



MEMORANDUM

DATE July 26, 2022

TO Legislation and Regulations Committee Members

FROM Elaine Yamaguchi
Executive Officer

SUBJECT AB 1536 Technical Clean-up

SUMMARY

The purpose of this memo is to provide updates and recommendations to the Legislation and Regulations Committee and the full Board regarding a technical amendment to Business and Professions Code (BPC) Sections 2881.2 and 4531.1.

BACKGROUND

On June 27, 2022, the Office of Administrative Law approved the Board's emergency regulations to adopt California Code of Regulations (CCR) sections 2537.2 and 2590.2 and to amend sections 2525, 2526, 2580, and 2581 to implement the provisions of AB 1536 (Committee on Business and Professions, Chapter 632, Statutes of 2021).

The Office of Administrative Law recommended that the Board seek legislative amendment of BPC sections 2881.2 (d) and 4531.1 (d). As written, these sections imply that a reduction in state funding *causes* reduced enrollment. However, State appropriation is based on enrollment numbers through its Budget Act—therefore, a reduction in enrollment causes the reduction in funding. Enrollment growth is directly supported by two primary sources of revenue: the tuition paid by the students themselves (less the amount set aside for financial aid) and State funding (General Fund). Together, these funds are intended to fully cover the marginal cost of enrollment growth, excluding any additional capital requirements (e.g., new classroom space).

For the sake of consistency, that same language is expressed in sections 2537.2 (f) and 2590.2 (f) of Title 16 of the California Code of Regulations, but the cause-and-effect relationship between student enrollment numbers and funding is still incorrect. The Office of Administrative Law recommends that the Board seeks amendment of BPC sections 2881.2 (d) and 4531.1 (d) to correct the statute and include that correction when filing the regular rulemaking in 2023.

If this is not corrected, the Board's ability to proceed with the permanent rulemaking process to implement AB 1536 may be impeded.

PROPOSED AMENDMENTS TO BUSINESS AND PROFESSIONS CODE SECTIONS

New language is underlined.

Deleted language is shown in ~~strikeout~~.

2881.2 (d) The board may reduce the continuing approval fees, by no more than one-half of the established fee, for a program that experiences a reduction in enrollment capacity~~state funding~~ that directly leads to a reduction in state funding~~enrollment capacity~~. The board shall require a program to provide documentation for the purposes of issuing the fee reduction~~delay~~.

4531.1 (d) The board may reduce the continuing approval fees, by no more than one-half of the established fee, for a program that experiences a reduction in enrollment capacity~~state funding~~ that directly leads to a reduction in state funding~~enrollment capacity~~. The board shall require a program to provide documentation for the purposes of issuing the fee reduction~~delay~~.

STAFF RECOMMENDATION

Staff recommends that the Legislation and Regulations Committee consider this issue and make the following recommendations to the full Board at the August 12, 2022 meeting.

1. Authorize the Executive Officer and staff to coordinate with Assembly and Senate staff to ascertain whether it is possible to amend this language into an existing omnibus bill.
2. Authorize the Executive Officer and staff to coordinate with the Department of Consumer Affairs Division of Legislative Affairs to identify an omnibus bill in 2023 which could accommodate this language.