



The State Bar of California

OPEN SESSION

AGENDA ITEM

54-141 JANUARY 2021

FINANCE COMMITTEE III.B

DATE: January 22, 2021

TO: Members, Finance Committee
Members, Board of Trustees

FROM: Kevin W. Harper, Interim Chief Financial Officer

SUBJECT: Reserve Policy Revisions

EXECUTIVE SUMMARY

This agenda item proposes updates and improvements to the State Bar's Reserve Policy.

BACKGROUND

The State Bar's Reserve Policy requires a Minimum Target Reserve of two months of operating expenses (17 percent) for each fund and requires a spend-down plan when reserves remain greater than 30 percent for longer than six consecutive months. Grant-related funds (Grants Fund, Legal Services Trust Fund, Equal Access Fund, Justice Gap Fund, and Bank Settlement Fund) are excepted from the Minimum Target Reserve.

DISCUSSION

Proposed revisions to the Reserve Policy as follows:

1. Update list of funds to those currently used by the State Bar.
2. Consolidation of "Restricted Funds" and "Special Revenue Funds" into the same category because both are tracking activities related to specific revenue sources.
3. Addition of a paragraph explaining how reserves are calculated midyear.
4. Clarification that the discussion in section 2, Classification of Reserves, for governmental funds is for informational purposes to assist with assessing the adequacy of reserves.
5. Various clarifications of wording and format.

The proposed revisions to the Reserve Policy are shown in Attachment A (redline version).

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD OF TRUSTEES POLICY MANUAL AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

None

RECOMMENDATIONS

Should the Finance Committee concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Finance Committee recommends that the Board of Trustees approve the proposed amendments to the Reserve Policy as proposed by the Chief Financial Officer.

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that upon recommendation of the Finance Committee, the Board of Trustees approves the proposed amendments to the Reserve Policy as proposed by the Chief Financial Officer.

ATTACHMENT(S) LIST

- A.** 2020 Reserve Policy (redline version)
- B.** 2020 Reserve Policy (clean version)

The State Bar of California Reserve Policy

~~Revised May 2018~~ Revised December 2020

A. DEFINITION AND CLASSIFICATION OF RESERVES

1. **Working Capital.** In accordance with best practices, State Bar reserves are defined as working capital (current assets less current liabilities). Since the State Bar uses Enterprise Fund accounting for its financial operations in accordance with Generally Accepted Accounting Principles (GAAP), working capital is the financial measure that most closely matches the concept of “fund balance” in the Governmental Funds and what is typically meant by the concept of “reserves” in a budgetary policy context. This is also the financial measure recommended by the Government Finance Officers’ Association of the United States and Canada (GFOA) as a “best practice” in setting reserve policies for Enterprise Funds (web site link): www.gfoa.org/materials/determining-appropriate-levels-working-capital-targets-for-enterprise-funds
2. **Classification of Reserves.** The Governmental Accounting Standards Board (GASB) is responsible for establishing “GAAP” for state and local governments in the United States. For Governmental Funds, GASB Statement No. 54 adopted in 2009 requires that Fund Balance be classified into five components: non-spendable, restricted, committed, assigned and unassigned. While these classifications are only used for Governmental Funds and are not applicable to Enterprise Funds (in fact, there is no discussion under GAAP of the concept of “fund balance” or reserves for Enterprise Funds), they nonetheless provide a useful framework for assessing the State Bar’s reserves.—
~~Accordingly, reserves will be classified within each fund (where applicable) as follows:~~
 - a. **Non-Spendable.** Amounts that are not in spendable form, such as prepaid items or inventories. (The State Bar does not currently have any reserves that would be classified as non-spendable.)
 - b. **Restricted.** Revenues where the use is subject to *externally* enforceable restrictions imposed by outside third parties.
 - c. **Committed.** These are outstanding obligations for contractual or policy commitment for programs or projects approved in prior fiscal years that are carried forward into the new year. They are typically composed of two types:
 - Encumbrances: unfilled purchase orders and outstanding contractual obligations at year-end. Since these commitments were made during the fiscal year, adequate resources should be available at year-end to cover them and carryover balances into the new fiscal year.
 - Policy Commitments: Balances formally set aside by the Board in order to fund future projects based on adopted plans.
 - d. **Assigned.** Minimum reserve targets established based on assessing risks in accordance with the structured assessment methodology developed by the GFOA (see Section C), after addressing non-spendable, restricted and committed reserves.

- e. **Unassigned.** Residual classification of spendable amounts available for other purposes. Under GASB Statement No. 54, unassigned fund balance should not be shown as a negative number. However, as noted above, GASB Statement No. 54 is only being used as a policy framework in assessing the State Bar's reserves. Accordingly, in the interest of policy clarity, where the State Bar's ending reserves are not sufficient to meet its non-spendable, restricted, committed and assigned amounts, the unassigned balance will be shown as a negative number in clearly disclosing how short reserves are in meeting policy goals.

B. ESTABLISHMENT AND CLASSIFICATION OF FUNDS

While usually created with the goal of improving accountability, the proliferation of funds often makes an agency's financial position and fiscal operations more confusing and less transparent. As such, in accordance with GAAP, the State Bar will limit the proliferation of funds and only establish separate funds where there are compelling policy reasons to do so. This approach will not only simplify accounting and financial reporting, but by focusing on meaningful resource restrictions and earmarking, it will improve accountability, transparency and understandability.

Program Funds

State Bar funds are organized into ~~three Program Fund categories~~ funds as follows:

1. **Restricted Funds.** Using GAAP as the framework, "restricted" funds ~~are those whose use is will be established for revenues that are~~ externally restricted via legislation, bond covenants or similar external restrictions, ~~or activities for which there is~~ are compelling policy reasons to account for the use of resources separately. In short, to be classified as a "restricted" fund, the restriction must be externally imposed as set forth under GAAP. This ~~this~~ means that all significant special purpose assessments approved by the State Legislature, including voluntary ones, will be accounted for in a separate restricted fund. In the case of limited-term assessments that will expire at some point, the fund will be closed-out when the last assessment is received or all proceeds are used for designated purposes, whichever occurs last. Closed-out fund balances will typically be transferred to the General Fund; however, the Board will determine the disposition of any residual balances on a case-by-case basis. The following are Restricted Funds:
 - a. Client Security Fund
 - b. Elimination of Bias ~~and Bar Relations~~ Fund
 - c. Equal Access Fund
 - d. Justice Gap Fund
 - e. Lawyer's Assistance Program Fund
 - f. Legislative Activities Fund
 - g. Legal Services Trust Fund
 - h. Legal Specialization Fund
 - i. Bank Settlement Fund
 - j. SF Tenant Improvement Fund

i. ~~Information Technology Fund¹~~

2. ~~**Special Revenue Funds.** While these could be accounted for within the General Fund, there may be compelling policy reasons to account for the use of resources separately. In this case, separate “Special Revenue Funds” will be created, recognizing that in accordance with GAAP, these could have been accounted for within the General Fund. Board approval should be required to establish a Special Revenue Fund, with findings as to the fund purpose and why earmarking these resources is appropriate. The following are Special Revenue Funds.~~

k.

~~a.l.~~ Admissions Fund

~~b.~~ Annual Meeting Fund

~~e.m.~~ Grants Fund

~~d.~~ Sections Fund

3.2. **General Fund.** All other revenues, expenditures and other uses will be accounted for in the General Fund.

C. MINIMUM RESERVE TARGET

The State Bar will maintain ~~unrestricted, uncommitted~~ reserves in its General Fund, and each ~~fund within its~~ Restricted ~~and Special Revenue Program~~ Funds, other than Excluded Minimum Target Reserve Funds, ~~net of reserves that are non-spendable, restricted and committed~~, that equate to 2 months of operating expenses for the respective funds; this translates to a target minimum reserve level of 17 percent.

Since the State Bar accrues assets and liabilities only at year-end, reserves are determined annually at that time. Mid-year estimates of reserves, if needed, are determined by adding projected revenues and subtracting projected expenses from prior year reserves.

Excluded Minimum Target Reserve Funds: A ~~include~~ all grant-related Funds (~~specifically the Grants~~, Legal Services Trust, Equal Access, Justice Gap, and Bank Settlement Funds) ~~are excluded from the requirement to have do not have~~ a minimum reserve target.

For purposes of the Minimum Reserve Target, operating expenses of the Client Security Fund shall exclude application payouts. The Client Security Fund reserve calculation is differentiate in that only operating expenses and indirect costs are the basis for the reserve. Application payments and associated reimbursements are excluded from the calculation

D. APPROPRIATE RESERVE USES

Circumstances where taking reserves below target minimum levels would be appropriate include responding to the risks that reserves are intended to mitigate, such as:

¹ ~~A new Fund to be established pursuant to the State Bar's receipt of \$44 million in bank settlement monies to be used to support legal services in the areas of economic development and foreclosure prevention.~~

1. One-time uses in meeting cash flow needs; closing a projected short term revenue-expenditure gap; responding to unexpected expenditure requirements or revenue shortfalls; and making investments in human resources, technology, liability reductions, revenue base improvements, productivity improvements and other strategies that will strengthen State Bar revenues or reduce future costs.
2. Where a multi-year forecast shows an ongoing structural gap, in providing a strategic bridge to the future.

Any expenditure that would cause the balance of the General Fund, or any Restricted Fund, other than Excluded Minimum Target Reserve Funds, ~~within the Restricted or Special Revenue Program Funds~~, to fall to a level totaling 10 percent or less of recurring annual operating expenses, must be approved by the Board of Trustees.

E. FUND BALANCE SPEND DOWN WHEN RESERVES ABOVE POLICY LEVELS

Whenever reserve levels in the General Fund, or any ~~fund within the~~ Restricted or Special Revenue Program Funds, other than Excluded Excess Reserve Funds, surpass 30 percent, for a consecutive six month period, spend-down funding shall occur in accordance with the following principles:

1. Fund balance spend-down should be utilized to offset member dues and other assessments and use charges, where possible.
2. Fund balance spend-down should be used to advance strategic efficiency investments that will result in short- or long-term reductions in operating costs.
3. Fund balance spend-down should be used to bolster the Client Security Fund, where possible.
4. Fund balance spend-down should be used to increase legal services funding, where possible.

All spend-down in excess of \$250,000 must be approved by the Board of Trustees.

~~Excluded Excess Reserve Funds include all grant related Funds, specifically the Grant, Legal Services Trust, Equal Access, Justice Gap, and Bank Settlement Funds, and the Sections Fund.~~

F. RESTORING RESERVES TO POLICY LEVELS

Whenever reserve levels in the General Fund, or any ~~fund within the~~ Restricted or Special Revenue Program Funds, other than Excluded Minimum Target Reserve Funds, fall below the target minimum reserve level of 17 percent, the State Bar will strive to restore reserves to this level within five years. ~~As Annual surpluses of revenues versus over expenses~~ improve, of the the State Bar will be allocated at least half to reserve restoration, with the

balance available to fund outstanding liabilities, asset replacements, service levels restoration, new operating programs or capital improvement projects.

~~Excluded Minimum Target Reserve Funds include all grant related Funds, specifically the Grant, Legal Services Trust, Equal Access, Justice Gap, and Bank Settlement Funds.~~

The State Bar of California Reserve Policy

Revised December 2020

A. DEFINITION AND CLASSIFICATION OF RESERVES

1. **Working Capital.** In accordance with best practices, State Bar reserves are defined as working capital (current assets less current liabilities). Since the State Bar uses Enterprise Fund accounting for its financial operations in accordance with Generally Accepted Accounting Principles (GAAP), working capital is the financial measure that most closely matches the concept of “fund balance” in the Governmental Funds and what is typically meant by the concept of “reserves” in a budgetary policy context. This is also the financial measure recommended by the Government Finance Officers’ Association of the United States and Canada (GFOA) as a “best practice” in setting reserve policies for Enterprise Funds (web site link): www.gfoa.org/materials/working-capital-targets-for-enterprise-funds
2. **Classification of Reserves.** The Governmental Accounting Standards Board (GASB) is responsible for establishing GAAP for state and local governments in the United States. For Governmental Funds, GASB Statement No. 54 adopted in 2009 requires that Fund Balance be classified into five components: non-spendable, restricted, committed, assigned and unassigned. While these classifications are only used for Governmental Funds and are not applicable to Enterprise Funds (in fact, there is no discussion under GAAP of the concept of “fund balance” or reserves for Enterprise Funds), they nonetheless provide a useful framework for assessing the State Bar’s reserves:
 - a. **Non-Spendable.** Amounts that are not in spendable form, such prepaid items or inventories. (The State Bar does not currently have any reserves that would be classified as non-spendable.)
 - b. **Restricted.** Revenues where the use is subject to *externally* enforceable restrictions imposed by outside third parties.
 - c. **Committed.** These are outstanding obligations for contractual or policy commitment for programs or projects approved in prior fiscal years that are carried forward into the new year. They are typically composed of two types:
 - Encumbrances: unfilled purchase orders and outstanding contractual obligations at year-end. Since these commitments were made during the fiscal year, adequate resources should be available at year-end to cover them and carryover balances into the new fiscal year.
 - Policy Commitments: Balances formally set aside by the Board in order to fund future projects based on adopted plans.
 - d. **Assigned.** Minimum reserve targets established based on assessing risks in accordance with the structured assessment methodology developed by the GFOA (see Section C), after addressing non-spendable, restricted and committed reserves.

- e. **Unassigned.** Residual classification of spendable amounts available for other purposes. Under GASB Statement No. 54, unassigned fund balance should not be shown as a negative number. However, as noted above, GASB Statement No. 54 is only being used as a policy framework in assessing the State Bar's reserves. Accordingly, in the interest of policy clarity, where the State Bar's ending reserves are not sufficient to meet its non-spendable, restricted, committed and assigned amounts, the unassigned balance will be shown as a negative number in clearly disclosing how short reserves are in meeting policy goals.

B. ESTABLISHMENT AND CLASSIFICATION OF FUNDS

While usually created with the goal of improving accountability, the proliferation of funds often makes an agency's financial position and fiscal operations more confusing and less transparent. As such, in accordance with GAAP, the State Bar will limit the proliferation of funds and only establish separate funds where there are compelling policy reasons to do so. This approach will not only simplify accounting and financial reporting, but by focusing on meaningful resource restrictions and earmarking, it will improve accountability, transparency and understandability.

State Bar funds are organized into funds as follows:

1. **Restricted Funds.** Using GAAP as the framework, "restricted" funds will be established for revenues that are externally restricted via legislation, bond covenants or similar external restrictions, or activities for which there are compelling policy reasons to account for the use of resources separately. In short, to be classified as a "restricted" fund, the restriction must be externally imposed as set forth under GAAP. This means that all significant special purpose assessments approved by the State Legislature, including voluntary ones, will be accounted for in a separate restricted fund. In the case of limited-term assessments that will expire at some point, the fund will be closed-out when the last assessment is received or all proceeds are used for designated purposes, whichever occurs last. Closed-out fund balances will typically be transferred to the General Fund; however, the Board will determine the disposition of any residual balances on a case-by-case basis. The following are Restricted Funds:
 - a. Client Security Fund
 - b. Elimination of Bias Fund
 - c. Equal Access Fund
 - d. Justice Gap Fund
 - e. Lawyer's Assistance Program Fund
 - f. Legislative Activities Fund
 - g. Legal Services Trust Fund
 - h. Legal Specialization Fund
 - i. Bank Settlement Fund
 - j. SF Tenant Improvement Fund
 - k. Information Technology Fund
 - l. Admissions Fund
 - m. Grants Fund

2. **General Fund.** All other revenues, expenditures and other uses will be accounted for in the General Fund.

C. MINIMUM RESERVE TARGET

The State Bar will maintain reserves in its General Fund, and each Restricted Fund, other than Excluded Minimum Target Reserve Funds, that equate to 2 months of operating expenses for the respective funds; this translates to a target minimum reserve level of 17 percent.

Since the State Bar accrues assets and liabilities only at year-end, reserves are determined annually at that time. Mid-year estimates of reserves, if needed, are determined by adding projected revenues and subtracting projected expenses from prior year reserves.

Excluded Minimum Target Reserve Funds: All grant-related Funds (specifically the Grants, Legal Services Trust, Equal Access, Justice Gap, and Bank Settlement Funds) are excluded from the requirement to have a minimum reserve target.

For purposes of the Minimum Reserve Target, operating expenses of the Client Security Fund shall exclude application payouts.

D. APPROPRIATE RESERVE USES

Circumstances where taking reserves below target minimum levels would be appropriate include responding to the risks that reserves are intended to mitigate, such as:

1. One-time uses in meeting cash flow needs; closing a projected short term revenue-expenditure gap; responding to unexpected expenditure requirements or revenue shortfalls; and making investments in human resources, technology, liability reductions, revenue base improvements, productivity improvements and other strategies that will strengthen State Bar revenues or reduce future costs.
2. Where a multi-year forecast shows an ongoing structural gap, in providing a strategic bridge to the future.

Any expenditure that would cause the balance of the General Fund or any Restricted Fund, other than Excluded Minimum Target Reserve Funds, to fall to a level totaling 10 percent or less of recurring annual operating expenses, must be approved by the Board of Trustees.

E. FUND BALANCE SPEND DOWN WHEN RESERVES ABOVE POLICY LEVELS

Whenever reserve levels in the General Fund, or any Restricted Fund, other than Excluded Excess Reserve Funds, surpass 30 percent for a consecutive six-month period, spend-down funding shall occur in accordance with the following principles:

1. Fund balance spend-down should be utilized to offset member dues and other assessments and use charges, where possible.

2. Fund balance spend-down should be used to advance strategic efficiency investments that will result in short- or long-term reductions in operating costs.
3. Fund balance spend-down should be used to bolster the Client Security Fund, where possible.
4. Fund balance spend-down should be used to increase legal services funding, where possible.

All spend-down in excess of \$250,000 must be approved by the Board of Trustees.

F. RESTORING RESERVES TO POLICY LEVELS

Whenever reserve levels in the General Fund, or any Restricted Fund, other than Excluded Minimum Target Reserve Funds, fall below the target minimum reserve level of 17 percent, the State Bar will strive to restore reserves to this level within five years. Annual surpluses of revenues over expenses of the State Bar will be allocated at least half to reserve restoration, with the balance available to fund outstanding liabilities, asset replacements, service levels restoration, new operating programs or capital improvement projects.