

# CALIFORNIA BOARD OF ACCOUNTANCY

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*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.*

*— Business and Professions Code § 5000.1*

The California Board of Accountancy (CBA) licenses, regulates, and disciplines certified public accountants (CPAs) and public accounting firms and corporations. The Board also regulates existing members of an additional classification of licensees called public accountants (PAs). The 1945 Accountancy Act granted the PA license only during a short period after World War II, with the last PA license issued in 1968.

CBA currently regulates over 97,000 individuals, corporations, and partnerships. It establishes and maintains standards of qualification and conduct within the accounting profession, primarily through its power to license. CBA's enabling act, the Accountancy Act, is found at Business and Professions Code section 5000 *et seq.*; its regulations appear in Division 1, Title 16 of the California Code of Regulations (CCR).

CBA is a consumer protection agency located within the Department of Consumer Affairs (DCA). The Board consists of 15 members: seven CBA licensees and eight public members. Each Board member serves a four-year term.

The Board's staff administers and processes the nationally standardized Uniform CPA Examination, currently a four-part computerized exam encompassing the subjects of auditing and attestation; business law and professional responsibilities; regulation

(including taxation, managerial accounting, and accounting for governmental and not-for-profit organizations); and financial accounting and reporting (business enterprises). In order to be licensed, an applicant must complete 150 hours of college-level education, including substantial units in accounting, business-related subjects and ethics; complete twelve months of general accounting experience; and successfully pass all parts of the Uniform CPA Exam.

The operations of the Board are conducted through various advisory committees and, for specific projects, task forces which sunset at project completion. The Board's major advisory committees, which are legislatively established, include the following:

- The Qualifications Committee (QC), authorized in Business and Professions Code section 5023, consists of non-Board member CPAs who review applicants' experience to determine whether the applicants experience complies with the requirements in Business and Professions Code section 5093 and section 12, Title 16 of the CCR.

- The Enforcement Advisory Committee (EAC), authorized in Business and Professions Code section 5020, consists of up to 13 non-Board member CPAs who provide technical assistance to the Board's enforcement program by conducting investigations or hearings against licensees, and making recommendations to the enforcement program and the Executive Officer.

- The Peer Review Oversight Committee (PROC), created in Business and Professions Code section 5076.1, consists of up to seven CPAs appointed by the Board and oversees the Board's peer review requirement that is mandatory for licensees who perform attest engagements. The PROC is responsible for ensuring that peer review providers

administer peer reviews in accordance with the standards set forth in section 48, Title 16 of the CCR.

- The Mobility Stakeholder Group (MSG), created in Business and Professions Code section 5096.21, is charged with considering whether the current “no notice, no fee” practice privilege (under which CPAs not licensed in California may offer public accounting services here without providing notice and/or paying a fee to CBA) is consistent with the Board’s duty to protect the public, and whether the provisions of the practice privilege law satisfy the objectives of stakeholders of the accounting profession, including consumers.

On February 12, 2019 the Senate Rules Committee [reappointed](#) Xochitl León to the CBA. Ms. León was first appointed to the Board by the Senate Rules Committee in 2015. There is one public board member vacancy.

## **MAJOR PROJECTS**

### **Board Undergoes Sunset Review**

On November 29, 2018, CBA submitted its final [Sunset Review Report](#) to the legislature. The Sunset Report updates the legislature on past sunset issues, and outlines current issues facing the Board. On February 26, 2019, Board President Famalett, Executive Officer Bowers, and Vice President Silverman represented CBA at the [Joint Oversight Committee Sunset Review Hearing](#). During the hearing, Board representatives addressed questions from legislative members and outlined four key issues to be addressed by legislation, see below. On March 26, 2019, CBA submitted [written responses](#) to eight issues raised in conjunction with the Sunset Review hearing.

## **CBA's Sunset Review Report**

CBA's Sunset Review Report covered developments since the Board's previous Sunset Report in 2015. Specifically, CBA reported to the legislature that it had improved its enforcement proceedings over the four-year period, closing more cases and reducing the average age of cases. The Board reported that it had been granted a one-time, mid-year budget augmentation by the Department of Finance to pay \$154,000 for unanticipated Attorney General services related to its enforcement efforts. Of note, CBA is asking the legislature to approve a fee increase as part of its Sunset Review, in part to continue to improve its enforcement division and to reduce average case time in line with its goals.

In its Report, the Board included a section detailing the history of fees charged to members and applicants. CBA complies with Business and Professions Code section 128.5(a), which limits its fund balance to no more than two years of expenditures, or 24 months in reserve. However, the Report laid out how the current initial application and renewal fees of \$120 has led to a negative cash flow in recent years. The Report noted that CBA had approved an increase in the biennial renewal fee in January 2018 from \$120 to \$250. (Additionally, the Board's proposed Sunset legislation includes an increase to the maximum statutory fee, see below.) CBA cited the enforcement budget, a need to hire additional staff, and the desire to get the reserve level to 24 months of expenses as reasons in supporting its current request to increase its licensing fees.

In its report, CBA addressed five categories that the legislature raised as areas of concern at the 2015 Sunset Review hearing, including the need for a Peer Review Program, overhaul of its Enforcement Program, the need for permanent practice restrictions of licensees, the need for a 24-month fiscal reserve, and low consumer satisfaction levels.

CBA has continued the Peer Review Program, which the legislature had recommended at the prior Sunset Review. The Report acknowledged the importance of Peer Review in light of changes to Generally Accepted Accounting Principles (GAAP) and auditing standards. In the event a firm receives a sub-par review, CBA's Enforcement Program conducts a more in-depth review of the firm. According to the Board, its goal of consumer protection is furthered through this peer review process.

Second, the Board reported that it had overhauled its Enforcement Program since the 2015 Sunset Review, noting its performance measure for formal discipline dropping from 913 to 865 days on average over the four-year period. The Report outlines activities of the Board to continue the trend of reducing the amount of time the average case is open to its target of 540 days.

Third, in response to the legislature's concerns that CBA should be permitted to include permanent practice restrictions as part of a disciplinary order rather than seek a complete license revocation of the licensee, the Board recommended in its Report that Business and Professions Code section 5100.5 be added to the Accountancy Practice Act to allow CBA and administrative law judges to include permanent practice restrictions as part of a disciplinary order, while still permitting the licensee to retain a license to practice in such areas where competency is not compromised. This law, effective January 1, 2016, has allowed CBA to perform its consumer protection mandate while allowing licensees to continue to earn an income by practicing in areas where their competency is not compromised.

Fourth, the Board addressed the legislature's recommendation that the reserve fund rise to a 24-month expenditure level. The Board reported that it had attempted to increase

the biennial initial/renewal fees from \$120 to \$200 in March 2015, a change which was rejected by the Department of Finance. The Board included in the Report its current request to increase the initial and renewal fees from \$120 to \$250. [Note: The Board is also proposing legislation to increase the statutory maximum fees to \$500 to account for future needs and allow the Board to raise rates again pursuant to regulation, see below.]

Fifth, the Board responded to the legislature's concern that its consumer satisfaction levels were below 50% in one survey. The Board outlined in its Report the efforts taken to improve consumer satisfaction and the survey tool it uses to measure those outcomes.

The Board included four proposals to the legislature in its Report for changes to statutes. [see LEGISLATION/ [AB 1521 \(Business and Professions Committee\)](#)] is the resulting Sunset bill and includes the following:

- 1) Amend Business and Professions Code section 5134 to increase the California Board of Accountancy's maximum license renewal and initial permit fee amounts.
- 2) Amend Business and Professions Code section 5008 to allow the California Board of Accountancy to distribute the update publication and reports of other matters of interest to the public and practitioners through electronic mail and the California Board of Accountancy's website.
- 3) Adopt Business and Professions Code section 5001.2 related to the denial of an application for certified public accountant licensure.
- 4) Amend Business and Professions Code sections 5070, 5070.5, 5073, 5096, 5096.12, 5151, and 5152.1 to require California Board of Accountancy applicants and licensees to provide electronic mail addresses.

CBA members voted to approve the Sunset Review Report and the proposed legislative changes at the November 15, 2018 [meeting](#).

## **Sunset Review Hearing**

On February 26, 2019, the legislature held a [Joint Sunset Committee Review Hearing](#) for CBA in order to determine whether to amend the CBA’s enabling statute to allow CBA to continue operating for four more years. Board President Famalett, Executive Officer Bowers, and Vice President Silverman testified at the hearing and covered four broad issue areas.

First, the Board requested that the legislature raise the maximum initial and renewal licensing fees from the current level of \$250 to \$500, giving the Board the ability to increase funds to bring enforcement actions against large CPA firms, and fulfilling the identified need to raise its surplus to the 24-month expenditure level recommended by the legislature. The Board projected running a deficit in the near future, and projected being at approximately a 15-month reserve level at the end of fiscal year 2019–2020.

Second, the Board also raised its proposal to amend the newly passed [AB 2138 \(Chiu\) \(Chapter 995, Statutes of 2018\)](#) to allow CBA discretion to deny or discipline a licensee based on administrative action taken by U.S. or foreign administrations, and for other financial crimes. Many of a CPA’s duties do not include a fiduciary element, and the law as it stands requires a prior financial crime to be directly and adversely related to the fiduciary duties of a CPA in order for the Board to consider it in making a licensing or disciplinary decision. Thus, CBA wants to remove the “fiduciary” requirement of the law, based on the stated fear that the requirement would leave many financial crimes or actions out of the purview of the bill.

Next, the Board discussed CBA's business modernization project. Although the Board's intended roll-out of the BreZE system was halted due to issues with the technology, the Board continues to collaborate with DCA to modernize its system, which is intended to increase automated services, payment options, and notifications. The Board raised this issue partially to justify its request for more staff and higher fees.

Finally, the Board discussed the need for additional full-time staff. The Board noted that the expenditures on training, recruiting, and educating part-time staff created inefficiencies and cost the Board more money than would be spent if full-time staff were hired. The Board noted that its licensee population has increased 20% since 2012, but the number of full-time staff was the same in 2019 as it was in 2012.

## **Board Responds to Legislature's Sunset Review Questions**

On March 26, 2019, the Board submitted its [written responses](#) to eight issues the legislature identified in its [Background Paper](#), issued in conjunction with the Sunset Review Hearing.

Of note, the Board addressed the legislature's concerns originally raised at the 2015 Sunset Review Hearing regarding CBA's ability to fund and hire adequate staff to undertake an investigation and prosecution case against a large accountancy firm. The legislature also encouraged the CBA to maintain a 24-month expenditure reserve level. In response, the Board requested that the legislature increase the statutory maximum for initial and renewal license fees from \$250 to \$500, noting that the statutory maximum of \$250 had been in place for 30 years. Also, the Board pointed out that any increase in fees through rulemaking would be limited by Business and Professions Code section 128.5(a), which



requires the CBA to lower its fees if, at the end of any fiscal year, it has unencumbered funds in an amount equal to, or more than, its operating budget for the next two fiscal years.

Second, the Board's written responses reiterated oral testimony at the Sunset Review Hearing regarding the impending change in the law from [AB 2138 \(Chiu\) \(Chapter 995, Statutes of 2018\)](#) [see *supra* Sunset Review Hearing section].

Third, the legislature in its [Background Paper](#) raised lack of automation and online services as a contributing factor to processing timeframes and consumer service satisfaction. CBA responded that it had been in line for the third BreEZe release, however, was now pursuing its own Business Modernization Project beginning in July 2019. The Board explained that it had been collaborating with DCA in this effort.

The fourth issue addressed by the Board was the fact that the biannual newsletter distributed by the Board was still required to be manually distributed to members. The Board requested that the legislature amend Business and Professions Code section 5008, to allow members to receive electronic versions of the newsletter.

The fifth related issue the Board addressed was its desire to require its licensees to provide a valid email address to streamline communications. The Board explained that it currently may request an email address, but that some members choose to not provide this information.

The sixth issue addressed by the Board was its need to hire more full-time staff. The Board noted that it had the same number of full-time employees as it had in 2012. The Board also provided numbers related to temporary staff, and the high turnover in these positions. The Board expressed its belief that hiring more full-time staff would be more efficient.

The seventh issue addressed by the Board was whether CBA should continue to be the regulator of the CPA profession. CBA explained its role briefly and pointed out that it currently had more than 108,000 licensees under its regulation and supervision. The Board requested an extension of its sunset date.

The eighth issue identified by the legislature was whether the *Dynamex Operations West Inc. v. Superior Court* decision relating to the definition of employees versus independent contractors would affect licensees working as independent contractors. The Board noted that to date, CBA had not had any discussions of the impact of this decision on its licensees.

[AB 1521 \(Business and Professions Committee\)](#) is the Board’s “sunset bill,” which currently proposes to extend CBA’s sunset date to January 2024. [See LEGISLATION]

## **CBA Releases 2017–2018 Annual Report**

At its January 17, 2019 [meeting](#), CBA announced that its 2017–2018 [Annual Report](#) was available on the DCA website. This report covers activities in fiscal year November 1, 2017–October 31, 2018. The report noted several accomplishments and improvements made by the Board and plans for future improvements to better serve the licensees as well as the public.

The message from Executive Officer Patti Bowers described the Board’s planned Business Modernization Project, which will seek to increase the speed and flexibility of the application and enforcement processes. The goal of the Business Modernization Project is to create a new information technology system for CBA users. The Executive Officer also noted that the Board was working on a new mobility program, which allows out-of-state CPAs to work in California without giving notice or paying a fee. [SB 795 \(Galgiani\)](#)

[\(Chapter 447, Statutes of 2018\)](#), signed into law by Governor Brown on September 17, 2018, authorizes this practice. [[24:1 CRLR 263–264](#)]

The report identified two improvements in services to licensees: (1) as of October 31, 2018, the Board is processing all applications for licensure within 30 days; and (2) the Board worked with the DCA to develop a system which allows renewal fees to be paid online, to be launched in November 2018.

The report outlined CBA’s budget and reserve level, showing a downward trend in the reserve level. For this reason, the Board announced its plan to seek an increase in the initial licensing and renewal fees in order to operate with a more balanced budget.

Related to its enforcement program, the Board reported closing 2,356 investigations—its highest volume over the prior three fiscal years. Over 65 percent of investigations were closed within the first six months and 81 percent were closed within one year. The enforcement program reduced the inventory of complaints pending over 18 months from 190 to 71 cases in the course of the fiscal year. Finally, through collaborative efforts with the Attorney General’s office, the enforcement program reduced the number of pending cases at the Attorney General’s Office by 25 percent (from 92 cases in fiscal year 2016–17 to 69 case in fiscal year 2017–18). The Board stated in the report that it plans to continue improving the timeframes for closing cases, and to work with the Peer Review Oversight Committee on finalizing a framework for evaluating the peer review population.

# **RULEMAKING**

## **Board Votes to Amend Continuous CPA Exam Testing Regulations**

At its November 15, 2018 [meeting](#), the Board voted to approve draft language to amend section 7.1, Title 16 of the CCR, to allow for continuous CPA exam testing. The Board's Committee on Professional Conduct recommended the changes, and reported that its national counterparts, including the National Association of State Boards of Accountancy, announced their intent to transition the CPA Exam to a continuous testing format and eliminate the present testing windows. The Board voted to approve the potential change and directed staff to submit the text to the Director of DCA and the Business, Consumer Services, and Housing Agency for review. If no adverse comments are received, the Executive Officer is authorized to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for hearing. At this writing, the proposed amendment has not yet been formally noticed.

# **LEGISLATION**

[AB 1521 \(Business and Professions Committee\)](#), as amended April 8, 2019, is the Board's Sunset bill and would amend sections 5000, 5008, 5015.6, 5070, 5070.1, 5070.2, 5070.5, 5070.6, 5073, 5096, 5096.12, 5100.1, 5151, and 5152.1 of the Business and Professions Code. The bill would, among other things, extend the operation of CBA and its ability to designate an executive officer to January 1, 2024; authorize CBA to distribute its newsletter electronically; and require all CBA applicants and licensees who possess a valid email address to provide it to the Board.

Pursuant to the Board’s request in its Sunset Report, the bill also would amend section 480 of the Business and Professions Code. [AB 2138 \(Chiu\) \(Chapter 995, Statutes of 2018\)](#) was a bill passed in the previous legislative session, which limited DCA boards’ abilities to deny licenses or discipline licensees because of prior criminal convictions. Specifically, AB 1521 would allow CBA to consider, in those proceedings, any financial crime currently classified as a felony which is directly and adversely related to the duties of a CPA. *[A. B&P]*

[AB 613 \(Low\)](#), as introduced February 14, 2019, would add Section 101.1 to the Business and Professions Code to permit any board listed in section 101 of the Business and Professions Code, including CBA, to increase its licensing fees every four years by no more than the amount of the California Consumer Price Index. The Index would be determined pursuant to section 2212 of the Revenue and Taxation Code.

According to the author, “[c]urrently, a board seeking to increase its fees must either seek legislation or go through the full Administrative Procedures Act...AB 613 would allow for a regulatory board to adjust its fees administratively, without going through legislative or regulatory procedures, in proportion to CPI increases.” AB 613 includes language that a board seeking an increase would still have to provide calculations and its proposed fees to the director, who would approve it unless a few exceptions apply. The exceptions include a board already having funds in reserve which would make an increase unjustified.

At the March 21, 2019 [meeting](#), the Board voted to support the bill. In a [letter](#) of support sent to the legislature dated March 27, 2019, the Board explained its position that

“AB 613 would provide the CBA added flexibility and authority to adjust its fees in line with current economic conditions.” *[A. Appr]*

[AB 544 \(Brough\)](#), as amended March 21, 2019, would amend sections 5070.6, 5600.2, 5680.1 of the Business and Professions Code to limit the maximum fee for the renewal of an inactive license to no more than 50% of the renewal fee for an active license. The bill would also prohibit CBA from requiring payment of unpaid renewal fees as a condition of reinstating an expired license. According to the author, the bill is necessary because often the fee paid for the renewal of an inactive license is the same as the full fee paid for renewal by active license holders. Also, for certain licenses that have expired, all accrued fees must be paid as a condition of reinstatement of the license, which can be a barrier to re-entry to the profession. *[A. B&P]*

[SB 53 \(Wilk\)](#), as amended March 5, 2019, would amend section 11121 of the Government Code to expand the Bagley-Keene Open Meeting Act. Specifically, this bill would require even two-member advisory committees to follow the requirements of Bagley-Keene. The author states that “the ambiguity of Bagley-Keene has for years provided a loophole for state agencies that create two-member committees and claim they are exempt from open meeting requirements so long as they do not take action on anything.” A similar bill ([AB 2058 \(Wilk\)](#)) was vetoed in 2014 by Governor Brown. The current version of the bill includes an urgency provision which would cause it to go into effect immediately if passed.

The Board voted to oppose this bill at the January 17, 2019 [meeting](#). In a [letter](#) to the author on March 1, 2019, CBA argued that the bill would prevent the Board from asking

a committee to review a document, draft a letter, provide analysis and other functions they normally provide without noticing the event. [*S. Appr*]

## **RECENT MEETINGS**

At its November 15, 2018 [meeting](#), the Board voted on new and returning members of EAC, QC, and PROC. The Board appointed Douglas Aguilera, CPA as Vice-Chairperson to the EAC; Joseph R. Rosenbaum, CPA as Chairperson to the EAC; Angela Honzik, CPA as Vice-Chairperson to the QC; Kimberley Sugiyama, CPA as Chairperson to the QC; Pradeep Budhiraja, CPA to the QC; Renee Graves, CPA as Vice-Chairperson to the PROC; and Jeffrey De Lyser, CPA as Chairperson to the PROC.

The Board also voted on the 2019 CBA Executive Board at the November 15, 2018 meeting. The Board appointed George Famalett, CPA as President; Mark J. Silverman, Esq. as Vice-President; and Nancy J. Corrigan, CPA as Secretary-Treasurer.

At the January 17, 2019 [meeting](#), the Board appointed Iryna Oreshkova to the PROC.