



**Professional Fiduciaries Bureau**  
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## **Professional Fiduciaries Bureau Advisory Committee Meeting**

**Department of Consumer Affairs**  
2005 Evergreen Street, 1<sup>st</sup> Floor, Lake Tahoe Room  
Sacramento, CA 95815  
Thursday, April 21, 2011  
9:30 a.m. – 12:30 p.m.  
**\*Webcast\***

### **AGENDA**

1. Call to Order – Chair
2. Roll Call – Chief
3. Introductions
4. Swearing in – New Advisory Member
5. Approval of Minutes from the September 27, 2010 Meeting
6. Bureau Updates – Chief
  - i. Status of the Office
  - ii. Status of Sunset Review
  - iii. Status of Regulations
  - iv. Advisory Committee Training
  - v. Outreach
  - vi. Travel Claims / Per Diem
  - vii. Budget Report
7. DCA Updates – DCA Representative
8. Legislative Update
  - AB997
  - AB1288
  - AB1324
  - AB40
  - AB354
  - SB542
  - SB103

9. Expert Consultant - Contract/Fee

10. Formation of Sub-Committees:

- Education / Outreach
- Enforcement
- Licensing
- Legislative/Regulatory Affairs

- a) Roles and responsibilities
- b) Meeting Format
- c) Reports

11. Future Meeting Dates

12. Public Comment on Items Not on the Agenda

13. Adjournment

Notice: The meeting is accessible to the physically disabled. A person who needs disability-related accommodations or modifications in order to participate in the meeting shall make a request no later than five working days before the meeting to the Bureau by contacting Gil DeLuna at (916) 574-7754 or sending a written request to that person at the Professional Fiduciaries Bureau, 1625 North Market Blvd., Ste. S-202, Sacramento, California 95834. Requests for further information should be directed to Mr. DeLuna at the same address and telephone number.

**Professional Fiduciaries Bureau Workshop**  
**April 21, 2011**  
**1:30 pm – 3:30 pm**

The following workshop is scheduled to discuss and receive input from the fiduciary industry on the following regulatory proposals:

- 1) Advertising
- 2) Record keeping and retention of records

Notice: The meeting is accessible to the physically disabled. A person who needs disability-related accommodations or modifications in order to participate in the meeting shall make a request no later than five working days before the meeting to the Bureau by contacting Gil DeLuna at (916) 574-7754 or sending a written request to that person at the Professional Fiduciaries Bureau, 1625 North Market Blvd., Ste. S-202, Sacramento, California 95834. Requests for further information should be directed to Mr. DeLuna at the same address and telephone number.

# **Agenda Item**

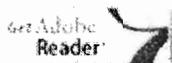
**#2**

**Department of Consumer Affairs**  
**Professional Fiduciaries Bureau**

### Advisory Committee Members

Member	Appointment Type	Appointed By	Appointment Date	Appointment Expires
Sharon O'Neill, Vice Chair	Probate Court Investigator	Governor	11/2008	1/1/2011
Lisa Berg	CLPF	Governor	10/2008	1/1/2011
Daniel Stubbs, Chair	CLPF	Governor	11/2008	1/1/2011
Donna Estacio	Public Member	Senate Rules Committee	03/2011	1/1/2015
Clark Parker	Public Member	Speaker of the Assembly	10/2009	1/1/2011
Vacant	CLPF	Governor		
Vacant	Nonprofit organization advocating on behalf of the elderly	Governor		

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# **Agenda Item**

**#4**



## MEMORANDUM

<b>DATE</b>	April 21, 2011
<b>TO</b>	Advisory Committee Members Professional Fiduciaries Bureau
<b>FROM</b>	Gil DeLuna, Acting Chief
<b>SUBJECT</b>	Agenda Item #4 Administer Oath of Office to new Advisory Committee Member – Donna Estacio

Oath of Office will be administered by Department of Consumer Affairs Director,  
Brian Stiger

# **Agenda Item**

**#5**



**Professional Fiduciaries Bureau  
Advisory Committee Meeting  
September 27, 2010  
Department of Consumer Affairs  
Hearing Room, 1<sup>st</sup> Floor  
1625 N. Market Blvd.  
Sacramento, CA 95834**

**\*DRAFT\***

**Committee Members Present**

Daniel Stubbs, CLPF- Chair  
Sharon O'Neill, Supervising Probate Court Investigator- Vice Chair  
Lisa Berg, CLPF  
Clark Parker, Public Member

**Committee Members Absent**

Cynthia Morrow, Public Member

**Staff Present**

Gil DeLuna, Acting Bureau Chief  
Angela Bigelow, Program Analyst  
Gary Duke, Department of Consumer Affairs Legal Counsel

**Guests Present**

Bev Brito, PFAC Regional President  
Joe Calderaro, CSEA  
Sandra Carey, PFAC Advocate

James C. Counts II, CPA  
Andrea Logue, Legal Services  
Stella Shvil, PFAC President

I. Call to Order – Chair

The meeting was called to order by Chair Daniel Stubbs, at 10:05am.

II. Roll Call – Chief

There were 4 members present and 1 absent.

III. Introductions

Those in attendance introduced themselves.

IV. Approval of minutes from the August 23, 2010 Meeting

Ms. O'Neill motioned to approve the minutes as drafted. Ms. Berg seconded the motion. No one opposed. The motion was carried.

V. Approval of the 2010 Strategic Plan

Mr. DeLuna explained the plan was developed during the last two meetings and it is in line with the Department's plan. The public was asked to comment on the plan, and then the committee members will vote.

Mr. Parker stated it would be helpful to the members to hear what the public thinks. Ms. Shivil is pleased with the effort taken by the Bureau to create the plan and that PFAC is willing to help with the plan. Mr. Parker stated it is important to have staff involved in setting the goals in this type of plan to ensure professionalism. Mr. Stubbs believes the plan creates a good foundation to start with.

Mr. Parker motioned to adopt the plan as written. Ms. O'Neill seconded the motion. No one opposed. The motion was carried.

VI. Bureau Updates – Chief

- i. Status of the Office – There is a hiring freeze but the Bureau was able to hire a retired annuitant as a complaint investigator. He worked at the Athletic Commission; he was also the Executive Officer of Medical Board and Chief of Enforcement. He was also a California Highway Patrol Officer previously. His name is Dave Thornton. The Bureau is attempting to contract with a subject matter expert to assist with the investigation of complaints when it comes to the practices of fiduciaries, and to assist with unlicensed activity. We will send out cease and desist letters and once the Cite and Fine Regulations are in place, issue cites and fines where applicable.
- ii. Status of Sunset Review – Date is set tentatively for November 9<sup>th</sup> or 10<sup>th</sup>. All of the Department's Boards and Bureaus that are up for review will testify on one of these dates. Public comment will be taken at the hearing. This will be posted on the Web site once it is finalized. Sunset Review document at this time has gone across the Governor's desk and has been sent to the Department of Finance. Questions from the Department of Finance were minimal but are not yet public record.
- iii. Status of Regulations – Initial Statement of Reasons was not clear enough and is being redone by Gil and Gary. Advertising regulations will be included with the new submission to require the fiduciary number on all advertising sent out to the public. Once they are drafted a public hearing will be held to start the rulemaking process. The Bureau is hoping this will be done prior to the Sunset Review hearing. Once regulations are passed, there should be more of the budget going to enforcement. Cite and Fine regulation will give the Bureau authority to issue citations on certain infractions like unlicensed activity or a fiduciary not providing paperwork as requested. Mr. Duke stated citations are not disciplinary action; it is meant to prod the licensee to do what they are required to do, similar to a speeding ticket. Mr. Counts asks if Cite and Fine will be posted on the Web site. Mr. DeLuna stated accusations are different from citations and are posted on the Web site. Mr. DeLuna does not see a reason we would post the citations on the Web site, unless the committee members feel differently, as other Boards and Bureaus post citations for transparency in government. Mr. Counts asked if the loans have been paid off, and if the Bureau will need additional loans in the future. Mr. DeLuna stated the budget has not been passed. We still have the second loan we hope to pay off this Fiscal Year, and there will be more money for enforcement. Once regulations are approved we will use additional funds for enforcement. Mr.

Counts asked about the current count of licensees. Mr. DeLuna stated the current number is 452. Ms. Bigelow stated it is 461.

- iv. Status of Center for Guardianship Certification (CGC) Contract – Contract expired and Bureau is in the process of setting up a 3-year contract to continue services with CGC for our new applicant examination administration.

#### VII. DCA Updates – DCA Representative

Mr. DeLuna states there is a hiring freeze unless it is mission critical or can cause consumer harm. The Breeze project is on target for a completion date. This project will allow licensees to apply on-line, pay on-line, and we will be able to develop enforcement statistics. First Boards and Bureaus are set to come up on this system November, 2012. All Boards and Bureaus will be complete by November, 2014. If anyone is interested, Mr. DeLuna stated he could have the Breeze project manager do a presentation at the next committee meeting. We will be posting the materials on-line prior to the meeting hopefully 2 weeks prior to the meeting. We will be Web-casting all meetings as we have the last two meetings. Ms. Carey expressed that we are very lucky to have Mr. DeLuna working for the Bureau, and Mr. Stubbs agreed. Mr. DeLuna expressed that he is happy to have Ms. Bigelow as his go-to person, and others agreed. Mr. Stubbs acknowledged Mr. Duke also.

#### VIII. Committee Structure:

- i. Types of Committees – Committees will be put together by the next meeting. Committees represent heart and soul in terms of finance, enforcement, continuing education, and the formation of clear regulations. We have a legal opinion that the committees can reach out to the public to join the committees. Mr. DeLuna states we can form the types of committees today:
  - Education and outreach – Development of consumer outreach projects (newsletter, Web site, e-government issues, outside organization presentations, and representing the Bureau at outside presentations). Also, social media is big right now: twittering, blogging. Mr. DeLuna would also like the committee to help find a candidate to fill the non-profit committee member vacancy.
  - Enforcement – Develop and review policies, guidelines, and make recommendations to enforcement actions that need to be addressed.
  - Legislative and Regulatory Affairs – Identify, track, and make recommendations to the Bureau about legislation that may impact the Bureau's mandate and/or operation in consultation with legal counsel, Board staff, and other interested parties. Propose language for new legislation and regulations. Also, identify regulatory and statutory needs.Mr. DeLuna will type this up and send out on listserv to get volunteers if this is acceptable with the committee. Mr. Stubbs asked for any objections and did not receive any, so Mr. DeLuna will move forward.
- ii. Roles – Not established.

#### IX. Public Comment on Items Not on the Agenda

Ms. Shivil brought up an issue from the minutes of the last meeting about Pooled Trust. She had a conversation with an attorney who stated it is important to have a licensed fiduciary for pooled trusts. She stated there is still the issue of the entire Board being up to speed for the requirements, and the attorney would like a letter from Gil about the requirements of the Board. Ms. Shivil expressed that this is also an issue for trusts within nonprofit organizations. Mr. Duke asked which trust Ms. Shivil was referring to and she stated it was the Special Needs Trust Foundation in San Diego. There are 65 beneficiaries at this point and there is not a

licensed fiduciary on the committee or Board. Mr. Duke asked Ms. Shivil to meet after the meeting to obtain contact information for this attorney.

Mr. Counts thinks if a licensed fiduciary will be required to serve on these trusts that guidelines need to be drafted as to the requirements and responsibilities of this person. It should be determined if it is an advisory position or if it will be a technical position.

Mr. Clark asked if statute covers this area of fiduciary relationship and is it being contemplated in the regulations now before the OAL.

Mr. Duke stated the proposed regulations only cover Cite and Fine at this time. Also, the definition of Professional Fiduciary is extremely broad and would probably encompass this group of fiduciaries.

Mr. DeLuna suggested we set up the next meeting and any items that need to be addressed at the next meeting.

There was one request which was not caught on the tape.

Ms. Shivil asked the advisory committee members' expiration date.

Mr. DeLuna stated they all expire January, 2011; however, there is a one year grace period.

The Governor is not making appointments at this time but anyone interested should still put in an application on the Governor's Web site.

Ms. Shivil asked whether people should wait to volunteer for the subcommittees until it is on the Web site.

Mr. DeLuna said it is ok to email the Bureau directly, but that the information should be posted on the Bureau's Web site in the next week.

Mr. Counts would like the budget reviewed at the next meeting.

Ms. Shivil would like a paper copy of the budget.

Mr. DeLuna said he will have budgets personnel make a presentation.

#### X. Adjournment

The meeting was adjourned by Chair, Daniel Stubbs, at 10:50am.

# **Agenda Item**

## **#6**

**BACKGROUND PAPER FOR THE  
PROFESSIONAL FIDUCIARIES BUREAU**  
(Oversight Hearing, March 21, 2011, Senate Committee on  
Business, Professions and Economic Development)  
**IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS  
FOR THE PROFESSIONAL FIDUCIARIES BUREAU**

**BRIEF OVERVIEW OF THE  
PROFESSIONAL FIDUCIARIES BUREAU**

The Professional Fiduciaries Bureau (PFB) in the Department of Consumer Affairs (DCA) is responsible for licensing and regulating non-family member professional fiduciaries, including conservators, guardians, trustees, and agents under durable power of attorney as defined by the Professional Fiduciaries Act (Act). The Act was established in 2006 by SB 1550 (Figueroa, Chapter 491, Statutes of 2006). The PFB currently licenses 516 professional fiduciaries.

Professional fiduciaries provide critical services to seniors, disabled persons, and children. They manage matters for clients including, but not limited to, daily care, housing and medical needs, and also offer financial management services ranging from basic bill paying to estate and investment management. Requirements for licensure include completing thirty (30) hours of approved education courses, passing an examination and earning fifteen (15) hours of continuing education credit each year for renewal. Licensees must comply with reporting requirements and must abide by the Professional Fiduciaries Code of Ethics so that client matters are handled responsibly and without conflict.

The Bureau began operation on July 1, 2007, and is charged with carrying out the following functions:

- Educating consumers about their rights and quality of service.
- Promoting legal and ethical standards of professional conduct.
- Investigating the background of applicants.
- Administering licensing examinations.
- Licensing Professional Fiduciaries.
- Investigating complaints from consumers.
- Taking disciplinary action and issuing citations against licensees whenever appropriate.

The current mission statement, as stated in its Strategic Plan, developed in 2010 in conjunction with the DCA Strategic Planning and Development unit, is as follows:

***To protect the consumer through licensing and monitoring, and to ensure competent and ethical standards of practice for professional fiduciaries.***

The Bureau Chief is appointed by the Governor, subject to Senate confirmation, and serves under the direction and supervision of the Director of DCA and at the pleasure of the Governor. The duty of enforcing and administering the Act is vested in the Chief, and the Act mandates that protection of the public is the highest priority for the Bureau in exercising its licensing, regulatory, and disciplinary functions. The current Acting Chief, Gil DeLuna, was appointed by the Director in April 2010.

The Act establishes a Professional Fiduciaries Advisory Committee composed of seven members. It has a public majority with three licensees actively engaged as professional fiduciaries in this state. The four public members include: one member of a nonprofit organization advocating on behalf of the elderly, and one probate court investigator. The Senate Rules Committee and the Assembly Speaker each appoint a public member of the committee. The function of the Advisory Committee is to increase the level of communication between the Bureau, the public, and fiduciaries.

The following table lists all members of the Advisory Committee, including: background on each member, when appointed, term expiration date, and appointing authority.

Name	Appointment Date	Term Expiration Date	Appointing Authority
<p><b>Sharon O'Neill</b>                      Probate Court Investigator – Completed Ethics Orientation for State Officials on January 8, 2010 and was sworn into office as a Member of the Professional Fiduciaries Advisory Committee on November 10, 2008. Her term expired January 1, 2011.</p>	<p>November 10, 2008</p>	<p>January 1, 2011</p>	<p>Governor</p>
<p><b>Lisa Berg</b>                      Professional Member – Has been in the practice of social work and fiduciary work for approximately 30 years. Ms Berg was licensed as a Professional Fiduciary in July 2008. Ms. Berg has also worked as a medical social worker; a psychiatric social worker; and has earned both Bachelor's and Master's Degrees in Social Work at Colorado State University and CSU San Diego, respectively.</p>	<p>November 14, 2008</p>	<p>January 1, 2011.</p>	<p>Governor</p>
<p><b>Daniel Stubbs</b>                      Professional Member – Became licensed as a Professional Fiduciary in July 2008. Mr. Stubbs has also worked as a Labor Relations Consultant; an Executive Director and Representative for teachers' and nurses' unions; and is currently employed as an instructor at CSU Fullerton.</p>	<p>November 12, 2008</p>	<p>January 1, 2011</p>	<p>Governor</p>

<b>Cynthia Morrow</b> Public Member – Currently serves as the Principal and Founder of Performance by Design. Ms. Morrow has earned a Bachelor of Arts Degree from Montclair University in 1983; an MSOD from the University of San Francisco in 1993; and an MBA from Columbia Business School in 2006	July 3, 2008	January 1, 2011	Senate Rules Committee
<b>Clark Parker</b> Public Member – Mr. Parker received accreditation from the United States Department of State in June, 2001. He has served as Honorary Consul General of the Central African Republic and currently resides in Southern California.	October 1, 2009	January 1, 2011	Assembly Speaker
<b>Vacancy</b> – Professional Member			Governor
<b>Vacancy</b> – Member of nonprofit organization advocating on behalf of the elderly.			Governor

Among all regulatory agencies within DCA, the Professional Fiduciaries Bureau is unique in that it has what might be termed a “reverse sunset.” While the sunset process for regulatory boards was originally set up to provide that when the statutory authority for the board is made inoperative and repealed by operation of law (sunsetting), the board would be abolished and the regulatory operations would be carried out as a bureau under DCA. In contrast, B&P Code section 6511 provides that if the Professional Fiduciaries Bureau sunsets and is abolished, as provided in law, the Advisory Committee shall succeed to and be vested with all the duties, powers, purposes, responsibilities, and jurisdiction of the Bureau. The law further provides that the Advisory Committee would further be established as the Professional Fiduciaries Committee in DCA with the authority and function of a Board of the Department.

For violations of the Act, the Bureau may impose administrative citations and fines, license suspension, probation, or revocation, and is required to provide on the Internet information regarding any sanctions imposed on licensees, including, citations, fines, suspensions, revocations, and formal accusations, and other related enforcement action. The Bureau continues to work to build an effective enforcement program which has been significantly restricted by the smaller than expected initial license base and the repayment of substantial startup loans.

As part of its legal mandate to educate consumers about their rights and quality of service, the Bureau, working with DCA Outreach Unit, attends outreach events, many of which target seniors, to disseminate information to consumers. The Bureau provides consumer brochures, such as “*Are You a Professional Fiduciary Who Needs Licensing*” and “*Do You or Does a Loved One Need a Professional Fiduciary.*” The Bureau also communicates through an electronic mail Interested Party mailing list, and issues notification of Bureau activities, which include meeting agendas, advisory notices and special bulletins.

As a Special Fund Agency, the Bureau receives no General Fund support, relying solely on the fees charged for initial applications, licenses and license renewals, which occur

annually. The examination fee is not paid to the Bureau, but is submitted directly to the company that administers the examination. Unlike many other boards, the Bureau's fees are not set in statute. Fees are determined during the Bureau's regulatory process at a level necessary to meet the program's operational costs. Fees have not been adjusted since the Bureau began operation in July 2007. Based on the Bureau's level of expenditures and projected reserve funds, there are no current plans to adjust or augment the current scheduled fees.

The total revenues anticipated by the Bureau for FY 2010/11 is \$398,000 and for FY 2011/12 is \$397,000. The total expenditures anticipated for the Bureau for FY 2010/11 is \$293,000, and for FY 2011/2012 is \$308,000. The Bureau anticipates it would have approximately 1.4 months in reserve for FY 2010/11, and 4.6 months in reserve for FY 2011/12. When it was established in 2007, startup revenues came from a special fund loan of \$1,055,000 from the Bureau of Automotive Repair's Vehicle Inspection and Retirement Fund (VIRF). That loan plus interest was repaid in FY 2008/09. A second loan of \$215,000 from the VIRF was obtained in FY 2008/09, and is anticipated to be repaid in FY 2010/11. Once the second loan is repaid, fund reserves are anticipated to increase to appropriate levels. This will also free up resources that will be directed towards enforcement.

Initially, the Bureau was budgeted to have a staff of 4 Personnel Years (PYs), but the staffing level was reduced to 1.7 PYs when revenues generated by licensing fees did not meet the originally anticipated amount.

(For more detailed information regarding the responsibilities, operation and functions of the Bureau, please refer to the Professional Fiduciaries Bureau's Sunset Review Report, provided in Members' binders.)

## INITIAL OVERSIGHT REVIEW

This is the initial review of the Professional Fiduciaries Bureau by this Committee. According to the Bureau, the most significant accomplishments and internal changes in the three years since the inception of the Bureau are the following:

- **Adoption of Regulations.** The Bureau filed emergency regulations dealing with the Code of Ethics and pre-licensure and continuing education requirements on November 2, 2007. Additionally, it issued emergency regulations on November 26, 2007 which allowed the Bureau to begin a licensing program. This second set of emergency regulations covered application requirements, grounds for license denial and annual reporting requirements. Both of these regulations packages were subsequently adopted as final regulations upon the filing of certificates of compliance.
- **Dissolution of the "Quad Bureaus."** The Bureau separated from the "Quad Bureaus" in October 2009. The "Quad Bureau" consisted of Telephone Medical Advice Service Bureau (TMAS), Hearing Aid Dispenser Bureau (HADB), Bureau of Naturopathic Medicine, and the Professional Fiduciaries Bureau. These bureaus

- were joined for the purposes of administrative and operational efficiencies. When AB X4 20 (Chapter 18, Statutes of 2009) was passed, the Bureau of Naturopathic Medicine became a committee under the Osteopathic Medical Board. Additionally, AB 1535 (Jones, Chapter 309, Statutes of 2009) merged the Hearing Aid Dispensers Bureau with the Speech-Pathology and Audiology Board. This legislation effectively dissolved the "Quad Bureaus" and the Professional Fiduciaries Bureau and TMS became stand alone entities.
- **Bureau Management.** Since its inception, the Bureau has been overseen by one appointed Bureau Chief and three subsequent Acting Chiefs. The current Acting Chief, Gil DeLuna, was appointed in April 2010.

## **CURRENT SUNSET REVIEW ISSUES**

The following are issues pertaining to the PFB, and other areas of concern for the Committee to consider along with background information concerning the particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. The PFB and other interested parties, including the professions, have been provided with this Background Paper and can respond to the issues presented and the recommendations of staff.

### **BUREAU ADMINISTRATION ISSUES**

**ISSUE # 1:** Consolidation with another regulatory board such as the California Board of Accountancy.

**Background:** In the May Revision of the 2009/10 Budget, Governor Arnold Schwarzenegger in a proposal, titled, "*Reorganization, Consolidations and Capitalizing on State Assets — Continuing the Work of the California Performance Review,*" suggested the consolidations or elimination of specific boards and bureaus. This proposal (which had little if any relationship to the recommendations of CPR) included consolidating the Professional Fiduciaries Bureau under the California Board of Accountancy. This consolidation was apparently because the Bureau struggled for viability, having a paucity of licensees and minimal revenues. Indeed the Bureau was in its infancy, having been established in by legislation in 2006, the first licenses were issued on July 1, 2008, required for all court appointed Professional Fiduciaries, and the licensing requirements were not fully mandated until January 1, 2009. At that time the Bureau was only in the first licensing cycle of its existence and there was little programmatic history of note.

The Senate Rules Committee instructed various policy Committees to hold hearings on the Governor's consolidation proposals and report their findings to the Budget Conference Committee. In June 2009, the Senate Business, Professions and Economic Development Committee held hearings on the Governor's proposal, including the proposal to consolidate the Bureau under the CBA. At that hearing the Committee approved the following motion on a 6-2 vote: "*Do not consolidate the Professional Fiduciaries Bureau with the Board of*

*Accountancy. Professional fiduciaries should continue to be licensed and regulated by a bureau under the Department of Consumer Affairs.”* †

Under the current sunset review process, the idea of consolidation with the CBA has again been raised. In its third license renewal cycle, the Bureau’s current licensing population has increased to 516, and is expected to grow as the number of older Californians increases.

In addition, the Bureau has passed two critical junctures in its early existence: (1) the Bureau has repaid a special fund startup loan of \$1,055,000 in FY 2008/09; (2) a second loan of \$215,000 will be repaid in FY 2010/11. According to the Bureau, once the second loan is repaid, fund reserves are anticipated to increase to appropriate levels, thereby freeing up resources for greater levels of enforcement.

In addition, on February 24, 2010 the Board of Accountancy unanimously voted to oppose the idea of consolidating the PFB into the Board of Accountancy. The Board objected to the consolidation based upon three primary concerns: (1) Potential of confusion to consumers; (2) The disparity between the functions; licensed professional fiduciaries are mandated to operate in the best interests of the client, while licensed CPAs are mandated to be independent of the client. (3) Potential for merging the two special funds, which, according to the CBA, could be perceived as a tax on CPA licenses to support another profession.

Furthermore, as a bureau under the Department, the Professional Fiduciaries Bureau does not have the discretion to make independent legislative recommendations, as do the independent regulatory boards under the Department. Therefore, under the Administration’s direct oversight, the Bureau has not recommended consolidation with any other agency, but instead has recommended extending the current sunset of the Bureau. Therefore, it does not appear to be appropriate at this time to consolidate the Bureau under the CBA.

***Staff Recommendation: The Professional Fiduciaries Bureau should not be combined with the California Board of Accountancy.***

## **LICENSING AND PRACTICE ISSUES**

**ISSUE # 2:** Has PFB adopted regulations regarding disclosure of license identification numbers?

**Background:** Section 138 of the B&P Code provides that every board and bureau in the Department, shall initiate the process of adopting regulations to require its licensees to Section 23.8, to provide notice to clients or customers that the practitioner is licensed by this state.

Notifying consumers that a professional is licensed by the state is a basic element of consumer protection, putting the consumer on alert that a state agency stands in a

regulatory relationship to the licensee, and that consumers may turn to that agency for questions or to register complaints about the practitioner.

It is unclear whether the Bureau has taken any steps to begin regulations in compliance with Section 138.

**Staff Recommendation:** *The PFB should update the Committee on its plans to establish regulations requiring its licensees to notify clients or consumers that they are licensed by the Bureau.*

### **ISSUE # 3: Enrolled agents exemption.**

**Background:** When the Legislature enacted SB 1550 in 2006, the law created a limited exemption for a person who is enrolled as an agent to practice before the Internal Revenue Service acting within the scope of practice as an enrolled agent, as specified.

Enrolled agents are certified to represent taxpayers before the Internal Revenue Service. Under Section 10.2 of Subpart A, Rules Governing Authority to Practice, of Part 10 of Title 31 of the Code of Federal Regulations, the following defines the scope of practice for an enrolled agent:

Practice before the Internal Revenue Service comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing and filing documents, corresponding and communicating with the Internal Revenue Service, rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion, and representing a client at conferences, hearings and meetings.

On February 2, 2009, (then) Bureau Chief Mellonie Yang, issued a licensing advisory that any activities of an enrolled agent that are not within the scope of practice pursuant to the federal regulations would fall outside the exemption, stating:

“For example, if an enrolled agent is performing activities as a conservator, guardian, trustee, or agent under durable power of attorney for health care or finances within the definition of a professional fiduciary pursuant to the Professional Fiduciaries Act (Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code) that are not within the scope of practice described in Part 10 of Title 31 of the Code of Federal Regulations, they must obtain a license from the Professional Fiduciaries Bureau to comply with the law.”

The California Society of Enrolled Agents (CSEA) has expressed great concern with the Bureau's interpretation of the exemption. Furthermore, in 2010 CSEA sponsored AB 276

(Hyashi) to amend B&P Code Section 6530 to clarify the exemption. That bill was held in the Assembly Appropriations Committee on the Suspense File.

The CSEA subsequently requested that clarification of the exemption in Section 6530(d) be considered by the Committee in its oversight recommendations. CSEA states that “the current language and narrow interpretation of the Professional Fiduciaries Act has created a burdensome regulatory scheme for EAs, who are already licensed by the U.S. Department of the Treasury, undergoing a background check and fingerprinting for that license.” CSEA argues that the licensing scheme was intended to prevent unethical or incompetent individuals from financially abusing the public, not to deter EAs who are meeting the needs of their clients.

CSEA further suggests an EA who holds themselves out as Professional Fiduciaries or solicit fiduciary or conservatory assignments through the courts, and provides specific fiduciary services separate from tax planning reasonably should be required to become licensed under the Act. Most EAs offer fiduciary services only rarely, when they have been asked by long-term clients to act as trustees. Relationships have been built and private and confidential materials have already been shared.

To clarify the exemption, CSEA recommends amending Section 6530 (d) to provide:

This section does not apply to a person enrolled as an agent to practice before the Internal Revenue Service who is providing ancillary fiduciary services to clients at their request. Notwithstanding this section, Enrolled Agents who are soliciting clients for fiduciary services or holding themselves out as fiduciaries are required to obtain a Professional Fiduciary license in accordance with the Professional Fiduciary Act.

Committee staff notes that the Bureau’s interpretation is consistent with the wording of the existing exemption, and it does not necessarily follow that an enrolled agent who is trained and educated in tax issues would be qualified or able to safely represent a tax client as a conservator of the person or guardian of the person, or to act as a durable power of attorney for health care, making health care decisions on behalf of a client, or decisions about where the client will live and treatment options for a client’s mental, emotional or physical health.

However, it may be appropriate to make a clarifying amendment to somewhat broaden the existing exemption in the Act.

***Staff Recommendation: It would seem reasonable to make a narrowly-crafted clarification to the existing exemption in B&P Code Section 6530(d) of the Professional Fiduciaries Act relating to enrolled agents. However, the term “ancillary fiduciary services” is not precise and should be clearly defined, and the services should only apply to those clients with whom the enrolled agent already has an existing professional relationship.***

## ENFORCEMENT ISSUES

### ISSUE # 4: Enforcement issues

**Background:** As a newly created regulatory the Bureau, in its sunset report, the Bureau reported very few enforcement actions. In its first full year of existence in FY 2008/09, the Bureau reported 60 complaints received and closed 28 complaints. In FY 2009/10, the Bureau received 47 complaints and closed 50 complaints. During the same period of time, the Bureau referred 4 cases to the AG's office and did not revoke any licenses. The Report states that the Bureau continues to work to build an effective enforcement program. This effort has been significantly restricted by the smaller than expected licensee base and the repayment of substantial startup loans. The Bureau has been limited to one analyst that primarily focuses on licensing and other administrative duties, one part-time investigator, one borrowed staff position to review and manage consumer complaints and a part-time Acting Bureau Chief.

Since the sunset report was submitted, on February 11, 2010, The *San Diego Union Tribune* reported that, a San Diego County professional fiduciary licensed by the Bureau was accused by the U.S. Attorney's Office in a civil complaint of siphoning large sums of money from clients to feed a near-daily gambling habit at a casino. The licensed professional fiduciary had served as a probate court trustee for the San Diego Superior Court, where she was appointed to oversee conservatorships, family trusts, and estates for the past 13 years. The licensee was accused of opening legitimate bank accounts for numerous trusts, and then using online banking to regularly transfer funds into a personal account.

On February 18, the newspaper further reported that the professional fiduciary additionally pleaded guilty in federal court to wire fraud and money laundering, admitting to taking \$191,500 over one three month period, and laundering some \$18,000 in funds through business and personal bank accounts. According to the newspaper, the fraud charge carries a maximum of 20 years in prison, and money laundering charge of 10 years.

In discussing the case with Committee staff, the Acting Bureau Chief stated that the Bureau had been extensively involved with the investigation of the case. In a review of the Bureau's online license verification, the status of the license is shown as "Suspended, Federal Temporary Restraining Order."

It appears that although the Bureau has a number of limitations because its size and loan repayment constraints, the Bureau efficiently performed its responsibilities in working with federal prosecutors in this enforcement matter.

On January 31, 2011, the Bureau filed an accusation against a licensee for unprofessional conduct; dishonesty in obtaining a license.

**Staff Recommendation:** *Although the Acting Chief may be limited in what he may be able to say about this case on the public record, he should update the Committee on this case and relate any initial conclusions that he may have reached about how to most effectively carry out the Bureau's enforcement responsibilities.*

**ISSUE # 5: Adoption of regulations establishing a system for issuing citations and fines and fines.**

**Background:** B&P Code Section 6583 requires the Bureau to establish a system of administrative citations and fines under Section 125.9 for violations of the Professional Fiduciaries Act, the Professional Fiduciaries Code of Ethics, or any regulation adopted under the Act. The Bureau is in the process of developing a regulations package to enhance its enforcement program by implementing a cite and fine program for those that are either practicing illegally or are found to have violated the Act

Without a citation and fine provision, if the Bureau identifies a violation by a licensee, in order to take action, the Bureau would have to initiate a formal disciplinary action against the licensee, which can take a good deal of time and a great deal of the Bureau's resources for enforcement and legal staff. Such formal action may not always be warranted, especially in cases where there are lesser violations of the Act by a licensee, or on occasions where it is appropriate to take action to immediately assure compliance with the law rather than a formal disciplinary action against a licensee.

In such cases, the ability to issue an administrative citation and fine can be an effective tool to gain compliance with the law for lesser violations. Licensees do not lose the ability to appeal an administrative citation and fine, but are given the right to request a hearing before an Administrative Law Judge. Promulgating citation and fine regulations will help both consumers and licensees, by allowing the Bureau to more quickly address violations with licensees, and by directing licensees to more quickly correct those items found to be in violation.

**Staff Recommendation:** *The Bureau should inform the Committee of the status of its citation and fine regulations, giving an estimated timeframe for the final adoption of the regulatory package.*

**ISSUE # 6: Should the Bureau be given authority to enter into stipulated settlements without filing an accusation against a licensee?**

**Background:** The Administrative Procedures Act (APA) requires an agency to file an accusation or statement of issues against a licensee before the regulatory agency can reach a stipulated settlement with the licensee. While many licensees will not agree to a stipulated settlement without the pressure of a formal accusation having been filed, it is the experience of a number of regulatory boards that there are instances in which a licensee is willing to agree to a stipulated settlement earlier on in the investigation stage of the enforcement process. Licensees may be willing to do this in order to minimize the cost of an administrative hearing, or in order to expedite the resolution of a disciplinary matter. In such cases in which a licensee may be agreeable to the disciplinary action of the Bureau, the ability to directly enter into a stipulated settlement would save time and costs for both the licensee and the Bureau.

The provision to enter into a stipulated settlement should require the settlement to include language identifying the factual basis for the action taken, and a list of the statutes or regulations violated. In addition, the provision should also allow a licensee to file a petition to modify the terms of the settlement or petition for early termination of probation if probation is part of the settlement.

**Staff Recommendation:** *The Bureau should be authorized to enter into a settlement agreement with a licensee or applicant prior to the Bureau's issuance of an accusation or statement of issues against the licensee.*

## BUDGET ISSUES

**ISSUE # 7:** In light of the smaller than expected licensing population, and the resultant budget limitations, is the Bureau sustainable as a viable regulatory agency?

**Background:** The licensing and regulation of professional fiduciaries was enacted in response to a series of investigative reports in the *Los Angeles Times* in 2005 and 2006. Those reports found numerous instances of abuse in conservatorship and guardianship cases in California and called for a greater oversight role by the state. As a result several pieces of legislation were introduced dealing with various aspects of conservatorship and guardianship oversight. Senator Liz Figueroa introduced SB 1550 to establish a licensing and regulatory framework for professional fiduciaries and create the Professional Fiduciaries Bureau as the licensing and regulatory agency. The initial projections of the Department had placed the approximate number of licensees at 1,300, the actual number has not reached that level. Currently there are 507 professional fiduciaries licensed by the Bureau.

As a special fund agency, the Bureau operates solely off fees generated from licensing revenue. SB 1550 did not establish any statutory fee levels; instead it required the Bureau to set the fees through regulation at a level necessary to meet the program's operational costs. As a consequence the licensing fees are large; \$700 each year for license renewal.

Fee Schedule	Current Fee	Statutory Limit
Application Fee	\$400	Not set in statute
Exam Fee	\$250	Not set in statute
Original License Fee	\$600	Not set in statute
Original License Fee- Prorated	Variable*	Not set in statute
Renewal Fee	\$700	Not set in statute

Revenues for the current year FY 2010/11 are projected to be \$398,000, and expenditures are projected at \$293,000. In addition, the Bureau expects to pay off the final loan of \$215,000 which was necessary for the Bureau startup costs in FY 2010/11. The Bureau

states that once the loan is repaid, fund reserves are anticipated to increase to appropriate levels. This will also free up resources that will be directed towards enforcement.

Over the three years of the Bureau's existence, the Bureau has spent on program costs an average of 8.7% of its expenditures on enforcement, 52.6 % on licensing, and 38:% on administrative costs. It is assumed that the levels for enforcement costs will rise, as the Bureau utilizes revenues that were previously used for loan repayment.

A top goal of the Bureau, as stated in its Report is increasing the Bureau's licensee population. An increase in the number of licensees would provide more revenue for the Bureau that could help add additional staff, streamline office operations and enhance the enforcement program.

California's population of people 65 years of age or older is surpassing that in other states. The number of California's population 65 years of age or older is expected to grow from 3.6 million people in the year 2000, to 6.2 million people in the year 2020, an increase of 72 percent. As the population of California continues to grow and age, an increasing number of people in the state are unable to provide properly for their personal needs, manage their financial resources, or resist fraud or undue influence as well as fiscal, emotional, and physical harm. In addition, there is an increasing use of trusts and durable powers of attorney by individuals seeking to provide for potential incapacity. As a result, it is likely that the population of licensed professional fiduciaries will continue to increase as the population ages.

The establishment of the Bureau is partially based on the premise that the number of people in California who are going to need a licensed fiduciary is going to increase significantly in the coming decade. This increase could also result in more people wanting to become professional fiduciaries, thereby expanding the licensee base

**Staff Recommendation: *The Bureau should discuss with the Committee its projections for increasing its revenue base, including its plans for expanding enforcement capabilities after all startup loans have been repaid. The Bureau should also discuss the viability of its revenue stream into the foreseeable future.***

## **CONTINUED REGULATION OF THE PROFESSION BY THE PROFESSIONAL FIDUCIARIES BUREAU**

**ISSUE # 8:** Should the "reverse sunset" on the Professional Fiduciaries Bureau be eliminated, thereby indefinitely continuing the regulatory agency as a bureau? Should the licensing and regulation of professional fiduciaries continue to be regulated by the current Professional Fiduciaries Bureau?

**Background:** As noted above, the Professional Fiduciaries Bureau contains what might be called a "reverse sunset." Under the Department of Consumer Affairs, each regulatory board has a statutorily established date upon which that board is made inoperative and is repealed. As enacted in the original bill which established the Sunset Review process in

California SB 2036 (McCorquodale, Chapter 908, Statutes of 1994) when the code sections authorizing the existence of the regulatory board became inoperative and repealed, that board would be abolished and the regulatory functions would be carried out as a bureau under the DCA. In 1996, when the Legislature enacted SB 1550 (Figueroa, Chapter 491, Statutes of 2006), creating the current Bureau, the legislation provided that if the Professional Fiduciaries Bureau sunsets and is abolished, as provided in law, the Bureau's Advisory Committee shall succeed to and be vested with all the duties, powers, purposes, responsibilities, and jurisdiction of the Bureau. The law additionally provides that the Advisory Committee would further be established as the Professional Fiduciaries Committee in DCA with the authority and function of a Board of the Department.

In signing the SB 1550 in September 2006, Governor Schwarzenegger issued a signing message indicating that he believed the bill is important to protect California's vulnerable population from the financial abuse of unscrupulous professional fiduciaries that seek to do intentional harm. The Governor further noted:

"However clean-up legislation will be necessary in the next legislative session because of the way the author structured the bill. This bill establishes an unnecessary and complicated mechanism of transferring the responsibilities and jurisdiction of the newly created Professional Fiduciaries Bureau (Bureau) to a newly created Professional Fiduciaries Advisory Committee, which would then be established as a board within the Department of Consumer Affairs, after July 1, 2011. The creation of this arrangement is not justified and will leave consumers and the general public more confused by this regulatory scheme. Moreover, there is no rational, analytical justification to assume that in five years the Bureau would even need to be reconstituted as a full board. I would rather have a future Legislature evaluate that need at the time of the sunset review, instead of establishing the presumption now.

Therefore, my Administration will work with the Legislature to eventually clean up this bill so that the public can have faith that its State government is open, transparent, and easy to understand while protecting the interests of all Californians, especially its most vulnerable citizens."

Committee staff notes that in the more than four years since the bill was signed, this Committee has not received any phone calls from consumers, licensees, the Bureau's staff, or the general public indicating any confusion over this provision.

In its Sunset Report, the Bureau recommends that the next sunset review be established three 3 years from now. The Bureau believes this should provide sufficient time to demonstrate the continued increase in the number of licensees, the sustainability of the Bureau's budget and the value of the consumer protection that is provided.

Although the PFB faces a number of challenges, it should be continued with the recommendation for further review by the Committee in three years

***Staff Recommendation: Recommend that the profession should continue to be regulated by the current Professional Fiduciaries Bureau in order to protect the interests of the public and be reviewed once again in three years.***

**TITLE 16. CALIFORNIA PROFESSIONAL FIDUCIARIES BUREAU  
DEPARTMENT OF CONSUMER AFFAIRS**

NOTICE IS HEREBY GIVEN that the Professional Fiduciaries Bureau (hereinafter referred to as "Bureau"), Department of Consumer Affairs (hereinafter referred to as "Department"), is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the **Reporting Requirements, Citation and Fine, Enforcement, Code of Ethics, and Cleanup Changes** proposed at a hearing to be held at the:

**Van Nuys State Building  
6150 Van Nuys Blvd.  
1<sup>st</sup> Floor Auditorium  
Van Nuys, CA 91401**  
on  
**Thursday, June 2, 2011  
At 9:00 AM**

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Bureau at its office not later than 5:00 p.m. on **June 2, 2011**, or at the hearing. The Bureau, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 125, 125.9, 148, 481, 482 and 6517 of the Business and Professions Code, and Government Code Section 11425.50 to implement, interpret or make specific Sections 125.3, 125.6, 125.9, 141, 148, 480(a), 481, 482, 490, 496, 6534, 6536, 6560, 6561, 6580, 6583, and 6584 of the Business and Professions Code and Sections 11425.50(e) and 11519 of the Government Code, the Bureau, the Department, is considering changes to Division 41 of Title 16 of the California Code of Regulations as follows:

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Professional Fiduciaries Bureau (Bureau) was created by legislation enacted in 2007 (SB 1550, Figueroa, Chapter 491, Statutes of 2006) to regulate non-family member professional fiduciaries, including conservators, guardians, trustees, and agents under durable power of attorney as defined by the Professional Fiduciaries Act (Business and Professions (Bus.&Prof.) Code § 6500 et seq.). The Bureau is under the authority of the Department of Consumer Affairs and is responsible for licensing and regulating professional fiduciaries under the Professional Fiduciaries Act. Professional

fiduciaries provide critical services to seniors, disabled persons, and children. They manage matters for clients including daily care, housing and medical needs, and also offer financial management services ranging from basic bill paying to estate and investment management.

The protection of the public is the Bureau's highest priority. (Bus.&Prof. Code § 6516.) The Bureau achieves this goal through the following primary methods: issuing licenses to eligible and qualified applicants; investigating complaints against professional fiduciaries; and disciplining licensees for violation of the Act. The Bureau is proposing the regulatory changes described below in order to enhance its disciplinary function and strengthen its enforcement program to better achieve its public protection mandate.

#### Article 2. Application and Licensure

1. Amends Section 4422.

This amendment makes a technical cleanup correcting the use of the word, "licensee" with the correct word "applicant."

#### Article 3. Prelicensing and Continuing Education

2. Amends Section 4440.

This amendment removes the references to two California Rules of Court.

3. Amend Section 4446.

This amendment adds two additional approved education providers:

- Any Long-Term Care Ombudsman program certified by the California Department of Aging.
- An Internal Revenue Service/Office of Professional Responsibility approved program sponsor for continuing education for enrolled agents.

#### Article 4. Code of Ethics

4. Add Subsection (f) and (g) of Section 4470.

This amendment adds an affirmative duty upon the licensee to provide or arrange for services that are in the best interest and needs of the consumer.

5. Add Subsection (g) of Section 4482.

This amendment prohibits a licensee from recovering expenses associated with complying or defending against a citation issued by the Professional Fiduciaries

Bureau or complying with any terms and conditions of probation.

### Article 9. Reporting Requirements

6. Add Section 4544.

This section adds and specifies the ongoing reporting duties for licensure. Specifically, it requires that certain information be reported to the Bureau within 15 days of occurrence.

### Article 10. Citations

7. Add Section 4600.

This section establishes the Bureau's authority to issue citations and establishes a citation format.

8. Add Section 4602.

This section defines the maximum administrative fine amount of \$5,000 that can be assessed on a citation issued by the Bureau.

9. Add Section 4604.

This section specifies factors to consider when determining the amount of an administrative fine.

10. Add Section 4606.

This section would establish the process for contesting a citation and holding an informal conference.

11. Add Section 4608.

This section authorizes the Bureau to take administrative action against a licensee when they fail to comply with a citation.

12. Add Section 4610.

This section establishes order of abatement procedures.

## Article 11. Enforcement

### 13. Add Section 4620.

This section specifies substantially related criteria for license suspension or revocation.

### 14. Add Section 4622.

This section specifies rehabilitation criteria for license suspension or revocation.

### 15. Add Section 4624.

This section specifies disciplinary guidelines for enforcement actions.

## FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

### Business Impact:

The Bureau has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

### Impact on Jobs/New Businesses:

The Bureau has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

### Cost Impact on Representative Private Person or Business:

The costs impact of the regulation include only those expenses associated with complying with record reporting requirements and administrative actions initiated by the Bureau for failing to be in compliance with the Professional Fiduciaries Act and other applicable laws, rules or regulations.

Effect on Housing Costs: None

#### EFFECT ON SMALL BUSINESS

In addition to reporting requirements, the Bureau has determined that the proposed regulations would only effect small fiduciary businesses that are subject to licensing under the Act that become subjects of enforcement actions.

#### CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

#### INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

#### TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Professional Fiduciaries Bureau at 1625 North Market Blvd., Suite S-202, Sacramento, CA 95834.

#### AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below **[or by accessing the website listed below]**.

#### CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Gil DeLuna  
Address: 1625 North Market Blvd., Suite S-202  
Sacramento, CA 95834

Telephone No.: (916) 574-7340  
Fax No.: (916) 928-7988  
E-Mail Address: fiduciary@dca.ca.gov

The backup contact person is:

Name: Angela Bigelow  
Address: 1625 North Market Blvd., Suite S-202  
Sacramento, CA 95834

Telephone No.: (916) 574-7340  
Fax No.: (916) 574-8645  
E-Mail Address: fiduciary@dca.ca.gov

Website Access: Materials regarding this proposal can be found at  
**[www.fiduciary.ca.gov](http://www.fiduciary.ca.gov)**.

PROFESSIONAL FIDUCIARIES' BUREAU  
DEPARTMENT OF CONSUMER AFFAIRS

INITIAL STATEMENT OF REASONS

**Hearing Date:** June 2, 2011

**Subject Matter of Proposed Regulations:** Reporting, Citation and Fine, Enforcement, Code of Ethics, and Cleanup.

**Section(s) Affected:** This regulatory action amends Section 4422 of Article 2, Section 4440 of Article 3, Section 4446 (b) of Article 3 and adopts subdivision (f), (g), and (h) of Section 4470 and subdivision (g) of 4482 of Article 4, Section 4544 of Article 7, Sections 4600, 4602, 4604, 4606, 4608, and 4610 of Article 10, and Sections 4620, 4622 and 4624 of Article 11 of Division 41 of Title 16 of the California Code of Regulations.

**Introduction:** The Professional Fiduciaries Bureau (Bureau) was created by legislation enacted in 2007 (SB 1550, Figueroa, Chapter 491, Statutes of 2006) to regulate non-family member professional fiduciaries, including conservators, guardians, trustees, and agents under durable power of attorney as defined by the Professional Fiduciaries Act (Business & Professions Code (Bus.&Prof.) § 6500 et seq.). The Bureau is under the authority of the Department of Consumer Affairs and is responsible to licensing and regulating professional fiduciaries under the Professional Fiduciaries Act (Act). Professional fiduciaries provide critical services to seniors, disabled persons, and children. They manage matters for clients including daily care, housing and medical needs, and also offer financial management services ranging from basic bill paying to estate and investment management.

The protection of the public is the Bureau's highest priority (Bus.&Prof. Code § 6516.) The Bureau achieves this goal through the following primary methods: issuing licenses to eligible and qualified applicants; investigating complaints against professional fiduciaries; and disciplining licensees for violation of the Act. The Bureau is proposing the regulatory changes described below in order to enhance its disciplinary function and strengthen its enforcement program to better achieve its public protection mandate.

**Specific Purpose of each adoption, amendment, or repeal:**

**Article 2. Application and Licensure**

**Amend Section 4422** – This amendment makes a technical cleanup replacing the use of the word, "licensee" with the correct word "applicant."

Factual Basis/Rationale:

Section 4422 deals with requirements for individuals applying for licensure with the Bureau. Current regulation in paragraph (c) of this section indicates that disclosure of any civil complaint, a petition, motion, objection, or other pleading filed with the court against a licensee is required. Because this section applies to applicants and not licensees, changing the language to correct this inaccuracy ensures the accuracy of this section.

### **Article 3. Prelicensing and Continuing Education**

Amend Section 4440 – This amendment removes the references to two California Rules of Court.

Factual Basis/Rationale:

The requirement that education courses taken on or after January 1, 2007, to satisfy the continuing education requirements of Rules 7.1010 and 7.1060 of the California Rules of Court has been omitted. This requirement is no longer valid since the California Rules of Court were amended to delete these rules.

Amend Section 4446 – This amendment adds two additional approved education providers:

- Any Long-Term Care Ombudsman program certified by the California Department of Aging.
- An Internal Revenue Service/Office of Professional Responsibility approved program sponsor for continuing education for enrolled agents.

Factual Basis/Rationale:

These two identified education providers were omitted inadvertently from the list of education providers when Section 4446 was initially adopted.

### **Article 4. Code of Ethics**

Add Subsections (f) and (g) of Section 4470 – This amendment adds an affirmative duty upon the licensee to provide or arrange for services that are in the best interest and needs of the consumer.

Factual Basis/Rationale:

The other sections under the Code of Ethics, which are consumer protection clauses, do not specifically address the issue of providing services in the best interest and needs of the consumer. This ensures that consumer dollars are not spent foolishly. Additionally, safeguards are provided for the licensee to ensure that if an expense for a service has been determined to be reasonable by an independent judge, then such expense will be

deemed reasonable by the Bureau.

Add Subsection (g) of Section 4482 – This amendment prohibits a licensee from recovering expenses associated with complying or defending against a citation issued by the Bureau or related to or complying with any terms and conditions of probation.

Factual Basis/Rationale:

Costs related to complying with, or defending against, a citation issued pursuant to Section 4600, or related to complying with any of the terms and conditions of probation in a disciplinary action by the Bureau are not reasonable costs that can be charged to the client's estate. A client should not have to pay for the expenses that were incurred due to the professional fiduciary's own fault in not following the law.

### **Article 7. Reporting Duties of Licensee**

Add Section 4544 – This section adds and specifies the ongoing reporting duties for licensure. Specifically, requiring that certain information be reported to the Bureau within 15 days of occurring.

Factual Basis/Rationale:

Although the licensing program is relatively new, the public reporting mandates for fiduciaries are not. Under the law, prior to July 1, 2008, former California Probate Code Section 2850 et seq. required private fiduciaries to register with the California Department of Justice. In addition, former Probate Code Section 2342 required all private fiduciaries to file annual statements with the court clerks. These provisions sunsetted June 30, 2008, at the same time the Bureau started licensing professional fiduciaries.

Under the Act, fiduciaries must report information on their licensing application and annual statements to the Bureau, which is similar to what fiduciaries reported under the previous reporting mandates to the Department of Justice and to the court clerks. Disclosure of information collected from applicants and licensees is a fundamental design of the licensing program. The Act requires that some of the information be provided to the public, and requires specific confidential information be available to the courts only.

The proposed regulation clarifies and adds ongoing reporting duties for licensees. Current regulations do not specify a time period for making reports to the Bureau when certain events take place. The addition of reporting requirements to the Bureau's regulations will insure that the information in the Bureau's licensee records is current. Additionally, this section strengthens the reporting requirements incumbent upon licensees, thereby strengthening consumer protection and ensuring transparency of reporting requirements.

### **Article 10. Citations**

Add Section 4600 – This section establishes the Bureau’s authority to issue citations and establishes a citation format.

Factual Basis/Rationale:

Sections 6583 and 6584 of the Bus.&Prof. Code provide for enforcement actions for which the Bureau may issue citations and fines for violations of the Act as specified. As a general matter, citations are issued for violations of sufficient severity to warrant enforcement action by the Bureau, but which are not severe enough to warrant disciplinary action, or in the case of an unlicensed practice where the Bureau does not have the authority to pursue disciplinary action. Citation factors are needed to provide the Bureau with the authority and flexibility to appropriately manage individual violations.

This section strengthens consumer protection by authorizing in regulation that the Bureau has the discretion to issue citations containing orders of abatement and/or administrative fines pursuant to Sections 125.9 or 148 of the Bus.&Prof. Code, an authority not previously codified in the Bureau’s regulations. The regulatory authority to issue citations and fines is necessary in order for the Bureau to encourage compliance with the Act’s provisions. The Act has many ministerial provisions, such as the reporting requirements, in which it would not be appropriate to take formal disciplinary action (i.e., to suspend or revoke license) where there are minor violations. Used appropriately, the citation will have a deterrent effect and provide for consumer protection.

Add Section 4602 – This section defines the maximum administrative fine amount of \$5,000 that can be assessed on a citation issued by the Bureau.

Factual Basis/Rationale:

This section clarifies the authority of the Bureau to cite licensees in violation of the Bus.&Prof. Code cited in Section 4600, above, by specifying the maximum dollar amount of the citation potentially applicable, thereby making more efficient the Bureau’s ability to regulate licensees. Business and Professions Code Section 125.9 authorizes the Bureau to adopt citation and fine regulations, but limits the amount of fine assessed to \$5,000. This regulation is necessary for sake of clarity to specify that the Bureau elects to issue fines up to the amount that is authorized by statute.

Add Section 4604 – This section specifies factors to consider when determining the amount of an administrative fine.

Factual Basis/Rationale:

These factors are important. They allow the Bureau flexibility in managing enforcement for a variety of violations by different types of fiduciaries. These fiduciaries act in different capacities with responsibilities based upon the specific needs of the consumers. These specific needs include governing authorities, whether the authority is derived from written

agreements, such as trusts and durable powers of attorney, or by court authority for specific conservatorships, guardianships, and special needs trusts. Fiduciary cases are complex with varying issues involving a spectrum of possible interested parties, including the courts, court investigators, probate attorneys, family members, health care providers, etc... The factor, "Such other matters as justice requires" allows for unique facts and specific circumstances to be considered for each violation or violations, so the Bureau can evaluate each case individually, taking into account matters of fundamental fairness. Such an evaluation makes the Bureau's ability to regulate licensees and protect the rights of consumers more effective and efficient. This section restates and adds clarifying factors into regulation that are delineated in Bus.&Prof Code Section 125.9(b)(3).

Add Section 4606 – This section would establish the process for contesting a citation and holding an informal conference.

Factual Basis/Rationale:

This regulation is necessary by delineating the necessary procedures mandated by fairness and due process. This section is necessary in order for licensees who have been issued a citation to be aware of the procedures by which the citation may be contested. The section specifies time frames in which a licensee may request an informal conference and specifies the time frames in which an informal conference will be held. By specifying the means by which a licensee who has been cited by the Bureau for violations as indicated within this section, the Bureau again solidifies and clarifies its authority to regulate licensees, thereby making more effective its ability to protect the rights of consumers.

Add Section 4608 – This section authorizes the Bureau to take administrative action against a licensee when they fail to comply with a citation.

Factual Basis/Rationale:

This section allows the Bureau to revoke a license in the event of non-compliance by a licensee. The suspension or revocation of a license is a formal disciplinary action. This section is necessary in order to make clear that failure to comply with a citation or citations is also grounds for formal disciplinary action. Again, the result is increased consumer protection and a clarification of the Bureau's ability to regulate licensees.

Add Section 4610 – This section establishes order of abatement procedures.

Factual Basis/Rationale:

This section is necessary in order to make clear that failure to comply with an order of abatement is also grounds for formal disciplinary action. Also, this section specifies that the time allowed for abatement of a violation shall begin the first day after the order of abatement has been received. By establishing the specific rights of licensees who receive

an order of abatement, this section makes more efficient and effective the Bureau's ability to regulate licensees, and allows licensees to more effectively practice as licensed professional fiduciaries in the State of California by advising them of their rights.

### **Article 11. Enforcement**

Add Section 4620 – This section specifies substantially related criteria for license suspension or revocation.

Factual Basis/Rationale:

Bus.&Prof. Code Section 481 requires the Bureau to develop criteria to aid it in determining whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates. This regulation is necessary to aid in determining whether a crime or act is substantially related. It contains some examples of substantially related crimes and acts including crimes or acts involving fiscal dishonesty or breach of fiduciary responsibilities of any kind. Such crime or acts can present significant risks to consumers relative to financial or health matters. By specifying the types of crimes which may disqualify a licensee from continuing to practice as a professional fiduciary in the State of California, this section again strengthens the Bureau's ability to regulate the fiduciary profession, and thereby increase consumer protection. This regulation is also necessary since the mandate of Bus.&Prof. Code 481 must be specified in the Bureau's regulations since it is a standard of general application.

Add Section 4622 – This section specifies rehabilitation criteria for license suspension or revocation.

Factual Basis/Rationale:

Bus.&Prof. Code Section 482 requires the Bureau to develop criteria to evaluate the rehabilitation of a person when considering the denial of a license or considering suspension or revocation of a license. This regulation is necessary since the criteria mandated by Section 482 must be specified in the Bureau's regulations. These factors must be considered in light of the acts or crimes to provide for consumer protection. This will ensure that a person who commits a minor offense is treated differently than a person who commits a more serious offense. Also, compliance with the law subsequent to the disciplinary action will be considered favorably. In addition, an act or crime that occurred closer in time will be considered more relevant on the issue than an act or crime for which more time has lapsed.

Add Section 4624 – This section specifies disciplinary guidelines for enforcement actions.

Factual Basis/Rationale:

Government Code Section 11425.50(e) requires all penalties or disciplinary guidelines

used by a regulatory agency to be adopted as a regulation. This regulation is necessary in order to meet this statutory mandate. By specifying the details of the Bureau's probationary program as applied to licensees found in violation of applicable Bureau regulations, Bus.&Prof. Code, or Government Code, as noted in the Cite and Fine Regulations, the Bureau increases its ability to effectively and efficiently regulate licensed professional fiduciaries. In addition, licensees may be less likely to commit violations. In cases where a licensee has already committed a violation, this section will aid them in coming into compliance with the Bureau's regulations. Ultimately, the most important benefit is increased consumer protection of the clients of licensees, often a particularly vulnerable population.

#### Business Impact

This regulation will not have a significant adverse economic impact on businesses; it only impacts licensed professional fiduciaries and applicants for a professional fiduciary license.

#### Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

#### Consideration of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Below is the alternative which was considered and the reasons this alternative was rejected:

Alternative 1: Not adopt the regulations. This alternative was rejected because the changes proposed by this regulatory action are based on months of internal review of the Bureau's enforcement processes and procedures and are necessary to improve the Bureau's effectiveness in encouraging licensees to comply with the law.

It is necessary that the Bureau adopt the reporting requirements and enforcement procedures to enforce the Bureau's laws as mandated by the Professional Fiduciaries Act. The Bureau determined that to adopt these regulations would enhance the Bureau's ability to protect the public.

**PROFESSIONAL FIDUCIARIES BUREAU**  
(Division 41, Title 16, California Code of Regulations)

Proposed Regulations

**Article 2. Application and Licensure**

**4422. Application.**

(a) A person applying for a license as a professional fiduciary shall submit an application for licensure to the Bureau and pay the application fee required in Section 4580.

(b) An application for licensure shall require the applicant to meet the qualifications of Section 6533 of the Business and Professions Code and, in addition, provide the following information:

(1) For a determination of compliance with the education requirements under subdivision (g) of Section 6533, if applicable, the applicant shall provide the names of the universities or colleges, the dates of graduation, and the applicable degrees awarded.

(2) For a determination of compliance with the experience requirements under subdivision (g) of Section 6533, if applicable, the applicant shall provide information regarding the qualifying substantive fiduciary responsibilities, including type and dates of experience, and contact information for three references, and shall provide consent for the Bureau to contact the references for verification of specified experience.

(3) The applicant's physical business address, telephone number, and facsimile number.

(4) The applicant's designated address of record for public information.

(5) A list of any license or professional certificate ever held by the applicant, including information regarding the type, state/country, license or certificate number, date issued, status, and whether the license or certificate has been subject to disciplinary action, including revocation or suspension. The applicant may attach a statement of explanation.

(6) Whether the applicant has filed for bankruptcy in the last ten (10) years or held a controlling financial interest in a business when that business filed for bankruptcy in the last ten (10) years, as required by paragraph (7) of subdivision (a) of Section 6534, and the date of the bankruptcy filing. The applicant may attach a statement of explanation.

(7) Whether the applicant has ever been convicted of a crime. The applicant may attach a statement of explanation.

(8) Whether the applicant has ever been found by a court to have breached a fiduciary duty, the date, case name, court location, and case number associated with each breach of fiduciary duty. The applicant shall submit a record of the court findings and orders

related to each specific case. The applicant may file an additional statement of the issues and facts pertaining to each case.

(9) Whether the applicant has ever been removed as a fiduciary by a court for breach of trust, the date, case name, court location, and case number associated with each removal. Whether all related appeals have been taken or the time to file an appeal has expired. The applicant shall submit a record of the court findings and orders related to each specific case. The applicant may file an additional statement of the issues and facts pertaining to each case.

(10) Whether the applicant has ever resigned as a fiduciary in a matter in which a complaint has been filed with the court, the date the complaint was filed, the date of the resignation, case name, court location, and case number associated with each resignation, and a statement of the issues and facts pertaining to each allegation. The applicant shall submit a record of the court findings and orders related to each specific case.

(11) Whether the applicant has ever settled as a fiduciary in a matter in which a complaint has been filed with the court, the date the complaint was filed, the date of the settlement, case name, court location, and case number associated with each settlement, and a statement of the issues and facts pertaining to each allegation. The applicant shall submit a record of the court findings and orders related to each specific case.

(c) As used in this section "complaint" means a civil complaint, a petition, motion, objection, or other pleading filed with the court against the licensee applicant alleging the licensee applicant has not properly performed the duties of a fiduciary.

*NOTE: Authority cited: Section 6517, Business and Professions Code. Reference: Sections 141, 480, 481, 490, 6533, 6534, 6536, 6538, 6539, and 6561, Business and Professions Code.*

### **Article 3. Prelicensing and Continuing Education**

#### **4440. Prelicensing Education Requirements.**

To qualify for licensure under the Act an applicant shall complete thirty (30) hours of prelicensing education credit subject to the conditions of this Article. The following courses shall qualify for prelicensing education credit:

(a) Any education course taken on or after January 1, 2007, that meets the requirements of an approved education course under Section 4444.

(b) Any fiduciary management course taken from the California State University, Fullerton, Extended Education Program.

~~(c) Any education course taken on or after January 1, 2007, to satisfy the continuing education requirements of Rule 7.1010 and 7.1060 of the California Rules of Court.~~

*NOTE: Authority cited: Section 6517, Business and Professions Code. Reference: Section 6538, Business and Professions Code.*

**4446. Approved Education Providers.**

(a) Approved education providers may include accredited educational institutions, professional associations, professional continuing education entities, public or private for-profit or not-for-profit entities, and court-connected groups. An "accredited educational institution" is a college or university, including a community or junior college, accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation.

(b) The following educational entities that offer or approve eligible education courses as defined in subdivision (a) of Section 4444, in accordance with the requirements of Section 4448, are approved education providers of courses that meet the prelicensing and continuing education requirements of this Article:

- (1) An accredited educational institution;
- (2) An education provider offering courses sponsored by a local court of the State of California;
- (3) An education provider offering courses approved by the California State Bar for continuing education;
- (4) An accountancy organization or an education provider, if the education qualifies with the California State Board of Accountancy for continuing education credit for renewal of an individual license as a Certified Public Accountant;
- (5) An education provider offering courses registered with the Certified Financial Planner Board of Standards, Inc.;
- (6) An education provider offering courses approved by the California Department of Insurance;
- (7) An education provider of continuing education courses approved by the California Board of Registered Nursing;
- (8) An education provider offering courses approved by the California Board of Psychology;
- (9) An education provider offering courses approved by the California Board of Behavioral Sciences;
- (10) The California Department of Mental Health, Social Services and Developmental Services;
- (11) The Professional Fiduciary Association of California;

(12) The California State Association of Public Administrators, Public Guardians, and Public Conservators;

(13) The National Guardianship Association and its state affiliates;

(14) The National Association of Professional Geriatric Care Managers;

(15) The American Bar Association;

(16) The American Society of Aging;

(17) The Gerontological Society of America;

(18) The National Association of Social Workers;

(19) The National College of Probate Judges;

(20) The National Elder Law Foundation;

(21) The American Bankers Association and its training providers; and,

(22) The Cannon Financial Institute;

(23) Any Long Term-Care Ombudsman program certified by the California Department of Aging; and,

(24) An Internal Revenue Service/Office of Professional Responsibility Approved Program Sponsor for Continuing Education for Enrolled Agents.

*NOTE: Authority cited: Section 6517, Business and Professions Code. Reference: Section 6538, Business and Professions Code.*

#### **Article 4. Code of Ethics**

##### **4470. General Principles.**

(a) A licensee's fiduciary duties recognized under this Article are based upon the fiduciary relationship established with the consumer as follows:

(1) A licensee's relationship to a conservatee when acting as a court appointed conservator;

(2) A licensee's relationship to a ward when acting as a court appointed guardian;

(3) A licensee's relationship to a principal when acting under a durable power of attorney; and,

(4) A licensee's relationship to a beneficiary when acting as a trustee.

(b) The licensee shall comply with all local, state, and federal laws and regulations, and requirements developed by the courts and the Judicial Council as a minimum guide for the fulfillment of the fiduciary duties recognized under this Article.

(c) The licensee shall protect all rights of the consumer that relate to licensee's fiduciary duties to the consumer.

(d) The licensee shall refrain from representing the consumer in areas outside the scope of legal authority.

(e) The licensee shall seek competent professional advice whenever appropriate for the benefit of the consumer.

(f) Consistent with the licensee's fiduciary duties, the licensee shall provide or arrange for services to the consumer, to the extent they are appropriate and reasonable based upon the needs of the consumer, that are in the best interest of the consumer.

(g) Notwithstanding any other provision of law, any expense incurred by the licensee for the delivery of services that are provided to, or arranged for, the consumer by the licensee, including attorney fees or fees to the licensee for services, shall be considered reasonable if approved by the court.

*NOTE: Authority cited: Sections 6517 and 6520, Business and Professions Code. Reference: Section 6520, Business and Professions Code.*

#### **4482. Management of the Estate.**

(a) The licensee shall protect the assets of the estate.

(b) The licensee shall pursue claims against others when it reasonably appears to be in the best interest of the consumer or the estate to do so.

(c) The licensee shall defend against actions or claims against the estate when it reasonably appears to be in the best interest of the consumer or the estate to do so.

(d) The licensee may incur expenses that are appropriate to the estate, in relation to the assets, overall investment strategy, purpose, and other relevant information and circumstances when investing and managing estate assets.

(e) Consistent with the licensee's fiduciary duties, the licensee shall manage the assets of the estate in the best interest of the consumer.

(f) The licensee shall manage the estate with prudence, care and judgment, maintaining detailed fiduciary records as required by law.

(g) Any costs related to complying with, or defending against, a citation issued pursuant to Section 4600 as provided for in subdivision (d) of Section 4604, or related to complying with any of the terms and conditions of probation in a disciplinary action by the Bureau as provide for in subdivision (f) of Section 4624 shall not be considered reasonable.

*NOTE: Authority cited: Sections 6517 and 6520, Business and Professions Code. Reference: Section 6520, Business and Professions Code.*

## **Article 7. Reporting Duties of Licensee**

### **4544. Ongoing Reporting Duties.**

(a) A licensee has a duty to report the following information to the Bureau within fifteen (15) business days of the following occurrences:

(1) Any change to addresses and telephone numbers for the licensee's place of business or place of residence.

(2) If the licensee is removed as a fiduciary by the court for breach of trust, the date, case name, court location, and case number associated with the removal. The licensee shall submit a record of the court findings and orders related to the case. The licensee may file an additional statement of the issues and facts of the case.

(3) If the licensee files for bankruptcy or holds a controlling financial interest in a business that files for bankruptcy.

(b) Each licensee shall report any information that is required to be reported on the annual statement, as specified in Section 4542, or that is otherwise authorized by the Act or regulation as specifically requested by the Bureau, or provide any information for verification of compliance with any item that is required to be reported on the annual statement or that is authorized by the Act or regulation as requested by the Bureau to the Bureau within fifteen (15) business days of the request or later as specified. Compliance with this subdivision shall be in addition to compliance with the reporting requirements in subdivision (a).

(c) Reporting requirements pursuant to this Section shall be in addition to the annual reporting duties of Section 4540 or any other provision of law.

(d) A licensee may be subject to cite or fine or disciplinary action for failure to comply with this Section.

*NOTE: Authority cited: Section 6517, Business and Professions Code. Reference: Sections 141, 480, 481, 490, 6534, 6536, 6560, and 6561, Business and Professions Code.*

## **Article 10. Citations**

### **4600. Authority to Issue Citations; Citation Format.**

(a) The Bureau is authorized to issue citations containing orders of abatement and/or administrative fines pursuant to Sections 125.9 or 148 of the Business and Professions Code against a professional fiduciary or an unlicensed person who has committed any acts or omissions which are in violation of the Act or the regulations contained in this Division.

(b) A citation shall be issued whenever any order of abatement is issued or any fine is levied. Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statutes or regulations alleged to have been violated. The citation shall be served upon the individual personally or by certified mail.

(c) Each citation issued shall inform the cited person that, if he or she desires a hearing to contest the finding of a violation, that a hearing shall be requested by written notice to the Bureau within thirty (30) days of the issuance of the citation or assessment.

NOTE: Authority Cited: Sections 125.9, 148, and 6517, Business and Professions Code. Reference: Sections 125.9, 148, 6580, and 6583, Business and Professions Code.

#### **4602. Administrative Fines for Citations.**

(a) Where citations issued pursuant to Section 4600 of this Article include an assessment of an administrative fine, the fine shall be up to \$5,000 for each violation.

(b) The Bureau shall consider the factors specified in Section 4604 when determining the amount of the administrative fine.

NOTE: Authority cited: Sections 125.9, 148, and 6517, Business and Professions Code. Reference: Sections 125.9, 148, 6580, and 6583, Business and Professions Code.

#### **4604. Citation Factors.**

(a) The following factors shall be considered when determining the amount of an administrative fine:

(1) The good or bad faith exhibited by the cited person.

(2) The nature and severity of the violation.

(3) Evidence that the violation was willful or not.

(4) History of previous violations.

(5) The extent to which the cited person has cooperated with the Bureau.

(6) The extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by his or her violation.

(7) Extenuating circumstances as justice may require.

(8) A finding by a court in a matter related to the violation.

(b) The sanctions authorized under this section shall be separate from, and in addition to, any other civil or criminal remedy.

(c) Any costs related to a citation issued pursuant to Section 4600, including but not limited to, the payment of the fine levied or costs related to the defense of, or compliance with, an order issued in the citation, shall not be borne by the consumer served by the licensee in the matter.

NOTE: Authority cited: Sections 125.9, 148, and 6517, Business and Professions Code. Reference: Sections 125.9, 148, 6580, and 6583, Business and Professions Code.

#### **4606. Contest of Citations; Informal Conference.**

(a) In addition to requesting an administrative hearing as provided for in subdivision (b)(4) of Section 125.9 of the Business and Professions Code, the cited person may request an informal conference to review the acts charged in the citation. A request for an informal conference shall be made in writing, within ten (10) days after the citation has been served upon the individual personally or by certified mail.

(b) The Bureau shall hold, within sixty (60) days from the receipt of the request, an informal conference with the cited person. At the conclusion of the informal conference, the Bureau may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued. The Bureau shall state in writing the reasons for the action and transmit a copy of the findings and decision to the cited person. The decision shall be deemed to be a final order with regard to the citation issued, including any administrative fine levied or order of abatement.

(c) If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If the cited person desires a hearing to contest the new citation, he or she shall make a request in writing, within thirty (30) days of receipt of the informal conference decision, to the Bureau. The hearing shall be conducted as provided for in subdivision (b)(4) of Section 125.9. A cited person may not request an informal conference for a citation which has been modified following an informal conference.

NOTE: Authority cited: Section 125.9, 148, and 6517, Business and Professions Code. Reference: Sections 125.9, 148, 6580, and 6583, Business and Professions Code.

#### **4608. Compliance with Citation!**

The failure of a licensee to comply with a citation containing an assessment of administrative fine, an order of abatement or both an administrative fine and an order of abatement after the citation is final and has been served in accordance with the provisions of Section 11505(c) of the Government Code shall constitute a ground for revocation or suspension of a license.

NOTE: Authority cited: Sections 125.9, 148 and 6517, Business and Professions Code. Reference: Sections 125.9, 148, 6580 and 6583, Business and Professions Code.

#### **4610. Compliance with Order of Abatement.**

(a) The time allowed for abatement of a violation shall begin the first day after the order of abatement has been served or received. If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the person cited may request an extension of time from the Bureau in which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) When an order of abatement is not contested or if the order is appealed and the person cited does not prevail, failure to abate the violation charged within the time specified in the citation shall constitute a violation and failure to comply with the order of abatement. Failure to timely comply with an order of abatement or failure to pay the fine included in the citation within the time allowed may result in disciplinary action being taken by the Bureau or other appropriate judicial relief being taken against the person cited.

NOTE: Authority cited: Sections 125.9, 148, and 6517, Business and Professions Code. Reference: Sections 125.9, 148, 6580 and 6583, Business and Professions Code.

### **Article 11. Enforcement**

#### **4620. Substantially Related Criteria for License Suspension or Revocation.**

For purposes of suspension or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a fiduciary if to a substantial degree it demonstrates present or potential unfitness of a person holding a license to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to fiscal dishonesty or breach of fiduciary responsibilities of any kind.

NOTE: Authority cited: Sections 481 and 6517, Business and Professions Code. Reference: Sections 481, 490, 6580 and 6584, Business and Professions Code.

#### **4622. Rehabilitation Criteria for License Suspension or Revocation.**

When considering the suspension or revocation of a license under Section 480 or 6536 of the Business and Professions Code, the Bureau, in evaluating the rehabilitation of the licensee and his or her present eligibility for a license, shall consider the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for suspension or revocation.

(b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for suspension or revocation which also could be considered grounds for suspension or revocation under Section 6584 of the Business and Professions Code.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (a) or (b).

(d) The extent to which the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(e) Evidence, if any, of rehabilitation submitted by the licensee.

NOTE: Authority cited: Sections 482 and 6517, Business and Professions Code. Reference: Sections 482, 6580, and 6584, Business and Professions Code.

#### **4624. Disciplinary Order.**

For violations of Section 6584 of the Business and Professions Code which result in a disciplinary order issued in accordance with Chapters 4.5 and 5 of Part 1 of Division 3 of Title 2 of the Government Code against a professional fiduciary, the following provisions shall apply to disciplinary orders of the Bureau.

(a) The minimum disciplinary order shall be reproof. The maximum disciplinary order shall be revocation of the license.

(b) In those cases where suspension is warranted, the suspension shall be a minimum of thirty (30) days, unless otherwise noted.

(c) If warranted by extenuating and/or mitigating factors in the matter, the disciplinary order may be stayed by an express condition that the respondent comply with probationary terms and conditions. The minimum time period in which the respondent shall have to comply with the probationary terms and conditions shall be two years. For purposes of this section, this time period shall be known as the "period of probation."

(d) All decisions containing stayed disciplinary orders as described in subdivision (b) shall include the following probationary terms and conditions:

(1) The respondent shall comply with all federal, state, and local laws, and all rules and regulations governing the practice of a professional fiduciary. A full and detailed account of any and all violations of law shall be reported by the respondent to the Bureau within seventy-two (72) hours of occurrence.

(2) The respondent shall comply with any court order including the payment of a fine or penalty imposed by a court order for any court action relating to any violation of duties of a professional fiduciary.

(3) During the period of probation the respondent shall comply with the terms and conditions of probation and demonstrate no cause for disciplinary action or denial of license.

(4) The respondent shall appear in person for scheduled interviews with the Bureau purposes of monitoring compliance with the disciplinary order.

(5) The respondent shall submit reports to the Bureau, including criminal court probation reports and other reports as specified, upon request by the Bureau relating to their duties as a professional fiduciary.

(6) The respondent shall submit specified records to the Bureau for inspection upon request by the Bureau.

(7) The respondent shall, at all times while on probation, maintain a current and active license with the Bureau, including any period during which suspension or probation is tolled. Should respondent's license, by operation of law or otherwise, expire, upon renewal respondent's license shall be subject to any and all terms of this probation not previously satisfied.

(8) If the respondent violates the probationary terms and conditions in any respect, the Bureau, after giving the respondent notice and the opportunity to be heard, may vacate the stay and reinstate the disciplinary order which was stayed. If, during the period of probation, an accusation or petition to vacate stay is filed against the respondent, or if the matter has been submitted to the Office of the Attorney General for the filing of such, the Bureau shall have continuing jurisdiction until all matters are final, and the period of probation shall be extended until all matters are final.

(9) Following the effective date of the disciplinary order, if respondent is unable or unwilling to satisfy the terms and conditions of probation, respondent may voluntarily request the surrender of his or her license to the Bureau. The Bureau reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within fifteen (15) calendar days deliver respondent's license certificate and pocket license to the Bureau and respondent shall no longer engage in any practice for which a license is required. Upon formal acceptance of the tendered license, respondent will no longer be subject to the terms and conditions of probation.

Voluntary surrender of respondent's license shall be considered to be a disciplinary action and shall become a part of respondent's history with the Bureau. Respondent may

not petition the Bureau for reinstatement of the surrendered license. Should respondent at any time after voluntary surrender ever reapply to the Bureau for licensure, respondent must meet all current requirements for licensure including, but not limited to, filing a current application, meeting all current educational requirements, and taking and passing any and all examinations required of new applicants.

Surrender without the written consent of the Bureau shall not, during any period in which the license may be renewed, restored, reissued, or reinstated, deprive the Bureau of the authority to initiate or continue a disciplinary proceeding against respondent, or to enter an order suspending or revoking the license, or otherwise take disciplinary action.

(10) Upon successful completion of all of the probationary terms and conditions and the expiration of the period of probation, the respondent's licensee shall be unconditionally restored.

(e) All decisions containing stayed disciplinary orders as described in subdivision (b) may include one or more of the following probationary terms and conditions:

(1) Within thirty (30) days of the effective date of the decision, the respondent shall provide the Bureau with evidence that he or she has provided all persons or entities with whom he or she has a fiduciary relationship such that the relationship is in the area of practice of a professional fiduciary in which the violation occurred with a copy of the decision and disciplinary order of the Bureau and shall provide the Bureau with the name and business address of each person or entity required to be so notified. During the period of probation, the respondent may be required to provide the same notification of each new person or entity with whom he or she has a fiduciary relationship such that the relationship is in the area of practice of a professional fiduciary in which the violation occurred and shall report to the Bureau the name and address of each person or entity so notified. A person or entity required to be notified, including a new person or entity as specified, shall include but not be limited to, the consumer of an applicable professional fiduciary relationship, any court involved in the fiduciary matter in which the consumer must be notified, and any attorney who represents the consumer in the matter in which the consumer must be notified.

(2) The respondent shall make restitution as ordered. The respondent shall provide verifiable proof to the Bureau that restitution has been paid as ordered. The probationary terms and conditions shall include a time period in which the verifiable proof shall be provided to the Bureau which time period shall be at least sixty (60) days less than the time period ordered for the period of probation.

(3) Respondent's duties or services shall be limited as designated by the disciplinary order.

(4) In addition to the disciplinary order described in this section, all decisions shall address recovery of the Bureau's investigation and enforcement costs, as described in and authorized by Section 125.3 of the Business and Professions Code.

(5) The respondent shall reimburse the Bureau the reasonable costs it incurs in monitoring the probation to ensure compliance for the duration of the period of probation.

(6) The respondent shall complete a remedial education program directly relevant to the violation as specified by the Bureau. The education program shall specify the areas and hours of education required and shall be completed within a designated time period. All course work shall be from an accredited educational institution or from an approved continuing education provider. Classroom attendance may be specifically required.

Within sixty (60) days of the effective date of the disciplinary order, respondent shall submit a plan for prior Bureau approval for meeting these educational requirements. The respondent shall provide proof of attendance and satisfactory completion of courses. Failure to satisfactorily complete the required program as scheduled shall constitute a violation of probation. All costs of the course work shall be paid by the respondent. Units obtained for an approved course shall not be used for continuing education units required for renewal of licensure.

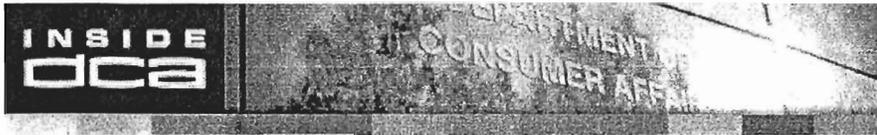
(f) Any expenses incurred by a professional fiduciary for compliance with any of the terms and conditions of probation in a disciplinary action by the Bureau, including but not limited to, costs to comply with orders related to probation monitoring, reporting, restitution, remedial education, and fines levied against the professional fiduciary, shall not be borne by the consumer served by the licensee in the matter.

(g) Notwithstanding this section, non-conforming terms and conditions may be included as part of the disciplinary order, including such other further or lesser actions as the Bureau deems appropriate, in the interest of protecting the public health, safety, and welfare.

NOTE: Authority cited: Section 6517, Business and Professions Code; Section 11425.50(e), Government Code. Reference: Sections 125.3, 125.6, 480(a), 496, 6580, 6584, Business and Professions Code; Sections 11425.50(e) and 11519, Government Code.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Gil DeLuna  
Acting Bureau Chief  
Professional Fiduciaries Bureau



To serve the interests of California consumers by ensuring a standard of professionalism in key industries and promoting informed consumer practices.

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## BOARD MEMBER ORIENTATION TRAINING (BMOT)

*"Every newly appointed board member shall, within one year of assuming office, complete a training and orientation program offered by the department regarding, among other things, his or her functions, responsibilities, and obligations as a member of a board."*

Business and Professions Code Section 453

### DCA has scheduled the following Board Member Orientation Training (BMOT) sessions:

- ▶ March 2, 2011 - Sacramento
- ▶ June 1, 2011 - Southern California
- ▶ October 12, 2011 - Sacramento

All BMOT sessions will begin at 9:00 a.m. and conclude at 4:30 p.m. Please make travel arrangements that allow for you to attend the full training.

### Contact person

[Deanna Marino Robinson](#)  
 Strategic Organization, Leadership & Individual Development  
 1625 North Market Blvd., Suite S209  
 Sacramento, CA 95834  
 (916) 574-8320

### Resources

[Board Member Orientation Training RSVP Form](#)

DEPARTMENT OF CONSUMER AFFAIRS

## BOARD MEMBER RESOURCE CENTER

### **Board Members - Sexual Harassment Prevention Training**

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Section 12950.1 of the Government Code requires all new board members to attend at least two hours of classroom or other interactive training and education regarding sexual harassment prevention within six months of their appointment. The Equal Employment Opportunity (EEO) Office is responsible for ensuring that all board members complete their required training. If you have already completed the required training, please forward a copy of your certificate of proof of training to the EEO Office and identify which Board/Committee/Commission you serve on.

For information on how to receive this training, or for further information, please use the contact information below:  
Equal Employment Opportunity Office  
1625 N. Market Blvd, Ste N330  
Sacramento, CA 95834  
(916) 574-8280 (916) 574-8604 Fax

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DEPARTMENT OF CONSUMER AFFAIRS

## BOARD MEMBER RESOURCE CENTER

**Board Members - Ethics Orientation**

California law requires all appointees to take an ethics orientation within the first six months of their appointment and to repeat this ethics orientation every two years throughout their term.

The training includes important information on activities or actions that are inappropriate or illegal. For example, generally public officials cannot take part in decisions that directly affect their own economic interests. They are prohibited from misusing public funds, accepting free travel and accepting honoraria. There are limits on gifts.

An online, interactive version of the training is available on the Attorney General's Web site at <http://ag.ca.gov/ethics/>. An accessible, text-only version of the materials is also available at the Attorney General's Web site.

Once you've completed the training, please send a copy of your certificate of completion to:

**California Department of Consumer Affairs  
Strategic Organization, Leadership & Individual Development  
1625 North Market Blvd., Suite N321  
Sacramento, CA 95834**

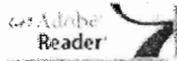
If you have any questions about the content of the orientation, please contact:

**Michael Santiago, Department of Consumer Affairs Ethics Officer: (916) 574-8220**

If you don't have Internet access, and you want to obtain an information package on ethics orientation training, please contact:

**Carol Wong: (916) 574-8323**

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DEPARTMENT OF CONSUMER AFFAIRS

BOARD MEMBER RESOURCE CENTER

**Conflict of Interest**

The Department of Consumer Affairs will make and retain a copy of the statements from members of the boards, commission, committees and subcommittees and make them available for public inspection. It will forward the original statement to the Fair Political Practices Commission.

Following are links to related forms, detailed information and resources:

[Form 700 - Statement of Economic Interests](#)

[Form 700 - Statement of Economic Interests Pamphlet](#)

[Department of Consumer Affairs - Conflict of Interest Regulations](#)

[Gifts to Agency Report](#)

[Can I vote? A Basic Review of Public Officials' Obligations Under the Political Reform Act's Conflict-of-Interest Rules](#)

[The Political Reform Act of 1974](#)

[Regulations of the Fair Political Practices Commission](#)

[Revolving Door and Other Post-Employment Issues: Leaving Your State Job? Post-Employment Restrictions May Affect You](#)

[Limitations & Other Restrictions on Gifts, Honoraria, Travel & Loans](#)

[Office of the Attorney General - Conflicts of Interest Publication](#)

[Your Duty To File: A Basic Overview of State Economic Disclosure Law And Reporting Requirements For Public Officials](#)

Fundamentally, the requirement is that public officials perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. However, the law in this area is complex and the circumstances of potential conflict of interest situations can vary.

**Assuming Office and Initial Statements**

Filer	Deadline
Elected officials	30 days after assuming office
Appointed positions specified in Gov. Code section 87200 (listed in Appendix-1)	30 days after assuming office
or	
Newly created board and commission members not covered by a conflict-of-interest code	10 days after appointment or nomination if subject to Senate or judicial confirmation
Other appointed positions (including newly-hired employees) designated in a conflict-of-interest code	30 days after assuming office (30 days after appointment or nomination if subject to Senate confirmation)
Positions newly added to a new or amended conflict-of-interest code	30 days after the effective date of the code or code amendment

**Annual Statements**

Due April 1 of each year. The deadline is extended to the next business day if the date falls on a weekend.

**Exception:** If you assumed office between October 1, 2006, and December 31, 2006, and filed an assuming office statement, you are not required to file an annual statement until April 1, 2008. The annual statement will cover the day after you assumed office through December 31, 2006.

### Leaving Office Statements

Leaving office statements must be filed no later than 30 days after leaving the office or position. If you have questions about conflict of interest laws, restrictions and filing requirements, contact:

**Michael Santiago, Department of Consumer Affairs Ethics Officer. (916) 574-8220**

Board members can contact the Filing Officer/Official in the Office of Human Resources for copies of required forms and schedules and for information regarding filing of the Form 700. Contact:

**David Test, Office of Human Resources: (916) 574-8367**

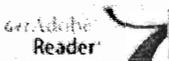
Information can also be obtained by contacting:

**Fair Political Practices Commission: (916) 322-5660 or toll-free at 1-866-ASK-FPPC (1-866-275-3772)**  
428 J Street, Suite 620  
Sacramento, CA 95814

**California Department of Consumer Affairs: (916) 574-8300, fax: (916) 574-8608**  
Office of Human Resources  
1625 North Market Blvd., Suite N 321  
Sacramento, CA 95834

*Office hours are from 8 a.m. to 5 p.m.*

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## DEPARTMENT OF CONSUMER AFFAIRS

## FIDUCIARY BUREAU

**BUDGET REPORT**  
**FY 2009-10 EXPENDITURE PROJECTION**  
**CALSTARS REPORT AS OF 3/31/11**

OBJECT DESCRIPTION	FY 09-10		FY 10-11				UNENCUMBERED BALANCE 6/30/10
	ACTUAL EXPENDITURES (MONTH 13)	PRIOR YEAR EXPENDITURES AS OF 3/31/10	BUDGET ALLOTMENT	CURRENT YEAR EXPENDITURES AS OF 3/31/11	PERCENT SPENT	PROJECTIONS TO YEAR END	
<b>PERSONNEL SERVICES</b>							
Salary & Wages	32,075	22,492	85,900	30,975	36.1%	44,000	41,900
Temp Help (Examiners)					0.0%	0	0
Temp Help (Consultant)				8,575	0.0%	13,000	(13,000)
Temp Help (Seasonals)					0.0%	0	0
Temp Help (Exam Proctor)					0.0%	0	0
Board Member Per Diem					0.0%	0	0
Committee Members					0.0%	0	0
Overtime					0.0%	0	0
Staff Benefits	18,081	16,988	42,809	19,006	44.4%	25,000	17,809
Salary Savings	0	0	(4,469)		0.0%		(4,469)
<b>TOTALS, PERSONNEL SVCS</b>	<b>50,156</b>	<b>39,480</b>	<b>124,240</b>	<b>58,556</b>	<b>47.1%</b>	<b>82,000</b>	<b>42,240</b>
<b>OPERATING EXPENSE AND EQUIPMENT</b>							
General Expense	326	26	10,565	1,763	16.7%	3,000	7,565
Fingerprint Reports	2,447	12			0.0%	0	0
Minor Equipment					0.0%	0	0
Printing	140	59		934	#DIV/0!	1,500	(1,500)
Communication			770	942	122.3%	1,500	(730)
Postage	2,910	608	1,014	1,491	147.0%	4,000	(2,986)
Insurance					0.0%	0	0
Travel In State	1,260	1,248	16,719	637	3.8%	1,000	15,719
Travel, Out-of-State					0.0%	0	0
Training	148	148	1,014	750	0.0%	1,000	14
Facilities Operations	13,671	13,602	30,915	12,817	41.5%	14,000	16,915
C & P Services - Inter			2,935		0.0%	0	2,935
C & P Services - External					0.0%	0	0
DP Billing	18,185	14,895	16,765	12,554	74.9%	16,765	0
Admin Prorata	55,295	41,544	27,754	20,816	75.0%	27,754	0
Interagency Svcs			26,130		0.0%	0	26,130
DOI Prorata	1,257	1,017	668	502	75.1%	668	0
Public Affairs Prorata	1,532	2,322	1,356	1,017	75.0%	1,356	0
Consumer and Community	1,632	1,224	821	615	74.9%	821	0
Consolidated Data Center					0.0%	0	0
DP Maintenance & Supplies			1,162		0.0%	0	1,162
Central Admin Svcs - Pro Rata	43,159	32,369	18,921	14,191	75.0%	19,000	(79)
<b>EXAM EXPENSES:</b>							
Exam Supplies					0.0%	0	0
Exam Freight					0.0%	0	0
Exam Site Rental					0.0%	0	0
Exam Contract	1,350	1,350		1,350	0.0%	1,500	(1,500)
Exam Experts					0.0%	0	0
<b>ENFORCEMENT:</b>							
Attorney General	24,200	9,930		38,720	0.0%	52,000	(52,000)
Office of Admin. Hearings	9,930	357		170	0.0%	10,000	(10,000)
Court Reporter Services						0	0
Evidence / Witness Fees	9,004				0.0%	1,000	(1,000)
DCA / Div. of Investigations	941	774			0.0%	1,000	(1,000)
Major Equipment					0.0%	0	0
Vehicle Operations					0.0%	0	0
Other Items Expense	662				0.0%	0	0
Special Adjustments					0.0%	0	0
Tort Payments					0.0%	0	0
<b>TOTALS, OE&amp;E</b>	<b>188,049</b>	<b>121,485</b>	<b>157,509</b>	<b>109,269</b>	<b>69.4%</b>	<b>157,864</b>	<b>(355)</b>
<b>TOTAL EXPENSES</b>	<b>238,205</b>	<b>160,965</b>	<b>281,749</b>	<b>167,825</b>	<b>59.6%</b>	<b>239,864</b>	<b>41,885</b>
Sched. Reimb. - Other	0	0	0	0	0.0%	0	0
Fingerprints	0	0	0	0	0.0%	0	0
Internal Cost Recovery	0	0	0	0	0.0%	0	0
<b>NET APPROPRIATION</b>	<b>238,205</b>	<b>160,965</b>	<b>281,749</b>	<b>167,825</b>	<b>59.6%</b>	<b>239,864</b>	<b>41,885</b>

**Surplus/(Deficit): 14.9%**

## NOTES/ASSUMPTIONS

1. CY expenditures include YTD+ Encumbrances
2. New Bureau effective FY 2007-08 (Chapter 491, Statutes of 2006)

# 3108 - Professional Fiduciaries Bureau

## Analysis of Fund Condition

(Dollars in Thousands)

### Proposed FY 2011-12 Governor's Budget

	Actual 2009-10	CY 2010-11	Governor's Budget BY 2011-12	BY +1 2012-13	BY +2 2013-14
<b>BEGINNING BALANCE</b>	\$ 78	\$ 146	\$ 48	\$ 136	\$ 212
Prior Year Adjustment	\$ 7	\$ -	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 85	\$ 146	\$ 48	\$ 136	\$ 212
<b>REVENUES AND TRANSFERS</b>					
Revenues:					
125600 Other regulatory fees	\$ -	\$ -	\$ -	\$ -	\$ -
125700 Other regulatory licenses and permits	\$ 134	\$ 69	\$ 69	\$ 69	\$ 69
125800 Renewal fees	\$ 161	\$ 319	\$ 319	\$ 319	\$ 319
125900 Delinquent fees	\$ 1	\$ 8	\$ 8	\$ 8	\$ 8
141200 Sales of documents	\$ -	\$ -	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ -	\$ -	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 1	\$ 2	\$ 1	\$ 2	\$ 3
150500 Interest from Interfund loan	\$ -	\$ -	\$ -	\$ -	\$ -
160400 Sale of fixed assets	\$ -	\$ -	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ -	\$ -	\$ -	\$ -	\$ -
161400 Miscellaneous revenues	\$ 1	\$ 1	\$ 1	\$ 1	\$ 1
Totals, Revenues	\$ 298	\$ 399	\$ 398	\$ 399	\$ 400
Transfers from Other Funds					
F03108 From VIRF loan per CS 14.00, BA of 2007	\$ -	\$ -	\$ -	\$ -	\$ -
Transfers to Other Funds					
To VIRF loan per CS 14.00, BA of 2007	\$ -	\$ (215)	\$ -	\$ -	\$ -
Totals, Revenues and Transfers	\$ 298	\$ 184	\$ 398	\$ 399	\$ 400
Totals, Resources	\$ 383	\$ 330	\$ 446	\$ 535	\$ 612
<b>EXPENDITURES</b>					
Disbursements:					
0840 State controller (State Operations)			\$ 1		
HR Mod Project					
8860 FSCU (State Operations)			\$ 1		
1111 Program Expenditures (State Operations) -	\$ 237	\$ 282	\$ 308	\$ 323	\$ 330
9670 Equity Claims / Board of Control (State Operations)	\$ -	\$ -	\$ -	\$ -	\$ -
Total Disbursements	\$ 237	\$ 282	\$ 310	\$ 323	\$ 330
<b>FUND BALANCE</b>					
Reserve for economic uncertainties	\$ 146	\$ 48	\$ 136	\$ 212	\$ 282
<b>Months in Reserve</b>	6.2	1.9	5.0	7.7	10.0

**NOTES:**

- A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED
- B. ASSUMES NO EXPENDITURE GROWTH

# 89 - PROFESSIONAL FIDUCIARIES BUREAU

Item 1111-002-3108

## BUDGET SUMMARY

	<u>CY 2010-11</u>	<u>Governor's Budget BY 2011-12</u>		
2010 Governor's Budget	293,000			
Change Book / Governor's Veto:	0			
2010 Budget Act	293,000	293,000		
One-Time Costs:			0	
Baseline Adjustments:				
Retirement Rate Adjustment (BL 10-32)	3,389	3,000		
Employee Compensation (BL 10-33)	-9,000	-4,000		
Healthcare Adjustment (10-33)	712	1,000		
Workforce Cap Adjust. (10-33)	-6,352	-7,000		
2.0% OE&E Price Increase (BL 10-25)				
2.0% OE&E Price Adjustment (BL 10-25)				
Department Distributed Costs				
OIS			-7,025	
Admin/Exec.			-3,944	
DOI Internal			-132	
Public Affairs			-253	
CCED			52,354	
DOI Investigative				
Statewide (Central Admin.) Prorata Equipment Adjustment			-19,000	
Budget Change Proposals (BCPs):				
Bureau BCPs:				
Department-wide:				
<b>REVISED APPROPRIATION</b>	<b>281,749</b>	<b>308,000</b>	<b>Net Change</b>	
Reimbursements	0	0	26,251	9.3%
<b>Revised Net Appropriation (from fund)</b>	<b>281,749</b>	<b>308,000</b>		
<b>PERSONNEL YEARS</b>	<b>1.6</b>	<b>1.6</b>	<b>0.0</b>	<b>0.0%</b>
Authorized Positions	1.7	1.7		
Blanket	0.0	0.0		
Salary Savings	-0.1	-0.1		

# **Agenda Item**

**#8**



## MEMORANDUM

<b>DATE</b>	April 21, 2011
<b>TO</b>	Advisory Committee Members Professional Fiduciaries Bureau
<b>FROM</b>	Gil DeLuna, Acting Chief
<b>SUBJECT</b>	<b>Agenda Item #8 – Legislative Update AB997</b>

### **AB 997 (Wagner): Professional Fiduciaries**

This bill clarifies the definition of a “professional fiduciary.” The bill provides limited exemptions from the Professional Fiduciaries Act (Act) for charitable trusts that meet certain requirements.

This Bill Would Exempt 501(c)(3) Entities that Meet the Following Conditions:  
Meet the requirements in Section 509(a)(1), Section 509(a)(2), or Section 509(a)(3) of the IRS Code:

- \*Has been in existence for at least five years
- \*Has a total fund value of at least \$2,000,000
- \*Is acting as a trustee of a trust that meets one of the following conditions:
  - Annual distributions are a fixed percentage of assets
  - Distributions are limited to income, including pooled income funds
  - The value of charitable interest can be ascertained upon creation of the trust

**Status:** Hearing set for April 26 in Assembly Business, Professions and Consumer Protection. No official position yet.

### **Support:**

Bakersfield Memorial Hospital Foundation  
California State University  
California State University, Long Beach Foundation  
Episcopal Diocese of California  
Jewish Community Foundation of Los Angeles  
Northern California Planned Giving Council  
Association of Independent California Colleges and Universities  
Santa Clara University  
Claremont McKenna College  
Kaspick & Company  
Stanford University  
Mount St. Mary's College  
University of California

Oppose:

Professional Fiduciary Association of California

Advisory Committee comments

Public comments

AMENDED IN ASSEMBLY APRIL 11, 2011  
AMENDED IN ASSEMBLY MARCH 31, 2011  
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 997**

---

**Introduced by Assembly Member Wagner**

February 18, 2011

---

An act to amend Section 6501 of the Business and Professions Code, relating to professional fiduciaries.

LEGISLATIVE COUNSEL'S DIGEST

AB 997, as amended, Wagner. Professional fiduciaries.

Existing law, the Professional Fiduciaries Act, provides for the licensure and regulation of professional fiduciaries by the Professional Fiduciaries Bureau within the Department of Consumer Affairs. Existing law defines the term "professional fiduciary" and specifies those entities excluded from that term.

This bill would additionally provide that *a* specified nonprofit ~~corporations~~ *corporation* or charitable ~~trusts~~ *trust* meeting certain requirements ~~are~~ *is* not a professional ~~fiduciaries~~ *fiduciary* subject to the act.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

- 1 SECTION 1. Section 6501 of the Business and Professions
- 2 Code is amended to read:

1 6501. As used in this chapter, the following terms have the  
2 following meanings:

3 (a) "Act" means this chapter.

4 (b) "Bureau" means the Professional Fiduciaries Bureau within  
5 the Department of Consumer Affairs, established pursuant to  
6 Section 6510.

7 (c) "Client" means an individual who is served by a professional  
8 fiduciary.

9 (d) "Department" means the Department of Consumer Affairs.

10 (e) "Licensee" means a person who is licensed under this chapter  
11 as a professional fiduciary.

12 (f) (1) "Professional fiduciary" means a person who acts as a  
13 conservator of the person, the estate, or person and estate, or  
14 guardian of the estate, or person and estate, for two or more  
15 individuals at the same time who are not related to the professional  
16 fiduciary or to each other.

17 (2) "Professional fiduciary" also means a person who acts as a  
18 trustee, agent under a durable power of attorney for health care,  
19 or agent under a durable power of attorney for finances, for more  
20 than three individuals, at the same time.

21 In counting individuals under this paragraph to determine  
22 whether a person is a professional fiduciary:

23 (A) Individuals who are related to the fiduciary shall not be  
24 counted.

25 (B) All individuals who are related to each other shall be counted  
26 as one individual.

27 (C) All trustors who are related to each other shall be counted  
28 as one individual, and neither the number of trusts nor the number  
29 of beneficiaries of those trusts shall be counted.

30 (3) For purposes of this subdivision, "related" means related by  
31 blood, adoption, marriage, or registered domestic partnership.

32 (4) "Professional fiduciary" does not include any of the  
33 following:

34 (A) A trust company, as defined in Section 83 of the Probate  
35 Code.

36 (B) An FDIC-insured institution, or its holding companies,  
37 subsidiaries, or affiliates. For the purposes of this subparagraph,  
38 "affiliate" means any entity that shares an ownership interest with,  
39 or that is under the common control of, the FDIC-insured  
40 institution.

1 (C) Any public agency, including the public guardian, public  
2 conservator, or other agency of the State of California or of a  
3 county of California or any regional center for persons with  
4 developmental disabilities as defined in Section 4620 of the  
5 Welfare and Institutions Code.

6 (D) Any nonprofit corporation or charitable trust that is  
7 described in Section 501(c)(3) of the Internal Revenue Code and  
8 that satisfies all of the following requirements:

9 (i) Is an organization described in Section 509(a)(1), Section  
10 509(a)(2), or Section 509(a)(3) of the Internal Revenue Code.

11 (ii) Has been in existence for at least five years.

12 (iii) Has total institutional funds as described in subdivision (e)  
13 of Section 18502 of the Probate Code according to its most recent  
14 audited financial statement with a value of at least two million  
15 dollars (\$2,000,000) net of encumbrances.

16 (iv) Is acting as a trustee, incidental to the purposes for which  
17 it was organized as a trust and, of a trust that meets at least one of  
18 the following conditions:

19 (I) It is a trust from which annual distributions are limited to  
20 *income*, a sum certain, or a fixed percentage of the net fair market  
21 value of the trust assets as described in Section 664(d) of the  
22 Internal Revenue Code governing charitable remainder trusts.

23 (II) It is a trust from which annual distributions are limited to  
24 a guaranteed annuity or a fixed percentage of the fair market value  
25 of the property as described in Section 2522(c)(2)(B) or Section  
26 2055(e)(2)(B) of the Internal Revenue Code.

27 (III) It is a trust from which annual distributions are limited to  
28 income, including a pooled income fund from which annual  
29 distributions are limited to income as described in Section 642(c)(5)  
30 of the Internal Revenue Code governing pooled income funds.

31 (IV) It is a trust as to which the value of the charitable interest  
32 was presently ascertainable upon creation of the trust and  
33 deductible for federal gift, estate, or income tax purposes under  
34 the Internal Revenue Code as in effect prior to enactment of the  
35 federal Tax Reform Act of 1969 (Public Law 91-172).

36 ~~(E) Any nonprofit corporation or charitable trust that is described  
37 in Section 501(c)(3) of the Internal Revenue Code acting as a  
38 trustee incidental to the purposes for which it was organized as a  
39 trust and that meets at least one of the following conditions:~~

- 1 (i) It is a trust from which annual distributions are limited to a  
2 sum certain or a fixed percentage of the net fair market value of  
3 the trust assets as described in Section 664(d) of the Internal  
4 Revenue Code governing charitable remainder trusts.
- 5 (ii) It is a trust from which annual distributions are limited to a  
6 guaranteed annuity or a fixed percentage of the fair market value  
7 of the property as described in Section 2522(e)(2)(B) or Section  
8 2055(e)(2)(B) of the Internal Revenue Code governing charitable  
9 lead trusts.
- 10 (iii) It is a trust from which annual distributions are limited to  
11 income, including a pooled income fund from which annual  
12 distributions are limited to income as described in Section 642(e)(5)  
13 of the Internal Revenue Code governing pooled income funds.
- 14 (iv) It is a trust that was created prior to January 1, 1970.
- 15 (F)
- 16 (E) A person employed by *or acting as an agent on behalf of*  
17 an entity or agency described in subparagraph (A), (B), (C), *or*  
18 (D), ~~or (E)~~ who is acting within the course and scope of that  
19 employment *or agency*, and a public officer of an agency described  
20 in subparagraph (C) acting in the course and scope of official  
21 duties.
- 22 (G)
- 23 (F) Any person whose sole activity as a professional fiduciary  
24 is as a broker-dealer, broker-dealer agent, investment adviser, or  
25 investment adviser representative registered and regulated under  
26 the Corporate Securities Law of 1968 (Division 1 (commencing  
27 with Section 25000) of Title 4 of the Corporations Code), the  
28 Investment Advisers Act of 1940 (15 U.S.C. Sec. 80b-1 et seq.),  
29 or the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et  
30 seq.), or involves serving as a trustee to a company regulated by  
31 the Securities and Exchange Commission under the Investment  
32 Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).
- 33 (g) "Committee" means the Professional Fiduciaries Advisory  
34 Committee, as established pursuant to Section 6511.



## MEMORANDUM

<b>DATE</b>	April 21, 2011
<b>TO</b>	Advisory Committee Members Professional Fiduciaries Bureau
<b>FROM</b>	Gil DeLuna, Acting Chief
<b>SUBJECT</b>	Agenda Item #8 – Legislative Update - <b>AB1288</b>

### **AB 1288 (Gordon): Public Guardians and Conservators: Property Held in Trust**

This bill extends the authority of a public guardian or conservator to take temporary possession of property, and the corresponding obligation of a financial institution or other person to provide property, to property held in trust for a potential ward or conservatee. The bill also extends to 30 days the period that the written certification issued for purposes of taking possession or control of the property is effective.

Status: Hearing set for May 10 in Assembly Judiciary. No official position.

Advisory Committee comments

Public comments

AMENDED IN ASSEMBLY MARCH 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1288

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Introduced by Assembly Member Gordon  
(Principal coauthor: Assembly Member Beall)

February 18, 2011

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~~An act to amend Section 2352.5 of the Probate Code, relating to conservatorships.~~ *An act to amend Sections 2900 and 2901 of the Probate Code, relating to public guardians and conservators.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1288, as amended, Gordon. ~~Conservatees: personal residences.~~ *Public guardians and conservators: authority: property held in trust.*

*Existing law authorizes a county public guardian or conservator to take temporary possession or control of real and personal property of a person in the county who requires a guardian or conservator, as specified, if the property is subject to loss, injury, waste, or misappropriation. Existing law authorizes a public guardian to issue a written certification for purposes of taking possession or control of property in this regard, which may be recorded and which is effective for 15 days after the date of issuance. Existing law requires a financial institution or other person, without inquiring into the truth of the written certification and without court order being issued, to provide the public guardian information concerning property held in the sole name of the proposed ward or conservatee and to surrender to the public guardian property of the proposed ward or conservatee that is subject to loss, injury, waste, or misappropriation. Existing law immunizes the financial institution or other person from any liability for any act or omission of the public guardian with respect to the property.*

*This bill would extend the authority of a public guardian or conservator to take temporary possession of property, and the corresponding obligation of a financial institution or other person to provide property, as described above, to property held in trust for a potential ward or conservatee. The bill would also extend to 30 days the period that the written certification issued for purposes of taking possession or control of property is effective.*

~~Existing law provides for the establishment of conservatorships and permits a conservator to establish the residence of the conservatee within the state without permission of the court. Existing law creates a presumption that the personal residence of the conservatee at the time a conservatorship proceeding commences is the least restrictive appropriate residence of the conservatee.~~

~~This bill would make a nonsubstantive, technical change to these provisions:~~

~~Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.~~

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

1     SECTION 1. Section 2900 of the Probate Code is amended to  
2     read:

3     2900. (a) If the public guardian or public conservator  
4     determines that the requirements for appointment of a guardian or  
5     conservator of the estate are satisfied and the public guardian or  
6     public conservator intends to apply for appointment, the public  
7     guardian or public conservator may take possession or control of  
8     real or personal property of, *or property held in trust for*, a person  
9     domiciled in the county that is subject to loss, injury, waste, or  
10    misappropriation, and, subject to subdivision (b), may deny use  
11    of, access to, or prohibit residency in, the real or personal property,  
12    by anyone who does not have a written rental agreement or other  
13    legal right to the use of, or access to, the property.

14    (b) The authority provided to the public guardian and public  
15    conservator in subdivision (a) includes the authority to terminate  
16    immediately the occupancy of anyone living in the home of an  
17    intended ward or conservatee, other than the intended ward or  
18    conservatee, and the authority to remove any such occupant  
19    residing therein, subject to the following requirements:

1 (1) The public guardian or public conservator shall first  
2 determine that the person whose occupancy is to be terminated  
3 has no written rental agreement or other legal right to occupancy,  
4 and has caused, contributed to, enabled, or threatened loss, injury,  
5 waste, or misappropriation of the home or its contents. In making  
6 this determination, the public guardian or public conservator shall  
7 contact the intended ward or conservatee and the occupant, advise  
8 them of the proposed removal and the grounds therefor, and  
9 consider whatever information they provide.

10 (2) At the time of the removal, the public guardian or public  
11 conservator shall advise the intended ward or conservatee and the  
12 occupant that a hearing will be held as provided in paragraph (3).

13 (3) The public guardian or public conservator shall file a petition  
14 regarding removal, showing the grounds therefor, to be set for  
15 hearing within 10 days of the filing of the petition and within 15  
16 days of the removal. The person removed and the intended ward  
17 or conservatee shall be personally served with a notice of hearing  
18 and a copy of the petition at least five days prior to the hearing,  
19 subject to Part 2 (commencing with Section 1200) of Division 3.  
20 The right of the public guardian or public conservator to deny  
21 occupancy by the removed person to the premises shall terminate  
22 15 days after removal, unless extended by the court at the hearing  
23 on the petition. The court shall not grant an extension unless the  
24 public guardian or public conservator has filed a petition for  
25 appointment as guardian or conservator of the estate.

26 (c) If the public guardian or public conservator takes possession  
27 of the residence of an intended ward or conservatee under this  
28 section, then for purposes of Section 602.3 of the Penal Code, the  
29 public guardian or public conservator shall be the owner's  
30 representative.

31 *SEC. 2. Section 2901 of the Probate Code is amended to read:*

32 2901. (a) A public guardian who is authorized to take  
33 possession or control of property under this chapter may issue a  
34 written certification of that fact. The written certification is  
35 effective for ~~15~~ 30 days after the date of issuance.

36 (b) The written recordable certification shall substantially  
37 comply with the following form:  
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“CERTIFICATE OF AUTHORITY

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THIS IS AN OFFICIAL CERTIFICATE ENTITLING THE PUBLIC GUARDIAN TO TAKE POSSESSION OF ANY AND ALL PROPERTY BELONGING TO THE FOLLOWING INDIVIDUAL:

(Name of Individual) \_\_\_\_\_

This Certificate of Authority has been issued by the Public Guardian pursuant to and in compliance with Chapter 1 (commencing with Section 2900) of Part 5 of Division 4 of the California Probate Code. Under California law, this Certificate of Authority authorizes the Public Guardian to take possession or control of property belonging to, *or held in trust for*, the above-named individual.

SPECIAL NOTE TO FINANCIAL INSTITUTIONS:  
State law requires that upon receiving a copy of this Certificate of Authority, financial institutions shall provide the public guardian with information concerning property held by, *or in trust for*, the above-named individual and surrender the property to the Public Guardian if requested.

This Certificate of Authority shall only be valid when signed and dated by the Public Guardian or a deputy Public Guardian of the County of \_\_\_\_\_ and affixed with the official seal of the Public Guardian below.

Signature of Public Guardian:  
Date:  
Official Seal”

(c) The public guardian may record a copy of the written certification in any county in which is located real property of which the public guardian is authorized to take possession or control under this chapter.

1 (d) A financial institution or other person shall, without the  
2 necessity of inquiring into the truth of the written certification and  
3 without court order or letters being issued:

4 (1) Provide the public guardian information concerning property  
5 held in the sole name of, *or held in trust for*, the proposed ward  
6 or conservatee.

7 (2) Surrender to the public guardian property of, *or held in trust*  
8 *for*, the proposed ward or conservatee that is subject to loss, injury,  
9 waste, or misappropriation.

10 (e) Receipt of the written certification:

11 (1) Constitutes sufficient acquittance for providing information  
12 and for surrendering property of the proposed ward or conservatee.

13 (2) Fully discharges the financial institution or other person  
14 from any liability for any act or omission of the public guardian  
15 with respect to the property.

16 SECTION 1. Section 2352.5 of the Probate Code is amended  
17 to read:

18 ~~2352.5. (a) It shall be presumed that the personal residence of~~  
19 ~~the conservatee at the time of commencement of the proceeding~~  
20 ~~is the least restrictive appropriate residence for the conservatee.~~  
21 ~~In any hearing to determine if removal of the conservatee from his~~  
22 ~~or her personal residence is appropriate, that presumption may be~~  
23 ~~overcome by a preponderance of the evidence.~~

24 ~~(b) Upon appointment, the conservator shall determine the~~  
25 ~~appropriate level of care for the conservatee.~~

26 ~~(1) That determination shall include an evaluation of the level~~  
27 ~~of care existing at the time of commencement of the proceeding~~  
28 ~~and the measures that would be necessary to keep the conservatee~~  
29 ~~in his or her personal residence.~~

30 ~~(2) If the conservatee is living at a location other than his or her~~  
31 ~~personal residence at the commencement of the proceeding, that~~  
32 ~~determination shall either include a plan to return the conservatee~~  
33 ~~to his or her personal residence or an explanation of the limitations~~  
34 ~~or restrictions on a return of the conservatee to his or her personal~~  
35 ~~residence in the foreseeable future.~~

36 ~~(c) The determination made by the conservator pursuant to~~  
37 ~~subdivision (b) shall be in writing, signed under penalty of perjury,~~  
38 ~~and submitted to the court no later than 60 days of appointment~~  
39 ~~as conservator.~~

1     ~~(d) The conservator shall evaluate the conservatee's placement~~  
2     ~~and level of care if there is a material change in circumstances~~  
3     ~~affecting the conservatee's needs for placement and care.~~

4     ~~(e) (1) This section shall not apply to a conservatee with~~  
5     ~~developmental disabilities for whom the Director of Developmental~~  
6     ~~Services or a regional center for the developmentally disabled,~~  
7     ~~established pursuant to Chapter 5 (commencing with Section 4620)~~  
8     ~~of Division 4.5 of the Welfare and Institutions Code, acts as the~~  
9     ~~conservator and who receives services from a regional center~~  
10    ~~pursuant to the Lanterman Developmental Disabilities Act~~  
11    ~~(Division 4.5 (commencing with Section 4500) of the Welfare and~~  
12    ~~Institutions Code).~~

13    ~~(2) Services, including residential placement, for a conservatee~~  
14    ~~described in paragraph (1) who is a consumer, as defined in Section~~  
15    ~~4512 of the Welfare and Institutions Code, shall be identified;~~  
16    ~~delivered, and evaluated consistent with the individual program~~  
17    ~~plan process described in Article 2 (commencing with Section~~  
18    ~~4640) of Chapter 5 of Division 4.5 of the Welfare and Institutions~~  
19    ~~Code.~~



## MEMORANDUM

<b>DATE</b>	April 21, 2011
<b>TO</b>	Advisory Committee Members Professional Fiduciaries Bureau
<b>FROM</b>	Gil DeLuna, Acting Chief
<b>SUBJECT</b>	Agenda Item #8 – Legislative Update - <b>AB1324</b>

### **AB 1324 (Berryhill): Professional Fiduciaries**

Status: Spot bill. Serves as a place holder should the author wish to introduce new language later in the session.

Advisory Committee comments

Public comments

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Introduced by Assembly Member Bill Berryhill

February 18, 2011

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An act to amend Section 6501 of the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1324, as introduced, Bill Berryhill. Professional fiduciaries.

Existing law, the Professional Fiduciaries Act, requires a professional fiduciary to be licensed by the Professional Fiduciaries Bureau within the Department of Consumer Affairs. Existing law defines various terms for the purposes of the act.

This bill would make a technical, nonsubstantive change to that provision.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

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

- 1 SECTION 1. Section 6501 of the Business and Professions
- 2 Code is amended to read:
- 3 6501. As used in this chapter, the following terms *shall* have
- 4 the following meanings:
- 5 (a) "Act" means this chapter.
- 6 (b) "Bureau" means the Professional Fiduciaries Bureau within
- 7 the Department of Consumer Affairs, established pursuant to
- 8 Section 6510.

1 (c) "Client" means an individual who is served by a professional  
2 fiduciary.

3 (d) "Department" means the Department of Consumer Affairs.

4 (e) "Licensee" means a person who is licensed under this chapter  
5 as a professional fiduciary.

6 (f) (1) "Professional fiduciary" means a person who acts as a  
7 conservator of the person, the estate, or person and estate, or  
8 guardian of the estate, or person and estate, for two or more  
9 individuals at the same time who are not related to the professional  
10 fiduciary or to each other.

11 (2) "Professional fiduciary" also means a person who acts as a  
12 trustee, agent under a durable power of attorney for health care,  
13 or agent under a durable power of attorney for finances, for more  
14 than three individuals, at the same time.

15 In counting individuals under this paragraph to determine  
16 whether a person is a professional fiduciary:

17 (A) Individuals who are related to the fiduciary shall not be  
18 counted.

19 (B) All individuals who are related to each other shall be counted  
20 as one individual.

21 (C) All trustors who are related to each other shall be counted  
22 as one individual, and neither the number of trusts nor the number  
23 of beneficiaries of those trusts shall be counted.

24 (3) For purposes of this subdivision, "related" means related by  
25 blood, adoption, marriage, or registered domestic partnership.

26 (4) "Professional fiduciary" does not include any of the  
27 following:

28 (A) A trust company, as defined in Section 83 of the Probate  
29 Code.

30 (B) An FDIC-insured institution, or its holding companies,  
31 subsidiaries, or affiliates. For the purposes of this subparagraph,  
32 "affiliate" means any entity that shares an ownership interest with,  
33 or that is under the common control of, the FDIC-insured  
34 institution.

35 (C) Any public agency, including the public guardian, public  
36 conservator, or other agency of the State of California or of a  
37 county of California or any regional center for persons with  
38 developmental disabilities as defined in Section 4620 of the  
39 Welfare and Institutions Code.

1 (D) A person employed by an entity or agency described in  
2 subparagraph (A), (B), or (C) who is acting within the course and  
3 scope of that employment, and a public officer of an agency  
4 described in subparagraph (C) acting in the course and scope of  
5 official duties.

6 (E) Any person whose sole activity as a professional fiduciary  
7 is as a broker-dealer, broker-dealer agent, investment adviser, or  
8 investment adviser representative registered and regulated under  
9 the Corporate Securities Law of 1968 (Division 1 (commencing  
10 with Section 25000) of Title 4 of the Corporations Code), the  
11 Investment Advisers Act of 1940 (15 U.S.C. Sec. 80b-1 et seq.),  
12 or the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et  
13 seq.), or involves serving as a trustee to a company regulated by  
14 the Securities and Exchange Commission under the Investment  
15 Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).

16 (g) "Committee" means the Professional Fiduciaries Advisory  
17 Committee, as established pursuant to Section 6511.



## MEMORANDUM

<b>DATE</b>	April 21, 2011
<b>TO</b>	Advisory Committee Members Professional Fiduciaries Bureau
<b>FROM</b>	Gil DeLuna, Acting Chief
<b>SUBJECT</b>	Agenda Item #8 – Legislative Update - <b>AB40</b>

### **AB 40 (Yamada): Elder Abuse: Reporting**

The Elder Abuse and Dependent Adult Civil Protection Act establishes various procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. The act requires certain persons, called mandated reporters, to report known or suspected instances of elder or dependent adult abuse. The act requires a mandated reporter, and authorizes any person who is not a mandated reporter, to report the abuse to the local ombudsman or the local law enforcement agency if the abuse occurs in a long-term care facility. Failure to report physical abuse and financial abuse of an elder or dependent adult under the act is a misdemeanor. This bill, instead, requires the mandated reporter, and authorizes any person who is not a mandated reporter, to report the abuse to both the local ombudsman and the local law enforcement agency. This bill contains other related provisions and other existing laws.

**Status:** Anticipated hearing in Assembly Public Safety on May 3. (Not officially set.)

#### **Support:**

California Advocates for Nursing Home Reform  
California Police Chiefs Association  
Crime Victims United of California  
The Arc of California  
California Commission on Aging  
Contra Costa County Advisory Council on Aging  
California District Attorneys Association (CDAA)  
California Senior Legislature (CSL)  
San Luis Obispo County Adult Abuse Prevention Council

#### **Oppose:**

California Association of Health Facilities  
California Hospital Association

California Association of Marriage and Family Therapists

Advisory Committee comments <sup>1</sup>

Public comments

ASSEMBLY BILL

No. 40

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Introduced by Assembly Member Yamada

December 6, 2010

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An act to amend ~~Section 15630~~ *Sections 15630, 15630.1, and 15631* of the Welfare and Institutions Code, relating to elder abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 40, as amended, Yamada. Elder abuse: reporting.

The Elder Abuse and Dependent Adult Civil Protection Act establishes various procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. The act requires certain persons, called mandated reporters, to report known or suspected instances of elder or dependent adult abuse. The act requires a mandated reporter, *and authorizes any person who is not a mandated reporter*, to report the abuse to the local ~~ombudsperson~~ *ombudsman* or the local law enforcement agency if the abuse occurs in a long-term care facility. Failure to report physical abuse and financial abuse of an elder or dependent adult under the act is a misdemeanor.

This bill would, instead, require the mandated reporter, *and authorize any person who is not a mandated reporter*, to report the abuse to both the local ~~ombudsperson~~ *ombudsman* and the local law enforcement agency. ~~This bill would also make various technical, nonsubstantive changes.~~

*Existing law requires a mandated reporter of suspected financial abuse of an elder or dependent adult, as defined, to report a known or suspected instance of financial abuse, as described, to the local ombudsman or the local law enforcement agency if the mandated*

reporter knows that the elder or dependent adult resides in a long-term care facility.

This bill would, instead, require the mandated reporter to report the abuse to both the local ombudsman and the local law enforcement agency. This bill would also make various technical nonsubstantive changes.

By changing the scope of an existing crime, this bill would impose a state-mandated local program. By increasing the duties of local law enforcement agencies, this bill 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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 15630 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 15630. (a) Any person who has assumed full or intermittent
- 4 responsibility for the care or custody of an elder or dependent
- 5 adult, whether or not he or she receives compensation, including
- 6 administrators, supervisors, and any licensed staff of a public or
- 7 private facility that provides care or services for elder or dependent
- 8 adults, or any elder or dependent adult care custodian, health
- 9 practitioner, clergy member, or employee of a county adult
- 10 protective services agency or a local law enforcement agency, is
- 11 a mandated reporter.
- 12 (b) (1) Any mandated reporter who, in his or her professional
- 13 capacity, or within the scope of his or her employment, has
- 14 observed or has knowledge of an incident that reasonably appears
- 15 to be physical abuse, as defined in Section 15610.63, abandonment,
- 16 abduction, isolation, financial abuse, or neglect, or is told by an

1 elder or dependent adult that he or she has experienced behavior,  
2 including an act or omission, constituting physical abuse, as defined  
3 in Section 15610.63, abandonment, abduction, isolation, financial  
4 abuse, or neglect, or reasonably suspects that abuse, shall report  
5 the known or suspected instance of abuse by telephone immediately  
6 or as soon as practicably possible, and by written report sent within  
7 two working days, as follows:

8 (A) If the abuse has occurred in a long-term care facility, except  
9 a state mental health hospital or a state developmental center, the  
10 report shall be made to both the local ~~ombudsperson~~ *ombudsman*  
11 and the local law enforcement agency.

12 The local ~~ombudsperson~~ *ombudsman* and the local law  
13 enforcement agency shall, as soon as practicable, except in the  
14 case of an emergency or pursuant to a report required to be made  
15 pursuant to clause (v), in which case these actions shall be taken  
16 immediately, do all of the following:

17 (i) Report to the State Department of Public Health any case of  
18 known or suspected abuse occurring in a long-term health care  
19 facility, as defined in subdivision (a) of Section 1418 of the Health  
20 and Safety Code.

21 (ii) Report to the State Department of Social Services any case  
22 of known or suspected abuse occurring in a residential care facility  
23 for the elderly, as defined in Section 1569.2 of the Health and  
24 Safety Code, or in an adult day care facility, as defined in paragraph  
25 (2) of subdivision (a) of Section 1502.

26 (iii) Report to the State Department of Public Health and the  
27 California Department of Aging any case of known or suspected  
28 abuse occurring in an adult day health care center, as defined in  
29 subdivision (b) of Section 1570.7 of the Health and Safety Code.

30 (iv) Report to the Bureau of Medi-Cal Fraud and Elder Abuse  
31 any case of known or suspected criminal activity.

32 (v) Report all cases of known or suspected physical abuse and  
33 financial abuse to the local district attorney's office in the county  
34 where the abuse occurred.

35 (B) If the suspected or alleged abuse occurred in a state mental  
36 hospital or a state developmental center, the report shall be made  
37 to designated investigators of the State Department of Mental  
38 Health or the State Department of Developmental Services, or to  
39 the local law enforcement agency.

1 Except in an emergency, the local law enforcement agency shall,  
2 as soon as practicable, report any case of known or suspected  
3 criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse.

4 (C) If the abuse has occurred any place other than one described  
5 in subparagraph (A), the report shall be made to the adult protective  
6 services agency or the local law enforcement agency.

7 (2) (A) A mandated reporter who is a clergy member who  
8 acquires knowledge or reasonable suspicion of elder or dependent  
9 adult abuse during a penitential communication is not subject to  
10 paragraph (1). For purposes of this subdivision, "penitential  
11 communication" means a communication that is intended to be in  
12 confidence, including, but not limited to, a sacramental confession  
13 made to a clergy member who, in the course of the discipline or  
14 practice of his or her church, denomination, or organization is  
15 authorized or accustomed to hear those communications and under  
16 the discipline tenets, customs, or practices of his or her church,  
17 denomination, or organization, has a duty to keep those  
18 communications secret.

19 (B) This subdivision shall not be construed to modify or limit  
20 a clergy member's duty to report known or suspected elder and  
21 dependent adult abuse if he or she is acting in the capacity of a  
22 care custodian, health practitioner, or employee of an adult  
23 protective services agency.

24 (C) Notwithstanding any other provision in this section, a clergy  
25 member who is not regularly employed on either a full-time or  
26 part-time basis in a long-term care facility or does not have care  
27 or custody of an elder or dependent adult shall not be responsible  
28 for reporting abuse or neglect that is not reasonably observable or  
29 discernible to a reasonably prudent person having no specialized  
30 training or experience in elder or dependent care.

31 (3) (A) A mandated reporter who is a physician and surgeon,  
32 a registered nurse, or a psychotherapist, as defined in Section 1010  
33 of the Evidence Code, shall not be required to report, pursuant to  
34 paragraph (1), an incident if all of the following conditions exist:

35 (i) The mandated reporter has been told by an elder or dependent  
36 adult that he or she has experienced behavior constituting physical  
37 abuse, as defined in Section 15610.63, abandonment, abduction,  
38 isolation, financial abuse, or neglect.

1 (ii) The mandated reporter is not aware of any independent  
2 evidence that corroborates the statement that the abuse has  
3 occurred.

4 (iii) The elder or dependent adult has been diagnosed with a  
5 mental illness or dementia, or is the subject of a court-ordered  
6 conservatorship because of a mental illness or dementia.

7 (iv) In the exercise of clinical judgment, the physician and  
8 surgeon, the registered nurse, or the psychotherapist, as defined  
9 in Section 1010 of the Evidence Code, reasonably believes that  
10 the abuse did not occur.

11 (B) This paragraph shall not be construed to impose upon  
12 mandated reporters a duty to investigate a known or suspected  
13 incident of abuse and shall not be construed to lessen or restrict  
14 any existing duty of mandated reporters.

15 (4) (A) In a long-term care facility, a mandated reporter shall  
16 not be required to report as a suspected incident of abuse, as defined  
17 in Section 15610.07, an incident if all of the following conditions  
18 exist:

19 (i) The mandated reporter is aware that there is a proper plan  
20 of care.

21 (ii) The mandated reporter is aware that the plan of care was  
22 properly provided or executed.

23 (iii) A physical, mental, or medical injury occurred as a result  
24 of care provided pursuant to clause (i) or (ii).

25 (iv) The mandated reporter reasonably believes that the injury  
26 was not the result of abuse.

27 (B) This paragraph shall not be construed to require a mandated  
28 reporter to seek, nor to preclude a mandated reporter from seeking,  
29 information regarding a known or suspected incident of abuse prior  
30 to reporting. This paragraph shall apply only to those categories  
31 of mandated reporters that the State Department of Public Health  
32 determines, upon approval by the Bureau of Medi-Cal Fraud and  
33 Elder Abuse and the state long-term care ~~ombudsperson~~  
34 *ombudsman*, have access to plans of care and have the training  
35 and experience necessary to determine whether the conditions  
36 specified in this section have been met.

37 (c) (1) Any mandated reporter who has knowledge, or  
38 reasonably suspects, that types of elder or dependent adult abuse  
39 for which reports are not mandated have been inflicted upon an  
40 elder or dependent adult, or that his or her emotional well-being

1 is endangered in any other way, may report the known or suspected  
2 instance of abuse.

3 (2) If the suspected or alleged abuse occurred in a long-term  
4 care facility other than a state mental health hospital or a state  
5 developmental center, the report may be made to the long-term  
6 care ~~ombudsperson~~ *ombudsman* program. Except in an emergency,  
7 the local ~~ombudsperson~~ *ombudsman* shall report any case of known  
8 or suspected abuse to the State Department of Public Health and  
9 any case of known or suspected criminal activity to the Bureau of  
10 Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

11 (3) If the suspected or alleged abuse occurred in a state mental  
12 health hospital or a state developmental center, the report may be  
13 made to the designated investigator of the State Department of  
14 Mental Health or the State Department of Developmental Services  
15 or to a local law enforcement agency or to the local ~~ombudsperson~~  
16 *ombudsman*. Except in an emergency, the local ~~ombudsperson~~  
17 *ombudsman* and the local law enforcement agency shall report any  
18 case of known or suspected criminal activity to the Bureau of  
19 Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

20 (4) If the suspected or alleged abuse occurred in a place other  
21 than a place described in paragraph (2) or (3), the report may be  
22 made to the county adult protective services agency.

23 (5) If the conduct involves criminal activity not covered in  
24 subdivision (b), it may be immediately reported to the appropriate  
25 law enforcement agency.

26 (d) If two or more mandated reporters are present and jointly  
27 have knowledge or reasonably suspect that types of abuse of an  
28 elder or a dependent adult for which a report is or is not mandated  
29 have occurred, and there is agreement among them, the telephone  
30 report may be made by a member of the team selected by mutual  
31 agreement, and a single report may be made and signed by the  
32 selected member of the reporting team. Any member who has  
33 knowledge that the member designated to report has failed to do  
34 so shall thereafter make the report.

35 (e) A telephone report of a known or suspected instance of elder  
36 or dependent adult abuse shall include, if known, the name of the  
37 person making the report, the name and age of the elder or  
38 dependent adult, the present location of the elder or dependent  
39 adult, the names and addresses of family members or any other  
40 adult responsible for the elder's or dependent adult's care, the

1 nature and extent of the elder's or dependent adult's condition, the  
2 date of the incident, and any other information, including  
3 information that led that person to suspect elder or dependent adult  
4 abuse, as requested by the agency receiving the report.

5 (f) The reporting duties under this section are individual, and  
6 no supervisor or administrator shall impede or inhibit the reporting  
7 duties, and no person making the report shall be subject to any  
8 sanction for making the report. However, internal procedures to  
9 facilitate reporting, ensure confidentiality, and apprise supervisors  
10 and administrators of reports may be established, provided they  
11 are not inconsistent with this chapter.

12 (g) (1) Whenever this section requires a county adult protective  
13 services agency to report to a law enforcement agency, the law  
14 enforcement agency shall, immediately upon request, provide a  
15 copy of its investigative report concerning the reported matter to  
16 that county adult protective services agency.

17 (2) Whenever this section requires a law enforcement agency  
18 to report to a county adult protective services agency, the county  
19 adult protective services agency shall, immediately upon request,  
20 provide to that law enforcement agency a copy of its investigative  
21 report concerning the reported matter.

22 (3) The requirement to disclose investigative reports pursuant  
23 to this subdivision shall not include the disclosure of social services  
24 records or case files that are confidential, nor shall this subdivision  
25 be construed to allow disclosure of any reports or records if the  
26 disclosure would be prohibited by any other provision of state or  
27 federal law.

28 (h) Failure to report, or impeding or inhibiting a report of,  
29 physical abuse, as defined in Section 15610.63, abandonment,  
30 abduction, isolation, financial abuse, or neglect of an elder or  
31 dependent adult, in violation of this section, is a misdemeanor,  
32 punishable by not more than six months in the county jail, by a  
33 fine of not more than one thousand dollars (\$1,000), or by both  
34 that fine and imprisonment. Any mandated reporter who willfully  
35 fails to report, or impedes or inhibits a report of, physical abuse,  
36 as defined in Section 15610.63, abandonment, abduction, isolation,  
37 financial abuse, or neglect of an elder or dependent adult, in  
38 violation of this section, if that abuse results in death or great bodily  
39 injury, shall be punished by not more than one year in a county  
40 jail, by a fine of not more than five thousand dollars (\$5,000), or

1 by both that fine and imprisonment. If a mandated reporter  
2 intentionally conceals his or her failure to report an incident known  
3 by the mandated reporter to be abuse or severe neglect under this  
4 section, the failure to report is a continuing offense until a law  
5 enforcement agency specified in paragraph (1) of subdivision (b)  
6 of Section 15630 discovers the offense.

7 (i) For purposes of this section, “dependent adult” shall have  
8 the same meaning as in Section 15610.23.

9 *SEC. 2. Section 15630.1 of the Welfare and Institutions Code*  
10 *is amended to read:*

11 15630.1. (a) As used in this section, “mandated reporter of  
12 suspected financial abuse of an elder or dependent adult” means  
13 all officers and employees of financial institutions.

14 (b) As used in this section, the term “financial institution” means  
15 any of the following:

16 (1) A depository institution, as defined in Section 3(c) of the  
17 Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c)).

18 (2) An institution-affiliated party, as defined in Section 3(u) of  
19 the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(u)).

20 (3) A federal credit union or state credit union, as defined in  
21 Section 101 of the Federal Credit Union Act (12 U.S.C. Sec. 1752),  
22 including, but not limited to, an institution-affiliated party of a  
23 credit union, as defined in Section 206(r) of the Federal Credit  
24 Union Act (12 U.S.C. Sec. 1786(r)).

25 (c) As used in this section, “financial abuse” has the same  
26 meaning as in Section 15610.30.

27 (d) (1) Any mandated reporter of suspected financial abuse of  
28 an elder or dependent adult who has direct contact with the elder  
29 or dependent adult or who reviews or approves the elder or  
30 dependent adult’s financial documents, records, or transactions,  
31 in connection with providing financial services with respect to an  
32 elder or dependent adult, and who, within the scope of his or her  
33 employment or professional practice, has observed or has  
34 knowledge of an incident, that is directly related to the transaction  
35 or matter that is within that scope of employment or professional  
36 practice, that reasonably appears to be financial abuse, or who  
37 reasonably suspects that abuse, based solely on the information  
38 before him or her at the time of reviewing or approving the  
39 document, record, or transaction in the case of mandated reporters  
40 who do not have direct contact with the elder or dependent adult,

1 shall report the known or suspected instance of financial abuse by  
2 telephone immediately, or as soon as practicably possible, and by  
3 written report sent within two working days to the local adult  
4 protective services agency or the local law enforcement agency.

5 (2) When two or more mandated reporters jointly have  
6 knowledge or reasonably suspect that financial abuse of an elder  
7 or a dependent adult for which the report is mandated has occurred,  
8 and when there is an agreement among them, the telephone report  
9 may be made by a member of the reporting team who is selected  
10 by mutual agreement. A single report may be made and signed by  
11 the selected member of the reporting team. Any member of the  
12 team who has knowledge that the member designated to report has  
13 failed to do so shall thereafter make that report.

14 (3) If the mandated reporter knows that the elder or dependent  
15 adult resides in a long-term care facility, as defined in Section  
16 15610.47, the report shall be made to the local ombudsman ~~or~~ *and*  
17 local law enforcement agency.

18 (e) An allegation by the elder or dependent adult, or any other  
19 person, that financial abuse has occurred is not sufficient to trigger  
20 the reporting requirement under this section if both of the following  
21 conditions are met:

22 (1) The mandated reporter of suspected financial abuse of an  
23 elder or dependent adult is aware of no other corroborating or  
24 independent evidence of the alleged financial abuse of an elder or  
25 dependent adult. The mandated reporter of suspected financial  
26 abuse of an elder or dependent adult is not required to investigate  
27 any accusations.

28 (2) In the exercise of his or her professional judgment, the  
29 mandated reporter of suspected financial abuse of an elder or  
30 dependent adult reasonably believes that financial abuse of an  
31 elder or dependent adult did not occur.

32 (f) Failure to report financial abuse under this section shall be  
33 subject to a civil penalty not exceeding one thousand dollars  
34 (\$1,000) or if the failure to report is willful, a civil penalty not  
35 exceeding five thousand dollars (\$5,000), which shall be paid by  
36 the financial institution that is the employer of the mandated  
37 reporter to the party bringing the action. Subdivision (h) of Section  
38 15630 shall not apply to violations of this section.

39 (g) (1) The civil penalty provided for in subdivision (f) shall  
40 be recovered only in a civil action brought against the financial

1 institution by the Attorney General, district attorney, or county  
2 counsel. No action shall be brought under this section by any  
3 person other than the Attorney General, district attorney, or county  
4 counsel. Multiple actions for the civil penalty may not be brought  
5 for the same violation.

6 (2) Nothing in the Financial Elder Abuse Reporting Act of 2005  
7 shall be construed to limit, expand, or otherwise modify any civil  
8 liability or remedy that may exist under this or any other law.

9 (h) As used in this section, “suspected financial abuse of an  
10 elder or dependent adult” occurs when a person who is required  
11 to report under subdivision (a) observes or has knowledge of  
12 behavior or unusual circumstances or transactions, or a pattern of  
13 behavior or unusual circumstances or transactions, that would lead  
14 an individual with like training or experience, based on the same  
15 facts, to form a reasonable belief that an elder or dependent adult  
16 is the victim of financial abuse as defined in Section 15610.30.

17 (i) Reports of suspected financial abuse of an elder or dependent  
18 adult made by an employee or officer of a financial institution  
19 pursuant to this section are covered under subdivision (b) of Section  
20 47 of the Civil Code.

21 (j) This section shall remain in effect only until January 1, 2013,  
22 and as of that date is repealed, unless a later enacted statute, that  
23 is enacted before January 1, 2013, deletes or extends that date.

24 *SEC. 3. Section 15631 of the Welfare and Institutions Code is*  
25 *amended to read:*

26 15631. (a) Any person who is not a mandated reporter under  
27 Section 15630, who knows, or reasonably suspects, that an elder  
28 or a dependent adult has been the victim of abuse may report that  
29 abuse to a long-term care ombudsman program or local law  
30 enforcement agency *or both the long-term care ombudsman*  
31 *program and local law enforcement agency* when the abuse is  
32 alleged to have occurred in a long-term care facility.

33 (b) Any person who is not a mandated reporter under Section  
34 15630, who knows, or reasonably suspects, that an elder or a  
35 dependent adult has been the victim of abuse in any place other  
36 than a long-term care facility may report the abuse to the county  
37 adult protective services agency or local law enforcement agency.

38 ~~SEC. 2.~~

39 *SEC. 4.* No reimbursement is required by this act pursuant to  
40 Section 6 of Article XIII B of the California Constitution for certain

1 costs that may be incurred by a local agency or school district  
2 because, in that regard, this act creates a new crime or infraction,  
3 eliminates a crime or infraction, or changes the penalty for a crime  
4 or infraction, within the meaning of Section 17556 of the  
5 Government Code, or changes the definition of a crime within the  
6 meaning of Section 6 of Article XIII B of the California  
7 Constitution.

8 However, if the Commission on State Mandates determines that  
9 this act contains other costs mandated by the state, reimbursement  
10 to local agencies and school districts for those costs shall be made  
11 pursuant to Part 7 (commencing with Section 17500) of Division  
12 4 of Title 2 of the Government Code.

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## MEMORANDUM

<b>DATE</b>	April 21, 2011
<b>TO</b>	Advisory Committee Members Professional Fiduciaries Bureau
<b>FROM</b>	Gil DeLuna, Acting Chief
<b>SUBJECT</b>	Agenda Item #8 – Legislative Update - <b>AB354</b>

### **AB 354 (Silva): Estates and Trusts: Wrongful Taking**

This bill clarifies that a person who has, in bad faith, used undue influence or has committed elder or dependent adult financial abuse to take property from a decedent is liable under an existing statute that applies double-damages to those who have wrongfully taken property directly from the estate.

Status: Referred to Assembly Judiciary. Not set.

Support:  
Conference of California Bar Associations (Sponsor)

Oppose:  
None

Advisory Committee Comments

Public Comment

**ASSEMBLY BILL**

**No. 354**

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**Introduced by Assembly Member Silva**

February 10, 2011

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An act to amend Section 859 of the Probate Code, relating to estates and trusts.

LEGISLATIVE COUNSEL'S DIGEST

AB 354, as amended, Silva. Estates and trusts: property: wrongful taking.

Existing law provides that if a court finds that a person has, in bad faith, wrongfully taken, concealed, or disposed of property belonging to the estate of a decedent, conservatee, minor, or trust, the person is liable for twice the value of the property.

This bill would also establish liability for a person who has taken, concealed, or disposed of property, as described above, by use of undue influence in bad faith or through the commission of elder or dependent adult *financial* abuse, as defined.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

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

1 SECTION 1. Section 859 of the Probate Code is amended to  
2 read:  
3 859. If a court finds that a person has in bad faith wrongfully  
4 taken, concealed, or disposed of property belonging to the estate  
5 of a decedent, conservatee, minor, or trust, or has taken, concealed,

1 or disposed of the property by the use of undue influence in bad  
2 faith or through the commission of elder or dependent adult  
3 *financial* abuse, as defined in ~~Chapter 11 (commencing with~~  
4 ~~Section 15600) of Part 3 of Division 9~~ *Section 15610.30* of the  
5 Welfare and Institutions Code, the person shall be liable for twice  
6 the value of the property recovered by an action under this part.  
7 The remedy provided in this section shall be in addition to any  
8 other remedies available in law to a trustee, guardian or  
9 conservator, or personal representative or other successor in interest  
10 of a decedent.

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## MEMORANDUM

<b>DATE</b>	April 21, 2011
<b>TO</b>	Advisory Committee Members Professional Fiduciaries Bureau
<b>FROM</b>	Gil DeLuna, Acting Chief
<b>SUBJECT</b>	Agenda Item #8 – Legislative Update - <b>SB542</b>

### **SB 542 (Price): Professions and Vocations: Regulatory Boards**

This bill extends the Sunset dates for the Board of Accountancy and the Professional Fiduciaries Bureau from January 1, 2012 to January 1, 2016. This bill also revises the exemption requirement of enrolled agents by additionally requiring that the enrolled agent provide only fiduciary services that are ancillary to the primary services of an enrolled agent and that those services be provided at the request of a client with which the enrolled agent has an existing professional relationship. The bill authorizes the Bureau, instead of issuing an accusation or statement of issues against a licensee or applicant, to enter into a specified settlement with a licensee or applicant.

**Status:** Referred to Senate Business, Professions, and Economic Development Committee. Not set.

Advisory Committee comment

Public Comment

**Introduced by Senator Price**

February 17, 2011

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~~An act to amend Sections 5000, 5015.6, and 6510 of the Business~~  
*An act to amend Sections 5000, 5015.6, 5076, 5076.1, 6510, and 6530*  
*of, and to add Section 6582.2 to, the Business and Professions Code,*  
relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 542, as amended, Price. Professions and vocations: regulatory boards.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the ~~department~~ *Department of Consumer Affairs*, including; the California Board of Accountancy and the Professional Fiduciaries Bureau. Existing law authorizes the board to appoint an executive officer and authorizes the Governor to appoint the chief of the bureau. Under existing law, these provisions are repealed on January 1, 2012. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee.

This bill would extend the operation of these provisions until January 1, 2016, and would specify that these boards would be subject to review by the appropriate policy committees of the Legislature.

*With respect to accounting firms, existing law, until January 1, 2014, requires a firm, in order to renew its registration, to have a specified peer review report accepted by a board-recognized peer review group. Existing law, until January 1, 2014, requires the board to appoint a peer review oversight committee of certified public accountants to*

*provide recommendations to the board relating to the effectiveness of mandatory peer review. Existing law also requires the board, by January 1, 2013, to provide the Legislature and the Governor with a report regarding specified peer review requirements.*

*This bill would extend the operation of the peer review report requirement and the peer review oversight committee to January 1, 2016, and would require the report to the Legislature and the Governor to be submitted by January 1, 2015.*

*With respect to professional fiduciaries, existing law prohibits a person from holding himself or herself out as a professional fiduciary without a license issued by the bureau. Existing law exempts from the license requirement a person enrolled as an agent to practice before the Internal Revenue Service, as specified. Under existing law, a license may be suspended, revoked, denied, or other disciplinary action may be imposed for various reasons.*

*This bill would revise the exemption requirement by additionally requiring that the enrolled agent provide only fiduciary services that are ancillary to the primary services of an enrolled agent and that those services be provided at the request of a client with which the enrolled agent has an existing professional relationship. The bill would authorize the bureau, instead of issuing an accusation or statement of issues against a licensee or applicant, to enter into a specified settlement with a licensee or applicant.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

- 1 SECTION 1. Section 5000 of the Business and Professions
- 2 Code is amended to read:
- 3 5000. There is in the Department of Consumer Affairs the
- 4 California Board of Accountancy, which consists of 15 members,
- 5 seven of whom shall be licensees, and eight of whom shall be
- 6 public members who shall not be licentiates of the board or
- 7 registered by the board. The board has the powers and duties
- 8 conferred by this chapter.
- 9 The Governor shall appoint four of the public members, and the
- 10 seven licensee members as provided in this section. The Senate
- 11 Rules Committee and the Speaker of the Assembly shall each
- 12 appoint two public members. In appointing the seven licensee

1 members, the Governor shall appoint members representing a cross  
2 section of the accounting profession with at least two members  
3 representing a small public accounting firm. For the purposes of  
4 this chapter, a small public accounting firm shall be defined as a  
5 professional firm that employs a total of no more than four  
6 licensees as partners, owners, or full-time employees in the practice  
7 of public accountancy within the State of California.

8 This section shall remain in effect only until January 1, 2016,  
9 and as of that date is repealed, unless a later enacted statute, that  
10 is enacted before January 1, 2016, deletes or extends that date.  
11 Notwithstanding any other provision of law, the repeal of this  
12 section renders the board subject to review by the appropriate  
13 policy committees of the Legislature. However, the review of the  
14 board shall be limited to reports or studies specified in this chapter  
15 and those issues identified by the appropriate policy committees  
16 of the Legislature and the board regarding the implementation of  
17 new licensing requirements.

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

20 5015.6. The board may appoint a person exempt from civil  
21 service who shall be designated as an executive officer and who  
22 shall exercise the powers and perform the duties delegated by the  
23 board and vested in him or her by this chapter.

24 This section shall remain in effect only until January 1, 2016,  
25 and as of that date is repealed, unless a later enacted statute, that  
26 is enacted before January 1, 2016, deletes or extends that date.

27 SEC. 3. Section 5076 of the Business and Professions Code is  
28 amended to read:

29 5076. (a) In order to renew its registration, a firm, as defined  
30 in Section 5035.1, shall have a peer review report of its accounting  
31 and auditing practice accepted by a board-recognized peer review  
32 program no less frequently than every three years.

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

34 (1) "Peer review" means a study, appraisal, or review conducted  
35 in accordance with professional standards of the professional work  
36 of a firm, and may include an evaluation of other factors in  
37 accordance with the requirements specified by the board in  
38 regulations. The peer review report shall be issued by an individual  
39 who has a valid and current license, certificate, or permit to practice

1 public accountability from this state or another state and is  
2 unaffiliated with the firm being reviewed.

3 (2) "Accounting and auditing practice" includes any services  
4 that are performed using professional standards defined by the  
5 board in regulations.

6 (c) The board shall adopt regulations as necessary to implement,  
7 interpret, and make specific the peer review requirements in this  
8 section, including, but not limited to, regulations specifying the  
9 requirements for board recognition of a peer review program,  
10 standards for administering a peer review, extensions of time for  
11 fulfilling the peer review requirement, exclusions from the peer  
12 review program, and document submission.

13 (d) The board shall adopt emergency regulations in accordance  
14 with the Administrative Procedure Act (Chapter 3.5 (commencing  
15 with Section 11340) of Part 1 of Division 3 of Title 2 of the  
16 Government Code) to establish policies, guidelines, and procedures  
17 as outlined in subdivision (c). The adoption of the regulations shall  
18 be considered by the Office of Administrative Law to be necessary  
19 for the immediate preservation of the public peace, health and  
20 safety, or general welfare. The emergency regulations shall be  
21 submitted to the Office of Administrative Law for filing with the  
22 Secretary of State and publication in the California Code of  
23 Regulations, and shall be replaced in accordance with the  
24 Administrative Procedure Act.

25 (e) Nothing in this section shall prohibit the board from initiating  
26 an investigation and imposing discipline against a firm or licensee,  
27 either as the result of a complaint that alleges violations of statutes,  
28 rules, or regulations, or from information contained in a peer review  
29 report received by the board.

30 (f) A firm issued a substandard peer review report, as defined  
31 by the board in regulation, shall submit a copy of that report to the  
32 board. The board shall establish in regulation the time period that  
33 a firm must submit the report to the board. This period shall not  
34 exceed 60 days from the time the report is accepted by a  
35 board-recognized peer review program provider to the date the  
36 report is submitted to the board.

37 (g) (1) A board-recognized peer review program provider shall  
38 file a copy with the board of all substandard peer review reports  
39 issued to California-licensed firms. The board shall establish in  
40 regulation the time period that a board-recognized peer review

1 program provider shall file the report with the board. This period,  
2 shall not exceed 60 days from the time the report is accepted by a  
3 board-recognized peer review program provider to the date the  
4 report is filed with the board. These reports may be filed with the  
5 board electronically.

6 (2) Nothing in this subdivision shall require a board-recognized  
7 peer review program provider, when administering peer reviews  
8 in another state, to violate the laws of that state.

9 (h) The board shall, by January 1, 2010, define a substandard  
10 peer review report in regulation.

11 (i) Any requirements imposed by a board-recognized peer review  
12 program on a firm in conjunction with the completion of a peer  
13 review shall be separate from, and in addition to, any action by  
14 the board pursuant to this section.

15 (j) Any report of a substandard peer review submitted to the  
16 board in conjunction with this section shall be collected for  
17 investigatory purposes.

18 (k) Nothing in this section affects the discovery or admissibility  
19 of evidence in a civil or criminal action.

20 (l) Nothing in this section requires any firm to become a member  
21 of any professional organization.

22 (m) A peer reviewer shall not disclose information concerning  
23 licensees or their clients obtained during a peer review, unless  
24 specifically authorized pursuant to this section, Section 5076.1, or  
25 regulations prescribed by the board.

26 (n) (1) By January 1, ~~2013~~ 2015, the board shall provide the  
27 Legislature and Governor with a report regarding the peer review  
28 requirements of this section that includes, without limitation:

29 (1)

30 (A) The extent to which mandatory peer review of small firms  
31 or sole practitioners that prepare nondisclosure compiled financial  
32 statements on an other comprehensive basis of accounting enhances  
33 consumer protection.

34 (2)

35 (B) The impact of peer review required by this section on small  
36 firms and sole practitioners that prepare nondisclosure compiled  
37 financial statements on an other comprehensive basis of accounting.

38 (3)

39 (C) The impact of peer review required by this section on small  
40 businesses, nonprofit corporations, and other entities that utilize

1 small firms or sole practitioners for the purposes of nondisclosure  
2 compiled financial statements prepared on an other comprehensive  
3 basis of accounting.

4 (2) *A report to the Legislature pursuant to this section shall be*  
5 *submitted in compliance with Section 9795 of the Government*  
6 *Code.*

7 (o) This section shall remain in effect only until January 1, ~~2014~~  
8 2016, and as of that date is repealed, unless a later enacted statute,  
9 that is enacted before January 1, ~~2014~~ 2016, deletes or extends  
10 that date.

11 *SEC. 4. Section 5076.1 of the Business and Professions Code*  
12 *is amended to read:*

13 5076.1. (a) The board shall appoint a peer review oversight  
14 committee of certified public accountants of this state who maintain  
15 a license in good standing and who are authorized to practice public  
16 accountancy to provide recommendations to the board on any  
17 matter upon which it is authorized to act to ensure the effectiveness  
18 of mandatory peer review.

19 (b) The committee may request any information from a  
20 board-recognized peer review program provider deemed necessary  
21 to ensure the provider is administering peer reviews in accordance  
22 with the standards adopted by the board in regulations. Failure of  
23 a board-recognized peer review program provider to respond to  
24 the committee shall result in referral by the committee of the  
25 provider to the board for further action. Any information obtained  
26 by the board, its representatives, or the peer review oversight  
27 committee in conjunction with its review of peer review program  
28 providers shall not be a public record, and shall be exempt from  
29 public disclosure, provided, however, this information may be  
30 disclosed under any of the following circumstances:

31 (1) In connection with disciplinary proceedings of the board.

32 (2) In connection with legal proceedings in which the board is  
33 a party.

34 (3) In response to an official inquiry by a federal or state  
35 governmental regulatory agency.

36 (4) In compliance with a subpoena or summons enforceable by  
37 court order.

38 (5) As otherwise specifically required by law.

1 (c) The members of the committee shall be appointed to  
2 two-year terms and may serve a maximum of four consecutive  
3 terms.

4 (d) The board may adopt, as necessary, regulations further  
5 defining the minimum qualifications for appointment as a  
6 committee member and additional administrative elements designed  
7 to ensure the effectiveness of mandatory peer review.

8 (e) This section shall remain in effect only until January 1, 2014  
9 2016, and as of that date is repealed, unless a later enacted statute,  
10 that is enacted before January 1, 2014 2016, deletes or extends  
11 that date.

12 ~~SEC. 3.~~

13 *SEC. 5.* Section 6510 of the Business and Professions Code is  
14 amended to read:

15 6510. (a) There is within the jurisdiction of the department  
16 the Professional Fiduciaries Bureau. The bureau is under the  
17 supervision and control of the director. The duty of enforcing and  
18 administering this chapter is vested in the chief of the bureau, who  
19 is responsible to the director. Every power granted or duty imposed  
20 upon the director under this chapter may be exercised or performed  
21 in the name of the director by a deputy director or by the chief,  
22 subject to conditions and limitations as the director may prescribe.

23 (b) The Governor shall appoint, subject to confirmation by the  
24 Senate, the chief of the bureau, at a salary to be fixed and  
25 determined by the director with the approval of the Director of  
26 Finance. The chief shall serve under the direction and supervision  
27 of the director and at the pleasure of the Governor.

28 (c) This section shall remain in effect only until January 1, 2016,  
29 and as of that date is repealed, unless a later enacted statute, that  
30 is enacted before January 1, 2016, deletes or extends that date.  
31 Notwithstanding any other provision of law, the repeal of this  
32 section renders the board subject to review by the appropriate  
33 policy committees of the Legislature.

34 Notwithstanding any other provision of law, upon the repeal of  
35 this section, the responsibilities and jurisdiction of the bureau shall  
36 be transferred to the Professional Fiduciaries Advisory Committee,  
37 as provided by Section 6511.

38 *SEC. 6.* Section 6530 of the Business and Professions Code is  
39 amended to read:

1 6530. (a) On and after January 1, 2009, no person shall act or  
2 hold himself or herself out to the public as a professional fiduciary  
3 unless that person is licensed as a professional fiduciary in  
4 accordance with the provisions of this chapter.

5 (b) This section does not apply to a person licensed as an  
6 attorney under the State Bar Act (Chapter 4 (commencing with  
7 Section 6000)).

8 (c) This section does not apply to a person licensed as, and  
9 acting within the scope of practice of, a certified public accountant  
10 pursuant to Chapter 1 (commencing with Section 5000) of Division  
11 3.

12 (d) This section does not apply to a person enrolled as an agent  
13 to practice before the Internal Revenue Service ~~who is acting within~~  
14 ~~the scope of practice~~ pursuant to Part 10 of Title 31 of the Code  
15 of Federal Regulations, *who is providing fiduciary services that*  
16 *are ancillary to the primary services of an enrolled agent, and*  
17 *those services are provided at the request of a client with which*  
18 *the enrolled agent has an existing professional relationship.*  
19 *However, an enrolled agent who is soliciting clients for fiduciary*  
20 *services or holding himself or herself out as a professional*  
21 *fiduciary is required to obtain a license in accordance with this*  
22 *chapter.*

23 *SEC. 7. Section 6582.2 is added to the Business and Professions*  
24 *Code, to read:*

25 6582.2. (a) *Notwithstanding Section 6582 and Section*  
26 *11415.60 of the Government Code, the bureau may enter into a*  
27 *settlement with a licensee or applicant instead of the issuance of*  
28 *an accusation or statement of issues against that licensee or*  
29 *applicant.*

30 (b) *The settlement shall identify the factual basis for the action*  
31 *being taken and the statutes or regulations violated.*

32 (c) *A person who enters a settlement pursuant to this section is*  
33 *not precluded from filing a petition, in the timeframe permitted by*  
34 *Section 11522 of the Government Code, to modify the terms of the*  
35 *settlement or a petition for early termination of probation, if*  
36 *probation is part of the settlement.*

37 (d) *Any settlement with a licensee executed pursuant to this*  
38 *section shall be considered discipline and a public record and*  
39 *shall be posted on the bureau's Internet Web site. Any settlement*  
40 *with an applicant executed pursuant to this section shall be*

- 1 *considered a public record and shall be posted on the bureau's*
- 2 *Internet Web site.*

O



## MEMORANDUM

<b>DATE</b>	April 21, 2011
<b>TO</b>	Advisory Committee Members Professional Fiduciaries Bureau
<b>FROM</b>	Gil DeLuna, Acting Chief
<b>SUBJECT</b>	Agenda Item #8 – Legislative Update - <b>SB103</b>

### **SB 103 (Liu): Teleconferencing**

This bill requires that upon the request of a member of a state body, that state body must hold an open or closed meeting by teleconference unless deemed too expensive by the chair of that body. This bill also requires that any state body that has a website to provide supplemental live audio or video on the website of any board meeting that is open to the public.

**Status:** Referred to Senate Appropriations. Not set.

Advisory Committee comments

Public comments

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Introduced by Senator Liu

January 12, 2011

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An act to amend Section 11123 of the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

SB 103, as amended, Liu. State government: ~~meetings; teleconferencing; meetings.~~

Existing law authorizes a state body to conduct teleconference meetings.

This bill would ~~urge~~ *authorize* a state body, to the extent ~~legally or financially possible,~~ *practicable*, to conduct teleconference meetings.

*This bill would require, upon the request of a member of a state body, a state body to hold an open or closed meeting by teleconference, unless the chair of that state body determines that it would be more costly to hold the meeting by teleconference than it would be to hold it in person.*

*This bill would require a state body that operates an Internet Web Site to provide a supplemental live audio or video broadcast on the Internet Web site of its board meetings that are open to the public, and would specify that a technical failure to provide a live broadcast would not prohibit the board from meeting and taking actions.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes*. State-mandated local program: no.

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

1 SECTION 1. The Legislature finds and declares the following:

1 (a) That teleconferencing is a green technology, allowing  
2 organizations to mitigate energy use by dramatically reducing the  
3 need to travel.

4 (b) By communicating over video or telephone, organizations  
5 can also substantially reduce their carbon footprint by reducing  
6 the need to travel via high-emission methods, such as flying or  
7 driving.

8 (c) Teleconferencing saves money by reducing the number of  
9 trips taken annually, and this monetary savings is multiplied by  
10 the cost of transportation to and from the airport, the flight, per  
11 diem expenses, salary of time lost in traveling, and other incidental  
12 expenses of travel.

13 (d) The amount saved by teleconferencing greatly exceeds the  
14 minimal cost of investing and implementing teleconferencing  
15 solutions, such as the cost for new equipment, services, and  
16 training.

17 (e) Therefore, it is the intent of the Legislature that state bodies,  
18 to the extent possible, conduct teleconference meetings in order  
19 to save the environment and save the state money.

20 SEC. 2. Section 11123 of the Government Code is amended  
21 to read:

22 11123. (a) All meetings of a state body shall be open and  
23 public and all persons shall be permitted to attend any meeting of  
24 a state body except as otherwise provided in this article.

25 ~~(b) (1) This article does not prohibit a state body from holding~~  
26 ~~an open or closed meeting by teleconference for the benefit of the~~  
27 ~~public and state body. The meeting or proceeding held by~~  
28 ~~teleconference shall otherwise comply with all applicable~~  
29 ~~requirements or laws relating to a specific type of meeting or~~  
30 ~~proceeding, including the following:~~

31 *(b) (1) A state body may, to the extent practicable, hold an open*  
32 *or closed meeting by teleconference for the benefit of the public*  
33 *and the state body.*

34 *(2) Upon the request of a member of a state body, the state body*  
35 *shall hold an open or closed meeting by teleconference, unless the*  
36 *chair of the state body determines that it would be more costly to*  
37 *hold the meeting by teleconference than it would be to hold it in*  
38 *person.*

39 *(3) The meeting or proceeding held by teleconference pursuant*  
40 *to this subdivision shall otherwise comply with all applicable*

1 *requirements or laws relating to a specific type of meeting or*  
2 *proceeding, including all of the following:*

3 (A) The teleconferencing meeting shall comply with all  
4 requirements of this article applicable to other meetings.

5 (B) The portion of the teleconferenced meeting that is required  
6 to be open to the public shall be audible to the public at the location  
7 specified in the notice of the meeting.

8 (C) If the state body elects to conduct a meeting or proceeding  
9 by teleconference, it shall post agendas at all teleconference  
10 locations and conduct teleconference meetings in a manner that  
11 protects the rights of any party or member of the public appearing  
12 before the state body. Each teleconference location shall be  
13 identified in the notice and agenda of the meeting or proceeding,  
14 and each teleconference location shall be accessible to the public.  
15 The agenda shall provide an opportunity for members of the public  
16 to address the state body directly pursuant to Section 11125.7 at  
17 each teleconference location.

18 (D) All votes taken during a teleconferenced meeting shall be  
19 by rollcall.

20 (E) The portion of the teleconferenced meeting that is closed  
21 to the public may not include the consideration of any agenda item  
22 being heard pursuant to Section 11125.5.

23 (F) At least one member of the state body shall be physically  
24 present at the location specified in the notice of the meeting.

25 (2) For the purposes of this subdivision, "teleconference" means  
26 a meeting of a state body, the members of which are at different  
27 locations, connected by electronic means, through either audio or  
28 both audio and video. This section does not prohibit a state body  
29 from providing members of the public with additional locations  
30 in which the public may observe or address the state body by  
31 electronic means, through either audio or both audio and video.

32 ~~(e) A state body shall, to the extent legally or financially~~  
33 ~~possible, conduct teleconference meetings, subject to the~~  
34 ~~requirements set out in subdivision (b).~~

35 *(c) (1) If a state body operates an Internet Web site, the state*  
36 *body shall, subject to all otherwise applicable requirements of this*  
37 *article, provide a supplemental live audio or video broadcast on*  
38 *its Internet Web site of each of its meetings that are open to the*  
39 *public.*

1 (2) *If a technical failure prevents the body from providing a live*  
2 *broadcast on its Internet Web site pursuant to this subdivision,*  
3 *that failure shall not constitute a violation of this section if the*  
4 *board exercised reasonable diligence in providing the live*  
5 *broadcast.*

6 (3) *Failure to provide a live broadcast due to a technical failure*  
7 *shall not prohibit the body from meeting and taking actions as*  
8 *otherwise provided by law.*

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# **Agenda Item**

**#9**



**Date:** April 5, 2011

**To:** Members, Advisory Committee  
Professional Fiduciaries Bureau

**From:** Gil DeLuna, Acting Bureau Chief

**Subject:** Approval of Reimbursement Rates for Expert Consultants

**Issue:**

Staff is requesting the Members of the Advisory Committee set the rate for reimbursement expert consultants when those experts are utilized by the Bureau during the investigative and disciplinary process.

**Background:**

As part of the investigative process the Professional Fiduciaries Bureau (Bureau) must, from time to time, utilize the services of an expert consultant (expert). Many boards and some bureaus within the Department of Consumer Affairs use experts during the investigative process to review records, investigation reports and other documents and evidence to determine if a licensee has committed an act or acts of unprofessional conduct.

In most cases the use of experts by the Bureau would be limited to allegations involving gross negligence which has been defined as an extreme departure from the standard of practice, incompetence which is defined as a lack of knowledge or ability in carrying out their professional obligations and allegations the licensee committed a willful violation of duty. Violations of this type must be confirmed by the peer review process by an expert and cannot be established by a non-licensee.

Experts who agree to review matters for the Bureau are expected to reduce their findings and opinions to writing and, if necessary, testify in court as to those findings and opinions.

Boards and bureaus who utilize experts also set the reimbursement rates for those experts. The reimbursement is typically divided into two areas: record review and report preparation, and testimony at an administrative hearing (and in some cases at a criminal trial). Below are some samples of the reimbursement rates for the services of expert consultants by boards with the department:

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**Medical Board of California:**

Record review and report preparation: \$150 per hour  
Testimony at an administrative hearing: \$200 per hour with a max of \$1600 per day.

**Board of Registered Nursing:**

Record review and report preparation: \$75 per hour  
Testimony at an administrative hearing: \$75 per hour (no max was given)

**Board of Psychology:**

Record review and report preparation: \$90 per hour  
Testimony at an administrative hearing: \$110 per hour with a max of \$880 per day  
Conference with Investigator or AG: \$90 per hour

**California Board of Accountancy:**

Record review and report preparation: \$150 - \$200 per hour  
Testimony at an administrative hearing: \$200 - \$250 per hour (no max was given)

**California Board of Pharmacy:**

Record review and report preparation: \$50 – per hour  
Conference with Attorney General: \$75 – per hour  
Testimony at hearing: \$75 – per hour\*

\*minimum of \$300 for a half day or less spent in testimony. \$75 per hour thereafter, with a max of \$600 per day.

**Recommendation:**

It is recommended the reimbursement rate for experts for the Bureau for record review and report preparation be set at \$75 per hour and \$90 per hour for testimony with a maximum of \$720 per day.

AMENDED IN SENATE APRIL 13, 2011

SENATE BILL

No. 541

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Introduced by Senator Price

February 17, 2011

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An act to amend Sections 7000.5 and 7011 of add Section 40 to the Business and Professions Code, relating to ~~contractors~~ profession and vocations, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 541, as amended, Price. Contractors' State License Board. Regulatory boards: expert consultants.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law, the Chiropractic Act, enacted by initiative, provides for the licensure and regulation of chiropractors by the State Board of Chiropractic Examiners. Existing law, the Osteopathic Act, requires the Osteopathic Medical Board of California to regulate osteopathic physicians and surgeons. Existing law generally requires applicants for a license to pass an examination and authorizes boards to take disciplinary action against licensees for violations of law. Existing law establishes standards relating to personal service contracts in state employment.

This bill would authorize these boards to enter into an agreement with an expert consultant, subject to the standards regarding personal service contracts described above, to provide enforcement and examination assistance. The bill would require each board to establish policies and procedures for the selection and use of these consultants.

This bill would declare that it is to take effect immediately as an urgency statute.

Existing law establishes within the Department of Consumer Affairs, until January 1, 2012, the Contractors' State License Board and a registrar of contractors, for purposes of the licensure and regulation of contractors. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee.

This bill would extend the operation of those provisions until January 1, 2016, and would specify that the board would be subject to review by the appropriate policy committees of the Legislature.

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

1     SECTION 1. Section 40 is added to the Business and  
2     Professions Code, to read:

3     40. (a) Subject to the standards described in Section 19130  
4     of the Government Code, any board, as defined in Section 22, the  
5     State Board of Chiropractic Examiners, or the Osteopathic Medical  
6     Board of California may enter into an agreement with an expert  
7     consultant to do any of the following:

8     (1) Provide an expert opinion on enforcement-related matters,  
9     including providing testimony at an administrative hearing.

10    (2) Assist the board as a subject matter expert in examination  
11    development, examination validation, or occupational analyses.

12    (3) Evaluate the mental or physical health of a licensee or an  
13    applicant for a license as may be necessary to protect the public  
14    health and safety.

15    (b) An executed contract between a board and an expert  
16    consultant shall be exempt from the provisions of Part 2  
17    (commencing with Section 10100) of Division 2 of the Public  
18    Contract Code.

19    (c) Each board shall establish policies and procedures for the  
20    selection and use of expert consultants.

21    SEC. 2. This act is an urgency statute necessary for the  
22    immediate preservation of the public peace, health, or safety within  
23    the meaning of Article IV of the Constitution and shall go into  
24    immediate effect. The facts constituting the necessity are:

25    To ensure that licensees engaging in certain professions and  
26    vocations are adequately regulated at the earliest possible time

1 *in order to protect and safeguard consumers and the public in this*  
2 *state, it is necessary that this act take effect immediately.*

3 SECTION 1. ~~Section 7000.5 of the Business and Professions~~  
4 ~~Code is amended to read:~~

5 ~~7000.5. (a) There is in the Department of Consumer Affairs~~  
6 ~~a Contractors' State License Board, which consists of 15 members.~~

7 ~~(b) Notwithstanding any other provision of law, the repeal of~~  
8 ~~this section renders the board subject to review by the appropriate~~  
9 ~~policy committees of the Legislature.~~

10 ~~(c) This section shall remain in effect only until January 1, 2016,~~  
11 ~~and as of that date is repealed, unless a later enacted statute, that~~  
12 ~~is enacted before January 1, 2016, deletes or extends that date.~~

13 SEC. 2. ~~Section 7011 of the Business and Professions Code is~~  
14 ~~amended to read:~~

15 ~~7011. (a) The board, by and with the approval of the director,~~  
16 ~~shall appoint a registrar of contractors and fix his or her~~  
17 ~~compensation.~~

18 ~~(b) The registrar shall be the executive officer and secretary of~~  
19 ~~the board and shall carry out all of the administrative duties as~~  
20 ~~provided in this chapter and as delegated to him or her by the~~  
21 ~~board.~~

22 ~~(c) For the purpose of administration of this chapter, there may~~  
23 ~~be appointed a deputy registrar, a chief reviewing and hearing~~  
24 ~~officer, and, subject to Section 159.5, other assistants and~~  
25 ~~subordinates as may be necessary.~~

26 ~~(d) Appointments shall be made in accordance with the~~  
27 ~~provisions of civil service laws.~~

28 ~~(e) This section shall remain in effect only until January 1, 2016,~~  
29 ~~and as of that date is repealed, unless a later enacted statute, that~~  
30 ~~is enacted before January 1, 2016, deletes or extends that date.~~