

AMENDED IN ASSEMBLY APRIL 23, 2009

AMENDED IN ASSEMBLY MARCH 10, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 138

Introduced by Assembly Member Hayashi

January 20, 2009

An act to amend Section 5076 of, and to add Sections 5076.1 and 5076.2 to, the Business and Professions Code, relating to accountants.

LEGISLATIVE COUNSEL'S DIGEST

AB 138, as amended, Hayashi. Accounting firms: peer review.

Existing law provides for the licensing and regulation of certified public accountants and other licensees by the California Board of Accountancy. Existing law requires an accounting firm providing attest services, with certain exceptions, to complete a peer review every 3 years in order to renew its registration, if the board, prior to September 1, 2011, determines that a peer review program should be implemented and identifies the resources necessary for that implementation.

This bill would instead impose a peer review requirement for all accounting firms relative to accounting and auditing practice, which would be conducted by a board-recognized peer review program. The bill would require the board to adopt emergency regulations as necessary to implement the program. The bill would also require the board to appoint a peer review oversight committee, *as specified*. The bill would specify that these provisions shall be operative only if sufficient appropriations and hiring authority are provided to support these activities. *The bill would also make specified findings and declarations of the Legislature regarding the value of peer review.*

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.** *The Legislature hereby finds and declares the*
- 2 *following:*
- 3 *(a) The highest priority of the California Board of Accountancy*
- 4 *is to protect the public in exercising the board’s licensing,*
- 5 *regulatory, and disciplinary functions.*
- 6 *(b) The board protects the public by ensuring that only qualified*
- 7 *persons and firms are licensed to practice public accountancy and*
- 8 *that appropriate standards of competency and practice, including*
- 9 *ethics, objectivity, and independence, are established and enforced.*
- 10 *(c) Mandatory peer review is designed to assist the board in*
- 11 *ensuring the competency of licensees and their adherence to*
- 12 *professional standards.*
- 13 *(d) Firms that complete a peer review will be better equipped*
- 14 *to perform quality accounting and auditing engagements.*
- 15 *(e) By completing a peer review, quality control systems can*
- 16 *be designed or refined to ensure that work is performed in*
- 17 *conformity with professional standards and that licensees develop*
- 18 *and refine their technical skills.*
- 19 *(f) Mandatory peer review demonstrates the board’s commitment*
- 20 *to enhance the quality of the services provided by accounting firms*
- 21 *and contributes to the public’s confidence in the profession.*
- 22 *(g) Consumer confidence is paramount to a healthy economy.*
- 23 *Consumer confidence is achieved in the field of accounting when*
- 24 *consumers feel that the firms providing them with accounting and*
- 25 *auditing services are doing so in accordance with professional*
- 26 *standards.*
- 27 **SECTION 1.**
- 28 **SEC. 2.** Section 5076 of the Business and Professions Code is
- 29 amended to read:
- 30 5076. (a) In order to renew its registration, a firm, as defined
- 31 in Section 5035.1, shall have a peer review report of its accounting
- 32 and auditing practice accepted by a board-recognized peer review
- 33 program no less frequently than every three years.
- 34 (b) For purposes of this article, the following definitions apply:

1 (1) “Peer review” means a study, appraisal, or review conducted
2 in accordance with professional standards of the professional work
3 of a firm by an individual who has a valid and current license,
4 certificate, or permit to practice public accountancy from this state
5 or another state and is unaffiliated with the firm being reviewed,
6 and may include an evaluation of other factors in accordance with
7 requirements specified by the board in regulations.

8 (2) “Accounting and auditing practice” includes any services
9 that are performed using professional standards defined by the
10 board in regulations.

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

18 (d) The board shall adopt emergency regulations in accordance
19 with the Administrative Procedure Act (Chapter 3.5 (commencing
20 with Section 11340) of Part 1 of Division 3 of Title 2 of the
21 Government Code) to establish policies, guidelines, and procedures
22 as outlined in subdivision (c). The adoption of the regulations shall
23 be considered by the Office of Administrative Law to be necessary
24 for the immediate preservation of the public peace, health and
25 safety, or general welfare. The emergency regulations shall be
26 submitted to the Office of Administrative Law for filing with the
27 Secretary of State and publication in the California Code of
28 Regulations, and shall be replaced with final, permanent regulations
29 within 120 days of their adoption.

30 (e) Nothing in this section shall prohibit the board from initiating
31 an investigation involving a complaint of alleged violation of
32 statutes or regulations against a firm or licensee.

33 ~~(f) Any documents related to a firm’s peer review required for~~
34 ~~submission as prescribed by the board in regulations shall not be~~
35 ~~a public record and shall be exempt from public disclosure. and~~
36 ~~imposing discipline against a firm or licensee, either as the result~~
37 ~~of a complaint that alleges violations of statutes, rules, or~~
38 ~~regulations, or from information contained in a peer review report~~
39 ~~received by the board.~~

1 (f) Any requirements imposed by a board-recognized peer review
2 program on a firm in conjunction with the completion of a peer
3 review shall be separate from, and in addition to, any action by
4 the board pursuant to this section.

5 (g) Any report of a substandard peer review submitted to the
6 board in conjunction with this section shall be collected for
7 investigatory purposes.

8 ~~(g)~~

9 (h) Nothing in this section requires any firm to become a
10 member of any professional organization.

11 (i) A peer reviewer shall not disclose information concerning
12 licensees or their clients obtained during a peer review, unless
13 specifically authorized pursuant to this section, Section 5076.1,
14 or regulations prescribed by the board.

15 ~~SEC. 2.~~

16 SEC. 3. Section 5076.1 is added to the Business and Professions
17 Code, to read:

18 5076.1. (a) The board shall appoint a peer review oversight
19 committee of certified public accountants of this state *who maintain*
20 *a license in good standing to act as an advisory committee and*
21 *who are authorized to practice public accountancy* to provide
22 recommendations to the board on any matter upon which it is
23 authorized to act to ensure the effectiveness of mandatory peer
24 review.

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

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

39 (2) *In connection with legal proceedings in which the board is*
40 *a party.*

1 (3) *In response to an official inquiry by a federal or state*
2 *governmental regulatory agency.*

3 (4) *In compliance with a subpoena or summons enforceable by*
4 *court order.*

5 (5) *As otherwise specifically required by law.*

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

9 (d) *The board may adopt, as necessary, regulations further*
10 *defining the minimum qualifications for appointment as a*
11 *committee member and additional administrative elements designed*
12 *to ensure the effectiveness of mandatory peer review.*

13 ~~SEC. 3.~~

14 SEC. 4. Section 5076.2 is added to the Business and Professions
15 Code, to read:

16 5076.2. The provisions of Sections 5076 and 5076.1 shall only
17 be operative if, commencing July 1, 2010, there is an appropriation
18 from the Accountancy Fund in the annual Budget Act to fund the
19 activities in those sections and sufficient hiring authority is granted
20 pursuant to a budget change proposal to the board to provide
21 staffing to implement those sections.