



# The State Bar of California

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## **OPEN SESSION**

### **AGENDA ITEM**

**6.1 JULY 2024**

### **BOARD OF TRUSTEES**

**DATE:** July 18, 2024

**TO:** Members, Board of Trustees

**FROM:** Donna S. Hershkowitz, Chief Mission Officer/Legislative Director  
Bridget Gramme, Special Counsel, Division of Consumer Protection,  
Admissions, Access & Inclusion

**SUBJECT:** Update on and Approval of 2024 Legislative Priorities and Affirmative  
Legislative Proposals; Position on Pending Legislation

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### **EXECUTIVE SUMMARY**

At its March 2024 meeting, the Board of Trustees adopted a legislative priority to increase the annual licensing fee by \$125 for active California licensed attorneys and \$31 for inactive attorneys. The Board also adopted several legislative proposals to improve public protection, improve operations, advance efficiencies, and otherwise assist the State Bar in carrying out its mission. [Assembly Bill 3279 \(Judiciary\)](#), the State Bar's 2025 fee legislation, includes a licensing fee increase of \$88 for active attorneys and many of the affirmative legislative proposals sought by the organization. This agenda item provides an update on the contents of AB 3279, asks the Board to consider modifying its official position on that bill, and seeks approval to advance an additional affirmative legislative proposal.

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### **RECOMMENDED ACTION**

Staff recommend that the Board revise its previously adopted affirmative proposal that earmarks \$5 out of the \$45 opt-out donation to instead earmark \$10 to support summer law student fellowships, as supported by the Legal Aid Association of California, the California Access to Justice Commission, and California ChangeLawyers.

Staff also recommend that the Board support SB 940 (Umberg), which would require the State Bar to create a voluntary certification program for arbitration and mediation firms, providers, and practitioners and authorize the State Bar to charge fees to cover costs to stand up and administer the program.

Staff also recommend that, in light of the procedural posture of the bill – i.e., that the remaining possibility for amendments is on the Senate floor only, and the support that AB 3279 has received with the \$88 fee increase, the Board consider changing its current support if amended position.

## DISCUSSION

### FEE BILL UPDATE

As presented to the Board at its May 16, 2024, meeting (Item [702](#)), the State Bar submitted a report to the Legislature pursuant to section 6145.1 of the Business and Professions Code seeking a \$125 fee increase, comprised of \$95 to maintain existing operations, and \$30 for initiatives to improve public protection. As amended on June 5, AB 3279 includes \$88 of the \$125 increase requested as described more fully below. The bill was approved by the Senate Judiciary Committee on July 2, 2024, without amendment. We are continuing to work with legislative staff on incorporating several of the Board approved affirmative legislative proposals into the bill, as well as pursuing authorization to utilize CSF reserves to fulfill other funding needs.

### Maintaining Existing Operations

The bill currently provides \$77 of the requested \$95 to maintain existing operations and services levels, including information technology (IT) licenses and contractual obligations to employees (merit increases, COLAs, and benefits). Two components of the State Bar’s request for maintaining existing operations were not fully funded:

- **Lease costs:** The bill provides \$15 per active license towards the lease costs for the San Francisco building—\$6 less than the \$21 cost per active licensee; and
- **Vacancy rate:** The State Bar requested funding sufficient to maintain the existing 8 percent employee vacancy rate. Instead, the bill provides funding in an amount that would move the State Bar to a 15 percent vacancy rate (amounting to the loss of an additional 45–50 positions) through attrition by April 1, 2027. Analyses and legislative discussions also suggested that other state agencies use salary savings to fund merit increases and the costs of promoting staff in place, and that the State Bar should do so as well. However, doing so would require the State Bar to hold more than 15 percent of its positions vacant to have any savings available for these purposes.

### Improving Public Protection:

The bill currently provides \$11 out of the requested \$30 to improve public protection, including \$5.50 to fund a diversion program and \$5.50 to implement Phase II of the Client Trust Account Protection Program (CTAPP) to perform audits and compliance reviews of client trust accounts. Two components of the request were not funded:

- **Office of Chief Trial Counsel Case Processing:** AB 3279 does not include the requested \$15.50 needed to augment OCTC staff to reduce the timeline for resolving attorney discipline cases.
- **Complaint Review Unit (CRU):** It does not provide the \$3.50 requested to address the increasing backlog of cases this unit of the Office of General Counsel handles when complainants seek review of OCTC decisions to close complaints.

## IT Investment

The State Bar also submitted a detailed request for a one-time information technology investment, seeking authorization to access a portion of excess Client Security Fund (CSF) reserves, currently totaling \$9.3 million, to support identified projects and initiatives:

Area	One-Time Costs
Attorney Regulation Information System (ARIS)	\$4,000,000
IT Modernization – Multiple Initiatives	\$710,000
<b>Total</b>	<b>\$4,710,000<sup>1</sup></b>

The bill does not yet address the IT investment proposal. Staff continue to advocate for the flexibility to use CSF reserves to fund this much-needed one-time investment in IT infrastructure and modernization. This will be especially critical given the increased organizational vacancy rate reflected in current fee bill funding levels.

## Status of Affirmative Proposals

Several of the Board’s adopted affirmative legislative proposals are already included in AB 3279. Staff have submitted proposed language and continue to work with legislative staff and stakeholders with the goal of incorporating the following Board-approved proposals into the final version of the bill:

- Modernize Lawyer Referral Service (LRS) certification
- Use of Justice Gap Fund and Legal Services donations for urgent or emerging issues impacting the legal needs of indigent Californians
- CTAPP – preserving confidentiality of records in compliance reviews and audits
- Revising timing for bar exam evaluation studies

Staff has identified additional technical clean up language related to other affirmative legislative proposals or other language in AB 3279 and is working with legislative staff to address these issues as well.

## UPDATING AFFIRMATIVE LEGISLATIVE PROPOSAL RE: LAW STUDENT FELLOWSHIPS

AB 3279 currently amends section 6140.03 of the Business and Professions Code to extend the sunset date on a law student fellowship program from December 31, 2024, to January 1, 2030. This proposal was adopted by the Board as an affirmative legislative proposal at its January 2024 meeting, and was supported by several key stakeholders, including the Legal Aid Association of California, California ChangeLawyers, and the California Access to Justice Commission. Given the success of the program to date, staff request the Board’s approval to seek a further amendment to the statute to increase the dedicated funding to expand the number of available fellowships. The program is currently funded by dedicating \$5 to support the fellowships out of the \$45 opt-out donation attorneys pay to support legal aid as part of their annual licensing fees. Staff propose to increase this carve-out to \$10. In the last two cycles, staff have received requests that more than doubled available funding. As with the extension of the sunset date, the proposed

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<sup>1</sup> The State Bar also proposes a \$400,000 one-time investment for a Client Security Fund case management system, but use of CSF reserves for this purpose does not require legislative authorization.

increase in dedicated funds to support the fellowships, which are designed to enhance legal aid recruitment and retention, has received widespread support from the Legal Aid Association of California, California ChangeLawyers, and the California Access to Justice Commission.

### **POSITION ON PENDING LEGISLATION**

[SB 940 \(Umberg\)](#), as amended on June 27, 2024, among other things, requires the State Bar to create a program to permit alternative dispute resolution firms, providers, or practitioners to apply to the State Bar for certification. The bill identifies a few minimum requirements that the firms, providers, or practitioners would need to verify to qualify for certification, along with whatever other criteria the State Bar establishes. At the State Bar’s recommendation, the bill envisions a tiered certification program akin to the State Bar’s DEI Leadership Seal, where firms, providers, or practitioners would qualify for different levels of certification based on whether they meet certain elevated criteria tied to improved public protection. Staff envision consulting with experts in the field to develop these criteria.

Importantly, the bill provides that the State Bar may charge an alternative dispute resolution firm, provider, or practitioner a fee to cover the reasonable costs of administering the program, and also authorizes the fee to be sufficient to reimburse the State Bar to cover any costs the State Bar may have had to advance for staffing, technology, or other reasons, to stand up the program. Staff recommends the Board adopt a support position on SB 940.

### **PREVIOUS ACTION**

- January 18, 2024, Adoption of Preliminary Legislative Priorities and Affirmative Legislative Proposals (Item [706](#))
- March 21, 2024, Update on Legislation and Adoption of Legislative Proposals (Item [702](#))
- May 16, 2024, Discussion and Approval of Current and New 2024 Legislative Priorities and Affirmative Legislative Proposals (Item [702](#))

### **FISCAL/PERSONNEL IMPACT**

As detailed above, AB 3279 in its current form would provide funding in an amount that requires the State Bar to achieve a 15 percent employee vacancy rate (a reduction of 45–50 positions) by April 1, 2027. Although providing significant inroads to address the State Bar’s structural deficit, the fee increase authorized does not account for future financial pressures such as escalation in the lease costs for the San Francisco building, or future negotiated salary and benefit increases for staff.

The proposed increase to support the law student fellowships will not impact the State Bar general fund as the \$45 opt-out donation is already earmarked to support legal services. Given the interest rates over the last several years, funds generated from Interest on Lawyers’ Trust Accounts (IOLTA) that the State Bar distributes to legal services each year are at an all-time high with over \$200 million projected to be distributed next year. The additional \$5 in dedicated funding for law student fellowships will not negatively impact other legal services funds.

SB 940 authorizes the State Bar to assess fees on alternative dispute resolution firms, providers, and practitioners seeking certification to cover the reasonable costs of administering the program and the initial start-up costs.

## **AMENDMENTS TO RULES**

None

## **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

## **STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS**

Goal 1. Protect the Public by Strengthening the Attorney Discipline System

- a. 2. Secure additional funding for the attorney discipline system.

Goal 2. Protect the Public by Enhancing Access to and Inclusion in the Legal System

- c. 2. Increase the numbers of diverse attorneys in the legal profession through diversity pipeline programs that support aspiring attorneys in graduating from law school and passing the bar exam.

Goal 3. Protect the Public by Regulating the Legal Profession

- d. 1. Implement the Client Trust Account Protection Program.

Goal 4. Protect the Public by Engaging Partners

- d. 1. Collaborate with the legislature and other stakeholders to increase public protection and support the State Bar's mission.

## **RESOLUTION**

**Should the Board of Trustees concur, it is:**

**RESOLVED**, that the Board of Trustees adopts an affirmative legislative proposal to amend Business and Professions Code section 6140.03 to increase the \$5 earmark for law student fellowships to \$10; and it is

**FURTHER RESOLVED**, that the Board of Trustees, adopts a support position on SB 940 (Umberg).

## **ATTACHMENT LIST**

None