required before practice under a new practice privilege may commence.
 - (7) The individual has had a judgment or arbitration award in an amount of \$30,000 or greater entered against him or her in a civil matter involving the professional conduct of the individual.”
- Critically, the CBA is empowered by statute to add additional disqualifying factors to this list, as the CBA’s judgment may require. (B&P section 5096(g)(2)(E) “(E) Any other conditions as specified by the board in regulation.”) That the CBA apparently has not done so does not mean that it is unwise to permit it to do so.

5. CONSUMER PROTECTION GAPS IN THE UNIFORM ACCOUNTANCY ACT

CPIL looks critically at any policy that might restrict consumer choice by making it harder for consumers to select from among the broadest array of professionals.

CPIL therefore ***does not in concept oppose making it easier for out-of-state licensees to practice here.*** It has, for example, opposed none of the current mobility practices that currently make it so easy for out-of-state CPAs to practice here now.

This requires emphasis: CPIL does not per se oppose the ability of licensees to be “mobile” between states.

But, CPIL does oppose entirely eliminating the pre-screening of out-of-state CPAs based on the record currently before the CBA .

Even if each state had adopted the entirety of the model act verbatim – something that is unlikely if for no other reason than different states organize and draft their codes differently – ***the model act addresses none of the hallmarks of a minimally competent enforcement program.*** The UAA model act

- does not establish minimum state qualifications for board investigators;
- does not establish minimum state training for board investigators;
- does not establish minimum state disciplinary standards for licensees who commit felonies, break the law, or dramatically harm consumers;
- does not establish a minimum number of board investigators per hundred or thousand licensees, to make sure their workloads permit meaningful investigation;
- does not establish benchmark time-frames for addressing and resolving complaints;
- does not address whether a state board must have a licensee look-up Internet site nor what disclosures must be made about licensees on the website and how quickly;
- does not address how other states treat complaints from out-of-state residents in the same fashion as from residents;

- does not address how consumers from one state will easily be able to complain to boards of another state (nothing about boards forwarding complaints to others, no central complaint repository); and
- does not address how much financial wherewithal a state board should have to pay for experts, investigations, attorney general or private counsel representation, etc., to make sure that the enforcement program is not feckless.

The UAA addresses none of these topics. Neither CPIL nor, apparently, the CBA has any real firm grip on how other states address any of these issues.⁴ Yet, each is utterly central to whether the CBA should rely upon other states to do what it by law has been charged to do: *prevent California consumers from being harmed by pre-screening and weeding out the people who could harm them.*

In significant part, CPIL's prior opposition to UAA mobility is because the model UAA that is supposed to assure that every state is up to California's minimal consumer protection standards fails to address many of the most important hallmarks of a licensing consumer protection program – core topics the CBA wrestles with every meeting.

Indeed, the last time the CBA proposed enacting the UAA's approach to mobility, some CBA members during CBA open meetings repeatedly asserted that Californians would be able to go to other states' websites to check on their licensees. As it turned out, the CBA's own staff and an investigative reporter for the *Orange County Register* eventually, correctly, and identically documented that many states did not in fact have such websites allowing Californians to determine who from out-of-state really is a licensee. This warrants some emphasis: one of the important premises of the CBA's previous legislative mobility proposal – that California consumers could reliably go to other states' websites to check on licensees -- was simply untested by the CBA and, when tested, was simply wrong.

Thus, the last time the CBA proposed the UAA's particular approach to mobility, the CBA proposed relying on other states' disclosure and enforcement programs to assure the quality, honesty, and integrity of CPAs serving California consumers *without doing any due diligence as to whether other states' programs were deserving of such trust.*

⁴ As alluded to in the excerpt from Treasurer Lockyer's letter opposing AB 2473 (Niello, Ma), former Senate Pro Tempore Don Perata asked the CBA in writing to research these and other issues related to other states' CPA enforcement programs in January of 2008. For example, he asked for "[a]n analysis of accountancy disciplinary statutes and systems of the other states including, but not limited to, their statutory standards for discipline, their record of enforcement over the previous five years, and their resources, all in and of themselves and as compared to those of California."

If one were to hire someone to work as a junior CPA or lawyer, surely before one did so the person doing the hiring would request and check references. Employers and landlords run credit reports. The more important the job, the more searching the background check. Even fast food franchises require employment applications.

However, despite being urged to do so by no less an authority as the former Pro Tempore of the California State Senate, the CBA regrettably declined to do a meaningful check on the enforcement resources and quality of other states, or their Internet license disclosures, or the timeliness or accuracy of those disclosures, prior to urging the Legislature to enact the UAA's approach to mobility.

In effect, the CBA proposed to "hire" these other boards for a critical job without doing the kind of rudimentary due diligence done in the private sector for even fairly unimportant jobs.

More than anything else, this lack of due diligence from the CBA prompted the degree of CPIL's opposition to the bill authored by Mr. Niello and Ms. Ma (AB 2473) that would have enacted the UAA's approach to mobility. This lack of due diligence prior to sponsoring legislation eliminating pre-screening by California of individuals who want to practice in California plus the failure to respond to the Pro Tempore's request for such research plus the current ease with which out-of-state CPAs may currently practice in California are together what in large part doomed the bill in the Legislature.

Phrased another way, (i) because there is no evidence that the current pre-screening dissuades CPAs from other states from practicing here, there was and is no consumer-choice justification for the UAA's approach to mobility compared to what California has now; and (ii) the CBA was unable to offer assurances based upon the CBA's own research that other states were doing a sufficiently good job of policing their own pools of licensees such that it justified entirely eliminating California's ability to pre-screen them before they provided services that might harm California consumers.

Moreover, and in a way, worse, even if the black letter law of the UAA addressed the consumer protection items listed above, **a law being on the books is no assurance that it is being implemented properly, as this CBA's own struggles with too few enforcement staff underscores.**

We see this to some extent foreshadowed in the NASBA Regional Directors' most recent report, where four surveyed states mentioned possible complexities

related to mobility that reinforce the need of the CBA to ask questions about what is happening on-the-ground in other states.⁵

Even if, therefore, the UAA addressed the hallmarks of a minimally competent and trustworthy enforcement program, **neither AICPA nor NASBA routinely monitors or publicly reports on any of the following key state enforcement performance benchmarking metrics:**

- States' minimum qualifications for board investigators;
- States' minimum training for board investigators;
- States' record of vigorously or infrequently imposing discipline upon licensees convicted of serious crimes or found liable for serious civil wrongs;
- States' minimum number of investigators per hundred or thousand licensees, to make sure their workloads permit meaningful investigation;
- States' time-frames for addressing and resolving complaints;
- States' Internet disclosure practices (what is disclosed and how rapidly);
- Whether other states treat complaints from out-of-state residents in the same fashion as from residents;

⁵ Most states that had mobility simply answered "no" when asked if there were unspecified "problems" with mobility. Of course, we don't know if the states surveyed are checking for problems. However, four states responded as follows, underscoring that we simply have no CPA-worthy validation of how well or poorly state boards are performing their harm prevention functions:

"Arkansas – It is too early for us to provide a complete answer. So far, we are still having to communicate to our constituents / licensees about the changes, though the changes were adopted over a year ago."

"Mississippi – No, not at this time. However, confusion exists related to the disciplinary process between States. For example, uncertainty occurs if another jurisdiction's CPA has performed work in your State and a complaint is filed by the client, but the CPA is no longer performing services in your State and the jurisdiction of the principal place of business will not investigate or react to the complaint."

"North Carolina – We are currently waiting for two jurisdictions to consider action on the referrals of two individuals from the jurisdictions that the Board revoked their North Carolina reciprocal certificates."

"South Dakota – We have been discussing fines for non-licensees, which would require a statute change."

- Whether other states enforce their laws only against smaller practitioners on easy matters or also seek to enforce their laws against larger firms on complex matters;
- The timeliness, accuracy, or extent of Internet disclosures about licensee discipline;
- States' financial wherewithal to pay for investigations, experts, attorney general or private counsel representation, etc.; and
- Whether States have actually adopted the UAA without meaningful change and, if so, whether those states ***are actually implementing it correctly, in a minimally competent manner consistent with what the CBA would insist upon for itself.***

Thus, even if the UAA embraced all of the so-far missing, integral consumer protection elements, that is **only one step** of a **two step process** of assuring the CBA that other states are up to some minimum standards consistent with the CBA's consumer protection mission. The **additional step** is making sure **on a permanently ongoing basis that the words in the code books are actually being implemented both as the UAA contemplates and in a fashion that offers minimally effective pre-screening and monitoring of out-of-state CPAs that might end up providing services to California consumers.**

Even if the CBA were to find other states on paper "qualified" to "hire" for the CBA's job of pre-screening and maintaining a pool of competent and honest licensees (e.g., their codes embrace consumer protection elements despite the UAA's silence) practicing in California, hiring someone for a job isn't enough. Supervisors need routinely and periodically to check on an employee's performance. That is no different where relying on other states to do the CBA's job of protecting Californians is concerned.

6. WHAT SOME OTHERS HAVE SAID ABOUT THE PROPOSAL TO ELIMINATE PRE-SCREENING OF OUT-OF-STATE LICENSEES

In the words of the CBA's own prior enforcement chief, entirely eliminating pre-screening of out-of-state CPAs by the CBA **"would permit unrestricted practice by practitioners who have been convicted of a crime until the state of principal place of business takes appropriate discipline."**

Former DCA Director Carrie Lopez wrote: "By removing the notification requirement for out-of-state licensees the CBA will have no way of knowing who and how many out-of-state licensees are practicing in California. The Department fears that this policy could encourage unqualified individuals

to practice as CPAs in California and lead to a decline in consumer protection.”

These statements are true because (i) the UAA embraces almost none of the key components of a basic pre-screening, consumer protection program and, even if it did, (ii) the CBA has no idea whether the enacted codes in other states are being effectively enforced or minimally resourced by any other state, let alone 49. For example, the CBA has no idea whether it takes days, years, or months for another state board to revoke or impair a license of a CPA based on a criminal conviction.

The CBA does not know this because it has never inquired about it or any other facet of the performance of other states' boards.

7. THE LEGISLATURE JUST THIS YEAR RE-AFFIRMED THE PRE-SCREENING PRACTICE PRIVILEGE

SB 819 (Yee) most famously embraced a compromise between the profession and CPIL on the 150 hour Rule. But the same bill also re-affirmed the pre-screening Practice Privilege.

B&P section 5092(e) provides:

(e) This section [the section allowing for the 120 hour pathway] shall become inoperative on January 1, 2014, but shall become or remain operative if either the educational requirements in ethics study and accounting study established by subdivision (b) of Section 5094, Section 5094.5, and Section 5094.6 are reduced or eliminated ***or if the practice privilege requirements of Sections 5096 to 5096.15, inclusive, are amended or repealed.***

The agreement reached between the profession and CPIL, memorialized explicitly in code and endorsed by the Legislature, contemplates the continued existence of the pre-screening Practice Privilege as a condition to eliminating the 120-hour pathway, at least until all parties can achieve a consensus otherwise.

Respectfully submitted:

Ed Howard
Senior Counsel, CPIL

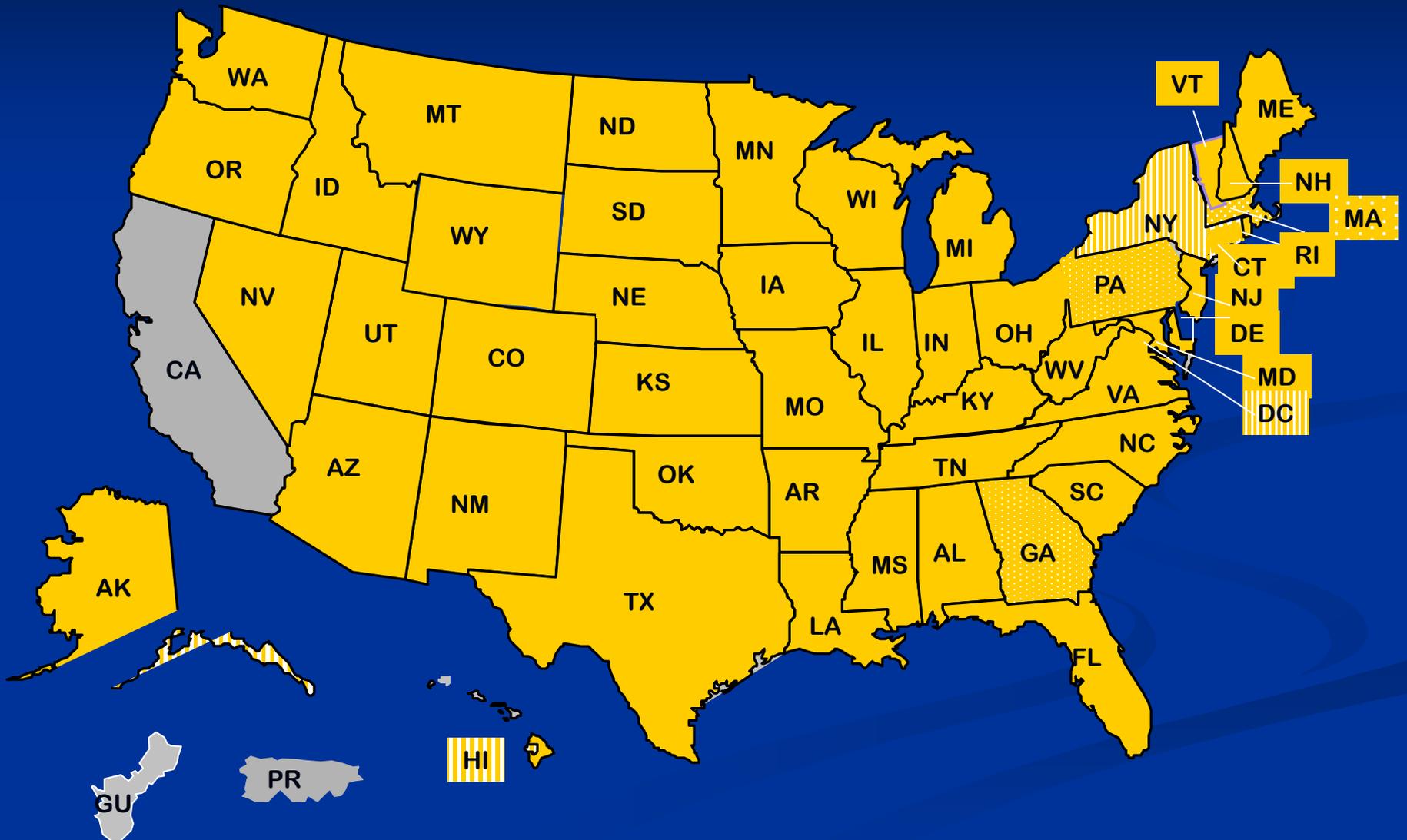
Mobility Success as of January 1, 2011

CBA Agenda Item II.E.
January 27-28, 2011

Mobility

Mobility quid pro quo

Legislation Introduced



Prototype of ALD Public Website



About the ALD

Search the ALD

<< Logout | Change Password >>

<< Back to Search

Database Search Results

	Last Name	First Name	Middle Name	Jurisdiction	License Num	License Status	action
view	ANDERSON	MARY		WA	11343	ACTIVE	
view	ANDERSON	MARY		WA	09353	ACTIVE	
	ANDERSON	MARY		WA	09353	INACTIVE	Y

Results Per Page: 25

The Accountancy Licensee Database (ALD) and this website are maintained as a service to provide access to CPA licensee information for accountants and accounting firms. The licensee information included in the ALD represents that of the various participating state boards of accountancy providing such information.

All information available on this website is compiled from the data supplied by participating state boards of accountancy and therefore varies by state as to content, disclosure items and regularity of information updates. NASBA assumes no responsibility or liability for the accuracy or completeness of such information and the user assumes all risk in the use of such.

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Click Here to be taken directly to the Washington State Board Website for more information.

Prototype of ALD Public Website



[About the ALD](#) [Search the ALD](#)

<< Back to Search Results

INDIVIDUAL Licensing

NAME: MARY ANDERSON
STATE OF LICENSE: WA (State Info)
Last Updated: 2010-07-31

	Business
Address:	SEATTLE, WA 98121

License/Certificate Number: 09353

Type of License: HOLDS A VALID CPA-INACTIVE CERTIFICATE NOT LICENSED TO PRACTICE AS A CPA

Reportable Action: [CLICK HERE](#)

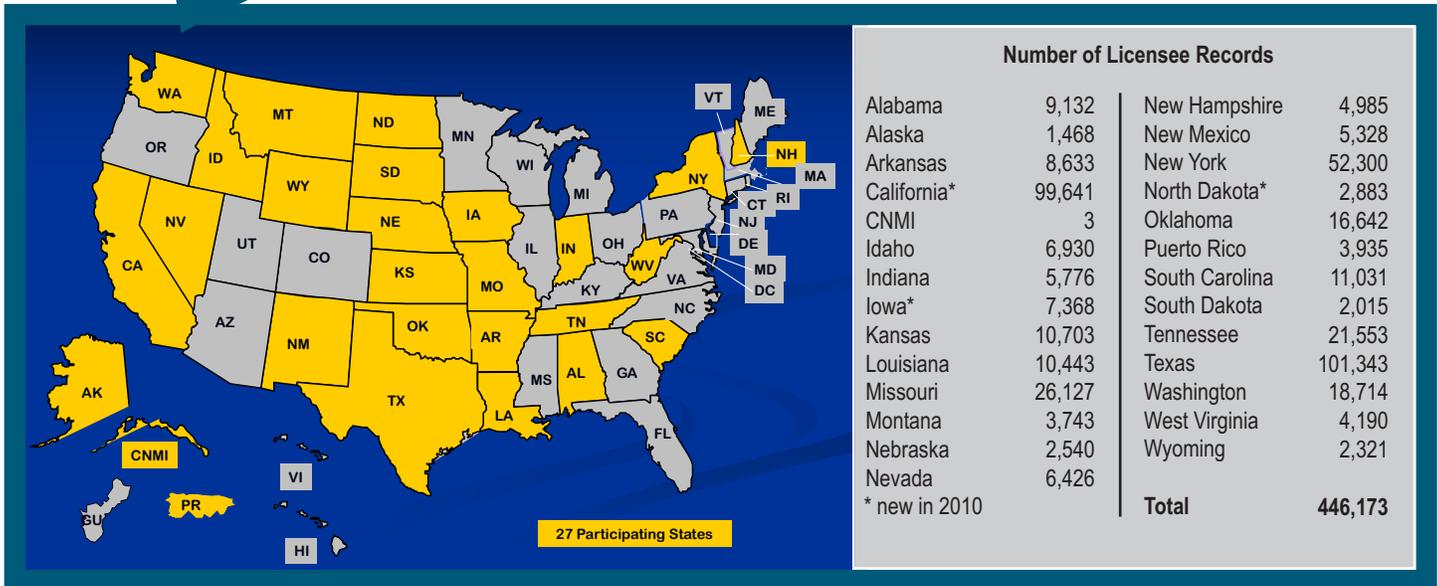
License/Certificate Status: ACTIVE

CPA License Issue Date: 1984-06-29

CPA License Expiration Date: 2010-06-30

Contact the WA Board for official verification of information. [click here for contact information](#)

A link to Washington's website



ALD Welcomes California

In life, commitment oftentimes serves as a catalyst to achieving a goal or task. In turn, a sense of real accomplishment accompanies completion of the goal or task - especially if the undertaking is one of great importance. One important goal of NASBA is to continually increase the awareness and number of participants in the ALD.

We are thrilled to announce that effective February 2010, the California Board of Accountancy (CBA) began sending a nightly transmission to ALD. With the addition of California's 110,000 records, the ALD now contains approximately 440,000 licensees.

In a recent conversation Patti Bowers, CBA Executive Officer, said that she plans for her staff to use the ALD as

they process applications for licensure to verify if individuals are licensed in other jurisdictions and, in some instances, to verify employers who sign experience verification forms.

Currently, the process is very manual for applicants and CBA staff alike. Applicants must send a Certificate of Experience form to their employer and then the employer completes and returns the form to the CBA. Depending on the type of experience being verified, CBA staff must then provide a form to the applicant to send to the employer's state of licensure. That state then completes the form with background information for the employer's CPA license and mails it to the CBA office.

Bowers concluded, "Using ALD will allow us to eliminate this manual process as we can now verify this information online. It is going to significantly cut down on the processing timeframe and the workflow."

Sally Anderson, CBA Board Member, also stressed the importance of the ALD public version going online to protect the public in a Mobility environment. "Strong consumer groups in California who are very influential with the Legislature have voiced concerns about individuals coming into our state and potentially doing harm to our citizens, with no means to track these individuals. Having a national database is very important so that if problems arise, we can find a way to

continued on next page

Recent Improvements. . .

The ALD Task Force is continuously thinking of ways for the ALD to better assist boards. Recently, three new improvements were introduced to the system. The improvement that our team is most excited about is direct access to Accountancy Licensing Library (ALL) summary information in the ALD. Users no longer have to leave the ALD to obtain up-to-date licensing information from ALL. Now, users can click on the link provided in the licensee record that will open the licensing information for that specific state in another window. This new addition provides easy access, in one location, to verify the licensing requirements for a particular state without ever having to leave the ALD.

Another improvement to the ALD system is the placement of a date stamp in each licensee's record. This stamp provides users with the date that the state board sent the file to the ALD. This will help all state boards ensure that their license information in the ALD is as up-to-date as possible. It will also help other state boards that are using the information in the ALD know that the information is as up-to-date as the information at the state board.

The third improvement is a link to state board contact information including their Web site. Each record has a statement to contact the state board for official verification and an easy link to the state.

If you have a suggestion for an improvement in the ALD system, please contact Kenny Denny at: kdenny@nasba.org or 615.312.3801.

ALD Welcomes California

continued from front

resolve them. The ALD public site will eliminate the biggest concern with Mobility that has been voiced so far," shared Anderson.

Regarding the need for a public version of ALD Bowers added, "This is a critical tool to move ahead with Mobility. Presently, when out of state licensees practice in California, we have a notice requirement. These licensees' names are posted on our Web site so consumers can verify that they have met the qualification screening process and are authorized to practice here."

Moving from a notice requirement to a no-notice system would leave the California public with a critical need for a resource to verify that a licensee is authorized to practice, and who members of the public should contact if they experience problems.

Bowers and Anderson are both members of the ALD Task Force. NASBA appreciates their commitment to shaping the ALD into a resource that meets the needs of Boards and the public. Also special thanks to the CBA IT team, Connie Kono and Nick Battalico, for their work in developing the ALD transmission.

ALD Plans to Assist the Public

We are very excited about the continued expansion of the ALD board tool as well as our plans to provide a Web site with basic licensee information to the public. The Public Web site is an exciting new way we are assisting boards in protecting the public through access to information.

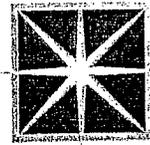
In February, NASBA sent out a Quick Poll to gather each board's questions, comments and level of interest in a Web site hosted by NASBA, accessible by the public, containing basic license information for all participating jurisdictions. We received responses from 40 jurisdictions that overall gave us a thumbs up.

Edith Steele made a presentation at the ED Conference in March and provided a summary of the results and a Q&A document to address questions and comments we received on this subject. We've looked at all of the state-sponsored Web sites that are now available to the public and created a prototype that will contain similar information with an added benefit of searching across all of the states. In the next few weeks, we will be contacting each state to ask for permission to include their information in this new Web site.

CONTACT US

The *ALD News* is the premier source for news and information regarding the Accountancy Licensee Database. For questions or comments, contact:

Kenneth Denny, Administrator
NASBA Accountancy Licensee Database
phone: 615.312.3801 fax: 615.880.4292
kdenny@nasba.org



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STATE LIBRARY
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California Research Bureau

May 12, 2009

The Honorable Gloria Negrete McLeod
Chair, Senate Committee on Business, Professions and Economic Development
State Capitol, Room 2053
Sacramento, CA 95814

Dear Senator Negrete McLeod,

Thank you very much for your recent request for the California Research Bureau to assist the committee in understanding the policy options before the Legislature with regard to the pathways through which residents can obtain a license as a Certified Public Accountant (CPA).

Based on consultations with your staff, the California Research Bureau will design and pursue a study with the following components:

- Summary of the points of concern, prior legislative deliberations, and review of the literature relative to those points of concern, including analysis of the impact of licensing changes on entry into the field for CPAs, consumer protections, and impacts on licensees in the education, experience and exam pipeline to the extent there are supporting data.
- Overview of the national discussion regarding the 150-hour rule for licensure, summary of legislative action in other states, and implications of national and state policies and trends for California and the ability of CPAs licensed in California to practice in other states. The overview would include identification of licensing policy and practice models that policymakers could consider, including best practice models to remove barriers to licensing for populations of concern where information is available.
- Identification of strategies that could be used to monitor and report trends in licensing and their impact on communities of concern, including women, persons of color or others.

To pursue this study, the California Research Bureau would convene an advisory committee to enable stakeholders to inform this work. The advisory committee would include representatives from the CPA profession, the California Board of Accountancy, along with stakeholders focused on consumer protection, improved access to the field, and others.

As requested, we will work to deliver this report to your office by November 1, 2009. Please feel free to contact me if you have any questions regarding this study.

Again, thank you very much for the opportunity to assist the committee.

Respectfully,

Toby Ewing
Toby Ewing, Ph.D.
Director

Memorandum

CBA Agenda Item V.A.
January 27-28, 2011

To : CBA Members
Date : December 30, 2010
Telephone : (916) 561-1731
Facsimile : (916) 263-3673
E-mail : rixta@cba.ca.gov

From : Rafael Ixta, Chief
Enforcement Division

Subject : Update on Peer Review Implementation

In an effort to continue to supply updates on peer review implementation activities, staff have provided this memorandum highlighting key topics where actions have occurred since the November CBA meeting.

Regulations

The rulemaking package making the peer review regulations permanent was approved by the Office of Administrative Law (OAL) on December 20, 2010. The permanent regulations vary only slightly from the emergency regulations; the key difference being the Peer Review Reporting Form now requires completion in its entirety. There are no longer any questions that are designated as "optional." The online reporting form and the hard copy have been updated to reflect these changes.

The rulemaking package for the proposed Peer Review Oversight Committee (PROC) regulations was approved by OAL and will go into effect on January 20, 2011.

Peer Review Oversight Committee

The first PROC meeting was held on November 9, 2010, at the CBA office in Sacramento. The meeting included a summary of the Bagley-Keene Open Meeting Act, state travel policies, and CBA's role in mandatory peer review. Representatives from the American Institute of Certified Public Accountants and the California Society of Certified Public Accountants provided an overview of the Peer Review Program. Members discussed their roles and responsibilities, implementation activities, and assigned a subcommittee to prepare comments on AICPA's Peer Review Exposure Draft.

The next PROC meeting is scheduled for Thursday, January 20, 2011 in San Jose.

Update on Peer Review Implementation

Page 2 of 2

Peer Review Survey

The Peer Review survey went live on the CBA Web site on December 9, 2010. The survey will be made available to all firms that are required to undergo peer review and report their peer review results online.

The voluntary survey will assist the CBA in collecting information from sole proprietors and small firms to prepare the report that is due to the Legislature and the Governor on January 1, 2013.

Reporting Statistics

As of December 28, 2010, 13,052 peer review reports have been submitted. The breakdown is as follows:

Peer Review Required	918
Peer Review Not Required (firms)	2,238
Peer Review Not Applicable (non-firms)	9,896

Staff is preparing a series of reminder letters to be sent to the first group of licensees who are required to report by July 1, 2011. In early 2011, letters will be sent to the second group of licensees, who are required to report by July 1, 2012.

Further, audit procedures are being developed to identify licensees who do not report by their required reporting date or do not report correctly. Audits of the first group of licensees are targeted to begin after the July 1, 2011 reporting date.

Outreach

Additional frequently asked questions (FAQs) have been added to the CBA Web site.

Staff will continue to inform members regarding the activities and progress of peer review implementation.

Memorandum

CBA Agenda Item V.D.
January 27-28, 2011

To : CBA Members

Date : December 30, 2010

Telephone : (916) 561-1716

Facsimile : (916) 263-3674

E-mail : vdaniel@cba.ca.gov


From : Veronica Daniel
Board Relations Analyst

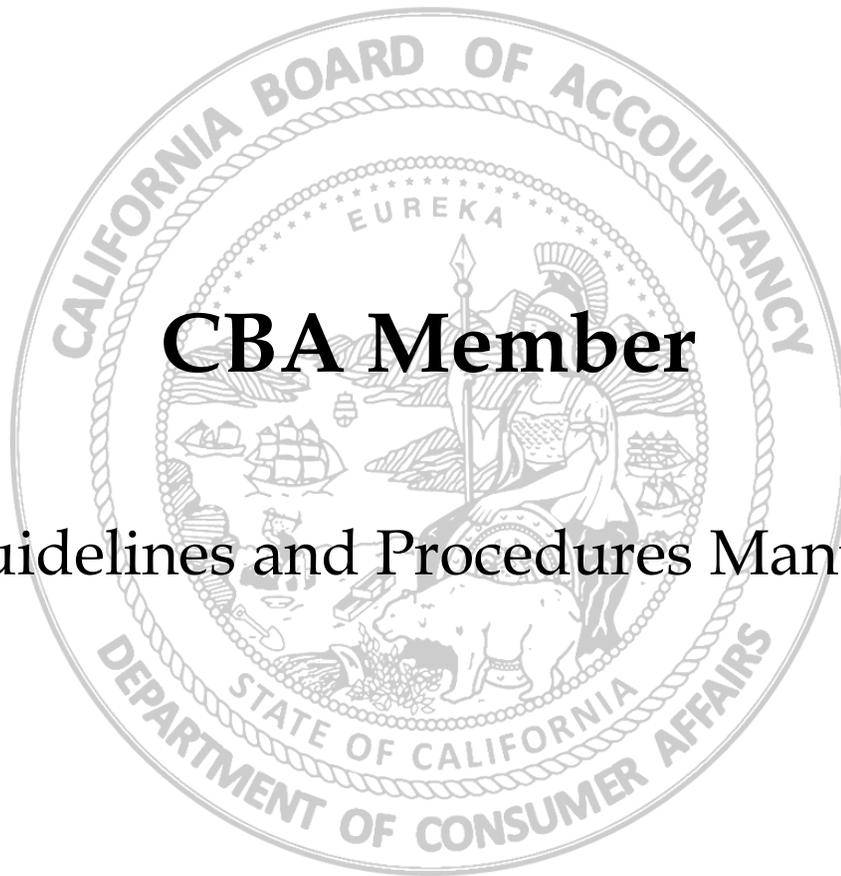
Subject : Discussion on Amendments to the CBA Guidelines and Procedures Manual

In January of 2010 the California Board of Accountancy (CBA) adopted a complete restatement of the Guidelines and Procedures Manual (G&P). In the past year, there have been a few topics identified for modification in the manual. In addition to minor grammatical changes, noteworthy modifications include:

1. Addition of Section I.D.3, Mentoring, which encourages senior CBA members to mentor new members, and make themselves available to answer procedural and historical questions, as requested in the 2010 Executive Roundtable.
2. Modification of Section I.F.3.b., Duties of the Vice President, to add that the duties of the Vice President include serving as the "ambassador" as needed. This addition was adopted at the March 2010 CBA meeting.
3. Modification of Section I.G.3., Attendance, to provide the CBA President with more flexibility in handling attendance matters. It has been suggested that the CBA may wish to modify its current policy, and notify the DCA Director when a CBA member misses two consecutive meetings, rather than three. This will align the CBA with the majority of other boards and bureaus.
4. Modification of Section I.G.9., Webcast, to delete reference of all CBA committee meetings being Webcast.
5. Addition of Section II.A.2., Peer Review Oversight Committee (PROC), which reflects the purpose and composition of the PROC.
6. Modification of Section V, Expense Reimbursement, to reflect the update to CBA travel procedures.

In order to reduce printing costs, only the modified sections are attached from the CBA Guidelines and Procedures Manual. A complete copy is available on request, and will be available at the meeting. Deletions are marked in ~~striketrough~~, additions are in underline. Upon adoption of these revisions, a new copy of the G&P Manual will be distributed to all members.

The California Board of Accountancy



CBA Member

Guidelines and Procedures Manual

Last updated
January 2011



AMENDMENTS TO THE GUIDELINES AND PROCEDURES MANUAL
Formerly: BOARD OPERATIONS MANUAL

September 30, 1994

March 15, 1995

June 10, 1997

November 21, 1997

January 23, 1998

March 21, 1998

January 26, 2001

January 1, 2003

April 1, 2004

Revised and Restated

January, 2010

Amendments to the Guidelines and Procedures Manual

January 2011

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SECTION I

THE CALIFORNIA BOARD OF ACCOUNTANCY

Created in 1901, The California Board of Accountancy (CBA) licenses and regulates nearly 81,000 licensees, the largest group of accounting professionals in the nation. The major staff functions of the CBA can be separated into two divisions, Licensing and Enforcement.

The CBA's Licensing Division is responsible for ensuring:

- 1) Applicants meet education requirements prior to taking the Uniform CPA Examination
- 2) Applicants for licensure have passed the CPA Examination and have met the education and experience requirements necessary for licensure
- 3) Accountancy firms are registered so they can offer services in California
- 4) Licensees have paid the required fees and have completed the required amount of continuing education hours in order to renew their license and demonstrate minimum competency
- 5) Out-of-state licensees seeking the privilege to practice public accountancy in California have notified the CBA of their intent.

The CBA's Enforcement Program receives complaints from consumers of accounting services, members of the accounting profession, professional societies, law enforcement agencies, other government agencies, and internal referrals from CBA committees and other programs. While historically consumers and internal referrals have been the main origin of complaints, licensees also have been a significant source, most often reporting unlicensed activity. CBA members and staff also regularly monitor the news media for information regarding licensees that may suggest violations of the Accountancy Act.

Within the Enforcement Program, workload is prioritized to maximize consumer protection and mitigate consumer harm. Cases with the potential for ongoing consumer harm receive the highest priority and urgent attention. The CBA has historically used licensed CPAs to investigate complaints. These resources have been effective but difficult to recruit and retain as state salaries have not kept parity with compensation available elsewhere. To augment its licensed investigators, the CBA has recently expanded its Enforcement Program resources to utilize analysts to conduct investigations of non-technical matters.

A. MISSION AND VISION OF THE CBA.

The mission of the California Board of Accountancy is to protect consumers by ensuring only qualified licensees practice public accountancy in accordance with established professional standards.

The Vision of the California Board of Accountancy is that:

All consumers are well informed and receive quality accounting services from licensees they can trust.

B. COMPOSITION (Ref. Business & Professions Code §§ 5000 & 5001(b)).

The CBA consists of 15 members, seven of whom must be certified public accountants, and eight of whom must be public members who are not licensees of the CBA.

The Governor appoints four of the public members and all of the licensee members with at least two licensees representing a small public accounting firm and one licensee may be an educator in a program that emphasizes the study of accounting within a college, university, or four-year educational institution. The Senate Rules Committee and the Speaker of the Assembly each appoints two public members.

C. QUALIFICATIONS (Ref. Business & Professions Code §§ 5000.5 & 5001(a)).

Each public member of the CBA must not:

- Be a current or former licensee of the CBA
- Be an immediate family member of a licensee
- Be currently or formerly employed by a public accounting firm, bookkeeping firm, or firm engaged in providing tax preparation as its primary business
- Have any financial interest in the business of a licensee

Each licensee member of the CBA must:

- Currently be engaged in the practice of public accountancy for a period of not less than five years preceding the date of their appointment, except for the educator position authorized by § 5001(b)

All members of the CBA must:

- Currently be a citizen of the United States and a resident of California for at least five years preceding the date of their appointment
- Be of good character
- Take and subscribe to the Oath of Office and file the Oath with the Secretary of State

D. CBA MEMBER RESPONSIBILITIES AND DUTIES (Ref. Business & Professions Code § 5000.1)

1. Responsibilities.

The CBA members are responsible for carrying out the mission of the CBA as delineated in Section I.A. of this manual. As noted in the CBA Strategic Plan (**Appendix 1**), protection of the public shall be the highest priority for the California Board of Accountancy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. In addition, members are to adhere to all statutory and regulatory requirements as well as all policies and procedures contained in this Guidelines and Procedures Manual.

2. Duties.

All members are to attend CBA meetings and volunteer to participate as CBA Liaison to at least one non-CBA member Committee and participate as a member of at least one of the following committees comprised of only CBA members:

- Legislative Committee
- Committee on Professional Conduct
- Enforcement Program Oversight Committee
- Other Committees and Task Forces

3. Mentoring.

[CBA officers and more experienced members are encouraged to act as mentors to new CBA members, making themselves available to answer procedural and historical questions as they arise.](#)

E. TENURE (Ref. Business & Professions Code § 5002).

Each member is appointed for a term of four years and holds office until they are reappointed, a successor is appointed, or until one year has elapsed since the expiration of the term for which he was appointed, whichever occurs first.

No person shall serve more than two terms consecutively.

Vacancies must be filled by a person in the same capacity (public or licensee member) as the person being replaced.

The Governor must remove any licensee member whose permit to practice becomes void, revoked, or suspended.

Any member may, after an administrative hearing, be removed for neglect of duty or other just cause.

If a member is appointed to fill a vacant seat in what would be the middle of the previous member's term, the rest of that term does not count against the two term limit, as it is still defined as the previous member's term.

F. OFFICERS (Ref. Business & Professions Code §§ 5003, 5004 & 5007).

The officers of the CBA are President, Vice-President, and Secretary-Treasurer.

1. Election of Officers.

The process for the election of officers is as follows:

- At the September CBA meeting, the President shall inform members that the election of officers will be held at the November CBA meeting. Interested candidates are requested to prepare a one page written summary outlining their qualifications for the position for which they are applying. The summary is to be sent to the Executive Analyst by a date determined by the Executive Officer and CBA President.
- The summaries of qualification shall be distributed as part of the agenda items for the November CBA meeting.

- At the November CBA meeting, the President shall ask if there are any additional candidates for the officer positions. All candidates may be given up to five minutes of floor time to describe why they are qualified for the position.
- The vote for officers shall be taken by a simple hand vote.
- The President, Vice-President, and Secretary-Treasurer serve one-year terms and may not serve more than two consecutive one-year terms. The newly elected President, Vice-President, and Secretary-Treasurer shall assume the duties of their respective offices at the conclusion of the annual meeting at which they were elected.

2. Vacancy.

In the event of a vacancy of the Vice President or Secretary-Treasurer prior to the annual election of officers, the CBA President shall make an interim appointment to fill the vacancy effective until the next election cycle. In the event of a vacancy of the President, the Vice President shall become the president.

3. Duties.

a. President.

The President shall perform general administrative duties, as well as the following:

- Preside over CBA meetings
- Approve the agenda and time schedule
- Appoint CBA members as Liaison to the EAC and QC committees
- Appoint CBA members to CBA committees and task forces
- Establish other CBA committees as needed
- Make decisions regarding CBA matters between meetings
- Represent the CBA in media relations
- Coordinate the annual evaluation of the Executive Officer
- Make interim appointments to the EAC and QC committees, subject to ratification at the next CBA Meeting
- Monitor CBA Member attendance at CBA Meetings, and report issues to DCA
- Make interim appointments to the Vice-President and Secretary-Treasurer positions should they become vacant mid-term

b. Vice-President.

The Vice-President shall perform the following:

- Act in the absence of the President
- Review the EAC and QC committee members and recommend appointments and reappointments
- Perform any other duties as assigned by the CBA President
- Review and act upon time sensitive appeals to the CBA by Examination and Licensure candidates.
- [Serve as the CBA “Ambassador”, performing and coordinating outreach on behalf of the CBA as part of the Communication and Outreach Plan.](#)

c. Secretary-Treasurer.

The Secretary-Treasurer shall perform the following:

- Act as Liaison to the staff of the CBA for fiscal/budgetary functions and routinely report to the CBA regarding relevant matters. This includes reviewing the quarterly and year-end financial statements, in concert with the President. After review, the Secretary-Treasurer presents the financial statement to the CBA.
- Interface with the Department of Consumer Affairs’ internal auditors regarding internal audit matters affecting the CBA. These matters include such issues as internal audit findings, requests for special reviews, and other related concerns or topics.
- Perform other duties as requested by the CBA President.

G. MEETINGS (Ref. Business & Professions Code §§ 5016 & 5017).

All meetings of the CBA and its committees, subcommittees and task forces are subject to the Bagley-Keene Open Meeting Act. This Act is summarized in a document developed by the Department of Consumer Affairs, and includes statutory requirements for conducting Teleconference and/or Emergency Meetings. **(Appendix 2)**

1. Frequency.

The CBA meets regularly during the year. The dates are normally established annually at the March meeting for the following calendar year.

2. Locations.

The CBA chooses locations that are ADA compliant, easily accessible to the public, applicants, and licensees, alternating between northern and southern California. The CBA also recognizes its responsibility regarding the public’s concern for the judicious use of public funds when choosing meeting facilities and overnight accommodations.

3. Attendance.

Members are expected to attend all scheduled meetings of the CBA. Regular attendance ensures current knowledge of procedures and policies as well as an equitable sharing of duties and responsibilities.

Should a member miss ~~three~~two consecutive meetings, the CBA President may notify the Director of the Department of Consumer Affairs (DCA).

Arrival and departure times of each member are recorded in the CBA minutes.

4. Agenda.

The CBA President, with the assistance of the Executive Officer, shall prepare the agenda and tentative time schedule. Any request not approved by the Executive Officer and CBA President shall be included in a standing agenda item, "Issues to be discussed at the next meeting," for consideration and vote by the full CBA.

Except where an accusation or statement of issues has been filed, and with reference to disclosure of enforcement matters, it shall be the policy of the California Board of Accountancy that, meeting notices or other public documents of the CBA and its committees shall identify enforcement matters solely by case or investigation number.

The mailing list shall include CBA members, committee, and task force chairs and vice-chairs, as well as those parties who have requested to be notified.

5. Notice Requirements.

The notice requirements defined by the Bagley-Keene Open Meeting Act are summarized, in the guide provided by the Department of Consumer Affairs. **(Appendix 2).**

6. Closed Session.

Closed sessions, if conducted by an Administrative Law Judge (ALJ), may be attended by CBA members only, unless otherwise invited by the ALJ to remain. Those individuals the CBA President deems appropriate as dictated by a need for their expertise may attend all other closed sessions.

Matters that can be considered in closed session are defined by the Bagley-Keene Open Meeting Act.

7. Minutes.

Preliminary draft minutes are prepared and distributed to the CBA President and DCA Legal Counsel, and CBA members prior to the subsequent meeting. The reviewed preliminary draft minutes will be distributed to CBA members, allowing five working days for comment. After all comments are incorporated, the minutes will become draft and be available for distribution to the public.

After adoption by the CBA, the minutes are signed by the CBA President and Secretary-Treasurer, bound by year, and retained in the CBA office as a public record of the CBA's activities. The minutes are also posted on the CBA Web site for at least three years.

8. Voting.

A majority of the CBA shall constitute a quorum for the transaction of any business.

a. Recording.

For each motion, the following information is recorded in the minutes: the name of the person making the motion, seconding the motion, opposing, abstaining and absent, respectively. Those absent are recorded after every motion unless the member is shown as absent for the entire meeting.

Excerpts from minutes must be accompanied by the first two pages of the same minutes that list those in attendance.

b. Abstentions.

A CBA member will abstain from voting on an issue if for any reason a conflict of interest is or may be perceived to be present.

Abstentions do not prevent a motion from carrying. For example, if seven members vote in favor of a motion, six members vote against, and two abstain, the motion would carry.

c. Mail Votes.

Mail votes are not permitted except in disciplinary matters. The CBA has 100 days from the receipt by the CBA of a proposed decision by an Administrative Law Judge to adopt or non-adopt the decision (Section 11517 (c) (2) California Administrative Procedure Act). A mail vote may be taken at the direction of the CBA President.

9. Webcast. (Ref. Business & Professions Code §§ 5017.5).

All CBA ~~and Committee~~ meetings are recorded and Webcast live.

H. APPEALS TO THE CBA.

Exam appeals should be submitted a minimum of 20 working days prior to a CBA meeting to be considered. In the event the CBA does not meet at a time to enable an exam candidate to sit for the exam, then the Vice-President shall act on behalf of the CBA.

The CBA will not consider new information unless previously reviewed by the appropriate committee, subcommittee, task force, or staff.

I. PETITION FOR REINSTATEMENT OR REDUCTION OF PENALTY.

Petitions must be received a minimum of 120 days prior to any CBA meeting. The CBA generally will hold a formal hearing, with an Administrative Law Judge, to consider these matters. In some instances, the CBA may review only the written record and render a decision without a hearing. Only CBA members who are present for the entire hearing shall be permitted to vote.

J. PRESENTATIONS.

Individuals and/or groups wishing to make a formal presentation to the CBA are requested to notify the CBA office 20 working days prior to the meeting. This is not intended to preclude public comment on specific agenda items or on other general matters. Presenters should provide any written material to supplement their presentations 10 days in advance of the meeting.

K. COMMITTEES AND TASK FORCES.

Committees and task forces, other than those created by statute, are established by the CBA President on behalf of the CBA. A committee organizational chart is included as **(Appendix 3)**.

L. APPOINTMENTS TO THE EAC, PROC, AND QC.

All reappointments and new appointments are made biennially. Reappointments are determined through the interest survey and evaluation process. The committee chairs recommend new appointments through the process outlined in ~~the EAC and QC~~ each committee manuals. Invitation to participate in the committee's new appointment process is noticed biennially or as necessary by publication in the CBA' newsletter, **UPDATE**, and on the CBA Web site. It must be noted in the article that applications for new appointments need to be received by a specific deadline, at least six weeks prior to the meeting where the appointments will be considered.

M. RESPONSIBILITY OF CBA MEMBER LIAISONS TO COMMITTEES AND TASK FORCES.

CBA members acting as Liaisons to committees, task forces, or CBA programs are responsible for keeping the CBA informed regarding emerging issues and policy recommendations made at the committee or task force level. In addition, the Liaison is to keep the committee or task force informed of CBA policies and assignments, and to make recommendations to the CBA regarding chair and vice-chair appointments. Finally, Liaisons assigned to the committees will evaluate committee chairs, vice-chairs, and members for whom they have specific knowledge of their performance, and report those evaluations to the President and Vice-President as required.

N. CPA EXAMINATION PROGRAM.

The national exam is administered throughout 55 jurisdictions, including the 50 states and the U.S. territories of District of Columbia, Guam, Puerto Rico, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

Staff has delegated authority to the National Association of State Boards of Accountancy (NASBA) for maintaining a national computerized CPA examination candidate database that stores information for the 55 jurisdictions on candidate's eligibility to test. The CBA qualifies candidates and provides oversight and policy/procedural direction.

The examination is written and graded by the American Institute of Certified Public Accountants (AICPA).

Information booklets for first-time and repeat applicants regarding requirements to sit for the examination and the CBA's policies and procedures for exam candidates requesting accommodations for disabilities and medical considerations are included in this manual as **Appendix 4**.

O. LICENSURE PROGRAM.

After passage of the examination, and fulfillment of the requisite experience, an applicant may apply for licensure. Approximately 3,100 applications are received each year and the CBA licenses approximately 2,800 individuals annually.

Applications are reviewed by staff, and if warranted, an employer may be asked to appear with work papers to substantiate the verification of experience (Form E) that was submitted on an applicant's behalf. This review is done by the QC. Individual applicants may also be required to appear before the QC to substantiate their experience if deemed necessary. Effective January 1, 2002, applicants may obtain licensure with general experience only which requires the completion of a Form G for verification of experience.

An information packet regarding licensure requirements is included in this manual as **Appendix 5**.

P. RENEWAL/CONTINUING COMPETENCY PROGRAM.

Functions related to continuing education (CE) and the review of professional competence of licensees who practice public accountancy are included in the Continuing Competency Program. The primary function within the Continuing Competency Program is Continuing Education Review. Licensees are required to complete 80 hours of CE to renew licenses in active status. Licensees report their CE by listing all courses at the time of license renewal.

Two programs are used to monitor licensees' compliance with the CE requirements – the CE Worksheet Review Process and the CE Audit Program. With the CE Worksheet Review Process, staff review all licensees self-reported CE at the time of license renewal to ensure all CE requirements are met, while for the CE Audit Program, a licensee must submit substantiating documentation to demonstrate proof of completion for the report CE.

The other CE-related program activities include approval of courses to qualify for the Regulatory Review requirement, and review of requests for extension of time or exemption from completion of CE.

Q. ENFORCEMENT PROGRAM.

The CBA receives and investigates approximately 500 complaints involving licensees each year. Another 50 complaints against unlicensed practitioners are also handled by the staff. CBA members will routinely see three different types of enforcement action, including:

1. Default Decisions

Default decisions are presented to the CBA whenever an accusation has been filed by the Executive Officer, and the named respondent has either failed to file a Notice of Defense, or failed to appear at a scheduled administrative hearing. The former is much more common, and default decisions occur in about 20% of the matters brought before the CBA.

Documents CBA members will receive with the agenda packets:

- Accusation
- Draft default decision
- Transmittal memorandum that summarizes the causes for discipline and the CBA's costs invested in the case

Adoption of a default decision results in the revocation of the CPA's license, but **will not** result in the imposition of cost recovery.

2. Stipulated Settlements.

Stipulated settlements are presented to the CBA whenever an accusation has been filed by the Executive Officer and the parties involved on both sides agree to a draft stipulated settlement that they believe to be appropriate for CBA review and consideration. The assigned Deputy Attorney General, Investigative CPA, and Chief of Enforcement collaborate in preparing appropriate proposals.

Documents CBA members will receive with the agenda packets:

- Accusation
- Draft stipulated settlement
- Letter from the Deputy Attorney General that supports the settlement
- Transmittal memorandum that summarizes the causes for discipline and the CBA costs

Adoption will result in the imposition of whatever sanctions are reflected in the draft stipulated settlement. Non-adoption will result in either a revised draft stipulated settlement or the matter proceeding to administrative hearing.

CBA members are free to broadly discuss cases involving stipulated settlements with the Chief of Enforcement prior to taking action on a case. The CBA cannot unilaterally increase the discipline terms of a draft stipulated settlement, but it can provide guidance to the Chief of Enforcement regarding future settlement revisions.

Stipulated settlements occur in about 60% of the matters brought before the CBA.

3. Proposed Decisions.

Proposed decisions are presented to the CBA after a contested accusation has proceeded through an administrative hearing and the administrative law judge has prepared a proposed decision.

Documents CBA members will receive with the agenda packets:

- Accusation
- Proposed decision
- Transmittal memorandum that summarizes the findings and proposed discipline reflected in the proposed decision.

CBA members may ask the Chief of Enforcement procedural questions regarding matters that involve proposed decisions; but must otherwise take their action based upon "the record", which includes the accusation and the ALJ's proposed decision. Furthermore, the liaison Deputy Attorney General should not be present for the CBA's discussion of proposed decisions.

Adoption of the proposed decision will result in imposition of whatever sanctions are reflected in the proposed decision. Nonadoption would generally result in the CBA's later review of the hearing transcript and counsel's arguments and then the CBA making a decision after nonadopt. The CBA could remand a nonadopt decision back to the ALJ for further hearing, but this option is rarely used.

Proposed decisions occur in about 20% of the matters brought before the CBA.

Some factors to consider when regarding an ALJ's proposed decisions are:

- a. Consider accepting an ALJ's proposed decision where:
 1. The decision is based upon an assessment of the credibility of the witnesses.
 2. The law and ethical standards are interpreted correctly.
 3. The CBA is simply unhappy with the result but there are no legal problems with the decision.
 4. The costs of proceeding are so extreme in comparison with the severity of the offense and the probability of the success for the respondent is high.
 5. The CBA does not approve the respondent's practices, but the prevailing standards at the time of the alleged violations did not prohibit such conduct.
- b. Consider nonadopting an ALJ's proposed decision where:
 1. The record reflects the ALJ clearly abused his or her discretion.
 2. The ALJ was clearly erroneous in his or her application of the relevant standard of practice for the issues in controversy at the administrative hearing.
 3. The ALJ was clearly erroneous in his or her interpretation of the licensing law and/or implementing regulations.
 4. The ALJ failed to interpret properly and/or to apply the appropriate ethical guidelines and standards to the specific facts of the case.
 5. The ALJ failed to understand the significance of the testimony of respondent with respect to the likelihood of future danger to the public.
 6. The ALJ made the correct conclusions of law and properly applied ethical standards and rules of conduct, but the penalty is substantially less than is appropriate to protect the public.

R. CBA MEMBER CONFLICT OF INTEREST IN DISCIPLINARY MATTERS:

Individual CBA members should not vote and should not be present for discussions on any disciplinary matter in which they have a conflict of interest. CBA counsel should be contacted if you have a question of whether you have a conflict of interest in a particular case.

1. Investigative Consultants.

An Investigative Consultant is prohibited from working on any case where it is determined that he or she has a conflict of interest. CBA committee members may not be utilized in paid positions; e.g., investigative consultant or expert witness (\$100 per day per diem excluded).

2. Conflict of Interest Disclosure Statement.

In disciplinary matters the conflict of interest disclosure statement used by the Enforcement Advisory Committee members should be used as a guide for determining whether a CBA member should participate or vote in CBA deliberations.

In some instances the relationship or conflict is of such significance the member should not be present during the CBA's deliberations. In all other matters the same guidelines generally apply although the law and rules are less stringent.

If a CBA member believes there is a potential or perceived conflict, the CBA member is to disclose the facts to the full CBA and legal counsel to obtain a determination as to the level of participation permitted.

3. Exparte Communications.

Exparte communications in disciplinary matters are strictly prohibited. Should information come to a member's attention that is not part of the administrative record or if contact is made by any of the participants, the member should immediately contact legal counsel for advice. A case may not be discussed with any person, including CBA members, other than at the CBA meeting when the matter is scheduled for discussion. A limited exception to this policy is when a member is acting in a Liaison capacity on one or more specific cases. If acting as a Liaison, the member may not vote or be present during CBA deliberations. If there are two or more Liaison members, at least one should attend each meeting.

SECTION II

CBA COMMITTEES AND TASK FORCES

The intent of all committees is to serve in an advisory capacity to the CBA. The Enforcement Advisory, Peer Review Oversight, and ~~and~~ Qualifications Committees are statutory in nature, meaning their use is written into the Accountancy Act. All other committees are standing in nature, and may be created/dissolved at the CBA's discretion.

Each committee and/or task force shall have a Chairperson. The Chairperson is designated by the CBA President, and is tasked with running the committee/task force meeting. The Chair opens and closes the meeting, and counts the vote. The Chair is also responsible for coordinating with staff the creation of the minutes, and the presentation of those minutes to the CBA.

CBA members who wish to attend committee meetings, but that are not a part of the committee, may do so. However, pursuant to the Bagley-Keene Act, if the CBA member's presence at the committee meeting would constitute a CBA quorum, they may make no comment, vote on any agenda item, or sit at the table with the committee.

At the November CBA meeting, the President shall inform CBA members that if they wish to participate on a committee for the next year, they must submit written notice to the Executive Analyst. The Executive Analyst will then compile the list of interested parties, and supply it to the President in December. The President, at their discretion, will then make appointments to CBA committees effective the first of January, the following year.

A. STATUTORY COMMITTEES (Ref. Business & Professions Code §§ 5020, 5023, & 5024).

1. Enforcement Advisory Committee (EAC).

a. Purpose.

To assist the CBA in an advisory nature with its enforcement activities by:

- Serving in a technical advisory capacity to the Executive Officer and the Enforcement Program. The EAC members may participate in investigative hearings along with staff investigators; counsel from the Attorney General's Office and where appropriate, outside counsel.
- In an appropriate manner, consistent with the Administrative Procedure Act, reporting its findings from any investigation or hearing to the CBA, or upon direction of the CBA, to the Executive Officer.
- Considering, formulating and proposing policies and procedures related to the CBA's Enforcement Program.
- Making recommendations and forwarding reports to the CBA for action on any matter on which it is authorized by the CBA to consider.

b. Membership.

The EAC is comprised of up to 13 licensees.

c. Meetings/Minutes.

The EAC meets approximately four times annually, generally for one day each meeting. Minutes are prepared from the meeting, and presented to the CBA for acceptance.

2. Peer Review Oversight Committee (PROC)

a. Purpose.

To act as an advisory committee and assist the CBA in its oversight of the Peer Review Program by:

- Overseeing the activities of sponsoring organizations related to how peer reviews are processed and evaluated.
- Ensuring the sponsoring organizations adhere to the American Institute of Certified Public Accountants (AICPA) *Standards for Performing and Reporting on Peer Reviews* (Standards).
- Ensuring that peer reviewers are properly qualified.
- Ensuring that peer reviews are being accepted in a consistent manner by the sponsoring organization's report acceptance body.
- Evaluating organizations outside the AICPA structure that desire to administer peer reviews in California.
- Representing the CBA at the AICPA's Peer Review Board meetings.

b. Membership.

The PROC is comprised of 7 licensees

c. Meetings/Minutes.

The PROC meets approximately four times annually, generally for one day each meeting. Minutes are prepared from the meeting, and presented to the CBA for acceptance.

23. Qualifications Committee (QC)

a. Purpose.

To act as an advisory committee and assist the CBA in its licensure activities by:

- Conducting work paper reviews of experience of applicants appearing before the committee

- Interviewing employers that appear before the committee under the provision of [Rule Section 69](#), of the Accountancy Regulations
- Making recommendations and forwarding reports to the CBA for action on any matter on which it is authorized to act

b. Membership.

The ~~QC~~[Qualifications Committee](#) is comprised of 16 licensees.

c. Meetings/Minutes.

The QC meets approximately four times annually, generally for one day each meeting. An additional [Rule Section 69](#) review may be conducted by QC members approximately one month prior to each committee meeting for those employers not in the geographic area of the upcoming QC meeting. Minutes are prepared from the meeting, and presented to the CBA for acceptance.

~~34.~~ Other Committees.

The CBA may create and appoint other committees consisting of certified public accountants in good standing of this State or other qualified interested parties, who may but need not be members of the CBA for the purpose of making recommendations on such matters as may be specified by the CBA.

B. STANDING, AD HOC, and OTHER COMMITTEES/TASK FORCES.

1. Committee on Professional Conduct (CPC).

a. Purpose.

To assist the CBA in consideration of issues relating to professional conduct by:

- Considering and developing recommendations on issues that apply to the practice of public accountancy and affect consumers
- Considering, formulating, and proposing policies and procedures related to emerging and unresolved issues
- Reviewing selected exposure drafts and developing recommendations to present to the CBA

b. Membership.

The ~~Committee on Professional Conduct~~ [CPC](#) may be comprised of up to seven CBA members.

c. Meetings/Minutes.

The ~~Committee on Professional Conduct CPC~~ generally meets before scheduled CBA meetings. Minutes are prepared from the meeting, and presented to the CBA for acceptance.

2. Enforcement Program Oversight Committee (EPOC).

a. Purpose.

To assist the CBA in the consideration of issues relating to professional conduct by:

- Reviewing policy issues related to the Enforcement Program
- Overseeing the program's compliance with CBA policies by way of performing periodic internal audits

b. Membership.

The ~~Enforcement Program Oversight Committee EPOC~~ may be comprised of up to seven CBA members.

c. Meetings/Minutes

Meeting to review the CBA's Disciplinary Guidelines shall be held on a tri-annual basis. More frequent meeting for any purpose may be called as deemed necessary. Minutes are prepared from the meeting, and presented to the CBA for acceptance.

3. Legislative Committee (LC).

a. Purpose.

To assist the CBA in its activities by:

- Reviewing, recommending, and advancing legislation relating to the practice of public accountancy.
- Coordinating the need for and use of CBA members to testify before the Legislature.

b. Membership.

The LC may be comprised of up to seven CBA members.

c. Meetings/Minutes.

The frequency of the meetings is determined by the urgency of the issue(s) at hand. The LC meets as required by the Chair or approximately three times a year. Minutes are prepared from the meeting, and presented to the CBA for acceptance.

4. Task Forces.

Under the CBA's General Authority, the CBA may create Task forces, which are temporary and terminate at a prescribed time. Task forces may be comprised of CBA members,

licensees, staff, and the general public. For a list of all current task forces, refer to the latest CBA roster. **(Appendix 3)**

5. National Committees.

The CBA encourages its members to participate in national committees, including the American Institute of Certified Public Accountants (AICPA) Qualifications Committee, and most National Association of State Boards of Accountancy (NASBA) committees. In addition, all new CBA members are encouraged to attend the NASBA yearly meeting, as NASBA generally reimburses travel costs, and the meetings are informative as to the workings of NASBA and ~~its~~ priorities for the upcoming year. **Appendix 6** includes a list of all NASBA national committees as reference.

SECTION III

REPRESENTATIONS ON BEHALF OF THE CBA

A. USE OF CBA STATIONERY.

Only correspondence that is transmitted directly by the CBA office may be printed or written on CBA stationery. Any correspondence from a CBA, committee, or task force member requiring use of CBA stationery or California Board of Accountancy/Department of Consumer Affairs logo or emblem, should be transmitted to the CBA office for finalization and distribution. Any correspondence transmitted directly from a CBA, committee, or task force member must be printed or written on their personal, firm, or business stationery.

B. TESTIMONY BEFORE THE LEGISLATURE.

Primary responsibility for testifying before the Legislature is the responsibility of the Executive Officer and CBA President, or their designee, as delegated by the CBA. Members are also asked to participate as deemed necessary by the President.

C. PUBLIC AND MEDIA RELATIONS.

It is important that the consumers of California have information regarding the activities, responsibilities, and mission of the CBA. This information must be disseminated properly and responsibly. Information is conveyed to consumers, licensees, examination applicants, constituents, and other stakeholders by two mechanisms: responding to inquiries, and initiating the release or communication of information. Nearly all information to consumers and the general public is communicated through the Internet, e-mail, and the news media; other information is conveyed by professional organizations, such as consumer advocacy groups, other regulatory entities, and professional society publications.

It is the CBA's policy to provide the public with as much information as possible about its activities in a manner that is both objective and factual. For example, the CBA's semiannual publication, **UPDATE**, and the CBA's Web site list disciplinary actions taken against licensees. This information provides the name and locality of the licensee, the license number, the cause for discipline, the effective date of discipline, and the code violation(s) that were cited in the findings.

The CBA's Web site also has a License Lookup feature. Consumers and licensees can check the status of individual licenses, as well as partnerships and corporations. Information available includes: Licensee/Firm Name, Type of License, License Number, Status, Expiration Date, Issue Date, Address of Record, and any disciplinary actions within the past seven years.

Statements to the News Media: To establish a foundation for accurate news coverage regarding CBA activities, statements to the news media by the Executive Officer, the CBA President, or their designee, are to be confined to matters of procedure and matters of fact already on the record. All information conveyed must be fact, not opinion. Editorializing or interpreting the facts of a situation is inappropriate and only can lead to misunderstandings and misinformation.

When queried about matters under investigation, in which an Accusation has not been filed, it is the policy of the CBA for the spokesperson to state: "It would be premature to discuss any matter that may or may not be under investigation by the CBA."

D. NEWS RELEASES.

The CBA issues three categories of news releases:

- Declarations of disciplinary actions when the CBA deems such an action necessary or desirable
- Information about CBA actions, findings, or other facts or details related to matters in which the consumers of California are clearly involved
- Information about the CBA's policies, actions, activities, or programs which may affect the consumers of California

The authority for issuing news releases relating to routine CBA business and notice of disciplinary actions resides with the Executive Officer and CBA President, who decide jointly whether a news release is appropriate.

News releases, information in **UPDATE** and on the Web site reporting actions by the CBA during closed session relating to disciplinary cases, may not be released for a period of 30 days, pending appeal by the respondent. If a writ of mandate is filed within the 30 days, the disciplinary action will still be published unless a stay order is issued by the court. In all instances, the composition of the vote of CBA members in closed session is not a matter of public record.

The content of each news release will determine the course of review the document must take. The Executive Officer, in consultation with the CBA President, will identify those parties to review each news release and identify the responsible party to draft the news release. While legal counsel will review the material prior to dissemination, final review, and authority to disseminate the news release is the charge of the CBA President, or his or her designee.

E. RESPONDING TO INQUIRIES.

All technical, license, or disciplinary inquiries to a CBA, committee, or task force member from applicants, licensees, or members of the public should be referred to the Executive Officer. Contact of a CBA, committee, or task force member by a member of the news media should be referred to the Executive Officer.

Other inquiries may be received such as:

Public Records Act — permits the CBA to withhold disclosing information during a pending investigation.

F. SPEAKING ENGAGEMENTS.

CBA, committee, and task force members sometimes are requested to make presentations before various organizations regarding CBA business or activities. Such requests must be approved by the CBA President or the Executive Officer. A written list of topics the speaker intends to present must be provided prior to the presentation.

G. **UPDATE** (Ref. Business & Professions Code § 5008).

The CBA issues a semi-annual periodical publication **UPDATE**. This publication serves as a communication link between the CBA, its licensee population, and other interested parties.

All articles and any information offered for submission to the **UPDATE** for publication should be submitted to the **UPDATE** staff managing editor. All material, including informational or instructive articles, notices, forms, proposed statutory or regulatory language, or any other information for publication should be presented in final form. Upon receipt, all material will be reviewed by the **UPDATE** staff, appropriate CBA division managers and the Executive Officer, and subsequently forwarded to the and DCA's Communications and Education Division, Legal Office and Executive Office for review before publication. Issues of **UPDATE** are also posted on the CBA's Web site.

SECTION IV

CONFLICT OF INTEREST

A. GENERAL GUIDELINES.

The Political Reform Act of 1974 (Proposition 9), as it governs conflicts of interest, was primarily designed to prevent persons from financially benefiting by virtue of their official position. Please refer to **Appendix 7** for more information from DCA regarding Conflict of Interest.

This act requires state agencies to adopt a Conflict of Interest Code that outlines the specific responsibilities of CBA members and employees in that agency. There are two major aspects of the Political Reform Act included in the Conflict of Interest Code: one refers to disqualification, the other to financial disclosure. CBA members have responsibilities under each of these aspects which are separately discussed.

1. Disqualification.

Government Code § 87100 sets forth the general prohibition: "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

Any CBA member who has a financial interest must disqualify himself/herself from making or attempting to use his/her official position to influence the decision. The question of whether a CBA member has a financial interest that would present a legal conflict of interest is a complex one and must be decided on a case-by-case review of the particular facts involved. For more information on disqualifying yourself due to a possible conflict of interest, please refer to the Fair Political Practice Committee's manual, located on their Web site.
<http://www.fppc.ca.gov/library/CanIVote7-05.pdf>

2. Financial Disclosure.

The Conflict of Interest Code also requires all CBA members to file annual financial disclosure statements. New CBA members are required to file a disclosure statement within 30 days after assuming office; or, if subject to Senate confirmation, 30 days after being appointed or nominated. Annual financial statements must be filed not later than April 1 of each year.

A "leaving office statement" must also be filed within 30 days after an affected CBA member or other official leaves office.

CBA members are not required to disclose all their financial interests. Government Code § 87302(b) indicates when an item is reportable:

An investment, interest in real property, or income shall be made reportable by the Conflict of Interest Code if the business entity in which the investment is held, the interest in real property, or the income or source of income may foreseeably be affected materially by any decision made or participated in by the designated employee by virtue of his or her position.

To determine what investments, interests in property, or income must be reported by a CBA member, reference should be made to the Department's Conflict of Interest Code. Questions concerning particular financial situations and related requirements should be directed to the

Department's Legal Office. More information is also available on DCA's Web site, http://www.dca.ca.gov/publications/board_members/conflict_interest.shtml

3. DCA's Policy: Incompatible Activities (Ref. Government Code § 19990).

The following is a summary of the employment, activities, or enterprises, which might result in, or create the appearance of being inconsistent, incompatible, or in conflict with the duties of state officers:

- Using the prestige or influence of a state office or employment for the officer's or employee's private gain or advantage, or the private gain or advantage of another.
- Using state time, facilities, equipment, or supplies for the officer's or employee's private gain or advantage, or the private gain or advantage of another.
- Using confidential information acquired by virtue of state employment for the officer's or employee's private gain or advantage, or the private gain or advantage of another.
- Receiving or accepting money, or any other consideration, from anyone other than the state for the performance of an act which the officer or employee would be required or expected to render in the regular course or hours of his or her state employment or as a part of his or her duties as a state officer or employee.
- Performance of an act in other than his or her capacity as a state officer or employee knowing that such an act may later be subject, directly or indirectly, to the control, inspection, review, audit, or enforcement by such officer or employee or the agency by which he or she is employed. [This, of course, would not preclude an "industry" member of a CBA or commission from performing the normal functions of his or her occupation.]
- Receiving or accepting, directly or indirectly, any gift, including money, any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or is seeking to do business of any kind with the state or whose activities are regulated or controlled in any way by the state, under circumstances from which it reasonably could be inferred that the gift was intended to influence him or her in his or her official duties or was intended as a reward for any official action on his or her part.
- The aforementioned limitations do not attempt to specify every possible limitation on employee activity that might be determined and prescribed under the authority of Section 19990 of the Government Code. DCA's Incompatible Work Activities Policy and Procedure ADM 99-02 is included in **Appendix 8**.

4. Ethics Training Requirement.

With the passage of AB 2179 (1998 Chapter 364), state appointees and employees in exempt positions are required to receive an ethics orientation within the first six months of their appointment and every two years thereafter. To comply with that directive you may either complete the interactive training on the Web site of the Office of the Attorney General or view an interactive video available upon request. Ethics training information may be found at: http://www.dca.ca.gov/publications/board_members/ethics_orientation.shtml

SECTION V

EXPENSE REIMBURSEMENT

A. PER DIEM AND TRAVEL.

1. Travel to the Meeting

CBA staff is always available to assist members with their flight or rental car needs. If a CBA member chooses to coordinate their own flight arrangements, they are encouraged to utilize www.SWABIZ.com to book their flight. Travelers not currently utilizing SWABIZ will need to establish a traveler account. The steps for creating a traveler account are included in Appendix 9. (Corporate ID: 99039695, IRN: 57448) If the member would rather contact a travel agent, they should contact The Travel Store at 916.376-3989. Please note, at this time The Travel Store does not accommodate Southwest Bookings. Giselle's Travel at 800.523.0100.

Occasionally a CBA member may need to rent a car. The state of California has a contract with Enterprise Rental Company for all car rental needs. CBA members may contact staff, or utilize the Department of Consumer Affairs' established web link when reserving vehicles: http://www.enterprise.com/car_rental/deeplinkmap.do?bid=002&cust=DBCA181 the closest Enterprise location to make rental arrangements. A justification may be necessary in the event car rental is needed.

CBA members are also encouraged to utilize the most economic source of transportation available. For example, if there is a shuttle from the airport to the hotel available, it is not fiscally responsible to rent a car or take a cab.

2. Lodging for the Meeting.

Approximately four weeks before CBA and Committee meetings, staff reserves hotel rooms for CBA and Committee members. The Executive Secretary will send out a memorandum detailing the name and address of the chosen hotel. CBA staff is available to assist CBA members in making travel reservations, or members are free to coordinate them on their own.

3. Reimbursement for Travel and Per Diem expenses.

All new CBA members are provided with an electronic copy of the Per Diem and Travel Expense Worksheet when they are appointed. A paper copy is also available at all meetings. **(Appendix 9)**. Please complete the worksheet, and return it to the CBA office as soon as possible following the CBA meeting. Staff cannot process your Per Diem and travel without it. A few key notes regarding the completion of the form:

- The form is actually two forms in one. The top section authorizes the payment of Per Diem of \$100 per day; the bottom section is where CBA members claim expenses for reimbursement.
- Please make sure to complete the time section of the Travel Expense Claim. Breakfast, lunch, dinner, and incidental payments all correspond to the time the traveler left and arrived at travel headquarters. home.

- In order to complete your Travel Claim, the Travel Claim Coordinator (TCC) must have a the original copy of all receipts, with the exception of meals. This includes a copy of your airline itinerary, and car rental receipt. Please make sure that the hotel receipt you submit has a zero balance. DCA will NOT pay any receipts that show a balance due.
- When requesting reimbursement for personal vehicle mileage, the TCC needs to know where the trip originated from, ~~and~~ where it ended, and the license plate number of the vehicle. For example, enter From: Home, 123 Green Street, Sacramento, CA 95815 To: CBA Office, 2000 Evergreen St., Sacramento, CA 95815.

SECTION VI

COMMONLY USED ACRONYMS

AAA	-American Accounting Association
AB	-Assembly Bill
AC	-Accountancy Corporation
AC	-Administrative Committee
ACT-PEP	-American College Testing Proficiency Examination Program
AEO	-Assistant Executive Officer
AG	-Attorney General
AICPA	-American Institute of Certified Public Accountants
ALJ	-Administrative Law Judge
ALO	-Administrative Law Office
APA	-Administrative Procedure Act
APB	-Accounting Principles Board
B & P Code	-Business and Professions Code
CA	-Chartered Accountant
CalCPA	-California Society of Certified Public Accountants
CBA	-California Board of Accountancy
CBT	-Computer Based Testing
CCR	-California Code of Regulations
CE	-Continuing Education
CEP	-Continuing Education Program
CFE	-Certified Fraud Examiner
CLEP	-College Level Examination Program
CMA	-Certified Management Accountant
CPA	-Certified Public Accountant
CPC	-Committee on Professional Conduct
CPE	-Continuing Professional Education
CPIL	-Center for Public Interest Law
CSATP	-California Society of Accounting and Tax Professionals
CSEA	-California Society of Enrolled Agents
DAG	-Deputy Attorney General
DCA	-Department of Consumer Affairs
DGS	-Department of General Services
DOF	-Department of Finance
DOI	-Division of Investigation
DPA	-Department of Personnel Administrations
EA	-Enrolled Agent
EAC	-Enforcement Advisory Committee
EO	-Executive Officer
EPOC	-Enforcement Program Oversight Committee
FTB	-Franchise Tax Board
GAAP	-Generally Accepted Accounting Principles
GAAS	-Generally Accepted Accounting Standards
GAO	-Government Accounting Office
IASB	-International Accounting Standards Board
ICPA	-Investigative Certified Public Accountant
iExam	-International Delivery of the Uniform CPA Exam
IRC	-Internal Review Committee (See the Qualifications Committee Manual Page VII-II)
IFRS	-International Financial Reporting Standards
IRS	-Internal Revenue Service
LC	-Legislative Committee
LGFA	-Local Governmental Fiscal Affairs
MOU	-Memorandum of Understanding (See Qualifications Committee Manual Pages III-21-23)
NASBA	-National Association of State Boards of Accountancy

NSPA	National Society of Public Accountants
OAHA	-Office of Administrative Hearings and Appeals
OAL	-Office of Administrative Law
PA	-Public Accountant
PCAOB	-Public Company Accounting Oversight Board
PROC	-Peer Review Oversight Committee
QC	-Qualifications Committee
SAS	-Statement on Auditing Standards
SB	-Senate Bill
SCA	-Society of California Accountants
SCO	-State Controller's Office
SEC	-Securities and Exchange Commission
SPB	-State Personnel Board
SSARS	-Statement on Standards for Accounting and Review <u>Services</u>
TEC	-Travel Expense Claim

SECTION VII

RESOURCE LIST

- APPENDIX 1 CBA's Strategic Plan
<http://www.dca.ca.gov/cba/publications/stratpln2010-2012.pdf>
- APPENDIX 2 DCA's guide to the Bagley Keene Open Meeting Act
http://www.dca.ca.gov/publications/bagleykeene_meetingact.pdf
- APPENDIX 3 CBA and Committee Roster
http://www.dca.ca.gov/cba/board_info/commitroster.pdf
- APPENDIX 4 CBA's Exam Candidate Handbook
<http://www.dca.ca.gov/cba/publications/exambk1.pdf>
<http://www.dca.ca.gov/cba/publications/exambk2.pdf>
- APPENDIX 5 CBA's Licensee Candidate Handbook
<http://www.dca.ca.gov/cba/publications/applbook.pdf>
- APPENDIX 6 NASBA National Committees and Interest Form:
- <http://www.nasba.org/nasbaweb/NASBAWeb.nsf/WPMCL>
 - Accountancy Licensee Database Committee
 - Administration and Finance Committee
 - Audit Committee
 - Awards Committee
 - Board of Directors
 - Bylaws Committee
 - CBT Administration Committee
 - Communications Committee
 - Compliance Assurance Committee
 - CPA Examination Review Board
 - CPA Licensing Examinations Committee
 - CPE Advisory Committee
 - Education Committee
 - Enforcement Assessment & Best Practices Committee
 - Enforcement Resource Committee
 - Ethics & Strategic Professional Issues Committee
 - Executive Directors Committee
 - Global Strategies
 - International Delivery of the CPA Exam
 - International Qualifications Appraisal Board
 - Nominating Committee
 - Past Chair Advisory Council
 - Regulatory Response Committee
 - Relations With Member Boards
 - Spouses and Guests of the NASBA Board of Directors
 - State Board Relevance and Effectiveness Committee
 - UAA Mobility Implementation Sub-Committee

- Uniform Accountancy Act Committee
- [http://www.nasba.org/nasbaweb/NASBAWeb.nsf/FNL/2009COMMITTEEINTERESTFOR/\\$file/2010_11_Committee_Interest_Form.pdf](http://www.nasba.org/nasbaweb/NASBAWeb.nsf/FNL/2009COMMITTEEINTERESTFOR/$file/2010_11_Committee_Interest_Form.pdf)

APPENDIX 7

DCA's Conflict of Interest Information
http://www.dca.ca.gov/publications/board_members/conflict_interest.shtml

APPENDIX 8

DCA's Incompatible Work Activities Policy and Procedure ADM 99-02

APPENDIX 9

Per Diem and Travel Expense Worksheet with Travel Reimbursement Guidelines.

Memorandum

CBA Agenda Item VII.A.
January 27-28, 2011

To : CBA Members

Date : January 10, 2011

Telephone : (916) 561-1718

Facsimile : (916) 263-3674

From : Leslie LaManna
CBA Secretary/Treasurer

Subject : Discussion of the Governor's Budget

The FY 2010/11 budget which was signed by Governor Schwarzenegger on Friday, October 8, 2010 includes two noteworthy changes that impact the CBA. In January 2010, the Governor issued Executive Order (EO) S-01-10 requiring departments to develop and implement a plan to achieve an additional five percent salary savings in FY 2010/11. After reviewing vacancies and past expenditure patterns, the CBA identified positions to hold vacant throughout the year to achieve these additional savings. In October 2010, the Department of Finance (DOF) issued Budget Letter 10-31, which addressed the Governor's Workforce Cap initiative turning the salary savings plans into permanent ongoing reductions. The CBA's budget decreased by approximately \$300,000 in FY 2010/11 and \$345,000 ongoing.

The FY 2010/11 budget also includes reduced salary and benefit costs of approximately \$400,000 related to the ratification of the SEIU 1000 contract. The contract includes nine days of furloughs from August through October 2010, one unpaid personal leave day for each month from November 2010 through November 2011, and increased employee retirement contributions from current employees with employer contributions decreasing by the same amount.

The CBA submitted two FY 2011/12 Budget Change Proposals (BCP). Both were approved and included in the FY 2011/12 Governor's Budget which was submitted to the Legislature on January 10, 2011. One BCP will augment the Enforcement Program's non-technical unit by 2.5 positions. With the additional analytical staff, the CBA will increase probation and continuing education monitoring as well as

increase its on-site investigations. An additional position was requested in the other BCP to assist with processing incoming peer review notifications. No additional funds were requested in the BCPs as staffing costs will be absorbed by the CBA's existing budget.

The DCA also submitted a negative BCP that proposes to reduce the CBA funding by \$1.0 M. The CBA has under spent its budget by over \$3 M in each of the past three fiscal years. The DCA's rationale was to proactively reduce budgets of programs that exhibited high expenditure reversions in light of the State's ongoing fiscal crisis. All three BCPs were approved by the DOF and were included in the FY 2011/12 Governor's Budget.

A summary of the CBA's budget changes for the current and budget year have been included in **Attachment 1**. An updated Analysis of the Fund Condition Statement with budget reductions as previously described and reduced renewal fee levels can be referenced in **Attachment 2**.

CALIFORNIA BOARD OF ACCOUNTANCY

Item 1110-001-0704

BUDGET SUMMARY

	<u>CY 2010/11</u>	<u>Governor's Budget BY 2011/12</u>		
2010 Budget Act	12,746,000	12,746,000		
<u>Baseline Adjustments:</u>				
Retirement Rate Adjustment (BL 10-32)	146,118	146,000		
Health Care Adjustment (BL 10-33)	35,355	60,000		
Employee Compensation CS 3.91 (BL 10-33)	-397,139	-144,000		
Workforce Cap CS 3.90 (BL 10-33)	-305,609	-345,000		
Department Distributed Costs		-51,000		
OIS (-37,000)				
Admin (-10,000)				
Division of Investigation (-1,000)				
Public Affairs (-2,000)				
CCSD (-1,000)				
Statewide (Central Admin.) Prorata		17,000		
Budget Change Proposals (BCPs):				
(Position Only)				
1110-01 Enforcement (+2.5 AGPAs)		0		
1110-02 Peer Review (+1.0 OT)		0		
Department-wide (BCPs):				
1111-04 BreeZe		23,000		
1111-13 Baseline Reduction		-1,000,000		
Revised Appropriation	12,224,725	11,452,000	772,725	%
Reimbursements	-296,000	-296,000		
Revised Net Appropriation (from fund)	11,928,725	11,156,000		
PERSONNEL YEARS	82.5	85.8		
Authorized Positions	84.0	87.5		
Blanket	6.3	6.3		
Salary Savings	-7.8	-8.0		

**0704 - California Board of Accountancy
Analysis of Fund Condition**

Attachment 2

(Dollars in Thousands)

Prepared 1/3/11

GOVERNOR'S BUDGET FY 2011-12

NOTE: \$30.270 Million General Fund Repayment Outstanding as of 1/3/11

	ACTUAL 2009-10	CY 2010-11	Governor's Budget BY 2011-12	BY + 1 2012-13	BY + 2 2013-14	BY + 3 2014-15	BY + 4 2015-16
BEGINNING BALANCE	\$ 15,693	\$ 19,753	\$ 11,046	\$ 19,770	\$ 18,337	\$ 16,597	\$ 14,581
Prior Year Adjustment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 15,693	\$ 19,753	\$ 11,046	\$ 19,770	\$ 18,337	\$ 16,597	\$ 14,581
REVENUES AND TRANSFERS							
Revenues:							
125600 Other regulatory fees	\$ 66	\$ 98	98	98	98	98	\$ 98
125700 Other regulatory licenses and permits	\$ 4,819	\$ 5,020	5,020	5,020	5,020	5,020	\$ 5,020
Initial Fee Decrease			-242	-242	-242	-242	
125800 Renewal fees	\$ 7,426	\$ 7,647	7,647	7,647	7,647	7,647	\$ 7,647
Renewal fee decrease			-2,921	-2,921	-2,921	-2,921	
125900 Delinquent fees	\$ 290	\$ 293	293	293	293	293	\$ 293
Delinquent fee decrease			-116	-116	-116	-116	
141200 Sales of documents	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 96	\$ 186	\$ 97	\$ 182	\$ 164	\$ 144	\$ 154
160400 Sale of fixed assets	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ 2	\$ 2	\$ 2	\$ 2	\$ 2	\$ 2	\$ 2
161400 Miscellaneous revenues	\$ 3	\$ 1	\$ 1	\$ 1	\$ 1	\$ 1	\$ 1
164300 Penalty Assessments	\$ 1	\$ 1	\$ 1	\$ 1	\$ 1	\$ 1	\$ 1
Totals, Revenues	\$ 12,703	\$ 13,249	\$ 9,881	\$ 9,966	\$ 9,948	\$ 9,928	\$ 13,217
Transfers from Other Funds							
F00683 Teale Data Center (CS 15.00, Bud Act of 2005)							
F00001 GF loan repay			\$10,000				
Transfers to Other Funds							
T00001 GF loan per Item 1120-011-074, BA of 2002	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
T00001 GF loan per Item 1120-011-074, BA of 2003	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
T00000 GF loan per Item, BA of 2008	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
T00001 Proposed GF loan	\$ -	\$ (10,000)	\$ -	\$ -	\$ -	\$ -	\$ -
Totals, Revenues and Transfers	\$ 12,703	\$ 3,249	\$ 19,881	\$ 9,966	\$ 9,948	\$ 9,928	\$ 13,217
Totals, Resources	\$ 28,396	\$ 23,002	\$ 30,926	\$ 29,736	\$ 28,285	\$ 26,524	\$ 27,798
EXPENDITURES							
Disbursements:							
0840 State Controller (State Operations)	\$ 8	\$ 20					
1110 Program Expenditures (State Operations)	\$ 8,635	\$ 11,929	\$ 12,133	\$ 12,376	\$ 12,624	\$ 12,876	\$ 13,134
2010-11 BCPs - Program							
Cal-Licensing System BCP 1B			\$ 23	\$ 23	\$ 64	\$ 67	\$ 67
Baseline Reduction BCP 1111-13			\$ (1,000)	\$ (1,000)	\$ (1,000)	\$ (1,000)	\$ (1,000)
2011-12 BCPs - CBA							
Enforcement BCP 1110-01			\$0	\$0	\$0	\$0	\$0
Peer Review BCP 1110-02			\$0	\$0	\$0	\$0	\$0
8880 Financial Information System for California (State Operations)		\$ 7					
Total Disbursements	\$ 8,643	\$ 11,956	\$ 11,156	\$ 11,399	\$ 11,688	\$ 11,943	\$ 12,201
FUND BALANCE							
Reserve for economic uncertainties	\$ 19,753	\$ 11,046	\$ 19,770	\$ 18,337	\$ 16,597	\$ 14,581	\$ 15,597
Months in Reserve	19.8	11.9	20.8	18.8	16.7	14.3	15.0

NOTES:

- A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED
- B. EXPENDITURE GROWTH PROJECTED AT 2% BEGINNING FY 2010-11

Memorandum

CBA Agenda Item VII.B
January 27-28, 2011

To : CBA Members

Date : January 12, 2011

Telephone : (916) 561-1713

Facsimile : (916) 263-3674

E-mail : drich@cba.ca.gov

From : Dan Rich 
Assistant Executive Officer

Subject : Repayment Schedule for Loans to the General Fund

At the November 2010 California Board of Accountancy (CBA) meeting, members discussed the four outstanding loans from the Accountancy Fund to the General Fund. These loans are summarized in a report that the Director of Finance submits to the Chairperson of the Joint Legislative Budget Committee biannually, and a copy of the most recent report is provided in **Attachment 1**. As additional background information, the budget bill language authorizing each of the loans is included in **Attachment 2**.

Neither the report to the Joint Legislative Budget Committee nor the Budget Act language reflect any repayment schedules, with the exception of the most recent \$10 million loan made in fiscal year 2010-11. As noted in Attachment 2, this loan, made on July 1, 2009, is scheduled to be repaid on June 30, 2011. However, it is unclear when the other three loans will be repaid.

Given the uncertainty surrounding repayment of these loans, and the impact this uncertainty has on the ability to accurately anticipate funding available to meet program needs, staff were directed to research the issue of repayment schedules for the loans and make a recommendation to the CBA. Absent development of a repayment schedule, staff understands that the CBA desires to consider options for restoration of the borrowed money to the Accountancy Fund.

Two government code sections (**Attachment 3**) provide some direction regarding repayment of special funds loaned to the General Fund. California Government Code Section 16310 authorizes the Governor to direct the transfer of monies not needed in other funds or accounts to the General Fund when the General Fund is, or will be, exhausted. All monies transferred shall be returned to the funds from which they were transferred as soon as there are sufficient monies in the General Fund to return them. Government Code Section 16320 further states that the Director of Finance shall order the repayment of the loans if the fund or account from which the loan was made has a "need" for the monies.

However, these law sections are nebulous in terms of providing guidance regarding when the CBA might anticipate having the loans repaid. Additionally, they bring into consideration the element of “need” being the basis for repayment, as opposed to simply repayment based on the fact that a loan exists. As statutes require that the CBA maintain an Accountancy Fund Reserve level of “nine months of expenditures” (months in reserve; MIR), it is presumed the Legislature believes this reserve level is sufficient to ensure that the CBA has enough resources to fund ongoing operations. Consequently, it could be argued that any Reserve funds over and above the nine MIR level are not needed to ensure that the CBA can meet its consumer protection mandates. This is underscored by the fact that any “excess” resources (over nine months) in the Reserve do not directly enable the CBA to spend more money on its programs. Whether the Reserve has an MIR factor of nine months or 90 months, the amount the CBA can spend in a given year is determined by the Legislature and Governor through the annual budget process...not the amount of money in the Accountancy Fund.

Looking at the issue of “need” from differing perspectives that impact the CBA, this agency’s fiscal “needs” can be broken into a number of related ideas, as follows:

- The CBA needs sufficient expenditure authority to pay for its programs.
- The CBA needs sufficient reserves in the Accountancy Fund to provide certainty that resources are available to pay for its programs.
- The CBA needs sufficient revenues to ensure that the Accountancy Fund Reserve maintains a targeted MIR level.

As stated earlier, presumably the Legislature and Governor believe that nine months worth of expenditures in the Accountancy Fund Reserve are sufficient resources to provide certainty that funding is available CBA to pay for CBA programs. Additionally, as reflected in under-expenditure of its budget for the past many years, it could be argued that the CBA has more than enough expenditure authority to pay for its programs. For example, in the fiscal year last closed (2009-10), the CBA was authorized to spend approximately \$11.7 million, but only ended up spending \$8.6 million. The “extra” \$3 million the CBA was authorized to spend (and which was supported by revenues) but did not “need” (as evidenced by the fact that the expenditure authority went unused), became a reversion and resulted in an approximate \$3 million increase in the Reserve. Of course, some of this savings actually is needed for effective CBA operations, but the CBA spending is constrained by other factors – such as not being able to hire Investigative CPAs, furloughs, etc. Still, most of the \$3 million reversion can be attributed to unspent expenditure authority reserved to pursue Enforcement cases as they arise. Unfortunately, the magnitude, frequency and costs of these cases cannot be predicted from year to year.

As illustrated in the Analysis of the Fund Condition Statement (**Attachment 4**), the Reserve, assuming full expenditure of the CBA annual authorized budget (which has not occurred in approximately a decade), will remain at a level well above the nine-month mandate even with the 40 percent renewal fee reduction starting in FY 2011-12.

Consequently, there seems to be little basis to presently argue for the repayment of the loans based on CBA "needs".

Staff is moving forward, per the CBA's direction, with a bill to include in the Accountancy Act a prohibition against future General Fund borrowing from Accountancy Fund. Further, in relation to three loans made from the Accountancy Fund, which have no repayment schedule tied to them, staff recommend that the CBA issue a letter requesting assistance from the Department of Consumer Affairs in establishing a repayment schedule for the three loans. A draft letter (**Attachment 5**) is included in this agenda item for CBA member consideration.

Absent success in establishing a repayment schedule for these loans staff will, if so directed, bring this item back for further deliberation based on additional guidance provided by members.

Staff will be at the meeting to answer any questions CBA members might have.



DEPARTMENT OF
FINANCE
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR
STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

July 30, 2010

Honorable Denise Moreno Ducheny, Chair
Joint Legislative Budget Committee
Attention: Ms. Jody Martin
Senate Budget and Fiscal Review Committee

Honorable Bob Blumenfield, Chair
Assembly Budget Committee

Honorable Christine Kehoe, Chair
Senate Appropriations Committee

Honorable Felipe Fuentes, Chair
Assembly Appropriations Committee

Report per Government Code Section 16320

Enclosed is the report pursuant to Government Code section 16320, which requires the Director of Finance to submit a summary and list of budgetary loans to the General Fund or obligations for future payment of deferred or suspended expenditures or transfers to any special fund or account and the dates that the loans or obligations are due. The attached reports contain projections based upon current law as of the 2010-11 May Revision.

Attachment I reflects the balances of outstanding loans to the General Fund from special funds and Attachment II reflects the balances of other General Fund obligations.

If you have any questions or need additional information regarding this matter, please call Greg Bruss at (916) 322-5540.

ANA J. MATOSANTOS
Director
By:

/s/ Miriam B. Ingenito for

TODD JERUE
Chief Deputy Director

Attachment

cc: Honorable Bob Dutton, Vice Chair, Senate Budget and Fiscal Review Committee
Honorable Jim Nielsen, Vice Chair, Assembly Budget Committee
Mr. Mac Taylor, Legislative Analyst (3)
Ms. Keely Bosler, Staff Director, Senate Budget and Fiscal Review Committee
Mr. Bob Franzoia, Staff Director, Senate Appropriations Committee
Mr. Seren Taylor, Staff Director, Senate Republican Fiscal Office
Mr. Craig Cornett, Senate President pro Tempore's Office (2)
Mr. Christian Griffith, Chief Consultant, Assembly Budget Committee
Mr. Geoff Long, Chief Consultant, Assembly Appropriations Committee
Mr. Peter Schaafsma, Staff Director, Assembly Republican Fiscal Committee
Mr. Almis Udrys, Policy and Fiscal Advisor, Assembly Republican Leader's Office
Mr. Christopher W. Woods, Assembly Speaker's Office (2)
Ms. Diane K. Anderson, Office of Legislative Counsel

Outstanding Budgetary Loans Made to the General Fund
 June 30, 2010 Balances
 As Projected in the 2010-11
 May Revision Workload Budget
 (whole dollars)

Attachment I

Org	Department	Item Number	Fund #	Fund Name	Authority	Outstanding Loan Balance as of June 30, 2010	Actual or Projected Loan Repayment Date
0690	California Emergency Management Agency	0690-011-3034	3034	Antiterrorism Fund	Budget Act of 2008	\$2,000,000	None specified
0690	Cal-EMA	0690-501-3117	3117	Renewable Resource Trust Fund	Chapter 29 Statutes of 2009 (SB x3 13)	\$16,300,000	June 30, 2013
0855	California Gambling Control Commission	0855-011-0567	0567	Gambling Control Fund	Budget Act of 2008	\$10,000,000	None specified
0858	California Debt and Investment Advisory Commission	0858-011-0171	0171	California Debt and Investment Advisory Commission Fund	Budget Act of 2008	\$2,000,000	June 30, 2011
0959	California Debt Limit Allocation Committee	0959-011-0189	0189	California Debt Limit Allocation Committee Fund	Budget Act of 2008	\$2,000,000	June 30, 2011
0968	California Tax Credit Allocation Committee	0968-011-0448	0448	Occupancy Compliance Monitoring Account, Tax Credit Allocation Fee Account	Budget Act of 2008	\$10,000,000	June 30, 2011
0968	California Tax Credit Allocation Committee	0968-011-0457	0457	Tax Credit Allocation Fee Account	Budget Act of 2008	\$10,000,000	June 30, 2011
1110	Consumer Affairs - Regulatory Boards	1110-011-0310	0310	Psychology Fund	Budget Act of 2008	\$2,500,000	None specified
1110	Consumer Affairs - Regulatory Boards	1110-011-0704	0704	Accountancy Fund, Professions and Vocations Fund	Budget Act of 2008	\$14,000,000	None specified
1110	Consumer Affairs - Regulatory Boards	1110-011-0735	0735	Contractors' License Fund	Budget Act of 2008	\$10,000,000	None specified
1110	Consumer Affairs - Regulatory Boards	1110-011-0758	0758	Contingent Fund of the Medical Board of California	Budget Act of 2008	\$6,000,000	None specified
1110	Consumer Affairs - Regulatory Boards	1110-011-0761	0761	Board of Registered Nursing Fund, Professions and Vocations Fund	Budget Act of 2008	\$2,000,000	None specified
1110	Consumer Affairs - Regulatory Boards	1110-011-0767	0767	Pharmacy Board Contingent Fund, Professions and Vocations Fund	Budget Act of 2008	\$1,000,000	None specified
1110	Consumer Affairs - Regulatory Boards	1110-011-0770	0770	Professional Engineers' and Land Surveyors' Fund	Budget Act of 2008	\$2,000,000	None specified
1110	Consumer Affairs - Regulatory Boards	1110-011-0773	0773	Behavioral Science Examiners Fund, Professions and Vocations Fund	Budget Act of 2008	\$3,000,000	None specified
1110	Consumer Affairs - Regulatory Boards	1110-011-3017	3017	Occupational Therapy Fund	Budget Act of 2009	\$2,000,000	None specified
1111	Consumer Affairs-Bureaus, Programs, Divisions	1111-011-0069	0069	State Board of Barbering and Cosmetology Fund	Budget Act of 2008	\$10,000,000	None specified
1111	Consumer Affairs-Bureaus, Programs, Divisions	1111-011-0239	0239	Private Security Services Fund	Budget Act of 2003	\$4,000,000	None specified
1111	Consumer Affairs-Bureaus, Programs, Divisions	1111-003-0421	0421	Vehicle Inspection and Repair Fund	Budget Act of 2003	\$14,000,000	None specified
1111	Consumer Affairs-Bureaus, Programs, Divisions	1111-011-0421	0421	Vehicle Inspection & Repair Fund	Budget Act of 2002	\$100,000,000	None specified
1111	Consumer Affairs-Bureaus, Programs, Divisions	1111-011-0421	0421	Vehicle Inspection and Repair Fund	Budget Act of 2008	\$25,000,000	None specified
1111	Consumer Affairs-Bureaus, Programs, Divisions	1111-011-0582	0582	High Polluter Repair or Removal Account	Budget Act of 2008	\$20,000,000	None specified
1120	Board of Accountancy	1120-011-0704	0704	Accountancy Fund	Budget Act of 2003	\$270,000	None specified
1120	Board of Accountancy	1120-011-0704	0704	Accountancy Fund	Budget Act of 2002	\$6,000,000	None specified

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1170	Board of Behavioral Sciences	1170-011-0773	0773	Behavioral Science Examiners Fund	Budget Act of 2002	\$6,000,000	None specified
1250	Board of Dentistry	1250-011-0741	0741	State Dentistry Fund	Budget Act of 2003	\$1,900,000	None specified
1250	Board of Dentistry	1250-011-0741	0741	State Dentistry Fund	Budget Act of 2002	\$2,500,000	None specified
1450	Board of Psychology	1450-011-0310	0310	Psychology Fund	Budget Act of 2002	\$5,000,000	None specified
1475	CA Board of Occupational Therapy	1475-011-3017	3017	Occupational Therapy Fund	Budget Act of 2003	\$640,000	None specified
1760	General Services	1760-011-0328	0328	Public School Planning, Design, and Construction Review Revolving Fund	Budget Act of 2008	\$50,000,000	None specified
2150	Financial Institutions Corporations	2150-011-0299	0299	Credit Union Fund	Budget Act of 2002	\$2,700,000	None specified
2180	Corporations	2180-011-0067	0067	State Corporations Fund	Budget Act of 2002	\$18,500,000	None specified
2240	Housing & Community Development	2240-117-0813	0813	Self-Help Housing Fund	Chapter 3, Statutes of 2003 First Ext. Session	\$3,418,000	None specified
2240	Housing & Community Development	2240-116-0927	0927	Farmworker Housing Grant Fund	Chapter 3, Statutes of 2003 First Ext. Session	\$1,048,000	None specified
2240	Housing & Community Development	2240-011-0927	0927	Joe Sema, Jr. Farmworker Housing Grant Fund	Budget Act of 2008	\$1,500,000	June 30, 2011
2240	Housing & Community Development	2240-116-0929	0929	Housing Rehabilitation Loan Fund	Chapter 3, Statutes of 2003 First Ext. Session	\$2,580,000	None specified
2240	Housing & Community Development	2240-116-0929	0929	Housing Rehabilitation Loan Fund	Budget Act of 2003	\$31,680,000	None specified
2240	Housing & Community Development	2240-011-0929	0929	Housing Rehabilitation Loan Fund	Budget Act of 2008	\$16,400,000	June 30, 2011
2240	Housing & Community Development	2240-116-0938	0938	Rental Housing Construction Fund	Chapter 3, Statutes of 2003 First Ext. Session	\$1,834,000	None specified
2240	Housing & Community Development	2240-116-0985	0985	Emergency Housing and Assistance Fund	Chapter 3, Statutes of 2003 First Ext. Session	\$1,817,000	None specified
2310	Office of Real Estate Appraisers	2310-015-0400	0400	Real Estate Appraisers Regulation Fund	Chapter 3, Statutes of 2003 First Ext. Session	\$1,000,000	None specified
2310	Office of Real Estate Appraisers	2310-011-0400	0400	Real Estate Regulations Appraisal Fund	Chapter 23, Statutes of 2004	\$2,000,000	None specified
2310	Office of Real Estate Appraisers	2310-011-0400	0400	Real Estate Appraisers Regulation Fund	Budget Act of 2008	\$11,600,000	None specified
2320	Real Estate	2320-011-0317	0317	Real Estate Commissioner's Fund	Budget Act of 2002	\$10,900,000	None specified
2660	Transportation	2660-011-0042	0042	State Highway Account, State Transportation Fund	Budget Act of 2008	\$200,000,000	June 30, 2011
2660	Transportation	2660-011-0045	0045	Bicycle Transportation Account, State Transportation Fund	Budget Act of 2008	\$6,000,000	June 30, 2011
2660	Transportation	2660-011-0052	0052	Local Airport Loan Account	Budget Act of 2008	\$7,500,000	June 30, 2011
2660	Transportation	2660-011-0061	0061	Motor Vehicle Fuel Account, Transportation Tax Fund	Budget Act of 2008	\$8,000,000	June 30, 2011
2660	Transportation	2660-011-0183	0183	Environmental Enhancement and Mitigation Program Fund	Budget Act of 2008	\$4,400,000	June 30, 2011
2660	Transportation	2660-011-0365	0365	Historic Property Maintenance Fund	Budget Act of 2008	\$3,000,000	June 30, 2011
2660	Transportation	2660-011-2500	2500	Pedestrian Safety Account, State Transportation Fund	Budget Act of 2008	\$1,715,000	June 30, 2011
3360	Energy Commission	3360-011-0382	0382	Renewable Resource Trust Fund	Budget Act of 2002	\$18,200,000	None specified

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3380	Energy Commission	3360-011-0382	0382	Renewable Resource Trust Fund	Budget Act of 2008	\$10,900,000	June 30, 2013
3380	Energy Commission	3360-011-0382	0382	Renewable Resource Trust Fund	Budget Act of 2009 amended by Chapter 1, Statutes of 2009 Fourth Ext. Session	\$35,000,000	June 30, 2011
3480	Conservation	3480-011-0133	0133	Beverage Container Recycling Fund	Budget Act of 2003	\$98,300,000	June 30, 2013
3480	Conservation	3480-011-0133	0133	Beverage Container Recycling Fund	Budget Act of 2009	\$99,400,000	June 30, 2013
3480	Conservation	3480-011-0133	0133	Beverage Container Recycling Fund	Budget Act of 2002	\$160,147,000	None specified
3480	Conservation	3480-011-0269	0269	Glass Processing Fee Account	Budget Act of 2003	\$39,000,000	June 30, 2012
3480	Conservation	3480-011-0278	0278	PET Processing Fee Account	Budget Act of 2003	\$27,000,000	June 30, 2012
3560	State Lands Commission	3560-011-0347	0347	School Land Bank Fund	Budget Act of 2008 as amended by Chapter 2, Statutes of 2009 Third Ext. Session	\$59,000,000	June 30, 2013
3680	Boating and Waterways	3680-011-0516	0516	Harbors and Watercraft Revolving Fund	Budget Act of 2008 as amended by Chapter 2, Statutes of 2009 Third Ext. Session	\$29,000,000	June 30, 2013
3790	Parks and Recreation	3790-011-0263	0263	Off-Highway Vehicle Trust Fund	Budget Act of 2009	\$22,000,000	None specified
3790	Parks and Recreation	3790-011-0263	0263	Off-Highway Vehicle Trust Fund	Budget Act of 2008 as amended by Chapter 2, Statutes of 2009 Third Ext. Session	\$90,000,000	June 30, 2013
3860	Water Resources	3860-013-0144	0144	California Water Fund	Budget Act of 2008	\$1,100,000	June 30, 2013
3860	Water Resources	3860-013-0244	0244	Environmental Water Fund	Budget Act of 2008	\$2,400,000	June 30, 2013
3910	California Integrated Waste Management Board	3910-013-0226	0226	Tire Recycling Management Fund	Budget Act of 2003	\$17,097,000	2011-12
3910	California Integrated Waste Management Board	3910-011-0226	0226	California Tire Recycling Management Fund	Budget Act of 2008 as amended by Chapter 2, Statutes of 2009 Third Ext. Session	\$10,000,000	June 30, 2011
3910	California Integrated Waste Management Board	3910-004-0281	0281	Recycling Market Development Revolving Loan Subaccount	Budget Act of 2003	\$1,853,000	2011-12
4140	Office of Statewide Health Planning and Development	4140-011-0121	0121	Hospital Building Fund	Budget Act of 2008 as amended by Chapter 2, Statutes of 2009 Third Ext. Session	\$20,000,000	June 30, 2011
4140	Office of Statewide Health Planning and Development	4140-011-0143	0143	California Health Data and Planning Fund	Budget Act of 2008	\$12,000,000	None specified
4265	Public Health	4265-011-0070	0070	Occupational Lead Poisoning Prevention Account	Budget Act of 2006	\$1,100,000	June 30, 2011
4265	Public Health	4265-011-0247	0247	Drinking Water Operator Certification Special Account	Budget Act of 2008	\$1,600,000	June 30, 2011

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Org	Department	Item Number	Fund #	Fund Name	Authority	Outstanding Loan Balance as of June 30, 2010	Actual or Projected Loan Repayment Date
8120	Commission on Peace Officer Standards and Training	8120-013-0268	0268	Peace Officers' Training Fund	Budget Act of 2008 as amended by Chapter 2, Statutes of 2009 Third Ext. Session	\$5,000,000	December 31, 2010
8660	Public Utilities Commission	8660-011-0470	0470	California High-Cost Fund-B Administrative Committee Fund	Budget Act of 2008 as amended by Chapter 2, Statutes of 2009 Third Ext. Session	\$24,000,000	June 30, 2011
8660	Public Utilities Commission	8660-011-0470	0470	California High-Cost Fund-B Administrative Committee Fund	Budget Act of 2008 as amended by Chapter 2, Statutes of 2009 Third Ext. Session	\$35,000,000	June 30, 2011
8660	Public Utilities Commission	8660-011-0471	0471	Universal Lifeline Telephone Service Trust Administrative Committee Fund	Budget Act of 2008 as amended by Chapter 2, Statutes of 2009 Third Ext. Session	\$15,000,000	June 30, 2011
8660	Public Utilities Commission	8660-011-0471	0471	Universal Lifeline Telephone Service Trust Administrative Committee Fund	Budget Act of 2008 as amended by Chapter 2, Statutes of 2009 Third Ext. Session	\$30,000,000	June 30, 2011
8660	Public Utilities Commission	8660-011-0483	0483	California Teleconnect Fund Administrative Committee Fund	Budget Act of 2008 as amended by Chapter 2, Statutes of 2008 Third Ext. Session	\$30,000,000	June 30, 2011
8660	Public Utilities Commission	8660-011-0493	0493	CA Teleconnect Fund Administrative Committee Fund	Budget Act of 2003	\$121,800,000	None specified
TOTALS						\$1,693,399,000	

GENERAL FUND OBLIGATIONS
(dollars in thousands)

<u>Description</u>	<u>Actual June 30, 2010 Balance</u>	<u>Anticipated Repayment Date as Projected in the 2010-11 May Revision</u>
Non-Proposition 98 State Mandates (Pre-2004 Mandate Costs)	\$956,120	Repayment began July 1, 2006 pursuant to Chapter 72/2005. No payment is proposed in the 2010-11 May Revision. Payments may resume in fiscal year 2011-12. Payment is statutorily required to be completely paid by 2020-21.
CTA Lawsuit Settlement	1,981,444	Repayment began with \$300 million in 2007-08 and \$450 million each year thereafter.
Suspensions of General Fund Transfers to Transportation Investment Fund (Proposition 42)	500,498	Of the initial \$2.127 billion, repayments of \$479 million for the 2003-04 suspension and of \$903 million for the 2004-05 suspension were made in 2006-07. Annual repayments of \$83 million began in 2007-08 and are projected through 2015-16.
Paterno Lawsuit Settlement	<u>214,000</u>	To be repaid over 10 years starting in 2005-06.
Total	\$3,652,062	

Item	Amount
<p>ected by the loan through reduction in service or through increased fees.</p> <p>1120-001-0704—For support of California Board of Accountancy, payable from the Accountancy Fund, Professions and Vocations Fund</p>	10,928,000
<p>Schedule:</p> <p>(1) 3-California Board of Accountancy. 11,132,000</p> <p>(2) Reimbursements..... -204,000</p>	
<p>Provisions:</p> <p>1. The amount appropriated in this item may include revenues derived from the assessment of fines and penalties imposed as specified in Section 13332.18 of the Government Code.</p>	
<p>1120-011-0704—For transfer by the Controller, upon order of the Director of Finance, from the Accountancy Fund to the General Fund</p>	(6,000,000)
<p>Provisions:</p> <p>1. The transfer made in this item is a loan to the General Fund. This loan shall be repaid with interest calculated at the rate earned by the Pooled Money Investment Account at the time of the transfer. It is the intent of the Legislature that repayment be made so as to ensure that the programs supported by this fund are not adversely affected by the loan through reduction in service or through increased fees.</p>	2002 LOAN
<p>1130-001-0706—For support of California Board of Architectural Examiners, payable from the California Board of Architectural Examiners Fund.....</p>	2,798,000
<p>Schedule:</p> <p>(1) 06.10-California Board of Architectural Examiners..... 2,803,000</p> <p>(2) Reimbursements..... -5,000</p>	
<p>Provisions:</p> <p>1. The amount appropriated in this item may include revenues derived from the assessment of fines and penalties imposed as specified in Section 13332.18 of the Government Code.</p>	
<p>1130-001-0757—For support of California Board of Architectural Examiners, Landscape Architect Technical Committee, Program 06.20, payable from California Board of Architectural Examiners-Landscape Architects Fund</p>	662,000
<p>Provisions:</p> <p>1. The amount appropriated in this item may include revenues derived from the assessment of fines and</p>	

Item	Amount
1120-011-0704—For transfer by the Controller, upon order of the Director of Finance, from the Accountancy Fund to the General Fund	(270,000)
Provisions:	
1. The transfer made by this item is a loan to the General Fund. This loan shall be repaid with interest calculated at the rate earned by the Pooled Money Investment Account at the time of the transfer. It is the intent of the Legislature that repayment be made so as to ensure that the programs supported by this fund are not adversely affected by the loan through a reduction in service or an increase in fees.	2003 LOAN
1130-001-0706—For support of California Board of Architectural Examiners, payable from the California Board of Architectural Examiners Fund.....	2,741,000
Schedule:	
(1) 06.10.010-California Board of Architectural Examiners.....	2,772,000
(2) 06.10.020-Distributed Cost-Architects/Landscape Architects ...	-26,000
(3) Reimbursements.....	-5,000
Provisions:	
1. The amount appropriated in this item may include revenues derived from the assessment of fines and penalties imposed as specified in Section 13332.18 of the Government Code.	
1130-001-0757—For support of California Board of Architectural Examiners, Landscape Architect Technical Committee, Program 06.20, payable from California Board of Architectural Examiners-Landscape Architects Fund	807,000
Provisions:	
1. The amount appropriated in this item may include revenues derived from the assessment of fines and penalties imposed as specified in Section 13332.18 of the Government Code.	
1130-011-0706—For transfer by the Controller, upon order of the Director of Finance, from the California Board of Architectural Examiners Fund to the General Fund.....	(1,800,000)
Provisions:	
1. The transfer made by this item is a loan to the General Fund. This loan shall be repaid with interest calculated at the rate earned by the Pooled Money Investment Account at the time of the transfer. It is the intent of the Legislature that re-	

Item	Amount
Provisions:	
1. The amount transferred in this item is a loan to the General Fund. This loan shall be repaid with interest calculated at the rate earned by the Pooled Money Investment Account at the time of the transfer. Repayment shall be made so as to ensure that the programs supported by the Psychology Fund are not adversely affected by the loan through reduction in services or through increased fees.	
1110-011-0704—For transfer by the Controller, upon order of the Director of Finance, from the Accountancy Fund, Professions and Vocations Fund, to the General Fund.....	(14,000,000)
Provisions:	
1. The amount transferred in this item is a loan to the General Fund. This loan shall be repaid with interest calculated at the rate earned by the Pooled Money Investment Account at the time of the transfer. Repayment shall be made so as to ensure that the programs supported by the Accountancy Fund, Professions and Vocations Fund are not adversely affected by the loan through reduction in services or through increased fees.	2008 LOAN
1110-011-0735—For transfer by the Controller, upon order of the Director of Finance, from the Contractors' License Fund to the General Fund	(10,000,000)
Provisions:	
1. The amount transferred in this item is a loan to the General Fund. This loan shall be repaid with interest calculated at the rate earned by the Pooled Money Investment Account at the time of the transfer. Repayment shall be made so as to ensure that the programs supported by the Contractors' License Fund are not adversely affected by the loan through reduction in services or through increased fees.	
1110-011-0758—For transfer by the Controller, upon order of the Director of Finance, from the Contingent Fund of the Medical Board of California to the General Fund.....	(6,000,000)
Provisions:	
1. The amount transferred in this item is a loan to the General Fund. This loan shall be repaid with interest calculated at the rate earned by the Pooled Money Investment Account at the time of the	

Item	Amount
Provisions:	
1. The amount appropriated in this item may include revenues derived from the assessment of fines and penalties imposed as specified in Section 13332.18 of the Government Code.	
1110-002-9250—For support of State Athletic Commission, for payment to Item 1110-001-0326, payable from the Boxers' Pension Fund.....	104,000
Provisions:	
1. The amount appropriated in this item may include revenues derived from the assessment of fines and penalties imposed as specified in Section 13332.18 of the Government Code.	
1110-011-0704—For transfer by the Controller, upon order of the Director of Finance, from the Accountancy Fund, Professions and Vocations Fund to the General Fund	(10,000,000)
Provisions:	
1. The amount transferred in this item is a loan to the General Fund and shall be repaid by June 30, 2012. Repayment shall be made so as to ensure that the programs supported by the Accountancy Fund, Professions and Vocations Fund are not adversely affected by the loan. This loan shall be repaid with interest calculated at the rate earned by the Pooled Money Investment Account at the time of the transfer.	2010 LOAN
1110-402—It is recognized that the healing arts boards within the Department of Consumer Affairs are incurring enforcement costs for Attorney General and Office of Administrative Hearing services that could have a fiscal impact beyond the amounts appropriated in their respective Budget Act items. Therefore, notwithstanding any other provision of law, upon the request of the Department of Consumer Affairs, the Department of Finance may augment the amount available for expenditure by up to \$200,000 to pay Attorney General enforcement costs, and \$40,000 to pay Office of Administrative Hearing enforcement costs. If the aggregate augmentation amounts exceed \$200,000 for Attorney General enforcement costs or \$40,000 for Office of Administrative Hearing enforcement costs, the augmentation may be made not sooner than 30 days after notification in writing to the chairpersons of the committees in each house of the Legislature that consider appropriations and the Chairperson of the Joint Legislative Budget Com-	

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ATTACHMENT 3

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California Government Code Section 16310

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(a) When the General Fund in the Treasury is or will be exhausted, the Controller shall notify the Governor and the Pooled Money Investment Board. The Governor may order the Controller to direct the transfer of all or any part of the moneys not needed in other funds or accounts to the General Fund from those funds or accounts, as determined by the Pooled Money Investment Board, including the Surplus Money Investment Fund or the Pooled Money Investment Account. All moneys so transferred shall be returned to the funds or accounts from which they were transferred as soon as there are sufficient moneys in the General Fund to return them. No interest shall be charged or paid on any transfer authorized by this section, exclusive of the Pooled Money Investment Account, except as provided in this section. This section does not authorize any transfer that will interfere with the object for which a special fund was created or any transfer from the Central Valley Water Project Construction Fund, the Central Valley Water Project Revenue Fund, or the California Water Resources Development Bond Fund.

(b) (1) Interest shall be paid on all moneys transferred to the General Fund from the following funds:

- (A) The Department of Food and Agriculture Fund.
- (B) The DNA Identification Fund.
- (C) The Mental Health Services Fund.
- (D) All funds created pursuant to the California Children and Families Act of 1998, enacted by Proposition 10 at the November 3, 1998, statewide general election.
- (E) Any funds retained by or in the possession of the California Exposition and State Fair pursuant to this section.

(2) With respect to all other funds, and unless otherwise specified, if the total moneys transferred to the General Fund in any fiscal year from any special fund pursuant to this section exceed an amount equal to 10 percent of the total additions to surplus available for appropriation as shown in the statement of operations of a prior fiscal year as set forth in the most recent published annual report of the Controller, interest shall be paid on the excess. Interest payable under this section shall be computed at a rate determined by the Pooled Money Investment Board to be the current earning rate of the fund from which transferred.

(c) Except as described in subdivision (d), all moneys in the State Treasury may be loaned for the purposes described in subdivision (a).

- (d) Subdivision (c) shall not apply to any of the following:
 - (1) The Local Agency Investment Fund.
 - (2) Funds classified in the State of California Uniform Codes Manual as bond funds or retirement funds.

(3) All or part of the moneys not needed in other funds or accounts for purposes of subdivision (a) where the Controller is prohibited by the California Constitution, bond indenture, or statutory or case law from transferring all or any part of those moneys.

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California Government Code Section 16320

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(a) Unless otherwise prohibited by law, moneys in the State Treasury may be loaned from one state fund or account to any other state fund or account to address the 2001-02, 2002-03, and 2003-04 fiscal year budgetary shortfalls, subject to all of the following conditions:

(1) The loan is authorized in the 2002 Budget Act, legislation enacted in a 2003-04 Extraordinary Session, or the 2003 Budget Act.

(2) The terms and conditions of the loan, including an interest rate, are set forth in the loan authorization.

(3) The loan is considered part of the balance of the fund or account that received the funds for the purpose of accounting and budgeting, including any determination made pursuant to Section 13307.

(4) The loan is not deducted from the balance of the fund or account from which the loan is made for purposes of calculating a fee or assessment.

(5) A fee or assessment is not increased as a result of a loan.

(6) Moneys loaned under this section are not considered a transfer of resources for purposes of determining the legality of the use of those moneys by the fund or account from which the loan is made or the fund or account that received the loan.

(b) (1) The Director of Finance shall order the repayment of all or a portion of any loan made pursuant to subdivision (a) if he or she determines that either of the following circumstances exists:

(A) The fund or account from which the loan was made has a need for the moneys.

(B) There is no longer a need for the moneys in the fund or account that received the loan.

(2) The Director of Finance shall notify, in writing, the Chairperson of the Joint Legislative Budget Committee within 30 days of ordering the repayment of any of these loans.

(c) On August 1 of each year, the Director of Finance shall report in writing to the Chairperson of the Joint Legislative Budget Committee the balances of these loans as of the preceding June 30.

(d) On February 1 of each year, the Director of Finance shall provide a report on General Fund obligations to the Chairperson of the Joint Legislative Budget Committee and to the chairpersons of the fiscal committees of the Assembly and the Senate. The report shall include both of the following:

(1) An update of the annual August 1 report to the Chairperson of the Joint Legislative Budget Committee on the balances of outstanding loans, as reflected in the preceding Governor's Budget.

(2) A summary and list of loans to the General Fund or obligations for future payment of deferred or suspended expenditures or transfers to any special fund or account and the dates that the loans or obligations are due.

Section: [Previous](#) [16309](#) [16310](#) [16311](#) [16312](#) [16313](#) [16314](#) [16315](#) [16316](#) [16317](#) [16317.5](#)
[16320](#) [16324](#) [16325](#) [16325.5](#) [16326](#) [Next](#)

Last modified: March 8, 2010

**0704 - California Board of Accountancy
Analysis of Fund Condition**

(Dollars in Thousands)

Attachment 4

Prepared 1/3/11

GOVERNOR'S BUDGET FY 2011-12

NOTE: \$30.270 Million General Fund Repayment Outstanding as of 1/3/11

	ACTUAL 2009-10	CY 2010-11	Governor's Budget BY 2011-12	BY + 1 2012-13	BY + 2 2013-14	BY + 3 2014-15	BY + 4 2015-16
BEGINNING BALANCE	\$ 15,693	\$ 19,753	\$ 11,046	\$ 19,770	\$ 18,337	\$ 16,597	\$ 14,581
Prior Year Adjustment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 15,693	\$ 19,753	\$ 11,046	\$ 19,770	\$ 18,337	\$ 16,597	\$ 14,581
REVENUES AND TRANSFERS							
Revenues:							
125600 Other regulatory fees	\$ 66	\$ 98	98	98	98	98	\$ 98
125700 Other regulatory licenses and permits	\$ 4,819	\$ 5,020	5,020	5,020	5,020	5,020	\$ 5,020
Initial Fee Decrease			-242	-242	-242	-242	
125800 Renewal fees	\$ 7,426	\$ 7,647	7,647	7,647	7,647	7,647	\$ 7,647
Renewal fee decrease			-2,921	-2,921	-2,921	-2,921	
125900 Delinquent fees	\$ 290	\$ 293	293	293	293	293	\$ 293
Delinquent fee decrease			-116	-116	-116	-116	
141200 Sales of documents	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 96	\$ 186	\$ 97	\$ 182	\$ 164	\$ 144	\$ 154
160400 Sale of fixed assets	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ 2	\$ 2	\$ 2	\$ 2	\$ 2	\$ 2	\$ 2
161400 Miscellaneous revenues	\$ 3	\$ 1	\$ 1	\$ 1	\$ 1	\$ 1	\$ 1
164300 Penalty Assessments	\$ 1	\$ 1	\$ 1	\$ 1	\$ 1	\$ 1	\$ 1
Totals, Revenues	\$ 12,703	\$ 13,249	\$ 9,881	\$ 9,966	\$ 9,948	\$ 9,928	\$ 13,217
Transfers from Other Funds							
F00683 Teale Data Center (CS 15.00, Bud Act of 2005)							
F00001 GF loan repay			\$10,000				
Transfers to Other Funds							
T00001 GF loan per Item 1120-011-074, BA of 2002	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
T00001 GF loan per Item 1120-011-074, BA of 2003	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
T00000 GF loan per Item, BA of 2008	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
T00001 Proposed GF loan	\$ -	\$ (10,000)	\$ -	\$ -	\$ -	\$ -	\$ -
Totals, Revenues and Transfers	\$ 12,703	\$ 3,249	\$ 19,881	\$ 9,966	\$ 9,948	\$ 9,928	\$ 13,217
Totals, Resources	\$ 28,396	\$ 23,002	\$ 30,926	\$ 29,736	\$ 28,285	\$ 26,524	\$ 27,798
EXPENDITURES							
Disbursements:							
0840 State Controller (State Operations)	\$ 8	\$ 20					
1110 Program Expenditures (State Operations)	\$ 8,635	\$ 11,929	\$ 12,133	\$ 12,376	\$ 12,624	\$ 12,876	\$ 13,134
<u>2010-11 BCPs - Program</u>							
Cal-Licensing System BCP 1B			\$ 23	\$ 23	\$ 64	\$ 67	\$ 67
Baseline Reduction BCP 1111-13			\$ (1,000)	\$ (1,000)	\$ (1,000)	\$ (1,000)	\$ (1,000)
<u>2011-12 BCPs - CBA</u>							
Enforcement BCP 1110-01			\$0	\$0	\$0	\$0	\$0
Peer Review BCP 1110-02			\$0	\$0	\$0	\$0	\$0
8880 Financial Information System for California (State Operations)		\$ 7					
Total Disbursements	\$ 8,643	\$ 11,956	\$ 11,156	\$ 11,399	\$ 11,688	\$ 11,943	\$ 12,201
FUND BALANCE							
Reserve for economic uncertainties	\$ 19,753	\$ 11,046	\$ 19,770	\$ 18,337	\$ 16,597	\$ 14,581	\$ 15,597
Months in Reserve	19.8	11.9	20.8	18.8	16.7	14.3	15.0

NOTES:

- A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED
- B. EXPENDITURE GROWTH PROJECTED AT 2% BEGINNING FY 2010-11



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ATTACHMENT 5

January 14, 2011

Brian Stiger, Acting Director
 California Department of Consumer Affairs
 1625 North Market Blvd.
 Sacramento, CA 95834

Re: Accountancy Fund Loans to General Fund; Repayment Schedule

Dear Director Stiger:

As you are aware, a number of transfers have been made from the Accountancy Fund and other special funds in recent years, in order to provide the State of California with sufficient monies in the General Fund to meet its obligations. The most recent transfer of Accountancy Fund Reserve funds took place in the current fiscal year, when \$10 million was transferred, per item 1120-011-0704 of the Budget Act of 2010.

Each of these transfers is reflected in the Budget Act pertaining to the year in which the transfers were made. Attachments 1 – 4 to this document reflect the actual Budget Act language authorizing each of the transfers, and below is a table showing each amount transferred, the year of transfer, and the Budget Act item that authorized the transfer.

<u>Amount</u>	<u>Year</u>	<u>Budget Act Authorization</u>
\$6,000,000	FY 2002-03	Budget Act of 2002; Item 1120-001-0704
\$270,000	FY 2003-04	Budget Act of 2003; Item 1120-011-0704
\$14,000,000	FY 2008-09	Budget Act of 2008; Item 1110-011-0704
\$10,000,000	FY 2010-11	Budget Act of 2010; Item 1120-011-0704

The California Board of Accountancy (CBA) recognizes the authority granted the Governor of California and the California Legislature to borrow monies from special funds, as reflected in Government Code Sections 16310 and 16320 (Attachment 5). Additionally, this agency is not unsympathetic to the fiscal problems currently facing California's economy generally and the State of California in particular.

Brian Stiger
January 14, 2011

Still, the CBA has a fiduciary responsibility to its stakeholders to prudently manage the resources entrusted to it through the collection of license fees and other revenues, to ensure that these funds are ultimately used for the purpose for which they were statutorily intended – protecting consumers through exercising this agency's licensing, regulatory, and disciplinary functions.

It is noteworthy that the Budget Act language authorizing the \$10 million transferred in FY 2010-11 reflects a specific repayment period – the funds are to be restored to the Accountancy Fund by June 30, 2012. Such specificity provides the CBA with critical information it needs to plan and manage its programs in terms of having assurance that resources will be available to cover future expenditures, and being able to set fees at levels to achieve statutory mandates.

Conversely, the \$20 million in loans made from the Accountancy Fund to the General Fund in fiscal years 2002-03, 2003-04 and 2008-09 do not reflect any repayment periods or schedules. Further, this lack of specificity undermines the CBA's ability to effectively manage resources entrusted to it by statute. To this end, the CBA is requesting assistance from the Department of Consumer Affairs to establish a repayment schedule for the \$20 million represented in these three loans.

CBA staff are seeking guidance regarding how best to proceed with this undertaking. Our initial assessment is that a repayment schedule will likely require a legislative solution, as it was various pieces of legislation (three Budget Acts) that authorized the loans' origination in the first place. However, we are unsure regarding how best to proceed with such a piece of legislation, in terms of ensuring its success. Some of the questions staff has raised related to possible legislation, as well as other potential remedies, include:

- Should the repayment schedule be included in a budget bill or a "stand alone" piece of legislation?
- If this issue should be included in a budget bill, how do we proceed?
- If the issue should be addressed in a "stand alone" bill, what would be the appropriate code (Government, Business & Professions, etc) and sections that should be amended?
- What repayment timeframe would most likely not be opposed by the Governor and the Legislature?
- What assistance can the DCA provide with respect to finding a legislator that would author the legislation?
- What avenues outside of the legislative process might be employed to establish a repayment schedule for these loans?

Brian Stiger
January 14, 2011

Thank you in advance for your assistance in removing the uncertainty the CBA faces with respect to resources entrusted to it. With your help I am sure that we will be able to better predict funding available to meet this agency's needs and ensure the California Board of Accountancy achieves its mandate of consumer protection.

Regards,

Sarah J. Anderson, CPA, President

Memorandum

CBA Agenda Item VIII.A
January 27-28, 2011

To : CBA Members

Date: January 13, 2011

Telephone : (916) 561- 1789
Facsimile : (916) 263- 3675
E-mail : lhersh@cba.ca.gov

From : Lauren Hersh
Information & Planning Manager

Subject : Update on 2010-2012 CBA Communications and Outreach Plan

As requested by the CBA, staff is providing regular updates regarding the communications and outreach activities which have taken place since the last CBA meeting.

Staff Outreach Committee (OC)

- Twitter
 - There has been slow and steady growth of Twitter followers since the CBA Twitter launch in November. As requested by the CBA President at the November 18-19, 2010 CBA meeting, staff has been researching ways in which to substantially increase the number of Twitter followers. The primary method used to increase followers is by following others and staff is planning to “follow” colleges and universities with accounting programs as a way of getting CBA News tweets to students and draw interest to the profession, as well as notifications via E-News and via the email lists previously developed for outreach to this constituency. Staff has also found that some of our Twitter followers are individuals involved in educational outreach at California Society of CPAs and American Institute of CPAs, and are reaching out to those individuals.
 - Given the younger demographic of Twitter users, message focus has been primarily to consumers, accounting students, exam applicants and new licensees. An informal analysis of the profiles of our current followers also shows a number of accounting students and CPAs based in Europe, India and the Far East. A list of “tweets” from the CBA is attached. **(Attachment 1)**
- Facebook

2010- 2012 Communications & Outreach Plan

- The CBA Facebook page was launched December 27, 2010, following legal approval of disclaimer language. In addition to customary disclaimer language, the CBA information stresses that the CBA Facebook page is not a vehicle for filing complaints and directs users to the appropriate CBA Web site link should they wish to file a complaint.
 - Content for the Facebook page continues to be added as it becomes available, including tweets, tips, “How To” articles, information on outreach events, news releases and relevant news stories.
 - A press release announcing CBA’s outreach efforts via Twitter and Facebook was issued in early January. The CBA Web site now has buttons that take visitors directly to the CBA Twitter and Facebook pages.
- Rewriting/reformatting of the Consumer Assistance Booklet continues, and is now expected to be completed by March 31, 2011, including a redesign by DCA’s graphics unit. The OC is also looking at developing smaller brochures targeting specific audiences, such as students and senior consumers.
 - The Licensing Division’s sections of the PowerPoint presentation for use in the Ambassador Program is complete and ready for use by CBA members at speaking engagements or other outreach events. The enforcement sections of the presentation are still under development. Staff is in the process of creating the 2011 calendar of outreach opportunities however, as individual opportunities arise, invitations are and will be extended to the CBA leadership or their designee.

UPDATE

- The Winter edition of UPDATE has been published on the CBA Web site, and the hard copy will be mailed by January 30, 2011. Planning for the Spring edition began in January.

E-News

- E-News subscriptions have increased by more than 500 from the last report, with the total number of subscriptions up from 7,200 October 26, 2010 to 8,755 on December 29, 2010. The increase has been across all interest areas among external subscribers. The number of internal subscribers, i.e. staff, has held steady. The table below indicates the number of subscribers by areas of interest, with many subscribers choosing more than one area of interest. Staff hopes to increase E-News exposure through use of social media in the future.

E-News Statistics

As of	List Name	External	Internal	Total
12/29/2010	California Licensee	2591	32	2623
	Consumer Interest	1295	39	1334
	Examination Applicant	694	28	722
	Licensing Applicant	836	29	865
	Out-of-State Licensee	571	27	598
	Statutory/Regulatory	2166	38	2204
	CBA Meeting Information & Agenda Materials	395	14	409
	Total Subscribers	8548	207	8755

Staff is available to answer any questions CBA members may have regarding this update.

Memorandum

CBA Agenda Item VIII.C.
January 27-28, 2011

To : CBA Members

Date : January 7, 2011
Telephone: (916) 561-1792
Facsimile : (916) 263-3675
E-mail : mstanley@cba.ca.gov

From : Matthew Stanley
Legislation/Regulation Analyst

Subject : Consideration of Revised Legislative Language to Extend the Sunset Date on Peer Review

At its November 2010 meeting, the California Board of Accountancy (CBA) voted to sponsor legislation to extend the legislative reporting date and the sunset date of peer review.

In further discussions, staff have developed alternate language (**Attachment 1**) that would remove the sunset from the entire program and instead, focus it only on the areas of concern that the Legislature had regarding other comprehensive basis of accounting (OCBOA). With the sunset only applying to the OCBOA engagements, the report to the Legislature would be able to be more focused and not defending the entire program.

Staff have discussed both this option and the option to simply extend the existing sunset date with Senator Darrell Steinberg's staff and are awaiting further communication from him. Should the Senator be satisfied with one or both of these options, Assemblymember Mary Hayashi's staff have indicated she may be willing to carry the legislation. Staff are requesting CBA approval for the attached language to be amended into the proposed bill when the time comes.

Attachment



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Attachment 1

Relevant Portions of Peer Review Law

5076.

(n) By January 1, ~~2013~~ 2016, the board shall provide the Legislature and Governor with a report regarding the peer review requirements of this section that includes, without limitation:

(1) The extent to which mandatory peer review of small firms or sole practitioners that prepare nondisclosure compiled financial statements on an other comprehensive basis of accounting enhances consumer protection.

(2) The impact of peer review required by this section on small firms and sole practitioners that prepare nondisclosure compiled financial statements on an other comprehensive basis of accounting.

(3) The impact of peer review required by this section on small businesses, nonprofit corporations, and other entities that utilize small firms or sole practitioners for the purposes of nondisclosure compiled financial statements prepared on an other comprehensive basis of accounting.

(o) For purposes of this Section, accounting and auditing work shall include the preparation of nondisclosure compiled financial statements on an other comprehensive basis of accounting. This ~~section~~ subsection shall remain in effect only until January 1, ~~2014~~ 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2014~~ 2017, deletes or extends that date.

(p) As of January 1, 2017, for purposes of this Section, accounting and auditing work shall not include the preparation of nondisclosure compiled financial statements on an other comprehensive basis of accounting.

5076.1.

(e) ~~This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.~~

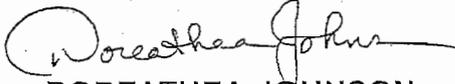


MEMORANDUM

CBA Agenda Item VIII.D.
January 27-28, 2011

DATE: January 5, 2011

TO: Executive Officers
Executive Directors
Registrars
Bureau Chiefs
Interested Parties

FROM: 
DOREATHEA JOHNSON
Deputy Director
Legal Affairs

Subject: Public Meetings (Bagley-Keene Open Meeting Act)

This memorandum is to update you on the provisions of the public meetings law, officially called the Bagley-Keene Open Meeting Act (Article 9 (commencing with section 11120), Chapter 1, Part 1, Division 3, Title 2 of the Government Code). The attached guide includes all statutory amendments through January 1, 2011. Please disregard all of our previous memoranda on the subject, and our Guide to the Bagley-Keene Open Meeting Act, issued January 5, 2010.

The following changes are important:

1. Page 21: We have added a new section on the use of electronic devices by board members during an open meeting – this is very important.
2. Page 23: We have added a section on webcasting – including suggested language to be placed on your agenda when you plan to webcast a meeting.

We hope you find this document helpful in answering questions you may have about the requirements of the Open Meeting Act. If you have any suggestions for ways to improve the guide in the future, please let us know.

GUIDE TO THE

BAGLEY-KEENE OPEN MEETING ACT
(Includes Amendments through January 1, 2011)

Prepared By:

DIVISION OF LEGAL AFFAIRS
Department of Consumer Affairs
1625 N. Market Blvd., Suite S 309
Sacramento, CA 95834

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BAGLEY-KEENE OPEN MEETING ACT

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**GUIDE TO THE
BAGLEY-KEENE OPEN MEETING ACT
(Includes Amendments through January 1, 2011)**

This guide is an update on the provisions of the public meetings law governing state agencies, officially called the Bagley-Keene Open Meeting Act. (Article 9 (commencing with Section 11120), Chapter 1, Part 1, Division 3, Title 2 of the Government Code). The Open Meeting Act closely parallels the Ralph M. Brown Act, which governs meetings of local government agencies. This guide includes all statutory changes through January 1, 2011. Please disregard all earlier memoranda and the previous Guide to the Bagley-Keene Open Meeting Act (distributed January 5, 2010) on this subject.

All statutory references are to the Government Code.

I. PUBLIC POLICY TO CONDUCT PEOPLE'S BUSINESS OPENLY

Section 11120 sets forth the purpose of the law:

"It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.

In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

This article shall be known and may be cited as the Bagley-Keene Open Meeting Act."

Each board has essentially three duties under the Open Meeting Act. First, to give adequate notice of meetings to be held. Second, to provide an opportunity for public comment. Third, to conduct such meetings in open session, except where a closed session is specifically authorized. We use the terms "agency" and "board" to mean not only boards, but also commissions and any examining committees or boards within the jurisdiction of the Medical Board of California.

II. BOARD, COMMITTEE, SUBCOMMITTEE, TASK FORCE MEETINGS

A. Definition of a "Meeting"

"Meeting" is defined in the Act as including "any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains." (§11122.5(a)) The law now prohibits use by a majority of the members of a state body of direct communications or a series of communications of any kind, directly or through personal intermediaries, or technological devices (such as e-mails) to discuss, deliberate, or take action on any item of business that is within the subject matter of the state body. (§11122.5(b))

B. Exemptions from Definition of Meeting

The law recognizes that not all gatherings of a majority of members of a state body at a single location constitute a meeting. Current law provides that the provisions of the Act do not apply to the following situations, provided that "a majority of the members do not discuss among themselves, other than as part of a scheduled program, business of a specified nature that is within the subject matter jurisdiction of the state body." (§11122.5(c))

- Individual contacts or conversations between a member of a state body and any other person. (§11122.5(c)(1))
- Attendance by a majority of members at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the state body. (§11122.5(c)(2))
- Attendance by a majority of members at an open and publicized meeting organized to address a topic of state concern by a person or organization other than the state body. (§11122.5(c)(3))
- Attendance by a majority of members at an open and noticed meeting of another state body or of a legislative body of a local agency. (§11122.5(c)(4))
- Attendance by a majority of members at a purely social or ceremonial occasion. (§11122.5(c)(5))
- Attendance by a majority of members at an open and noticed meeting of a standing committee of that body, provided the members of the body who are not members of the committee attend only as observers. (§11122.5(c)(6))

The law does not, however, prevent an employee or official from engaging in separate communications outside of a noticed meeting with members of the legislature to answer questions or provide information about a matter within the agency's subject

matter jurisdiction – with the limitation that the person cannot communicate the comments or position of any other member.

C. Board and Committee Meetings

There are two basic types of meetings held by agencies in the Department of Consumer Affairs. The first type is a board meeting, where a quorum of the members of the board is present. The second type is a committee meeting consisting of less than a quorum of the members of the full board. Subcommittee and task force meetings are variations of committee meetings.

Board meetings have historically been required to be noticed and open to the public, except where a closed session is authorized. Committee and subcommittee meetings, where less than a quorum of the board is present, are also required to be noticed and open to the public. The only exception is for a committee that consists of fewer than three persons. (NOTE – it is the number of persons on the committee [not the number of board members] that is determinative.)

Where a committee of fewer than three persons is to meet, and the meeting is not noticed, other members of the board should not attend the meeting, as such attendance would clearly be perceived as an Open Meeting Act violation. Board staff is not precluded from attending such a meeting.

[Restriction on Attendance at Committee Meetings] The law allows attendance by a majority of members at an open and noticed meeting of a standing committee of the board, provided the members of the board who are not members of the committee attend only as observers. (§11122.5(c)(6)) The Office of the Attorney General has addressed in a formal opinion a provision in the Brown Act relating to the attendance of "observers" at a committee meeting. The Attorney General concluded that "[m]embers of the legislative body of a local public agency may not ask questions or make statements while attending a meeting of a standing committee of the legislative body 'as observers.'" The opinion further concluded that such members of the legislative body may not sit in special chairs on the dais with the committee. (81 Ops.Cal.Atty.Gen. 156)

Thus, under the provisions of section 11122.5(c)(6), and the opinion of the California Attorney General, if a majority of members of the full board are present at a committee meeting, members who are not members of the committee that is meeting may attend that meeting only as observers. The board members who are not committee members may not sit on the dais with the committee, and may not participate in the meeting by making statements or asking questions.

If a board schedules its committee meetings seriatim, and other board members are typically present to ultimately be available for their own committee meeting, your notice of the committee meeting should contain a statement to the effect that "Members

of the board who are not members of this committee may be attending the meeting only as observers."

Subcommittees may be appointed to study and report back to a committee or the board on a particular issue or issues. If the subcommittee consists of three or more persons, the same provisions apply to its meetings as apply to meetings of committees.

Board chairpersons may occasionally appoint a task force to study and report on a particular issue. One or two board members typically serve as task force members, along with a number of other non-board members. When this is the case, the same Open Meeting Act rules that apply to committee meetings apply to task force meetings. Such a formally appointed task force falls under the definition of "state body in Section 11121(c)."

III. TYPES OF MEETINGS; PURPOSE; NOTICE; OTHER REQUIREMENTS

Boards and committees may hold several types of meetings, including a regularly scheduled meeting, a "special" meeting, or an "emergency" meeting under the provisions of section 11125.5. This section of the memorandum addresses who can hold certain types of meetings, the purposes for which the meetings can be held, notice requirements, and any other special requirements or prohibitions.

A. Regularly Scheduled Meetings

1. Who May Hold a Regularly Scheduled Meeting

A board, committee, subcommittee, or task force may hold a regularly scheduled meeting. These are the business meetings that are scheduled throughout the year to conduct the usual and customary business of the board. Such meetings may generally be called by the chairperson, or by a majority of the body. However, you must refer to your particular licensing act, which may contain different provisions as to who may call a meeting.

2. Purposes for Which the Meeting May be Held

These meetings are to conduct the usual and customary business of the board, or the business of a committee, subcommittee or task force as directed by the board. The subject matter of the meetings is essentially dictated by the jurisdiction of the board as found in the board's licensing act. There are no statutory restrictions in the Open Meeting Act on the purposes for which a regularly scheduled meeting may be held.

3. Notice Requirements for a Regularly Scheduled Meeting

a. Board Meetings

An agency is required to give at least 10 calendar days written notice of each board meeting to be held. (§11125(a).) The notice must include the name, address, and telephone number of a person who can provide further information prior to the meeting and must contain the website address where the notice can be accessed. The notice must also be posted on the Internet at least 10 calendar days before the meeting.

In addition to the website posting, effective January 1, 2003, the notice is required to be made available in appropriate alternate formats upon request by any person with a disability.

The notice of each board meeting must include an agenda that is prepared for the meeting. The agenda must include all items of business to be transacted or discussed at the meeting. " ... A brief general description of an item generally need not exceed 20 words. ... No item shall be added to the agenda subsequent to the provision of this notice." (§11125(b)) This provision does not, however, preclude amending an agenda provided the amended notice is distributed and posted on the Internet at least 10 calendar days prior to the meeting. Effective January 1, 2003, the notice must include information that would enable a person with a disability to know how, to whom, and by when a request may be made for any disability-related modification or accommodation, including auxiliary aids or services. We suggest the following as standard language:

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting _____ at (916) _____ or sending a written request to that person at the Board [Address], Sacramento, California, [zip code]. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.

The definition of "action taken" in Section 11122 is of some aid in determining what the Legislature intended by use of the words "items of business to be transacted."

"11122. As used in this article 'action taken' means a collective decision made by the members of a state body, a collective commitment or promise by the members of the state body to make a positive or negative decision or an actual vote by the members of a state body when sitting as a body or entity upon a motion, proposal, resolution, order or similar action."

General agenda items such as "New Business," "Old Business," "Executive Officer's Report," "Committee Reports," "President's Report," "Miscellaneous," etc.,

without specifying the particular matters thereunder, cannot be used to circumvent this requirement. The Office of the Attorney General has opined that:

"... the purpose of subdivision (b) [of Government Code Section 11125] is to provide advance information to interested members of the public concerning the state body's anticipated business in order that they may attend the meeting or take whatever other action they deem appropriate under the circumstances.

* * *

"We believe that Section 11125 was and is intended to nullify the need for . . . guesswork or further inquiry on the part of the interested public." (67 Ops. Cal. Atty. Gen. 85, 87)

Items not included on the agenda may not be discussed, even if no action is to be taken by the agency. However, we offer two suggestions so members of the public and board members may raise issues that are not on the agenda.

We strongly encourage boards to include an item on their agendas for "Public Comment on Matters Not on the Agenda." This gives persons who are attending a meeting an opportunity to raise any issues they may have, which may not be on the agenda, but which may be appropriate for future board discussion. Matters raised under this agenda item should be discussed only to the extent necessary to determine whether they should be made an agenda item at a future meeting. (§11125.7(a))

We also strongly encourage boards to include an item on their agenda for "Agenda Items for Future Meetings." This allows all board members an opportunity to request specific agenda items for a meeting. Again, these items should be discussed only to the extent necessary to determine whether they should be included as agenda items for a future meeting.

[CAVEAT: If the regularly scheduled meeting will have a closed session agenda item or items, or be held by teleconference, please refer to the discussion of additional requirements under those headings, below.]

The notice and the agenda must be provided to any person who requests it. A member of the public may request notice for a specific meeting, for all meetings at which a particular subject will be discussed or action taken thereon, or for all meetings of the agency. Mailing lists of persons who desire to be notified of more than one meeting must be maintained pursuant to Section 14911, which provides:

"14911. Whenever any state agency maintains a mailing list of public officials or other persons to whom publications or other printed matter is sent without charge, the state agency shall correct its mailing list and verify its accuracy at least once each year. This shall be done by addressing an appropriate postcard or letter to each person on the mailing

list. The name of any person who does not respond to such letter or postcard, or who indicates that he does not desire to receive such publications or printed matter, shall be removed from the mailing lists. The response of those desiring to be on the mailing list shall be retained by these agencies for one year."

Effective 1/1/98, a sentence was added to subdivision (c) of Section 11125.1 to state that "Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication." (Stats. 1997, Chapt. 949; SB 95) The Legal Office interprets this provision to supersede any provisions in particular practice acts which require newspaper publication of board or committee meetings. Boards and committees, of course, retain the discretion to publish notices in newspapers if they so chose.

b. Committee, Subcommittee or Task Force Meetings

Each agency is required to give notice of committee, subcommittee or task force ("committee") meetings to be held. However, this requirement does not apply if the committee consists of less than three persons. It is the number of persons on the committee that is determinative, not how many of the persons are board members. Thus, if a committee consisted of two board members and two other interested persons, its meetings would have to meet all the requirements of the Open Meeting Act.

Notice of committee meetings must be provided and posted on the Internet at least 10 calendar days in advance of the meeting. (§11125(a)) The notice "shall include a brief, general description of the business to be transacted or discussed, and no item shall be added subsequent to the provision of the notice." (§11125(c)) The notice must also include the Website address where the notice can be accessed on the Internet. Although the law does not so specify, we would suggest also including in the notice the name, address, and telephone number of a contact person who can provide further information prior to the meeting. As with board meetings, there is no requirement that the notice be published in any newspaper or other periodical. However, the notice must be provided to any person or persons who have requested to be notified of the particular committee's meetings. You may elect to send such notice to those persons on your regular mailing list.

Remember you must post your notice on the Internet at least 10 calendar days in advance of the meeting and must make the notice available in appropriate alternate formats upon request by any person with a disability.

Provision is made for certain non-emergency, but sometimes necessary, committee meetings. Where, during the course of a regularly scheduled and properly noticed board meeting, the board desires that a committee presently discuss an item of business on the agenda, the committee may do so provided (a) the specific time and place of the committee meeting is announced during the public meeting of the board, and (b) the committee meeting is conducted within a reasonable time of, and nearby, the meeting of the board. (§11125(c))

4. Specific Requirements for Regularly-Scheduled Meetings

There are no specific requirements, other than those set forth above, for regularly scheduled board, committee, subcommittee or task force meetings.

5. Specific Prohibitions on Holding a Regularly-Scheduled Meeting

There are no statutory prohibitions in the Open Meeting Act on a board, committee, subcommittee or task force conducting a regularly scheduled meeting.

We again remind you that, with respect to committee meetings, members of the board who are not members of the committee that is meeting may only attend the committee meeting as observers. This means these members may not sit on the dais with the committee, make any statements, or ask any questions during the committee meeting. (81 Ops. Cal. Atty. Gen. 156)

B. "Special" Meetings

SB 95 of 1997 created a new category of meeting, that being a "special" meeting.

1. Who May Hold a Special Meeting

A board, committee, subcommittee or task force may hold a special meeting.

2. Purposes for Which a Special Meeting May be Held

The only purposes for which a special meeting may be held are set forth in section 11125.4, and are drawn from the purposes for which an emergency meeting could be held under the prior law. In essence, the Legislature recharacterized those purposes as constituting "special" circumstances rather than "emergency" circumstances. Section 11125.4 provides in part that:

"(a) A special meeting may be called at any time by the presiding officer of the state body or by a majority of the members of the state body.

A special meeting may only be called for one of the following purposes where compliance with the 10-day notice provisions of Section 11125 would impose a substantial hardship on the state body or where immediate action is required to protect the public interest:

(1) To consider 'pending litigation' as that term is defined in subdivision (e) of Section 11126.

(2) To consider proposed legislation.

- (3) To consider issuance of a legal opinion.
- (4) To consider disciplinary action involving a state officer or employee.
- (5) To consider the purchase, sale, exchange, or lease of real property.
- (6) To consider license examinations and applications.
- (7) To consider an action on a loan or grant provided pursuant to Division 31 (commencing with Section 50000) of the Health and Safety Code.
- (8) To consider its response to a confidential final draft audit report as permitted by Section 11126.2.
- (9) To provide for an interim executive officer of a state body upon the death, incapacity, or vacancy in the office of the executive officer.

* * *

Department of Consumer Affairs licensing boards would most likely hold a special meeting for the purposes set forth in subdivisions (1), (2), (3), (4), and (6).

3. Notice Requirements for a Special Meeting

A special meeting can be called at any time by the presiding officer or a majority of the members of the state body, provided the 10-day notice requirements of section 11125 "would impose a substantial hardship on the state body or where immediate action is required to protect the public interest." (§11125.4(a)) The only purposes for which the meeting can be held are those set forth above.

The normal 10-day advance notice is not required for special meetings. However, notice of the special meeting is required to be provided to each member of the state agency and to persons who have requested notice of the agency's meetings as soon as practicable after the decision to hold the meeting is made. Notice to members, newspapers of general circulation, and radio or television stations must be received at least 48 hours in advance of the meeting. Notice to newspapers, radio and television stations is satisfied by providing notice to all national press wire services. Notices to the general public may be given via appropriate electronic bulletin boards or other appropriate mechanisms. (§11125.4(b)) The notice must also be posted on the Internet at least 48 hours in advance of the meeting.

The notice must specify the time and place of the special meeting and the business to be transacted. In essence, an agenda would be prepared. No business other than that noticed may be transacted. Notice is required even if no action is

subsequently taken at the meeting. (§11125.4(b)) The notice must contain the Website address where the notice may be accessed on the Internet.

[CAVEAT: If the special meeting will have a closed session agenda item or items, or be held by teleconference, please refer to the discussion of additional requirements under those headings, below.]

4. Specific Requirements During Special Meetings

At the commencement of a special meeting, the agency must make a finding in open session that providing a 10-day notice of the meeting would pose a substantial hardship on the agency, or that immediate action is required to protect the public interest. The specific facts constituting the hardship or need for immediate action must be articulated. This finding must be adopted by a two-thirds (2/3) vote of the agency members present, or if less than two thirds of the members are present, by a unanimous vote of the members present. Failure to adopt the finding terminates the meeting. The agency's finding must be made available on the Internet. (§11125.4(c))

5. Specific Prohibitions on Holding a Special Meeting

As discussed above, a special meeting may only be held for the purposes set forth in section 11125.4(b). Other than the limitation on the purposes of the meeting, there are no statutory prohibitions in the Open Meeting Act on a board, committee, subcommittee or task force conducting a special meeting.

C. "Emergency" Meetings

1. Who May Hold an Emergency Meeting

A board, committee, subcommittee or task force may hold an emergency meeting.

2. Purposes for Which an Emergency Meeting May be Held

As noted above, S.B. 95 of 1997 recharacterized a number of "emergency" situations as "special" situations. This resulted in the narrowing of situations for which an emergency meeting may be held. Section 11125.5 provides an emergency meeting may be held only in the case of an "emergency situation," defined as:

" (1) Work stoppage or other activity that severely impairs public health or safety, or both.

" (2) Crippling disaster that severely impairs public health or safety, or both." (§11125.5(b))

3. Notice Requirements for an Emergency Meeting

An emergency meeting may be held without complying with the 10-day notice requirement in Section 11125 or the 48-hour notice requirement in Section 11125.4. However, newspapers of general circulation, television and radio stations that have requested notice of meetings shall be notified of the emergency by telephone at least one hour before the meeting. If telephone services are not functioning, notice is deemed waived. The notice must be posted on the Internet as soon as practicable after the decision to call an emergency meeting has been made. However, newspapers, television and radio must be notified as soon as possible after the meeting of the fact of the meeting, its purpose, and any action taken. (§11125.5(c))

4. Specific Requirements for an Emergency Meeting

The following are required to be posted in a public place and on the Internet for a minimum of 10 days, as soon as possible after the emergency meeting:

- * Minutes of the meeting
- * A list of persons notified, or attempted to be notified, of the meeting
- * Any action taken at the meeting
- * The rollcall vote on action taken (§11125.5(d))

5. Specific Prohibitions on Holding an Emergency Meeting

As discussed above, an emergency meeting may only be held for the purposes set forth in section 11125.5(b).

IV. CLOSED SESSIONS

A. Purposes for Which Closed Session Can be Held

"Closed" sessions were formerly called "executive" sessions. Since all references in the Open Meeting Act have been changed from "executive" session to "closed" session, throughout this memorandum we will refer to such sessions as "closed" sessions.

Section 11123 states that "All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article."

Section 11126 sets forth those specific items of business which may be transacted in closed session. Only those enumerated items of business may be conducted in closed session. An agency in the Department may convene a closed session pursuant to Section 11126 for the following purposes.

1. Personnel Matters

A board may meet in closed session to "... consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against such employee by another person unless the employee requests a public hearing." In order to consider such disciplinary action or dismissal the "employee shall be given written notice of his or her right to have a public hearing ... which notice shall be delivered to the employee personally or by mail at least 24 hours before the meeting." (§11126(a)) If such a notice is not given any action taken during a closed session for the above reason is null and void. Once the public hearing has been held, the agency may convene into closed session to deliberate on the decision to be reached. (§11126(a)(4))

Prior to January 1, 1995, section 11126(a) did not apply to employees who were appointed to their positions, such as executive officers, executive directors, and registrars (referred to as "executive officer" for convenience). For example, any decision or deliberations made in the selection or dismissal of an executive officer previously had to be conducted in open session. (68 Ops.Cal.Atty.Gen. 34.) However, with the enactment of SB 1316 (Stats. 1994, Chapt. 845) and SB 95 (Stats. 1997, Chapt. 949), a board can now meet in closed session to consider the appointment, employment, evaluation of, or dismissal of its executive officer, unless the executive officer requests a public hearing. (§11126(a)(1), (2)) SB 1316 supersedes the conclusion reached in 68 Ops.Cal.Atty.Gen. 34. As noted above, once the public hearing has been held, the state body may convene in closed session to deliberate on the decision to be reached. (§11126(a)(4))

If the executive officer does not request a public hearing, he or she must be given the opportunity for a hearing in closed session. After the hearing, the executive officer should be excused from the closed session, and the board may then continue in closed session to deliberate on the decision to be reached. (§11126(a)(4))

Section 11126(a) is not to be interpreted to mean that a board is required to handle civil service personnel matters itself. Normally, this function of an agency is administered by its executive officer in conjunction with the Director of Consumer Affairs, who shares authority with respect to civil service personnel.

2. Examination Matters

A board may meet in closed session to "prepare, approve, grade or administer examinations." (§11126(c)(1)) Essentially, this includes any discussion regarding the actual content of examinations, and their reliability and validity. If an agency is perusing examination samples in order to choose one over the others, this may be done in closed session. On the other hand, if an agency is discussing, for example, the general logistics of administering an examination, then this would not be proper subject matter for a closed session. A basic rule is that if a meeting concerns the grading, specific content, validity of an examination, or examination security, then it can and should be conducted in closed session.

Also, an agency may hear appeals from examinees or re-review examinations in closed session as this would be included in the "grading" of the examination.

3. Matters Affecting Individual Privacy

A committee, consisting of less than a quorum of the full board, may meet in closed session to:

" . . . discuss matters which the [committee] has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, . . . Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body." (§11126(c)(2))

Thus, review by a committee (or subcommittee of an examining committee) of an applicant's qualifications for licensure could properly be done in a closed session. Also, for example, an enforcement committee could convene in closed session to discuss an inquiry related to a particular licensee or licensees prior to any action being filed.

CAVEAT: This closed session provision does not authorize such a review by the full board. Nor does it generally authorize a committee of a board to review complaints, investigation reports, or other information to determine whether disciplinary or other action should be filed against a licensee.

To ensure that board members render an impartial and fair decision in considering an Administrative Law Judge's proposed decision, board members are precluded from involving themselves in the investigation or prosecution phase of an action. (§11430.10 *et seq.*) The board's role is that of judge in the case. If a particular board member has any significant involvement in the investigative or prosecution phases, he or she must disqualify himself/herself from participation in the board's action relative to the proposed decision, and not attempt to influence any other board member regarding the decision. Legal counsel should be consulted before any enforcement actions are discussed with individual licensees, as such discussions may impact participation by the member in a final decision on a case (§11430.60), and may require disclosures under the provisions of the state's Administrative Procedure Act. (§11430.50)

Even though these committee meetings may consist entirely of subject matter proper for closed session they are required to be noticed as discussed above.

4. Administrative Disciplinary Matters

A board may meet in closed session to deliberate on a decision in an administrative disciplinary proceeding under the Administrative Procedure Act.

(§11400, *et seq.*; §11126(c)(3)) In the closed session, the board may decide whether to adopt a Proposed Decision, review a transcript of a hearing and render a decision of its own, deliberate upon evidence heard by the agency itself, or consider a stipulation.

This section does not authorize an agency to convene into closed session for the purpose of assigning cases, *i.e.* deciding whether a case should be heard by a hearing officer alone or by the agency itself with a hearing officer. This section does not authorize an agency to convene into closed session to review investigation files or complaints. Members of boards that have the discretion to hear cases should not review pending complaints or investigation files for the reasons given above.

5. Board of Accountancy Matters

The enforcement advisory committee established by the State Board of Accountancy pursuant to Business and Professions Code Section 5020 may convene in a closed session to "consider disciplinary action against an individual accountant prior to the filing of an accusation." (§11126(f)(3)) And the qualifications examining committee established by that board pursuant to Business and Professions Code Section 5023 may convene in closed session to "interview an individual applicant or accountant regarding the applicant's qualifications."

As noted above, such administrative and examining committee meetings are required to be noticed as previously discussed in this memorandum.

6. Pending Litigation

A board may meet in closed session to confer with or receive advice from its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation. (§11126(e)(1)) Again, please note the very specific notice requirements discussed below when a closed session is to be held to discuss "pending litigation". Litigation means an adjudicatory proceeding before a court, administrative body, hearing officer or arbitrator. Litigation is considered to be pending if, (1) it has been initiated formally (e.g. a complaint, claim or petition has been filed) or (2) based on existing facts and circumstances and on the advice of its legal counsel, the state body believes there is significant exposure to litigation against it, or it is meeting to decide whether a closed session is authorized because of significant exposure to litigation or (3) based on existing facts and circumstances, the state body has decided or is deciding whether to initiate litigation. (§11126(e)(2))

The agency's legal counsel must submit a memorandum which complies with the requirements of Section 11126(e)(2)(C)(ii) prior to the closed session if possible, but no later than one week after the closed session. This document is confidential until the pending litigation has been finally adjudicated or otherwise settled. (§6254.25)

7. Response to Confidential Final Draft Audit Report

Section 11126.2 (added effective January 1, 2005) permits an agency to meet in closed session to discuss its response to a confidential final draft audit report from the Bureau of State Audits. However, once that audit report becomes final and is released to the public, the agency may only discuss it in open session.

8. Threat of Criminal or Terrorist Activity

Effective January 1, 2006, AB 277 (Chap. 288, Stats. 2005) authorizes an agency at a regular or special meeting to meet in closed session to consider "matters posing a threat or potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body," where disclosure of those considerations could compromise or impede the safety or security of the described subjects. The law (Section 11126(c)(18)) requires the agency to authorize the closed session by a two-thirds vote of the members present at the meeting.

9. Advisory Bodies/Committees May Meet in Closed Session

To the extent a licensing board, which is defined as a "state body" in the Open Meeting Act, is authorized to meet in closed session, then committees, subcommittees, or other bodies advisory to the licensing board, which are also defined as "state bodies," may meet in closed session for the same purposes as the licensing board. (§11126((f), (4)-(6))

10. Open Session Otherwise Required

Any other business transacted by an agency must be in open session. Only for the above-mentioned reasons may a board within the Department of Consumer Affairs meet in closed session. (§11132) A board may not meet in closed session for the purpose of electing officers or to discuss the proposal or adoption of rules and regulations. Further, a board may not convene in closed session to discuss testimony received during a hearing on proposed rules and regulations. Finally, an agency may not meet in closed session because it wants to have a frank and open discussion among only members on a matter of controversy. In order for an agency to meet in closed session, the closed session must be specifically authorized by statute.

B. Notice and Reporting Requirements for Closed Sessions

1. Notice of Closed Session

When a closed session will constitute part or all of a meeting, it is important to note Government Code Section 11126.3, which requires that:

"(a) Prior to holding any closed session, the state body shall disclose, in an open meeting, the general nature of the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. [A provision applicable to the Public Utilities Commission is not included herein.] If the session is closed pursuant to subparagraph (A) of paragraph (2) of subdivision (e) of Section 11126 [litigation has already commenced], the state body shall state the title of, or otherwise specifically identify, the litigation to be discussed unless the body states that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage."

Thus, if the meeting will consist in part or in its entirety of a closed session, you must include on the notice of the meeting the above-described information. Pay particular attention to these very specific requirements if the closed session is to discuss pending litigation. Please note that to obtain legal advice in closed session concerning pending litigation, the notice must cite subdivision (e) of Section 11126 and your attorney must prepare a memorandum stating the specific reasons and legal authority for the closed session. Subdivisions of Government Code Section 11126, discussed under "Closed Sessions" above, will generally be the statutory authority cited.

If a closed session agenda to discuss pending litigation has been properly published, and an additional pending litigation issue subsequently arises, the state agency may discuss the new matter in closed session provided that postponement of the discussion would prevent the state agency from complying with any statutory, court-ordered, or other legally-imposed deadline. The state agency must publicly announce the title of, or otherwise identify, the litigation unless to do so would jeopardize the ability to effectuate service of process, or to do so would jeopardize the agency's ability to conclude existing settlement negotiations to its advantage. (§11126.3(d))

If you intend to have a closed session during your meeting, you should first contact your Legal Division attorney to ensure that a closed session is authorized and properly noticed.

2. Reporting After a Closed Session

Section 11126.3(f), requires a state body to convene in open session after a closed session and to report as required in Section 11125.2, which states that:

" Any state body shall report publicly at a subsequent public meeting any action taken, and any rollcall vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the state body."

C. Other Procedural Requirements for Closed Sessions

There are certain additional requirements that must be met when closed sessions are to be held.

1. All closed sessions must be held during a regular or special meeting (§11128); they may not be scheduled independently of a noticed meeting of the board or committee. Where, for example, a board or committee meeting is scheduled to discuss only matters appropriate for a closed session, the meeting should be opened as a public meeting with an announcement immediately following that the agency will convene into closed session.

2. As discussed under "Notice Required," above, prior to holding the closed session the agency must announce the general reason(s) for the closed session and the specific statutory or other legal authority under which the session is held. (§11126.3 (a)) With respect to litigation that has already been initiated, it must announce the title of or otherwise identify the litigation. (§11126.3(a)) Other specific notice requirements, discussed above, also apply to notices regarding pending litigation. In the closed session, only matters covered in the statement may be discussed. (§11126.3(b))

3. The agency is required to designate a staff person to attend the closed session and to record in a minute book a record of topics discussed and decisions made. (§11126.1)

4. The minute book referenced in (3) is available only to members of the agency, or if a violation of the Open Meeting Act is alleged, to a court of general jurisdiction. (§11126.1)

5. Information received and discussions held in closed session are **confidential** and must not be disclosed to outside parties by members or staff who attended the closed session. A recent opinion of the Office of the California Attorney General concluded that:

" A local school board member may not publicly disclose information that has been received and discussed in closed session concerning

pending litigation unless the information is authorized by law to be disclosed." (80 Ops.Cal.Atty.Gen. 231)

That opinion also cited a previous opinion, in which the Attorney General stated that "We have ... routinely observed that it would be *improper* for information received during a closed session to be publicly disclosed." (76 Ops.Cal.Atty.Gen. 289, 290-291; Emphasis in the original.)

V. MEETING BY TELECONFERENCING

Prior to January 1, 1995, the Bagley-Keene Open Meeting Act contained no provision for conducting meetings where the participating members were not physically present in one location.

Effective 1/1/95, subdivision (b) was added to Government Code section 11123 to authorize meetings by teleconference. (Stats. 1994, Chapt. 1153; AB 3467) That subdivision has been amended several times, most recently by AB 192 of 2001, and it currently provides:

"(a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

"(b) (1) This article does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and state body. The meeting or proceeding held by teleconference shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including the following:

(A) The teleconferencing meeting shall comply with all requirements of this article applicable to other meetings.

(B) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.

(C) If the state body elects to conduct a meeting or proceeding by teleconference, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. The agenda shall provide an opportunity for members of the public to address the state body directly pursuant to Section 11125.7 at each teleconference location.

(D) All votes taken during a teleconferenced meeting shall be by rollcall.

(E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5.

(F) At least one member of the state body shall be physically present at the location specified in the notice of the meeting.

(2) For the purposes of this subdivision, 'teleconference' means a meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or both audio and video. This section does not prohibit a state body from providing members of the public with additional locations in which the public may observe or address the state body by electronic means, through either audio or both audio and video."

A method is thus available whereby meetings may be conducted by audio or video teleconferencing provided the criteria set forth in the statute have been met. Note the restriction in subdivision (b)(1)(E) that prohibits a closed session emergency meeting. Emergency meetings in open session may be conducted by teleconference.

We emphasize that the law now requires every teleconference meeting location to be identified in the notice and agenda and to be open to the public. Most importantly, the members of the agency must attend the meeting at a public location. Members are no longer able to attend the meeting via teleconference from their offices, homes, or other convenient location unless those locations are identified in the notice and agenda, and the public is permitted to attend at those locations. Nothing prohibits additional locations, where only the public is connected to the teleconference meeting.
(§11123(b)(2))

VI. DELIBERATIONS AND VOTING

Keep in mind the Open Meeting Act declaration of legislative intent that actions of state agencies be taken openly and that their deliberation be conducted openly. (§11120) In this regard, there are a number of provisions in the Open Meeting Act which address deliberations and voting.

A. Seriatim Calls to Individual Agency Members Prohibited

Except as authorized by the above-discussed teleconferencing statutes, telephone conference calls may not be used to avoid the requirements of the Open Meeting Act. A conference call including members of a board, committee, subcommittee or task force sufficient to constitute a majority of that state body is prohibited, except pursuant to an authorized teleconference meeting.

In a case involving the Ralph M. Brown Act, the court concluded that a series of one-to-one telephone calls between members of a local body, where the purpose of the calls was to obtain a collective commitment on an issue, constituted a violation of the Act. (*Stockton Newspapers, Inc. v. Members of the Redevelopment Agency of the City of Stockton* (1985) 171 Cal.App.3d 95) The Brown Act is the local agency counterpart to the Bagley-Keene Open Meeting Act, and decisions rendered on its provisions are frequently followed in Open Meeting Act cases.

Citing the *Stockton Newspapers, Inc.* case, the court in *Sutter Bay Associates v. County of Sutter* held that to prevent evasion of the Brown Act, a series of private meetings (known as serial meetings) by which a majority of the members of the legislative body commit themselves to a decision concerning public business or engage in collective deliberation on public business would violate the open meeting requirement. ((1997) 58 Cal.App.4th 860, 877, 68 Cal.Rptr.2d 492, 502)

Effective January 1, 2010, the Act now specifically prohibits serial communications between a majority of members "to discuss, deliberate, or take action on any item of business that is within the subject matter of the state agency." (Emphasis added.)

B. E-Mail Prohibition

AB 192 of 2001 added subdivision (b) to section 11122.5 to provide:

"Except as authorized pursuant to Section 11123, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the state body to develop a collective concurrence as to action to be taken on an item by the members of the state body is prohibited."

The enactment of subdivision (b) of section 11122.5, expands upon and confirms a recent opinion of the Attorney General prohibiting the use of e-mail to reach a collective decision outside a regularly scheduled meeting. In 84 Ops.Cal.Atty.Gen. 30, the Attorney General concluded that:

"A majority of the board members of a local public agency may not e-mail each other to develop a collective concurrence as to action to be taken by the board without violating the Ralph M. Brown Act even if the e-mails are also sent to the secretary and chairperson of the agency, the e-mails are posted on the agency's Internet website, and a printed version of each e-mail is reported at the next public meeting of the board."

As noted above, interpretations of the Brown Act, which governs local public agencies, are often cited as authority in interpreting similar provisions of the Bagley-Keene Open Meeting Act.

Members of a board must refrain from calling or otherwise contacting other members on a one-to-one basis, or conducting serial meetings, in order to discuss, deliberate, or take action outside the meeting on a matter within the subject matter of the board.

C. Secret Ballot Prohibited

An agency may not vote by secret ballot in a public meeting nor vote in closed session on any matter where discussion, deliberations, or action taken is required to be in an open meeting. (68 Ops.Cal.Atty.Gen. 65, 69)

For example, the election of board officers may not be conducted by secret ballot or in closed session.

D. Voting by Proxy Prohibited

Voting by proxy is not authorized. (68 Ops.Cal.Atty.Gen. 65, 70)

E. Use of Electronic Devices During Meeting

Board members should not text or email each other during an open meeting on any matter within the board's jurisdiction. Using electronic devices to communicate secretly on such a matter would violate the law. Where laptops are used by board members at the meeting because the board provides board materials electronically, the board president should make an announcement at the beginning of the meeting as to the reason for the laptops. We suggest the following (or something similar):

"You may notice board members accessing their laptops during the meeting. They are using the laptops solely to access the board meeting materials which are in electronic format."

F. Voting by Mail on Administrative Disciplinary Matters

As a general rule, all voting on items of business to be transacted must be done at a public meeting. However, the Administrative Procedure Act authorizes mail voting on all questions arising under that act. (Govt. Code §11526.) Thus, board members may vote by mail on proposed decisions, stipulated decisions, and other matters in connection with a formal disciplinary case. No other votes may be cast by mail. (68 Ops.Cal.Atty.Gen. 65, 69)

VII. MISCELLANEOUS PROVISIONS

There are several provisions governing public meetings which do not fit under any of the above headings, but of which you should be aware.

A. Conforming Board Member's Conduct

Any person who has been appointed as a member of a state body, who has not yet assumed the duties of the office, must conform his or her conduct to the provisions of the Open Meeting Act. (§11125.95)

B. Providing Open Meeting Act to New Board Members

A copy of the Bagley-Keene Open Meeting Act must be provided to each agency member upon his or her appointment to office. Each agency should insure that a copy is given to each new member. (§11121.9.)

C. Prohibition on Placing Conditions on Public's Attendance

1. Sign-in

No person can be required to register or sign-in or fulfill any other condition in order to attend a public meeting of an agency. While a person who wishes to make public comment may be asked to identify himself or herself for the board's record or minutes, a commenter cannot be compelled to do so or prevented from speaking because the commenter refuses to identify himself or herself.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to persons present during the meeting, "it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document." (§11124)

2. Discrimination in Admittance to Meeting Facility

A meeting may not be held in any facility that prohibits the admittance of any persons on the basis of race, religious creed, color, national origin, ancestry, or sex. (§11131)

3. Access for the Disabled

All meetings must be accessible to the disabled. (§11131)

4. Charging a Fee or Requiring a Purchase for Access

The Open Meeting Act prohibits holding a meeting in any location where the public is required to pay a fee or make a purchase to attend. (§11131)

D. Agency Recording of the Proceedings

A tape or film record of an open and public meeting made by the agency must be made available for public inspection under the California Public Records Act, but may

be erased or destroyed 30 days after the taping or recording. An inspection must be provided without charge on an audio or video tape player made available by the state agency. (§11124.1(b))

E. Public's Right to Record the Proceedings

Persons attending a public meeting have a right to record the proceedings with an audio or video tape recorder or still or motion picture camera, in the absence of a reasonable finding by the agency that the recording could not continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings. (§11124.1(a))

F. Media Broadcast of the Proceedings

A state body may not prohibit or otherwise restrict the broadcast of a public meeting in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings. (§11124.1(c))

G. Webcasting

While webcasting is not required, if you plan to webcast your meeting, we encourage you to place the following statement on your agenda:

"While the board intends to webcast this meeting, it may not be possible to webcast the entire open meeting due to limitations on resources."

H. Taking Agenda Items Out of Order

Items listed on the agenda may be taken up out of order, provided the purpose of moving the agenda items is not to frustrate public or other input on the item. It is a good practice to note on either the top or the bottom of your agenda that "All times indicated and the order of business are approximate and subject to change," to alert members of the public this is a possibility.

If your agency schedules a multiple day meeting and may move items scheduled for a subsequent day to an earlier day, you should provide notice of this possibility on your agenda. Suggested language is that "Items scheduled for a particular day may be moved to an earlier day to facilitate the board's business." Again, the purpose may not be to frustrate public or other input.

I. Opportunity for Public Comment at Meetings

Section 11125.7 addresses the subject of public comment at board meetings. With specified exceptions, that section requires state agencies to provide an opportunity for members of the public to directly address the state agency on each agenda item

before or during the agency's discussion or consideration of the item. This opportunity for comment need not be made available if:

1. The agenda item has previously been considered at a public meeting by a committee comprised exclusively of board members, where members of the public were provided an opportunity to address the item. However, if the item has been substantially changed since the committee meeting, a new opportunity to address the agenda would be required at the full board meeting.
2. The agenda item is one that may properly be considered in closed session, which would include deliberation and action on disciplinary proceedings under the Administrative Procedure Act. (§11125.7)

If a board wishes to establish a standing rule that discussion of agenda items will be given a specified amount of time, or that public comment will be limited to a certain amount of time, the board may do that by adopting an administrative regulation. (§11125.7(b))

The law specifically provides that a state agency may not prohibit public criticism of its policies, programs, or services, or of the acts or omissions of the agency. (§11125.7(c))

VIII. DISCLOSURE OF DOCUMENTS

A. Documents Distributed Prior to the Meeting

When writings which are public records are distributed to all, or a majority of all, of the members of a board or committee for discussion or consideration at a public meeting, the writings must be made available for public inspection. Generally, the records must be made available for inspection at the time of distribution to agency members. (§11125.1(a)) Records exempt from disclosure under Sections 6253.5, 6254 or 6254.7 of the Public Records Act need not be disclosed even though the subject matter of the records may be considered or discussed at the meeting. This includes records which are drafts, notes or memoranda which will not be retained by the agency, attorney-client privileged communications, records of pending litigation and claims against the state, personnel, medical or similar files, complaint and investigation files, except for Accusations and Proposed Decisions, and any records or data relating to examinations.

B. Documents Distributed During the Meeting

When public records pertaining to an agenda item are prepared by the state body or a member of the state body, and distributed to state body members during a meeting, the documents must be made available for public inspection at the meeting. If records are prepared by some other person, and distributed to members of the state body during a meeting, the documents must be made available for public inspection after the

meeting. (§11125.1(b)) Records exempt from public disclosure under specified statutes are not required to be publicly disclosed. (§11125.1(a), (b))

C. Charging a Fee for Public Documents

Under section 11126.7, an agency may not charge a fee for a notice, including the agenda, of a meeting, and may only charge those fees specifically authorized for public documents that are considered at the meeting

At its discretion, an agency may charge a fee to cover reproduction costs for providing the documents required to be made available, as discussed in paragraph (B), immediately above. If an agency charges a fee, it is limited to the direct costs of duplication authorized in Section 6257 for the reproduction of public records. (§11125.1(c))

Effective January 1, 2003, documents distributed prior to or during a meeting that are public records must be made available, upon request by a person with a disability, in appropriate alternative formats. No extra charge can be imposed for putting those documents into an alternative format.

IX. PENALTIES

Under previous law, any interested person could commence court action (mandamus, injunction, declaratory relief) to stop or prevent violations or threatened violations of the Open Meeting Act. SB 95, effective 1/1/98, added the Attorney General and the district attorney to the list of those who may commence such action. Court costs and reasonable attorney's fees may be awarded to a successful plaintiff to be paid from the funds of the agency. (§11130.5)

SB 95 also expanded the law to authorize the Attorney General, a district attorney, or any interested person to seek court action "to determine whether any rule or action by the state body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, ..." (§11130(a)) This appears to be a rather unique provision, and its implications are unknown at this time.

SB 95 further expanded the law to authorize the Attorney General, a district attorney, or any interested person to seek a court action to compel a state agency to tape record its closed sessions. Upon a judgment of a violation of Section 11126, a court could so compel an agency. Discovery procedures for the tape recordings are also set forth. (§11130(b), and (c))

Section 11130.3 authorizes a person to institute a court action to obtain a judicial determination that an action taken in violation of the notice provisions or the provisions governing closed sessions of the Act is null and void. Court costs and reasonable attorney's fees may also be awarded to a successful plaintiff under this section. This

section reinforces the need for a specific, informative agenda as required by Section 11125.

These remedies extend to past actions of an agency. The statute of limitations for bringing an action is 90 days. (§§11130(c) and 11130.3(a)).

Section 11130.7 of the Act provides:

"Each member of a state body who attends a meeting of such body in violation of any provision of this article, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled, is guilty of a misdemeanor."

(Emphasis added.)

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11120. Public policy; legislative finding and declaration; citation of article

It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.

In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

This article shall be known and may be cited as the Bagley-Keene Open Meeting Act.

(Added by Stats.1967, c. 1656, p. 4026, § 122.
Amended by Stats.1980, c. 1284, p. 4333, § 4;
Stats. 1981, c. 968, p. 3683, § 4.)

11121. State body defined

As used in this article, "state body" means each of the following:

(a) Every state board, or

commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order.

(b) A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.

(c) An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.

(d) A board, commission, committee, or similar multimember body on which a member of a body that is a state body pursuant to this section serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.

(Added by Stats.1967, c. 1656, p. 4026, § 122.
Amended by Stats.1980, c. 515, § 1; Stats.1981, c. 968, p. 3683, § 5; Stats.1984, c. 193, § 38.
Amended by Stats.1996, c. 1023 (S.B.1497), § 88, eff. Sept. 29, 1996; Stats.1996, c. 1064 (A.B.3351), § 783.1, operative July 1, 1997; Stats.2001, c. 243 (A.B.192), § 1; Amended Stats. 2003 ch 62 § 117 (SB 600)).

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11121.1. State body; exclusions

As used in this article, "state body" does not include any of the following:

(a) State agencies provided for in Article VI of the California Constitution.

(b) Districts or other local agencies whose meetings are required to be open to the public pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).

(c) State agencies provided for in Article IV of the California Constitution whose meetings are required to be open to the public pursuant to the Grunsky-Burton Open Meeting Act (Article 2.2 (commencing with Section 9027) of Chapter 1.5 of Part 1 of Division 2 of Title 2).

(d) State agencies when they are conducting proceedings pursuant to Section 3596.

(e) State agencies provided for in Section 109260 of the Health and Safety Code, except as provided in Section 109390 of the Health and Safety Code.

(f) The Credit Union Advisory Committee established pursuant to Section 14380 of the Financial Code.

(Added by Stats.2001, c. 243 (A.B.192), § 2.
Amended by Stats. 2008, c. 344 (S.B. 1145), § 2. eff. Sept. 26, 2008.)

11121.2. Repealed by Stats. 2001, c. 243 (A.B.192), § 3

The repealed section, added by Stats.1981, c. 968, p. 3684, § 5.2, related to multimember body with authority from state body.

11121.7. Repealed by Stats. 2001, c. 243 (A.B.192), § 4

The repealed section, added by Stats.1980, c. 1284, p. 4333, § 5, amended by Stats.1981, c. 968, p. 3685, § 6, related to representatives of the state body.

11121.8. Repealed by Stats. 2001, c. 243 (A.B.192), § 5

The repealed section, added by Stats.1981, c. 968, p. 3684, § 7, related to advisory bodies.

11121.9. Provision of copy of article to members of state body

Each state body shall provide a copy of this article to each member of the state body upon his or her appointment to membership or assumption of office.

(Added by Stats.1980, c. 1284, p. 4334, § 6.
Amended by Stats.1981, c. 714, p. 2659, § 175.
Stats.1981, c. 968, p. 3685, § 7.1.)

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11121.95. Appointees or elected officials not yet in office; conformity of conduct to article requirements

Any person appointed or elected to serve as a member of a state body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this article and shall be treated for purposes of this article as if he or she has already assumed office.

(Added by Stats.1997, c. 949 (S.B.95), § 1.)

11122. Action taken

As used in this article "action taken" means a collective decision made by the members of a state body, a collective commitment or promise by the members of the state body to make a positive or negative decision or an actual vote by the members of a state body when sitting as a body or entity upon a motion, proposal, resolution, order or similar action.

(Added by Stats.1967, c. 1656, p. 4026, § 122.
Amended by Stats.1981, c. 968, p. 3685, § 7.3.)

11122.5. Meeting defined; series of communications to discuss, deliberate, or take action prohibited; exceptions

(a) As used in this article, "meeting" includes any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any

item that is within the subject matter jurisdiction of the state body to which it pertains.

(b)(1) A majority of the members of a state body shall not, outside of a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter of the state body.

(2) Paragraph (1) shall not be construed to prevent an employee or official of a state agency from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the state agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

(c) The prohibitions of this article do not apply to any of the following:

(1) Individual contacts or conversations between a member of a state body and any other person that do not violate subdivision (b).

(2)(A) The attendance of a majority of the members of a state body at a conference or similar gathering open to the public that involves a discussion of issues of general interest

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to the public or to public agencies of the type represented by the state body, if a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the state body.

(B) Subparagraph (A) does not allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a state body at an open and publicized meeting organized to address a topic of state concern by a person or organization other than the state body, if a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the state body.

(4) The attendance of a majority of the members of a state body at an open and noticed meeting of another state body or of a legislative body of a local agency as defined by Section 54951, if a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the other state body.

(5) The attendance of a majority of the members of a state body at a

purely social or ceremonial occasion, if a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the state body.

(6) The attendance of a majority of the members of a state body at an open and noticed meeting of a standing committee of that body, if the members of the state body who are not members of the standing committee attend only as observers.

(Added by Stats.2001, c. 243 (A.B.192), § 6.
Amended by Stats.2009, c. 150 (A.B.1494), § 1)

11123. Meetings; attendance; teleconference option

(a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

(b)(1) This article does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and state body. The meeting or proceeding held by teleconference shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including the following:

(A) The teleconferencing meeting shall comply with all requirements of this article applicable to other meetings.

(B) The portion of the

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teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.

(C) If the state body elects to conduct a meeting or proceeding by teleconference, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. The agenda shall provide an opportunity for members of the public to address the state body directly pursuant to Section 11125.7 at each teleconference location.

(D) All votes taken during a teleconferenced meeting shall be by rollcall.

(E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5.

(F) At least one member of the state body shall be physically present at the location specified in the notice of the meeting.

(2) For the purposes of this subdivision, "teleconference" means a meeting of a state body, the members of which are at different locations,

connected by electronic means, through either audio or both audio and video. This section does not prohibit a state body from providing members of the public with additional locations in which the public may observe or address the state body by electronic means, through either audio or both audio and video.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1981, c. 968, p. 3685, § 7.5. Amended by Stats.1994, c. 1153 (A.B.3467), § 1; Stats.1997, c. 52 (A.B.1097), § 1; Stats.2001, c. 243 (A.B.192), § 7.)

11123.1. State body meetings to meet protections and prohibitions of the Americans with Disabilities Act

All meetings of a state body that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(Added by Stats. 2002, c. 300 (A.B. 3035), § 1.)

11124. Conditions to attendance

No person shall be required, as a condition to attendance at a meeting of a state body, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

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If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

(Added by Stats.1967, c. 1656, p. 4026, § 122.
Amended by Stats.1981, c. 968, p. 3685, § 8.)

11124.1. Audio or video recording of proceedings; inspection of state's recording; broadcast restrictions

(a) Any person attending an open and public meeting of the state body shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera in the absence of a reasonable finding by the state body that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) Any audio or video recording of an open and public meeting made for whatever purpose by or at the direction of the state body shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but may be erased or destroyed 30 days after the

recording. Any inspection of an audio or video recording shall be provided without charge on equipment made available by the state body.

(c) No state body shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

(Added by Stats.1980, c. 1284, p. 4334, § 7.
Amended by Stats.1981, c. 968, p. 3685, § 9;
Stats.1997, c. 949 (S.B.95), § 2; Stats.2009, c. 88 (A.B.176), § 42.)

11125. Notice of meeting

(a) The state body shall provide notice of its meeting to any person who requests that notice in writing. Notice shall be given and also made available on the Internet at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The written notice shall additionally include the address of the Internet site where notices required by this article are made available.

(b) The notice of a meeting of a body that is a state body shall include a specific agenda for the meeting, containing a brief description of the items of business to be transacted or

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discussed in either open or closed session. A brief general description of an item generally need not exceed 20 words. A description of an item to be transacted or discussed in closed session shall include a citation of the specific statutory authority under which a closed session is being held. No item shall be added to the agenda subsequent to the provision of this notice, unless otherwise permitted by this article.

(c) Notice of a meeting of a state body that complies with this section shall also constitute notice of a meeting of an advisory body of that state body, provided that the business to be discussed by the advisory body is covered by the notice of the meeting of the state body, provided that the specific time and place of the advisory body's meeting is announced during the open and public state body's meeting, and provided that the advisory body's meeting is conducted within a reasonable time of, and nearby, the meeting of the state body.

(d) A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings. In addition, at the state body's discretion, a person may request, and may be provided, notice of only those meetings of a state body at which a particular subject or subjects specified in the request will be discussed.

(e) A request for notice of more than one meeting of a state body shall be subject to the provisions of Section

14911.

(f) The notice shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request, by any person with a disability. The notice shall include information regarding how, to whom, and by when a request for any disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires these aids or services in order to participate in the public meeting.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1973, c. 1126, p. 2291, § 1; Stats.1975, c. 708, p. 1695, § 1; Stats.1979, c. 284, § 1, eff. July 24, 1979; Stats.1981, c. 968, p. 3685, § 10. Amended by Stats.1997, c. 949 (S.B.95), § 3; Stats.1999, c. 393 (A.B.1234), § 1; Stats.2001, c. 243 (A.B.192), § 8; Stats. 2002, c. 300 (A.B. 3035), § 2.)

11125.1. Agendas and other writings distributed for discussion or consideration at public meetings; public records; Franchise Tax Board; inspection; availability on the Internet; closed sessions

(a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a state body by any person in connection with a matter

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subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7 of this code, or Section 489.1 or 583 of the Public Utilities Code.

(b) Writings that are public records under subdivision (a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats, as required by Section 202 of the American with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by a person with a disability.

(c) In the case of the Franchise Tax Board, prior to that state body taking final action on any item, writings pertaining to that item that are public records under subdivision (a) that are prepared and distributed to members of the state body by the Franchise Tax Board staff or individual members prior to or during a meeting shall be:

(1) Made available for public inspection at that meeting.

(2) Distributed to all persons who request notice in writing pursuant to subdivision (a) of Section 11125.

(3) Made available on the Internet.

(d) Prior to the State Board of Equalization taking final action on any item that does not involve a named tax or fee payer, writings pertaining to that item that are public records under subdivision (a) that are prepared and distributed by board staff or individual members to members of the state body prior to or during a meeting shall be:

(1) Made available for public inspection at that meeting.

(2) Distributed to all persons who request or have requested copies of these writings.

(3) Made available on the Internet.

(e) Nothing in this section shall be construed to prevent a state body from charging a fee or deposit for a copy of a public record pursuant to Section 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The writings described in subdivision (b) are subject

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to the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall not be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, or to limit the public's right to inspect any record covered by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a state body. Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication.

(f) "Writing" for purposes of this section means "writing" as defined under Section 6252.

(Added by Stats.1975, c. 959, p. 2238, § 4. Amended by Stats.1980, c. 1284, p. 4334, § 8; Stats.1981, c. 968, p. 3686, § 10.1. Amended by Stats.1997, c. 949 (S.B.95), § 4; Stats.2001, c. 670 (S.B.445), § 1; Stats. 2002, c. 300 (A.B. 3035), § 3.5.; Stats. 2005, c. 188 (A.B. 780), § 1.)

11125.2. Appointment, employment or dismissal of public employees; closed sessions; public report

Any state body shall report publicly at a subsequent public meeting any action taken, and any rollcall vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the state body.

(Added by Stats.1980, c. 1284, p. 4335, § 9. Amended by Stats.1981, c. 968, p. 3687, § 10.3.)

11125.3. Action on items of business not appearing on agenda; notice

(a) Notwithstanding Section 11125, a state body may take action on items of business not appearing on the posted agenda under any of the conditions stated below:

(1) Upon a determination by a majority vote of the state body that an emergency situation exists, as defined in Section 11125.5.

(2) Upon a determination by a two-thirds vote of the state body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there exists a need to take immediate action and that the need for action came to the attention of the state body subsequent to the agenda being posted as specified in Section 11125.

(b) Notice of the additional item to be considered shall be provided to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after a determination of the need to consider the item is made, but shall be delivered in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the time of the meeting specified

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in the notice. Notice shall be made available to newspapers of general circulation and radio or television stations by providing that notice to all national press wire services. Notice shall also be made available on the Internet as soon as is practicable after the decision to consider additional items at a meeting has been made.

(Added by Stats.1994, c. 1153 (A.B.3467), § 2.
Amended by Stats.2001, c. 243 (A.B.192), § 9.)

11125.4. Special meetings; authorized purposes; notice; required finding of hardship or need to protect public interest

(a) A special meeting may be called at any time by the presiding officer of the state body or by a majority of the members of the state body. A special meeting may only be called for one of the following purposes where compliance with the 10-day notice provisions of Section 11125 would impose a substantial hardship on the state body or where immediate action is required to protect the public interest:

(1) To consider "pending litigation" as that term is defined in subdivision (e) of Section 11126.

(2) To consider proposed legislation.

(3) To consider issuance of a legal opinion.

(4) To consider disciplinary action involving a state officer or employee.

(5) To consider the purchase, sale, exchange, or lease of real property.

(6) To consider license examinations and applications.

(7) To consider an action on a loan or grant provided pursuant to Division 31 (commencing with Section 50000) of the Health and Safety Code.

(8) To consider its response to a confidential final draft audit report as permitted by Section 11126.2.

(9) To provide for an interim executive officer of a state body upon the death, incapacity, or vacancy in the office of the executive officer.

(b) When a special meeting is called pursuant to one of the purposes specified in subdivision (a), the state body shall provide notice of the special meeting to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after the decision to call a special meeting has been made, but shall deliver the notice in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the time of the special meeting specified in the notice. Notice shall be made available to newspapers of general circulation and radio or television stations by providing that notice to all national press wire services. Notice shall

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also be made available on the Internet within the time periods required by this section. The notice shall specify the time and place of the special meeting and the business to be transacted. The written notice shall additionally specify the address of the Internet Web site where notices required by this article are made available. No other business shall be considered at a special meeting by the state body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the state body a written waiver of notice. The waiver may be given by telegram, facsimile transmission, or similar means. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Notice shall be required pursuant to this section regardless of whether any action is taken at the special meeting.

(c) At the commencement of any special meeting, the state body must make a finding in open session that the delay necessitated by providing notice 10 days prior to a meeting as required by Section 11125 would cause a substantial hardship on the body or that immediate action is required to protect the public interest. The finding shall set forth the specific facts that constitute the hardship to the body or the impending harm to the public interest. The finding shall be adopted by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present. The

finding shall be made available on the Internet. Failure to adopt the finding terminates the meeting.

(Added by Stats.1997, c. 949 (S.B.95), § 5. Amended by Stats.1999, c. 393 (A.B.1234), § 2; Stats.2004, c. 576 (A.B.1827), § 1.; Stats. 2007, c. 92 (S.B. 519), § 1.)

11125.5. Emergency meetings

(a) In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a state body may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125 or the 48-hour notice requirement of Section 11125.4.

(b) For purposes of this section, "emergency situation" means any of the following, as determined by a majority of the members of the state body during a meeting prior to the emergency meeting, or at the beginning of the emergency meeting:

(1) Work stoppage or other activity that severely impairs public health or safety, or both.

(2) Crippling disaster that severely impairs public health or safety, or both.

(c) However, newspapers of general circulation and radio or television stations that have requested notice of meetings pursuant to Section

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11125 shall be notified by the presiding officer of the state body, or a designee thereof, one hour prior to the emergency meeting by telephone. Notice shall also be made available on the Internet as soon as is practicable after the decision to call the emergency meeting has been made. If telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the presiding officer of the state body, or a designee thereof, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

(d) The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the state body, or a designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any action taken at the meeting shall be posted for a minimum of 10 days in a public place, and also made available on the Internet for a minimum of 10 days, as soon after the meeting as possible.

(Amended by Stats.1992, c. 1312 (A.B.2912), § 11, eff. Sept. 30, 1992; Stats.1997, c. 949 (S.B.95), § 6; Stats.1999, c. 393 (A.B.1234), § 3.)

11125.6. Fish and Game Commission; emergency meetings; appeals of fishery closures or restrictions

(a) An emergency meeting may be called at any time by the president of

the Fish and Game Commission or by a majority of the members of the commission to consider an appeal of a closure of or restriction in a fishery adopted pursuant to Section 7710 of the Fish and Game Code. In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of an established fishery, the commission may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125 or the 48-hour notice requirement of Section 11125.4 if the delay necessitated by providing the 10-day notice of a public meeting required by Section 11125 or the 48-hour notice required by Section 11125.4 would significantly adversely impact the economic benefits of a fishery to the participants in the fishery and to the people of the state or significantly adversely impact the sustainability of a fishery managed by the state.

(b) At the commencement of an emergency meeting called pursuant to this section, the commission shall make a finding in open session that the delay necessitated by providing notice 10 days prior to a meeting as required by Section 11125 or 48 hours prior to a meeting as required by Section 11125.4 would significantly adversely impact the economic benefits of a fishery to the participants in the fishery and to the people of the state or significantly adversely impact the sustainability of a fishery managed by the state. The finding shall set forth the specific facts that constitute the impact to the

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economic benefits of the fishery or the sustainability of the fishery. The finding shall be adopted by a vote of at least four members of the commission, or, if less than four of the members are present, a unanimous vote of those members present. Failure to adopt the finding shall terminate the meeting.

(c) Newspapers of general circulation and radio or television stations that have requested notice of meetings pursuant to Section 11125 shall be notified by the presiding officer of the commission, or a designee thereof, one hour prior to the emergency meeting by telephone.

(d) The minutes of an emergency meeting called pursuant to this section, a list of persons who the president of the commission, or a designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any action taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

(Added by Stats.1998, c. 1052 (A.B.1241), S 21.)

11125.7. Agenda item discussion before state body; opportunity for public address; regulation by state body; freedom of expression; application of provisions

(a) Except as otherwise provided in this section, the state body shall provide an opportunity for members of the public to directly address the state

body on each agenda item before or during the state body's discussion or consideration of the item. This section is not applicable if the agenda item has already been considered by a committee composed exclusively of members of the state body at a public meeting where interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the state body. Every notice for a special meeting at which action is proposed to be taken on an item shall provide an opportunity for members of the public to directly address the state body concerning that item prior to action on the item. In addition, the notice requirement of Section 11125 shall not preclude the acceptance of testimony at meetings, other than emergency meetings, from members of the public, provided, however, that no action is taken by the state body at the same meeting on matters brought before the body by members of the public.

(b) The state body may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public comment on particular issues and for each individual speaker.

(c) The state body shall not prohibit public criticism of the policies,

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programs, or services of the state body, or of the acts or omissions of the state body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

(d) This section is not applicable to closed sessions held pursuant to Section 11126.

(e) This section is not applicable to decisions regarding proceedings held pursuant to Chapter 5 (commencing with Section 11500), relating to administrative adjudication, or to the conduct of those proceedings.

(f) This section is not applicable to hearings conducted by the California Victim Compensation and Government Claims board pursuant to Sections 13963 and 13963.1.

(g) This section is not applicable to agenda items that involve decisions of the Public Utilities Commission regarding adjudicatory hearings held pursuant to Chapter 9 (commencing with Section 1701) of Part 1 of Division 1 of the Public Utilities Code. For all other agenda items, the commission shall provide members of the public, other than those who have already participated in the proceedings underlying the agenda item, an opportunity to directly address the commission before or during the commission's consideration of the item.

(Added by Stats. 1993, c. 1289 (S.B. 367), § 2. Amended by Stats. 1995, c. 938 (S.B. 523), § 13, operative July 1, 1997; Stats. 1997, c. 949

(S.B. 95), § 7.); Stats. 2006, c. 538 (S.B. 1852), § 248.)

11125.8. Hearings to consider crimes against minors or crimes of sexual assault or domestic violence; identification of applicant; disclosure of nature of hearing

(a) Notwithstanding Section 11131.5, in any hearing that the State California Victim Compensation and Government Claims Board conducts pursuant to Section 13963.1 and that the applicant or applicant's representative does not request be open to the public, no notice, agenda, announcement, or report required under this article need identify the applicant.

(b) In any hearing that the board conducts pursuant to Section 13963.1 and that the applicant or applicant's representative does not request be open to the public, the board shall disclose that the hearing is being held pursuant to Section 13963.1. That disclosure shall be deemed to satisfy the requirements of subdivision (a) of Section 11126.3.

(Added by Stats. 1997, c. 949 (S.B. 95), § 9.; Stats. 2006, c. 538 (S.B. 1852), § 249.)

11125.9. Regional water quality control boards; compliance with notification guidelines

Regional water quality control boards shall comply with the notification

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guidelines in Section 11125 and, in addition, shall do both of the following:

(a) Notify, in writing, all clerks of the city councils and county boards of supervisors within the regional board's jurisdiction of any and all board hearings at least 10 days prior to the hearing. Notification shall include an agenda for the meeting with contents as described in subdivision (b) of Section 11125 as well as the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. Each clerk, upon receipt of the notification of a board hearing, shall distribute the notice to all members of the respective city council or board of supervisors within the regional board's jurisdiction.

(b) Notify, in writing, all newspapers with a circulation rate of at least 10,000 within the regional board's jurisdiction of any and all board hearings, at least 10 days prior to the hearing. Notification shall include an agenda for the meeting with contents as described in subdivision (b) of Section 11125 as well as the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting.

(Added by Stats.1997, c. 301 (A.B.116), § 1.)

§ 11126. Closed sessions.

(a)(1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.

(2) As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, and that notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void.

(3) The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body.

(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

(b) For the purposes of this section, "employee" does not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees.

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Furthermore, for purposes of this section, the term employee includes a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(c) Nothing in this article shall be construed to do any of the following:

(1) Prevent state bodies that administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(2) Prevent an advisory body of a state body that administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters that the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(3) Prohibit a state body from holding a closed session to deliberate on a decision to be reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) or similar provisions of law.

(4) Grant a right to enter any correctional institution or the grounds of a

correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(5) Prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests that the donor or proposed donor has requested in writing to be kept confidential.

(6) Prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(7)(A) Prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

(B) However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties that the negotiations may concern and the person or persons with whom its negotiator may negotiate.

(C) For purposes of this paragraph, the negotiator may be a member of the state body.

(D) For purposes of this paragraph, "lease" includes renewal or renegotiation of

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a lease.

(E) Nothing in this paragraph shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (e).

(8) Prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(9) Prevent the Council for Private Postsecondary and Vocational Education from holding closed sessions to consider matters pertaining to the appointment or termination of the Executive Director of the Council for Private Postsecondary and Vocational Education.

(10) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or information the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.

(11) Require the Franchise Tax Board to notice or disclose any confidential tax information considered in closed sessions, or documents executed in connection therewith, the public disclosure of which is prohibited pursuant to Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(12) Prevent the Corrections Standards Authority from holding closed sessions when considering reports of crime

conditions under Section 6027 of the Penal Code.

(13) Prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(14) Prevent the State Board of Education or the Superintendent of Public Instruction, or any committee advising the board or the Superintendent, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of, or pursuant to Chapter 9 (commencing with Section 60850) of, Part 33 of Division 4 of Title 2 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

(15) Prevent the California Integrated Waste Management Board or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on

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the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this paragraph, a state body shall also be exempt from the provisions of paragraph (7) relating to the identification of real properties prior to the closed session.

(17) Prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), or Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(18)(A) Prevent a state body from holding closed sessions to consider matters posing a threat or potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body, where disclosure of these considerations could compromise or impede the safety or security of the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body.

(B) Notwithstanding any other provision of law, a state body, at any regular

or special meeting, may meet in a closed session pursuant to subparagraph (A) upon a two-thirds vote of the members present at the meeting.

(C) After meeting in closed session pursuant to subparagraph (A), the state body shall reconvene in open session prior to adjournment and report that a closed session was held pursuant to subparagraph (A), the general nature of the matters considered, and whether any action was taken in closed session.

(D) After meeting in closed session pursuant to subparagraph (A), the state body shall submit to the Legislative Analyst written notification stating that it held this closed session, the general reason or reasons for the closed session, the general nature of the matters considered, and whether any action was taken in closed session. The Legislative Analyst shall retain for no less than four years any written notification received from a state body pursuant to this subparagraph.

(d)(1) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

(2) Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against any person or entity under the jurisdiction of the commission.

(e)(1) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive

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advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

(2) For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(A) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(B)(i) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body.

(ii) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to clause (i).

(C)(i) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

(ii) The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If

the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to subparagraph (A) or (B), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

(iii) For purposes of this subdivision, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(iv) Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(f) In addition to subdivisions (a), (b), and (c), nothing in this article shall be construed to do any of the following:

(1) Prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(2) Prevent the examining committee established by the State Board of Forestry and Fire Protection, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider

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disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(3) Prevent the enforcement advisory committee established by the California Board of Accountancy pursuant to Section 5020 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent the qualifications examining committee established by the California Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(4) Prevent a state body, as defined in subdivision (b) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in closed session by the state body whose authority it exercises.

(5) Prevent a state body, as defined in subdivision (d) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the body defined as a state body pursuant to subdivision (a) or (b) of Section 11121.

(6) Prevent a state body, as defined in subdivision (c) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the state body it advises.

(7) Prevent the State Board of Equalization from holding closed sessions for either of the following:

(A) When considering matters pertaining to the appointment or removal of the Executive Secretary of the State Board of Equalization.

(B) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(8) Require the State Board of Equalization to disclose any action taken in closed session or documents executed in connection with that action, the public disclosure of which is prohibited by law pursuant to Sections 15619 and 15641 of this code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of the Revenue and Taxation Code.

(9) Prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Secretary of Emergency Management or the Governor concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(g) This article does not prevent either of the following:

(1) The Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering

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matters pertaining to the recruitment or removal of the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

(2) The Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

(h) This article does not prevent the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters relating to the development of rates and competitive strategy for plans offered pursuant to Chapter 15 (commencing with Section 21660) of Part 3 of Division 5 of Title 2.

(i) This article does not prevent the Managed Risk Medical Insurance Board from holding closed sessions when considering matters related to the development of rates and contracting strategy for entities contracting or seeking to contract with the board, entities with which the board is considering a contract, or entities with which the board is considering or enters into any other arrangement under which the board provides, receives, or arranges services or reimbursement, pursuant to Part 6.2 (commencing with Section 12693), Part 6.3 (commencing with Section 12695), Part 6.4 (commencing with Section 12699.50), Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code.

(j) Nothing in this article shall be construed to prevent the board of the State Compensation Insurance Fund from holding

closed sessions in the following:

(1) When considering matters related to claims pursuant to Chapter 1 (commencing with Section 3200) of Division 4 of the Labor Code, to the extent that confidential medical information or other individually identifiable information would be disclosed.

(2) To the extent that matters related to audits and investigations that have not been completed would be disclosed.

(3) To the extent that an internal audit containing proprietary information would be disclosed.

(4) To the extent that the session would address the development of rates, contracting strategy, underwriting, or competitive strategy, pursuant to the powers granted to the board in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, when discussion in open session concerning those matters would prejudice the position of the State Compensation Insurance Fund.

(k) The State Compensation Insurance Fund shall comply with the procedures specified in Section 11125.4 of the Government Code with respect to any closed session or meeting authorized by subdivision (j), and in addition shall provide an opportunity for a member of the public to be heard on the issue of the appropriateness of closing the meeting or session.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1968, c. 1272, p. 2396, § 1; Stats.1970, c. 346, p. 741, § 5; Stats.1972, c. 431, p. 791, § 43; Stats.1972, c. 1010, p. 1872, § 63, eff. Aug. 17, 1972, operative July 1, 1972; Stats.1974, c. 1254, p. 2713, § 1; Stats.1974, c.

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1539, p. 3525, § 1; Stats.1975, c. 197, p. 570, § 1; Stats.1975, c. 959, p. 2238, § 5; Stats.1977, c. 730, p. 2318, § 5, eff. Sept. 12, 1977; Stats.1980, c. 1197, p. 4043, § 1; Stats.1980, c. 1284, p. 4338, § 11; Stats.1981, c. 180, p. 1096, § 1; Stats.1981, c. 968, p. 3688, § 12; Stats.1982, c. 454, p. 1842, § 40; Stats.1983, c. 143, § 187; Stats.1984, c. 678, § 1; Stats.1984, c. 1284, § 4; Stats.1985, c. 186, § 1; Stats.1985, c. 1091, § 1; Stats.1986, c. 575, § 1; Stats.1987, c. 1320, § 2; Stats.1988, c. 1448, § 29; Stats.1989, c. 177, § 2; Stats.1989, c. 882, § 2; Stats.1989, c. 1360, § 52; Stats.1989, c. 1427, § 1, eff. Oct. 2, 1989, operative Jan. 1, 1990; Stats.1991, c. 788 (A.B.1440), § 4; Stats.1992, c. 1050 (A.B.2987), § 17; Stats.1994, c. 26 (A.B.1807), § 230, eff. March 30, 1994; Stats.1994, c. 422 (A.B.2589), § 15.5, eff. Sept. 7, 1994; Stats.1994, c. 845 (S.B.1316), § 1; Stats.1995, c. 975 (A.B.265), § 3; Stats.1996, c. 1041 (A.B.3358), § 2; Stats.1997, c. 949 (S.B.95), § 8; Stats.1998, c. 210 (S.B.2008), § 1; Stats.1998, c. 972 (S.B.989), § 1; Stats.1999, c. 735 (S.B.366), § 9, eff. Oct. 10, 1999; Stats.2000, c. 1002 (S.B.1998), § 1; Stats.2000, c. 1055 (A.B.2889), § 30, eff. Sept. 30, 2000; Stats.2001, c. 21 (S.B.54), § 1, eff. June 25, 2001; Stats.2001, c. 243 (A.B.192), § 10; Stats.2002, c. 664 (A.B.3034), § 93.7; Stats.2002, c. 1113 (A.B.2072), § 1; Stats.2005, c. 288 (A.B.277), § 1; Stats.2007, c. 577 (A.B.1750), § 4, eff. Oct. 13, 2007; Stats.2008, c. 179 (S.B.1498), § 91; Stats.2008, c. 344 (S.B.1145), § 3, eff. Sept. 26, 2008; Stats.2010, c. 328 (S.B.1330), § 81; Stats.2010, c. 32 (A.B.1887), § 2, eff. June 29, 2010; Stats.2010, c. 618 (A.B.2791), § 124.)

11126.1. Record of topics discussed and decisions made at closed sessions; availability

The state body shall designate a clerk or other officer or employee of the state body, who shall then attend each closed session of the state body and

keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available to members of the state body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction. Such minute book may, but need not, consist of a recording of the closed session.

(Added by Stats.1980, c. 1284, p. 4340, § 12.
Amended by Stats.1981, c. 968, p. 3691, § 13.)

11126.2. Closed session; response to confidential final draft audit report; public release of report

(a) Nothing in this article shall be construed to prohibit a state body that has received a confidential final draft audit report from the Bureau of State Audits from holding closed sessions to discuss its response to that report.

(b) After the public release of an audit report by the Bureau of State Audits, if a state body meets to discuss the audit report, it shall do so in an open session unless exempted from that requirement by some other provision of law.

(Added by Stats.2004, c. 576 (A.B.1827), § 2.)

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11126.3. Disclosure of nature of items to be discussed in closed session; scope of session; notice of meeting; announcement of pending litigation; unnecessary disclosures; disclosures at open session following closed session

(a) Prior to holding any closed session, the state body shall disclose, in an open meeting, the general nature of the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. If the session is closed pursuant to paragraph (2) of subdivision (d) of Section 11126, the state body shall state the title of, or otherwise specifically identify, the proceeding or disciplinary action contemplated. However, should the body determine that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties if the proceeding or disciplinary action is commenced or that to do so would fail to protect the private economic and business reputation of the person or entity if the proceeding or disciplinary action is not commenced, then the state body shall notice that there will be a closed session and describe in general terms the purpose of that session. If the session is closed pursuant to subparagraph (A) of paragraph (2) of subdivision (e) of Section 11126, the state body shall state the title of, or otherwise specifically identify, the litigation to be discussed unless the body states that to do so would

jeopardize the body's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(b) In the closed session, the state body may consider only those matters covered in its disclosure.

(c) The disclosure shall be made as part of the notice provided for the meeting pursuant to Section 11125 or pursuant to subdivision (a) of Section 92032 of the Education Code and of any order or notice required by Section 11129.

(d) If, after the agenda has been published in compliance with this article, any pending litigation (under subdivision (e) of Section 11126) matters arise, the postponement of which will prevent the state body from complying with any statutory, court-ordered, or other legally imposed deadline, the state body may proceed to discuss those matters in closed session and shall publicly announce in the meeting the title of, or otherwise specifically identify, the litigation to be discussed, unless the body states that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage. Such an announcement shall be deemed to comply fully with the requirements of this section.

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(e) Nothing in this section shall require or authorize a disclosure of names or other information that would constitute an invasion of privacy or otherwise unnecessarily divulge the particular facts concerning the closed session or the disclosure of which is prohibited by state or federal law.

(f) After any closed session, the state body shall reconvene into open session prior to adjournment and shall make any reports, provide any documentation, and make any other disclosures required by Section 11125.2 of action taken in the closed session.

(g) The announcements required to be made in open session pursuant to this section may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcement.

(Added by Stats.1980, c. 1284, p. 4341, § 13. Amended by Stats.1981, c. 968, p. 3692, § 14; Stats.1987, c. 1320, § 3. Amended by Stats.1997, c. 949 (S.B.95), § 10; Stats.1998, c. 210 (S.B.2008), § 2; Stats.2001, c. 243 (A.B.192), § 11.)

11126.4. Closed sessions of Gambling Control Commission; information prohibited from being disclosed by law or tribal-state gaming compact; limitations; public notice

(a) Nothing in this article shall be construed to prevent the California Gambling Control Commission from

holding a closed session when discussing matters involving trade secrets, nonpublic financial data, confidential or proprietary information, and other data and information, the public disclosure of which is prohibited by law or a tribal-state gaming compact.

(b) Discussion in closed session authorized by this section shall be limited to the confidential data and information related to the agenda item and shall not include discussion of any other information or matter.

(c) Before going into closed session the commission shall publicly announce the type of data or information to be discussed in closed session, which shall be recorded upon the commission minutes.

(d) Action taken on agenda items discussed pursuant to this section shall be taken in open session.

(Added by Stats. 2005, c. 274 (S.B. 919), § 1.)

11126.5. Disorderly conduct of general public during meeting; clearing of room

In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting the state body conducting the meeting may order the meeting room cleared and continue in

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session. Nothing in this section shall prohibit the state body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting. Notwithstanding any other provision of law, only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section.

(Added by Stats.1970, c. 1610, p. 3385, § 1.
Amended by Stats.1981, c. 968, p. 3692, § 15.)

11126.7. Fees

No fees may be charged by a state body for providing a notice required by Section 11125 or for carrying out any provision of this article, except as specifically authorized pursuant to this article.

(Added by Stats.1980, c. 1284, p. 4341, § 14.
Amended by Stats.1981, c. 968, p. 3692, § 16.)

11127. Application of article

Each provision of this article shall apply to every state body unless the body is specifically excepted from that provision by law or is covered by any other conflicting provision of law.

(Added by Stats.1967, c. 1656, p. 4026, § 122.
Amended by Stats.1981, c. 968, p. 3692, § 17.)

11128. Time of closed session

Each closed session of a state body shall be held only during a regular or special meeting of the body.

(Added by Stats.1967, c. 1656, p. 4026, § 122.
Amended by Stats.1980, c. 1284, p. 4341, § 15;
Stats.1981, c. 968, p. 3692, § 18.)

11128.5. Adjournment; declaration; notice; hour for reconvened meeting

The state body may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting, the clerk or secretary of the state body may declare the meeting adjourned to a stated time and place and he or she shall cause a written notice of the adjournment to be given in the same manner as provided in Section 11125.4 for special meetings, unless that notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special, or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all

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purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by law or regulation.

(Added by Stats.1997, c. 949 (S.B.95), § 11.)

11129. Continuance; posting notice

Any hearing being held, or noticed or ordered to be held by a state body at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the state body in the same manner and to the same extent set forth in Section 11128.5 for the adjournment of meetings. A copy of the order or notice of continuance shall be conspicuously posted on or near the door of the place where the hearing was held within 24 hours after the time of the continuance; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

(Added by Stats.1967, c. 1656, p. 4026, § 122.
Amended by Stats.1981, c. 968, p. 3692, § 19.
Amended by Stats.1997, c. 949 (S.B.95), § 12.)

11130. Actions to prevent violations or determine applicability of article; validity of rules

discouraging expression; audio recording of closed sessions; discovery procedures for recordings

(a) The Attorney General, the district attorney, or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this article or to determine the applicability of this article to past actions or threatened future action by members of the state body or to determine whether any rule or action by the state body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the state body to audio record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 11126, order the state body to audio record its closed sessions and preserve the audio recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c)(1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The audio recordings shall be subject to the following discovery procedures:

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(A) In any case in which discovery or disclosure of the audio recording is sought by the Attorney General, the district attorney, or the plaintiff in a civil action pursuant to this section or Section 11130.3 alleging that a violation of this article has occurred in a closed session that has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency that has custody and control of the audio recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

(i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency that has custody and control of the recording.

(ii) An affidavit that contains specific facts indicating that a violation of the act occurred in the closed session.

(3) If the court, following a review of the motion, finds that there is good cause to believe that a violation has occurred, the court may review, in camera, the recording of that portion of the closed session alleged to have

violated the act.

(4) If, following the in camera review, the court concludes that disclosure of a portion of the recording would be likely to materially assist in the resolution of the litigation alleging violation of this article, the court shall, in its discretion, make a certified transcript of the portion of the recording a public exhibit in the proceeding.

(5) Nothing in this section shall permit discovery of communications that are protected by the attorney-client privilege.

(Added by Stats.1967, c. 1656, p. 4026, § 122. Amended by Stats.1969, c. 494, p. 1106, § 1; Stats.1981, c. 968, p. 3693, § 20; Stats.1997, c. 949 (S.B.95), § 13; Stats.1999, c. 393 (A.B.1234), § 4; Stats.2009, c. 88 (A.B.176), § 43.)

11130.3. Judicial determination action by state body in violation of §§ 11123 or 11125 null and void; action by interested person; grounds

(a) Any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of obtaining a judicial determination that an action taken by a state body in violation of Section 11123 or 11125 is null and void under this section. Any action seeking such a judicial determination shall be commenced within 90 days from the date the action was taken. Nothing in this section shall be construed to prevent a state body from curing or

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correcting an action challenged pursuant to this section.

(b) An action shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement related thereto.

(2) The action taken gave rise to a contractual obligation upon which a party has, in good faith, detrimentally relied.

(3) The action taken was in substantial compliance with Sections 11123 and 11125.

(4) The action taken was in connection with the collection of any tax.

(Amended by Stats.1999, c. 393 (A.B.1234), § 5.)

11130.5. Court costs and attorney fees

A court may award court costs and reasonable attorney's fees to the plaintiff in an action brought pursuant to Section 11130 or 11130.3 where it is found that a state body has violated the provisions of this article. The costs and fees shall be paid by the state body and shall not become a personal liability of any public officer or employee thereof.

A court may award court costs and reasonable attorney's fees to a defendant in any action brought pursuant to Section 11130 or 11130.3 where the defendant has prevailed in a final determination of the action and the court finds that the action was clearly frivolous and totally lacking in merit.

(Added by Stats.1975, c. 959, p. 2240, § 6. Amended by Stats.1981, c. 968, p. 3693, § 21; Stats.1985, c. 936, § 2.)

11130.7. Violations; misdemeanor

Each member of a state body who attends a meeting of that body in violation of any provision of this article, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this article, is guilty of a misdemeanor.

(Added by Stats.1980, c. 1284, p. 4341, § 16. Amended by Stats.1981, c. 968, p. 3693, § 22. Amended by Stats.1997, c. 949 (S.B. 95), § 14.)

11131. Use of facility allowing discrimination; state agency

No state agency shall conduct any meeting, conference, or other function in any facility that prohibits the admittance of any person, or persons, on the basis of ancestry, or any characteristic listed or defined in Section 11135 or that is inaccessible to disabled persons, or where members of the public may not be present without

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making a payment or purchase. As used in this section, "state agency" means and includes every state body, office, officer, department, division, bureau, board, council, commission, or other state agency.

(Added by Stats.1970, c. 383, p. 798, § 1.
Amended by Stats.1981, c. 968, p. 3693, § 23.
Amended by Stats.1997, c. 949 (S.B.95), § 15.;
Stats. 2007, c. 568 (A.B. 14), § 32.)

11131.5. Identity of victims or alleged victims of crimes, tortious sexual conduct, or child abuse; public disclosure

No notice, agenda, announcement, or report required under this article need identify any victim or alleged victim of crime, tortious sexual conduct, or child abuse unless the identity of the person has been publicly disclosed.

(Added by Stats.1997, c. 949 (S.B.95), § 16.)

11132. Closed session by state body prohibited

Except as expressly authorized by this article, no closed session may be held by any state body.

(Added by Stats.1987, c. 1320, § 4.)

**CALIFORNIA BOARD OF ACCOUNTANCY
CURRENT PROJECTS LIST**

DATE: December 14, 2010

**CBA Agenda Item VIII.E
January 27-28, 2011**

DIVISION: Administration

PROJECT TITLE/DESCRIPTION	START DATE	ESTIMATED FINISH DATE	UNIT/STAFF ASSIGNED	STATUS/COMMENTS
2010 Business Continuity Plan	8/3/2010	9/30/2010	Ng	Complete
Delegation of Authority Regulations	9/1/2010	9/30/2010	Stanley	Dropped by CBA Action
PROC Regulations	12/4/2009	12/4/2010	Stanley	Approved by OAL/Complete
Peer Review Certificate of Compliance	12/4/2009	12/4/2010	Stanley	Approved by OAL/Complete
Coordinate the scheduling of phase 2 of CBA's space expansion	6/7/2007	1/1/2011 6/1/2010	Ng	Facility remodel complete. DCA will submit modular equipment purchase order once vendor issues necessary parts list. Will not take place until budget is signed for FY 10-11
Cell Phones	12/1/2010	3/1/2011	Ng	Currently researching more efficient contract rates.
CE Cleanup Regulations	3/26/2010	3/26/2011	Stanley	Delivered to OAL on December 20, 2010
Revise Consumer Assistance Booklet	3/30/2010	3/31/2011 12/31/2010	Hersh	Re-Write/Re-Design Underway.
Fee Regulations	5/28/2010	5/28/2011	Stanley	Department of Finance Review
PR Provider Requirements and Regulations	9/1/2010	9/30/2011	Stanley	Preparing Final Statement of Reasons
Perform Peer Review education and outreach	7/1/2008	Ongoing 10/31/2009	Hersh	Outreach continues through multiple avenues including social media and Ambassador Program.
Delegation of Authority from DCA for personnel tasks	10/29/2008	TBD 6/1/2010	Ng	Received approval as HRIS "Super User". Still awaiting SPB approval to access cert lists.
Implement new online e-procurement/contract process	1/1/2009	TBD	Ng	Delayed by DCA

**CALIFORNIA BOARD OF ACCOUNTANCY
CURRENT PROJECTS LIST**

DATE: December 14, 2010

**CBA Agenda Item VIII.E
January 27-28, 2011**

DIVISION: Administration IT

PROJECT TITLE/DESCRIPTION	START DATE	ESTIMATED FINISH DATE	UNIT/STAFF ASSIGNED	STATUS/COMMENTS
Peer Review Reporting System Enhancement	9/1/2010	9/30/2010	Hansen-Taylor	Completed
CBA Exam System Redesign	11/15/2010	3/30/2011	Hansen Taylor	Enhance the current CBA Exam System to improve efficiency and reduce processing times.
E-Mail Client Standardization and Migration Project	1/2/2009	7/31/2011 1/30/2009	Hansen	DCA has chosen to be in the first phase migration to the State's new outsourced CES email system. CBA is required by the OCIO to join DCA in the first phase migration.
Document Imaging Project (IT Management)	7/1/2008	2/1/2012 4/30/2011	Andres	DCA project under development
Develop a Continuing Education Database	9/1/2008	TBD 10/1/2010 7/1/2010	Hansen	Integrated with Peer Review Reporting System. 85% complete, some final details need to be worked on. Delayed by CBA Exam System Redesign
Online Address Change Form	9/15/2010	TBD 11/30/2010	Hansen Taylor	Allow licensees to use CBA website to update addresses. Delayed due to other priorities
Migrate Initial Licensing Unit's Master Tracking Data	11/4/2008	TBD 5/30/2009	Taylor	Scope of project has changed in light of DCA BreEZe system.
Practice Privilege Program Enhancements	11/10/2008	TBD 6/30/2009	Hansen	Delayed due to other priorities
Review and Combine Office Databases	TBD	TBD	Taylor	

**CALIFORNIA BOARD OF ACCOUNTANCY
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DIVISION: Enforcement

DATE: December 14, 2010

**CBA Agenda Item VIII.E
January 27-28, 2011**

PROJECT TITLE/DESCRIPTION	START DATE	ESTIMATED FINISH DATE	UNIT/STAFF ASSIGNED	STATUS/COMMENTS
Scanned enforcement documents—confirm accuracy/completeness	11/1/2008	9/13/2010	Nunally	Complete
Update process manuals and guidelines	12/1/2008	11/30/2010	Santaga	Complete, pending regulatory approval.
Enforcement Program Audit	9/1/2010	4/30/2011 11/30/2010	Ixta	December 2010 - Audit Engagement, January 2011 - Commence Field Work, March 2011 - Complete Audit, April 2011 - Respond to Audit

**CALIFORNIA BOARD OF ACCOUNTANCY
CURRENT PROJECTS LIST**

DIVISION: Executive

DATE: December 14, 2010

**CBA Agenda Item VIII.E
January 27-28, 2011**

PROJECT TITLE/DESCRIPTION	START DATE	ESTIMATED FINISH DATE	UNIT/STAFF ASSIGNED	STATUS/COMMENTS
Develop a report of CBA's performance measures for CBA consideration	11/5/2008	9/23/2010-9/25/2009	Bowers	Complete
Annual Report	2/1/2010	9/30/2010-7/31/2010	Vincent	Complete
Sunset Review Report	3/10/2010	4/1/2010	Vincent	Complete
Develop CBA Succession Plan	5/1/2010	12/31/2010	Bowers/Rich	Complete
Identify solution for resolving enforcement program staffing needs	10/24/2008	TBD	Bowers	Actively working with DCA on this issue.
Paperless Meeting materials for CBA members	2/3/2010	TBD 7/1/2010	Veronica	On hold due to equipment needs (laptops) and ordering restrictions due to budget.

**CALIFORNIA BOARD OF ACCOUNTANCY
CURRENT PROJECTS LIST**

DIVISION: Licensing

DATE: December 14, 2010

**CBA Agenda Item VIII.E
January 27-28, 2010**

PROJECT TITLE/DESCRIPTION	START DATE	ESTIMATED FINISH DATE	UNIT/STAFF ASSIGNED	STATUS/COMMENTS
Develop draft language for the 20 units of accounting study recommended by the Accounting Education Committee at the June 23, 2010 meeting.	7/1/2010	8/31/2010	Deanne	Complete
Begin preliminary work on the Ethics Curriculum Committee's inaugural meeting.	6/1/2010	8/31/2010	Deanne	Complete
Review and possibly revise the current process for issuing CPA licenses.	7/1/2010	1/30/2011 11/20/2010	Deanne	Staff are still working to implement the changes with the CBA's Master Tracking system. Anticipate new process to begin February 1, 2011
Update all Licensing Division Handbooks	12/1/2010	1/31/2011	Deanne	Staff presently working on updates.
Develop subpoena processing manual, policy & procedures, and conduct a training class for staff.	5/15/2008	2/18/2011 9/30/2010	Deanne	Using DCA developed subpoena manual. Staff are working to augment this with procedures on internal acceptance and use of the CBA developed subpoena tracking system.
Update and create informational materials for firms, including a handbook, updating Web site and partnership/corporation applications, and including Peer Review information where necessary.	12/21/2009	2/28/2011 4/1/2011	Deanne	Client Services Unit Staff began work on this project, but it is now in transition back to the staff withing the Initial Licensing and Renewal Units. Anticipate a draft to be developed by end of February.
Work with the DCA to implement an option to allow licensees to pay their license renewal via credit card.	3/1/2010	TBD 12/31/2010	Deanne	CBA to be included with the next group of boards to be folded into the Credit Card Program. DCA is still working with the first-phase of DCA boards and bureaus. Based on discussion with DCA, it appears that the meetings with other boards and bureaus that are considering a credit card option will occur in late January or February.

Memorandum

Board Agenda Item IX.A
January 27-28, 2011

To : CBA Members

Date : January 6, 2011

Telephone : 916-561-1740
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From : Deanne Pearce, Chief
Licensing Division

Subject: Licensing Division Report

Attached is the Licensing Division Report, which has been structured in a new format. The new format provides a three month review of statistics for each unit within the Licensing Division. The report also provides a narrative of Division and Unit activities as well as news on the various committees presently staffed by the Licensing Division, including the Qualifications Committee, Ethics Curriculum Committee, and Accounting Education Committee.

The new report format consolidates the information into four pages (two pages back-to-back), reduced from the prior format which was seven pages (four pages back-to-back).

If any members have any comments or suggestions regarding the format or information contained in the report, please feel free to provide them at the upcoming meeting.

**CALIFORNIA BOARD OF ACCOUNTANCY
LICENSING DIVISION REPORT
OCTOBER 2010 – DECEMBER 2010**

EXAMINATION	October	November	December
CPA Examination Applications Received			
First-time Sitter	433	293	377
Repeat Sitter	1375	601	1879
Processing Time Frames			
First-time Sitter	41	45	33
Repeat Sitter	9	9	7
Appeals			
Management-Level Appeals	10	27	22
Board-Level Appeals	0	0	0
INITIAL LICENSING	October	November	December
CPA Licensure Applications Received			
CPA	326	316	298
Partnership	7	14	10
Corporation	12	21	21
Fictitious Name Permit (Registration)	30	9	18
Processing Time Frames			
CPA	21	22	21
Partnership	13	17	24
Corporation	13	17	24
Fictitious Name Permit (Registration)	13	17	24
Applicants Licensed Under			
Pathway 0	0	0	0
Pathway 1A	25	37	63
Pathway 1G	35	67	68
Pathway 2A	51	93	109
Pathway 2G	84	131	149

**CALIFORNIA BOARD OF ACCOUNTANCY
LICENSING DIVISION REPORT
OCTOBER 2010 – DECEMBER 2010**

RENEWAL AND CONTINUING COMPETENCY	October	November	December
Licenses Renewed			
CPA	2,803	3,328	2,985
PA	4	3	0
Partnership	29	27	31
Corporation	78	94	72
CE Worksheet Review			
CPA/PA Applications Reviewed	1,873	1,580	3,081
Deficient Applications Identified	91	117	128
Compliance Responses Received <i>(Including Requests for Inactive Status)</i>	14	14	6
Enforcement Referrals	0	0	0
Outstanding Deficiencies <i>(Including Abandonment)</i>	77	103	122
PRACTICE PRIVILEGE	October	November	December
Notifications Received			
Hardcopy	56	37	93
Electronic	130	143	217
Disqualifying Conditions Received			
Approved	6	3	4
Denied	0	0	0
Pending	0	0	2
Practice Privilege Suspension Orders			
Notice of Intent to Suspend	0	0	0
Administrative Suspension Order	0	0	0

**CALIFORNIA BOARD OF ACCOUNTANCY
LICENSING DIVISION REPORT
OCTOBER 2010 – DECEMBER 2010**

DIVISION AND UNIT ACTIVITIES

BreEZe

Licensing and Enforcement Division staff are continuing to work collaboratively with the Department of Consumer Affairs (DCA) on the BreEZe project. During December, staff completed a final review of the BreEZe requirements to prepare for the release of the Request for Proposal. The DCA is anticipating awarding a contract by the end of the fiscal year. The BreEZe system will completely replace the Consumer Affairs System (CAS) database and a majority of the internal databases used by California Board of Accountancy (CBA) staff in the administration, examination, initial licensure, license renewal and enforcement units. The tentative date for CBA to transition to BreEZe is January 2014.

Examination Unit

- The CBA has received a total of 14,801 scores for the October/November 2010 testing window. This is a 40% increase when compared to the same testing window in 2009. This is the highest number of scores received since the inception of computer-based testing. Staff is attributing the increase in scores due to the launch of CBT-e in January 2011.
- CBT-e, the evolution of the Uniform CPA Examination, launched on January 3, 2011. The significant changes to the exam are section structure, section time allocations, and the percentage value of examination components changes. New question formats will be introduced and new content and skill specifications will go into effect.
- Rachel Vierra and Anna Torrecillas, previously in the Client Services Unit, became members of the Examination Unit on November 29, 2010.
- The Examination Unit continues to have three vacant positions, one full-time Staff Services Analyst Limited Term, one full-time Office Technician, and one Retired Annuitant.

Initial Licensing Unit

- The Initial Licensing Unit will be utilizing the US Accountancy Licensee Database (ALD) and license look-up, whenever possible, as the primary source for verifying the license status of out of state licensees requesting licensure in California.
- The vacant Associate Governmental Program Analyst position in the Initial Licensing Unit has been filled. Victoria Thornton started on December 2, 2010.
- Gina Steele, previously in the Client Services Unit, became a member of the Initial Licensing Unit on November 29, 2010.
- The Initial Licensing Unit has one full-time Office Technician position vacancy as a result of a staff retirement effective December 31, 2010.

**CALIFORNIA BOARD OF ACCOUNTANCY
LICENSING DIVISION REPORT
OCTOBER 2010 – DECEMBER 2010**

DIVISION AND UNIT ACTIVITIES CONTINUED...

Renewal and Continuing Competency Unit

- Sherry Allen-Osamwonyi, previously in the Client Services Unit, became a member of the License Renewal/Continuing Competency Unit on November 29, 2010.
- The vacant Staff Services Analyst position in the License Renewal/Continuing Competency Unit has been filled. Kari O'Connor, previously with the Board of Behavioral Sciences, started on December 29, 2010.
- The License Renewal/Continuing Competency Unit continues to have four vacancies, two full-time Office Technicians (OT), one permanent intermittent OT, and one OT Retired Annuitant.
- A total of 14 regulatory review courses have been approved this year. Staff is presently working with one more potential course provider to amend their course materials. Once the necessary revisions are made, the CBA will provide approval of a 15th regulatory review course.

Practice Privilege Unit

- A notice was posted to the CBA Web site notifying out-of-state licensees that on January 1, 2011, Section 5050(b) of the Business and Professions Code on temporary and incidental practice became inoperative.
- The vacant Associate Governmental Program Analyst position in the Practice Privilege Unit has been filled. Steve Del Rio started on December 2, 2010 and has begun training by staff.

COMMITTEE NEWS

- At the September 3, 2010 Accounting Education Committee (AEC) meeting, a subcommittee consisting of Mr. Ruben Davila and Mr. Michael Moore, was established to work on draft regulatory language for the 20 units of accounting study. The subcommittee has held multiple discussions and met with staff on December 21, 2010 to discuss strategies for drafting the regulatory language. The next meeting of the full AEC will be held in Southern California in February 2011.
- The meeting of the Ethics Curriculum Committee (ECC) will be held on January 26, 2011 in conjunction with the CBA Meeting. The ECC will continue discussions regarding applicants with education completed out-of-state, ethics education requirements of other State Boards of Accountancy, and the ethics study required by Business and Professions Code Section 5093.
- The Qualifications Committee (QC) will meet on January 26, 2011, in conjunction with the CBA Meeting. The QC will be discussing course requirements for the 48 hours of continuing education needed for reissuance candidates.

Memorandum

CBA Agenda Item IX.B.
January 27-28, 2011

To : CBA Members

Date : January 13, 2011

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E-mail : dpearce@cba.ca.gov



From : Deanne Pearce, Chief
Licensing Division

Subject : Discussion of International Delivery of the Uniform CPA Examination

The California Board of Accountancy (CBA) has considered the international delivery of the Uniform CPA Examination (iExam) over the past eighteen months, most recently at the September 2010 CBA meeting. Over this time staff, the National Association of State Boards of Accountancy (NASBA) and American Institute of Certified Public Accountants (AICPA) have provided various materials for members' consideration.

On October 17, 2010, NASBA, in conjunction with the AICPA and Prometric, issued a press release announcing that the Uniform CPA Examination (CPA Exam) "will be offered outside the 55 U.S. jurisdictions for the first time in its history in 2011...The international exam will be the same as the one offered in the U.S., using the same computerized format and administered in English. As in the U.S., the purpose of taking the examination will be to qualify for licensure as a CPA through U.S. state boards of accountancy."

Currently, the CPA Exam is administered only at Prometric testing centers in the United States, District of Columbia, Guam, Puerto Rico, and the Virgin Islands. California candidates are allowed to take the CPA exam at any of these Prometric testing centers. iExam will be offered in Japan, Bahrain, Kuwait, Lebanon and the United Arab Emirates (**Attachment 1**). California candidates who sit for the CPA Exam internationally will be required to pay a surcharge of between \$150 to \$200 dollars, in addition to the CBA's application fee and NASBA's test section fees. The purpose of the administrative fee is to ensure international administration of the CPA Exam will not impact or increase fees for domestic candidates.

Attached is a prior CBA agenda items to provide members background information related to the iExam (**Attachment 2**). In addition, provided below are issues and concerns discussed by CBA members related to the iExam. Some issues have previously been deliberated, but are included for reference purposes to consider during deliberations on whether to participate in the iExam program.

Security of the CPA Exam Administered Internationally

At the request of CBA Member Petersen at the July 2010 meeting, staff contacted Mr. Bishop to obtain a status update on the iExam project. Following two e-mail communications, a letter was sent to Mr. Bishop requesting clarification on several topics related to the iExam and requesting a representative from NASBA to provide an update and answer any further questions members may have regarding the project (**Attachment 3**). Mr. Bishop accepted the invitation to attend the September 2010 CBA meeting and provided an update on the iExam and responded to the questions included in Attachment 3.

In response to staff's query regarding specific security measures in place to protect the exam, Mr. Bishop explained that security is of the up-most importance and that several measures have been taken to ensure the security of the CPA Exam. He pointed out that the pilot foreign countries selected for administration of the iExam rated high in the international standards used to measure the safety of testing environments. He added that reviewing scoring trends and pass rates, in addition to continual monitoring of blogs, will take place to detect any indications of cheating.

Mr. Bishop explained that the CPA Exam is an aggressive modified adaptive exam. This means that a candidate who is trying to harvest questions and who is not actually prepared to take the CPA Exam will never see the high value questions due to being unsuccessful at the lower level questions.

Exam Passage Letter

At the September 2010 meeting, Mr. Bishop also discussed NASBA's concern regarding the issuance of the CBA exam passage letter. Mr. Bishop explained that a benign passage letter is currently being drafted for issuance once a foreign candidate is successful in passing the CPA Exam. Mr. Bishop stated that he saw some CBA exam passage letters issued to foreign candidates being displayed as certificates.

The CBA has been issuing an exam passage letter for more than 10 years. The exam passage letter is issued to all candidates upon successful passage of the final section of the CPA Exam (**Attachment 4**). Below is background related to the issuance of the CBA's current exam passage letter.

Background

At the May 2001 CPC meeting, Mr. Ron Tom of Governmental Advocates, representing DeVry University including Becker-Convissor, a provider of review courses for CPA Exam candidates, requested that the CBA provide to foreign candidates a document suitable for framing to display that they were successful in passing the CPA Exam. Mr. Tom explained that these candidates were not interested in working as CPAs in California but that the credential was highly valued in foreign countries. At that time, an exam passage letter was already being provided by the CBA to successful candidates, but it was not suitable for framing.

During deliberations at the CPC, members suggested that it may be more appropriate for the AICPA to issue the letter and that the CBA letter may look like an authorization to practice. After lengthy deliberation by the CPC, staff were directed to bring back a revised version of the exam passage letter to the CBA for consideration at the July 2001 meeting.

At the July 2001 CBA meeting staff presented a modified exam passage letter more suitable for framing. The changes to the original exam passage letter consisted of enlarging the font to be more easily read if framed, the standard embossing that was placed on the bottom of the letter was replaced by a gold seal, and adding a paragraph that states the individual is not licensed to practice. The CBA unanimously adopted the revisions to the exam passage letter, which is still being used today.

Residency

California is one of only 11 states that does not have a residency requirement to sit for the CPA Exam. The remaining 44 jurisdictions require that a candidate is a resident of the jurisdiction before they can apply to take the CPA Exam as a candidate of that jurisdiction.

California has one of the largest populations of international candidates. International candidates are required to travel to one of the aforementioned locations in order to take the CPA Exam. It is anticipated the residency requirement topic will be placed on the March agenda for either the Committee on Professional Conduct or full Board for discussion purposes.

Previously Identified CBA Concerns

Provided below are issues that have previously been discussed by the CBA but still remain unresolved. The information is being provided to assist in CBA deliberations related to CBA participation in the iExam program.

Benefits of iExam

The CBA questioned how having California licensed CPAs in foreign countries would benefit the consumers of California. NASBA responded that in some countries there is no designation or certificate to demonstrate competency in areas such as preparing financial reports. The only way for these individuals to demonstrate that they have mastered these skills is to pass the CPA Exam. This benefits Californians by increasing the quality of financial statements and reports used by California business and industry, but prepared in foreign countries.

Enforcement Concerns

The CBA expressed concerns about enforcement activities in foreign countries. NASBA responded that the likelihood of increased enforcement would be minimal.

The majority of international licensees would not be signing audits, but rather working in business and industry. Therefore, the majority of enforcement would be compliance with licensure requirements.

NASBA clarified that licensing international candidates would not give them practice privileges in their home countries. However, it would allow U.S. companies that have engagements in foreign countries that are incidental to U.S. engagements to utilize U.S. CPAs on the ground in those countries. In these instances, the state where that CPA is licensed would have jurisdiction over that engagement.

NASBA Licensure Commitment Requirement

The AICPA has recently posted International Testing FAQs to their CPA Exam candidate Web site at www.cpa-exam.org (**Attachment 5**). The second FAQ on Page 2 references candidate requirements to sit for the CPA Exam internationally, most importantly seeking licensure upon passing the CPA Exam. When discussing CBA participation in the iExam program, the items below should be taken into consideration as possible licensure impediments to candidates taking the CPA Exam internationally.

- U.S. Social Security Number Requirement

Pursuant to section 30(a) of the California Business and Professions Code, "Notwithstanding any other provision of law, any board, as defined in Section 22, and the State Bar and the Department of Real Estate shall at the time of issuance of the license require that the licensee provide its federal employer identification number, if the licensee is a partnership, or his or her social security number for all others."

This provision of law prohibits California from issuing a license to an individual who does not possess a U.S. Social Security Number. According to the Social Security Administration, to apply for a Social Security number to work in the United States, an applicant must show current immigration documents with work authorization. Therefore, the CBA would be prohibited from issuing a license to an individual who is unable to provide a U.S. Social Security Number.

- Verification of experience

A provision within the CBA Regulations requires that all applicants with foreign attest work experience appear at a Qualifications Committee (QC) Meeting. Typically QC meetings are held four times a year in California. It is presumed that most international candidates would be subject to this requirement.

As stated in the beginning of the paper, five countries are participating in the pilot of the iExam program. NASBA is hopeful that all eligible states will participate at least temporarily to determine if the program meets their needs. Of course, the more states that participate, the more cost effective the program will be overall.

Should the CBA not support the international delivery of the Uniform CPA Exam, staff can prepare a letter detailing why the CBA has decided not to participate in the International CPA Examination Administration program.

I will be available at the meeting to answer any questions you may have.



ATTACHMENT 1

FOR IMMEDIATE RELEASE

Contact for AICPA:
Joel Allegretti
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Contact for NASBA:
Thomas G. Kenny
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U.S. CPA Exam to Be Administered Outside the U.S. for the First Time

AICPA, NASBA and Prometric Reach Historic Agreement

NEW YORK, NASHVILLE and BALTIMORE (Oct. 17) - The Uniform CPA Examination will be offered outside the 55 U.S. jurisdictions for the first time in its history in 2011. The American Institute of Certified Public Accountants, National Association of State Boards of Accountancy and Prometric – the three organizations that jointly offer the CPA Examination in the United States – reached an agreement to administer the exam in international locations.

The CPA Examination next year will be offered in Japan, Bahrain, Kuwait, Lebanon and the United Arab Emirates.

The international exam will be the same as the one offered in the U.S., using the same computerized format and administered in English. As in the U.S., the purpose of taking the examination will be to qualify for licensure as a CPA through U.S. state boards of accountancy.

“Candidates for licensure as U.S. CPAs reside all over the world, but at present, they must travel to the U.S. to take the CPA Exam,” said Barry Melancon, AICPA president and CEO. “International administrations are being offered as a service to them and to other international candidates who wish to seek CPA licensure – the mark of highly-qualified professionals in accounting.”

The Uniform CPA Examination is one of the “Three Es – Education, Examination, and Experience” that are required for licensure as a CPA in the U.S. The CPA Examination consists of four sections: Auditing and Attestation; Financial Accounting and Reporting; Regulation; and Business Environment and Concepts. The combined testing time for the four sections is 14 hours.

“NASBA and its member boards are pleased to play a significant role in advancing the Uniform CPA Examination delivery in international locations,” said NASBA President and CEO David Costello. “We are proud of our licensing examination, developed by the AICPA with significant input and assistance by NASBA and state boards, and its well-earned reputation for overall quality and preeminence as a high stakes examination. Since a growing number of CPA candidates reside in other countries, the time has come to manage the overall process of international candidates in a more effective manner.”

The CPA Examination employs a combination of question formats. It includes the traditional multiple-choice questions and essays, as well as the highly innovative simulations – questions that replicate workplace situations and require the application of knowledge and skills to arrive at solutions.

“This new effort expands on the already successful partnership of the AICPA, NASBA, and Prometric,” said Michael Brannick, president and CEO of Prometric. “The Uniform CPA Examination is already administered routinely to foreign nationals who take the test in the U.S., U.S. Virgin Islands, Puerto Rico and Guam. Making the examination available in additional locations around the world will enhance accessibility for individuals in the accounting profession who desire a world class accounting credential and are excited about obtaining it.”

In its nearly 100-year history, the Uniform CPA Examination has undergone many changes. Until the end of 2003, it was a paper-and-pencil examination administered twice each year. In April 2004, the computer-based CPA Examination was launched and the paper-and-pencil examination was discontinued. The computer-based CPA Examination achieved its millionth administration in 2009.

Today, the Uniform CPA Examination is a state-of-the-art licensure examination – technologically advanced, psychometrically sound and poised for an additional round of innovations and improvements to be implemented in 2011. For additional information on the Uniform CPA Exam, please visit www.cpa-exam.org.

About Prometric

Prometric, a wholly-owned subsidiary of ETS, is the recognized global leader in technology-enabled testing and assessment services. Its comprehensive suite of services, including test development, test delivery and data management capabilities, allows clients to develop and launch global testing programs as well as accurately measure program results and data. Prometric reliably delivers and administers more than seven million tests a year on behalf of 450 clients in the academic, professional, healthcare, government, corporate and information technology markets. It delivers tests flexibly via the Web or by utilizing a robust network of more than 10,000 test centers in 163 countries. For more information, please visit www.prometric.com.

About NASBA

Celebrating 102 years of service, the National Association of State Boards of Accountancy (NASBA) serves as a forum for the nation’s state boards of accountancy, which administer the Uniform CPA Examination, license more than 600,000 certified public accountants and regulate the practice of public accountancy in the United States. NASBA’s mission is to enhance the effectiveness of state boards of accountancy in meeting their regulatory responsibilities. The Association promotes the exchange of information among the accountancy boards, serving the needs of the 55 U.S. jurisdictions.

NASBA is headquartered in Nashville, Tenn., with a satellite office in New York, N.Y. and a Computer Testing Center in Guam. To learn more about NASBA, visit www.nasba.org.

About the AICPA

The American Institute of Certified Public Accountants (www.aicpa.org) is the national, professional association of CPAs, with more than 360,000 CPA members worldwide in business and industry, public practice, government, education, student affiliates, and international associates. It sets ethical standards for the profession and U.S. auditing standards for audits of private companies, non-profit organizations, federal, state and local governments. It develops and grades the Uniform CPA Examination.

The AICPA maintains offices in New York, N.Y., Washington, D.C., Durham, N.C., Ewing, N.J., and Lewisville, TX.

Media representatives are invited to visit the AICPA Online Media Center at www.aicpa.org/mediacenter.

Memorandum

Board Agenda Item IX.C.
September 24-25, 2009

ATTACHMENT 2

To : Board Members
Date : September 10, 2009
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From : Deanne Pearce, Acting Chief
Licensing Division

Subject : Discussion of the Presentation Related to International Delivery of the
Uniform CPA Examination from the July 2009 Board Meeting

At the July 24, 2009 California Board of Accountancy (Board) meeting, the Board discussed the international administration of the Uniform CPA Examination (CPA exam). Ken L. Bishop, Senior Vice President of the National Association of State Boards of Accountancy (NASBA), and Craig N. Mills, Vice President of the American Institute of Certified Public Accountants (AICPA), chronicled the evolution of the idea and presented their implementation model.

Background

Currently, the CPA exam is administered only at authorized Prometric testing centers in the United States, District of Columbia, Guam, Puerto Rico, and the Virgin Islands. California candidates are allowed to sit for the CPA exam at any Prometric testing center.

California is one of only 11 states that does not have residency requirements to sit for the CPA exam. Further, California has one of the largest populations of international candidates. International candidates are required to travel to one of the above-listed locations in order to sit for the CPA exam. It should be noted that Prometric offers examination services in over 160 countries in 7,500 locations.

Approximately four years ago, at the request of several state boards of accountancy, NASBA began researching the possibility of allowing candidates in international locations to sit for the CPA exam in their home countries. At that time, a committee comprised of volunteers from NASBA, AICPA and Prometric was created to determine feasibility. The initial rationale for allowing international candidates to sit in their home country was merely a matter of convenience for the candidate. At that time, the risks associated with delivering the exam internationally outweighed the need for providing convenience.

In the past four years, the global economy has changed dramatically. Many organizations have a nexus to international locations which require CPAs to be

stationed on the ground worldwide to accommodate those business relationships. What was considered a matter of convenience four years ago has developed into a necessity and, therefore, changed the impetus for moving forward with the proposal for the international delivery of the CPA exam.

NASBA/AICPA's Plan

The committee of NASBA, AICPA and Prometric has designed an implementation plan that is designed to benefit domestic candidates and increase the influence of the U.S. CPA designation throughout the world.

Key elements of the plan are:

- Eligibility based on state requirements.
- Candidates still apply through state boards.
- Candidates sign "informed consent," including a commitment to obtain licensure and adhere to certain security policies, prior to being approved to sit for the exam.
- Outreach to employers concerning the advantages of licensure.
- Centralized database of all international licensees and their license status.
- Candidates commit to a code of ethics, a system of discipline, CPE and lifelong learning.
- Candidates agree that all information, including license status and disciplinary actions, can be provided to NASBA and AICPA.
- Scores "archived" or made inactive if license is not achieved or maintained.
- Uniform passing letter for all participating states.
- States authorize NASBA and AICPA to cancel scores of questionable validity.
- Candidate agrees to jurisdiction of state and/or binding arbitration of disputes.
- Security measures, including shorter testing windows, doubling the number of available test questions, and segregating questions used on domestic versus international exams.

Possible benefits of the international delivery of the CPA exam include:

- Potential reduction in cost of the domestic program.
- Improvement to AICPA and NASBA infrastructure.
- Increased public protection of the CPA designation.
- Growth of the influence of the U.S. CPA designation internationally.
- Licensure allows candidates to access the U.S. profession as a community and a resource.

It is expected that the state-based licensure process will drive increased licensure rates, resulting in reduced fees for domestic candidates. Further, it is in the interest of the U.S. CPA and the American public for the U.S. CPA designation to be one of the most influential in the world. The public will benefit from more candidates

becoming licensed and committing to lifelong learning and a system of discipline. Further, fewer candidates who pass the exam will hold themselves out as a CPA without a license.

Board Concerns

The Board questioned how having California licensed CPAs in foreign countries would benefit the consumers of California. NASBA responded that in some countries there is no designation or certificate to demonstrate competency in areas such as preparing financial reports. The only way for these individuals to demonstrate that they have mastered these skills is to pass the CPA exam. This benefits Californians by increasing the quality of financial statements and reports used by California business and industry, but prepared in foreign countries.

The Board expressed concerns about enforcement activities in foreign countries. NASBA responded that the likelihood of increased enforcement would be minimal. The majority of international licensees would not be signing audits, but rather working in business and industry. Therefore, the majority of enforcement would be compliance with licensure requirements.

NASBA clarified that licensing international candidates would not give them practice privileges in their home countries. However, it would allow U.S. companies that have engagements in foreign countries that are incidental to U.S. engagements to utilize U.S. CPAs on the ground in those countries. In these instances, the state where that CPA is licensed would have jurisdiction against that engagement.

Additional Topics to Consider

- **U.S. Social Security Number Requirement**

Pursuant to section 30(a) of the California Business and Professions Code, "Notwithstanding any other provision of law, any board, as defined in Section 22, and the State Bar and the Department of Real Estate shall at the time of issuance of the license require that the licensee provide its federal employer identification number, if the licensee is a partnership, or his or her social security number for all others."

This provision of law prohibits California from issuing a license to an individual who does not possess a U.S. Social Security Number. According to the Social Security Administration, to apply for a Social Security number to work in the United States, an applicant must show current immigration documents with work authorization. Therefore, this Board would be prohibited from issuing a license to an individual who is unable to provide a U.S. Social Security Number.

- **Verification of experience**

Pursuant to Section 11.5(c) of the Board of Accountancy Regulations, "The applicant who is applying with public accounting experience obtained outside the United States and its territories must present work papers substantiating

that such experience meets the requirements of Rule 11.5(a) and generally accepted auditing standards."

This provision of law requires that all applicants with foreign work experience appear at a Qualifications Committee Meeting held four times a year in California. It is assumed that all international candidates would be subject to this requirement.

- **Workload**

The Board's Examination Unit expects to experience an initial increase in workload developing procedures for the program. Once the program is in place, it is anticipated that additional workload, such as collecting fees, would be handled by NASBA. An ongoing increase in workload may be experienced if the number of international candidates increases based on their ability to sit for the exam in their home countries.

Conclusion

NASBA is currently presenting the implementation plan to all of the eligible state boards as boards are not required to participate in the program. However, NASBA is hopeful that all eligible states will participate at least temporarily to determine if the program meets their needs. Of course, the more states that participate, the more cost effective the program will be overall. States that choose to move forward with the program can anticipate implementation in limited countries in 2010.

Upon direction from the Board, staff will work with NASBA to gather any additional information necessary to evaluate and move forward with this proposal.

Should the Board not support the international delivery of the Uniform CPA Examination, staff can prepare a letter detailing why the Board has decided not to participate in the program.

I will be available at the meeting to answer any questions you may have.



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August 19, 2010

ATTACHMENT 3

Ken L. Bishop, Senior Vice President and Chief Operating Officer
National Association of State Boards of Accountancy
150 Fourth Ave., North, Ste. 700
Nashville, TN 37219-2417

RE: International Delivery of the Uniform CPA Examination

Dear Mr. Bishop:

The California Board of Accountancy (CBA) would like to thank you for your recent communication to CBA staff providing additional information regarding the status of the International Delivery of the Uniform CPA Examination (iExam).

The CBA will be discussing the iExam at the upcoming September 22-23, 2010 CBA meeting. During the meeting, we are seeking additional information on the following topics:

- What is the expected role of each state board of accountancy?
- Is each state board required to participate in this program?
- Is this merely an expansion of testing center locations?
- What specific security measures are in place to protect the examination?
- Will the CBA's contract with NASBA need amending as a result of iExam?
- Will iExam require a surcharge, similar to that imposed for Guam candidates?

We would appreciate having a representative from the National Association of State Boards of Accountancy attend the September 22-23, 2010 CBA meeting to personally address the members and provide an update to the above items, in addition to addressing any further questions the members may have.

CBA staff will be providing a copy of your presentation from July 2009 to the CBA members and will also share the specifics contained in your recent email communication.

Please provide a response regarding your availability to attend the September 22-23, 2010 CBA meeting as soon as possible, but no later than September 8, 2010, in order that we can meet notice requirements for the meeting.

If you have any questions, or would like to speak further about this request, please feel free to contact me at (916) 561-1711 or via e-mail at pbowers@cba.ca.gov.

Sincerely,

A handwritten signature in black ink that reads 'Patti Bowers'. The signature is fluid and cursive, with a long horizontal line extending to the right.

Patti Bowers
Executive Officer

c: Manuel Ramirez, CPA, CBA President
CBA Members



DEPARTMENT OF CONSUMER AFFAIRS
CALIFORNIA BOARD OF ACCOUNTANCY
2000 EVERGREEN STREET, SUITE 250
SACRAMENTO, CA 95815-3832
TELEPHONE: (916) 263-3680
FACSIMILE: (916) 263-3675
WEB ADDRESS: <http://www.cba.ca.gov>



Date

ATTACHMENT 4

Name
Address
City, State Zip

SAMPLE

Dear Name:

Congratulations! The records of the California Board of Accountancy indicate that you have successfully passed all sections of the Uniform Certified Public Accountant Examination. The grades awarded on the Uniform Certified Public Accountant Examination(s) were those reported by the American Institute of Certified Public Accountants and adopted, unchanged, by the California Board of Accountancy.

The passing grade for each section of the Uniform Certified Public Accountant Examination in California is 75.

It is important for you to know that you may not engage in the practice of public accountancy in California, nor hold yourself out as a certified public accountant unless you are the holder of a valid permit to practice public accountancy issued by the California Board of Accountancy.

Sincerely,

A handwritten signature in cursive script that reads 'Deanne Pearce'. The signature is fluid and elegant, with a large initial 'D'.

Deanne Pearce
Licensing Division Chief



International Testing FAQ

Q. What is international testing?

A. The AICPA and the National Association of State Boards of Accountancy (NASBA), in consultation with state boards of accountancy, the Board of Examiners, and other major stakeholders, spent two years studying an international examination delivery program. The result is the international administration of the Uniform CPA Examination (CPA Exam), which utilizes the state board licensure process and the current examination structure. The AICPA, NASBA and Prometric are providing the same services as they do for the domestic program, so that the Exam and the licensure process will be the same for international examinees as it is for examinees within US jurisdictions.

Q. When will international testing begin?

A. Beginning in the second half of 2011, candidates who qualify will be allowed to schedule their CPA Exam at select international locations. It will be the same examination offered in the U.S. and it will be given in English only, regardless of location.

In addition, the exam will be offered at the international locations for only one month within each testing window. Information about the testing dates is expected to be available in the fourth quarter of 2010.

Q. What are the international locations?

A. Initially, the exam will be offered at selected Prometric testing centers in Bahrain, Kuwait, Japan, Lebanon, and the United Arab Emirates (UAE). Additional information including specific locations and schedules will be posted to the Exams website at www.aicpa.org/cpa-exam as information becomes available.

Q. What must candidates do to be able to schedule a test at an international location?

A. The CPA Examination application process is basically the same for U.S. and international candidates alike. Prospective candidates must select the U.S. jurisdiction to which they will apply, contact the Board of Accountancy (or its agent) in that jurisdiction to obtain application materials, submit completed applications and required fees, as instructed, and once deemed qualified, schedule the examination. Any special requirements that international applicants must meet (such as arranging for an evaluation of their educational credentials by an agency approved by the board) are explained in accountancy board application instructions.

Candidates should visit the NASBA website at www.nasba.org for information about eligibility requirements and the exam application process for each jurisdiction.

Q. How can a qualified candidate request an international testing location?

A. In order to qualify to take the CPA Examination outside the U.S., candidates will have to establish their eligibility through a state board participating in the International CPA Examination Administration program. In addition, candidates will be required to:

- make a commitment to seek CPA licensure upon passing the CPA Examination, and thereafter maintain their status as licensees
- meet citizenship/residency requirements
- provide demographic information
- pay additional fees

A list of participating state boards will be available in the second half of 2010. Updates will be posted to the Exams website at www.aicpa.org/cpa-exam as information becomes available.

Q. Where can a candidate of a non-participating jurisdiction take the test?

A. Candidates of a non-participating jurisdiction may take the test only at approved testing centers in the U.S., Guam, Puerto Rico, or the Virgin Islands.

Q. Where can candidates find additional information and when will it be available?

A. Information and updates about international testing will be posted to the Exams website at www.aicpa.org/cpa-exam in the autumn of 2010.

Candidates should visit the NASBA website at any time at www.nasba.org for the most current information about examination eligibility and the application process.