



# The State Bar of California

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## **OPEN SESSION AGENDA ITEM AUGUST 2023 BOARD EXECUTIVE COMMITTEE II.B**

**DATE:** August 10, 2023

**TO:** Members, Board Executive Committee

**FROM:** Donna S. Hershkowitz, Chief of Programs & Legislative Director  
Audrey Ching, Program Director III, Office of Admissions  
Amy Nuñez, Program Director I, Office of Admissions

**SUBJECT:** Approval of February 2024 Bar Exam Testing Locations; Approval of Related Contracts Pursuant to Business and Professions Code Section 6008.6

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### **EXECUTIVE SUMMARY**

The Admissions Fund currently has a structural deficit and is not sufficiently solvent to support operations in 2024. Staff are proposing a combination of fee increases and cost reductions to balance out the revenue and expenditures. The proposed fee increases, options for which have been reviewed by the Board at two prior meetings, will be presented to the Board in final form in September. Although these increases will address the structural deficit in the Admissions Fund in significant part, a \$1 million shortfall will remain. This agenda item recommends that the Board authorize staff to reduce the number of testing locations for the February 2024 bar exam as a deficit mitigation measure. Staff anticipate returning to the Board in early 2024 with a proposal that will include remote administration of part of the July 2024 exam, further reducing expenses and balancing the Admissions Fund on a go-forward basis. This agenda item also recommends that the Board approve proceeding with the contracts for the recommended test sites.

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### **BACKGROUND**

The cost of all expenses for Admissions' operations, including all of the programs and services and the Admissions staff, is paid from the Admissions Fund. The money in the Admissions Fund comes from the fees charged by the Office of Admissions to applicants for its programs and services. The Admissions Fund is not supported by the State Bar General Fund, nor is supported by the State General Fund. Over the last five years Admissions revenue has generally been

decreasing (with a high of \$23.5 million in 2018); at the same time, expenditures have been increasing (to a high of \$24.6 million in 2022).

The Admissions Fund currently operates at a structural deficit. The 2023 Admissions Fund budget projected \$17.5 million in revenue and \$24.5 million in expenses, resulting in a deficit of \$7.0 million. At the end of 2023 the projected fund balance is anticipated to be \$4.0 million; the fund is not sufficiently solvent to support operations in 2024. Drivers for the current budget deficit include the following: escalating facility, proctor, and software costs; increases in approved requests for testing accommodations; reductions in the overall number of applicants for various admissions programs; cost-of-living adjustments and merit increases for Admissions staff which are funded out of the Admissions Fund; the failure to increase fees since 2016 or earlier for many admissions programs and services. The Admissions Fund had a healthy fund balance for several years, which it used for one-time costs such as the development and deployment of the Admissions Information Management System (AIMS) in 2018 and 2019 and a liberal refund policy for the bar exam during the pandemic. Ongoing costs have been covered by the fund balance for 2022 and 2023.

A proposal to increase fees for admissions programs and services has been presented to the Board, with the final proposal to be brought in September 2023 for Board action. Despite the significant fee increases proposed, if adopted the Admissions Fund would continue to have a deficit of more than \$1 million.

Administration of the bar exam program supported by the Office of Admissions, at a cost of \$14.5 million, including the proportionate costs for staff, is the highest cost program operated by the Office of Admissions. This fact alone suggested administration of the bar exam was the most sensible place to identify cost savings.

On June 28, 2023, staff presented the Committee of Bar Examiners (CBE) with four different models for consideration:

- As is: This model reflects what would occur absent any changes, that is, contracting 10–12 sites for the February exam; 14–16 contracted sites for the July exam; all components of the exam to be administered in-person.
- 6 sites: This model relies on the use of three contracted “super sites” for applicants with and without testing accommodations, and three small sites limited to those with testing accommodations who would be testing in private or nearly private rooms. All components of the exam to be administered in-person.
- One remote day at six contracted sites: Under this model, the essays and performance test would be administered remotely; the multiple-choice exam would need to continue in-person.
- One remote day at four contracted sites and two State Bar offices: Under this model, the essays and performance test would be administered remotely, the multiple-choice exam would need to continue in-person.

Following the CBE’s adoption of the model with one remote day and the use of State Bar offices, staff determined that additional time would be needed to consider the best methods

for implementing the remote modality on applicants with testing accommodations. Staff thus put out for public comment a fully in-person model using four contracted sites and the two State Bar offices. The public comment period closed on July 31, 2023; 679 public comments were received. The public comment is highlighted in the discussion section, below.

On July 20, 2023, staff presented a further revised model to the Board, one which replaced the State Bar's San Francisco office as a testing accommodations site with a contracted facility. The change was in response to a variety of uncertainties due to the planned sale of the State Bar's San Francisco building.

## **DISCUSSION**

At the July Board meeting, staff presented a discussion item related to admissions service fee increases and bar exam administration cost reduction options. Trustees raised the following questions during that discussion; several of those that relate more specifically to the fee increase proposal will be answered in the agenda item on that matter presented in September.

- Are there advances in technology that we can explore to reduce proctoring costs and/or can we eliminate the Multistate Bar Exam (MBE) to eliminate in-person proctors?
  - At this time the State Bar is not able to eliminate the MBE. The MBE is critical to the scaling component of bar exam grading; simply eliminating this component of the exam will jeopardize the integrity of the entire grading process.

At its May Board meeting, the Board directed staff to transmit to the Supreme Court the recommendations of the Blue Ribbon Commission on the Future of the Exam. These recommendations included adoption of a California-specific exam, which would eliminate the use of the MBE and give the State Bar greater flexibility in the future to transition the exam to fully remote administration. The remote delivery of the exam that occurred during the height of the pandemic (October 2020, February 2021, and July 2021) recorded applicants remotely and used a combination of AI and live proctor review to determine if there were suspicious conduct. The costs of remote exam administration are significantly less than the in-person alternative.

- In light of the significant use of remote work in state government, is there a possibility to use state office buildings for administering the bar exam?
  - Yes.

The Judicial Council of California has agreed to allow us to use space at no cost in both the Milton Marks Conference Center in the lower level of the Judicial Council's San Francisco building and the Judicial Council Conference Center on the second floor of the same building.

The Department of General Services indicated they would review their facilities to see what they might have available. We expect to hear from them shortly. We do not anticipate, however, that there would be any site large enough to fully replace the contracted sites in the “as is” model,” and the State Bar does not have the staffing resources in Admissions to handle a larger number of sites (than the typical 10–16) across the state.

- Can we administer the exam more than twice per year, rotating locations?
  - No, not at this time.

The MBE is only given twice a year in February and July. The State Bar is limited to biannual testing until an alternative to the MBE is developed. Additionally, statutory change would be required to increase testing frequency.

- Why does the fee proposal include reductions in the fee for Registered Military Spouse Attorneys and Registered Legal Aid Attorneys?
  - To be addressed in the September Board agenda item.
- To what extent did law school tuition increase from 2016 to 2022 (for ABA, California accredited, and unaccredited law schools); to what extent did tuition at the UCs and CSU increase for the same period?
  - To be addressed in the September Board agenda item.
- Explore “tiered pricing” for the fee increases for the annual reports for the California accredited law schools.
  - To be addressed in the September Board agenda item.
- Compare the proposed fee amounts with the amounts assessed in other states.
  - To be addressed in the September Board agenda item.
- Can we provide a reduced cost by “bundling” several of the fees for those who are subject to multiple fees?
  - To be addressed in the September Board agenda item.
- Compare the cost of fees paid by law students up through and including sitting for the bar exam versus fees paid to the State Bar after becoming licensed.
  - To be addressed in the September Board agenda item.

## **CURRENT PROPOSAL**

Following the identification of the Judicial Council building as a site for approximately 125 applicants with testing accommodations, staff revised the proposal that had been presented to the Board at its July meeting. The addition of the Judicial Council site allowed us to eliminate a high-cost hotel in the San Francisco Bay Area. However, to accommodate individuals who will need to test in private or nearly private rooms, staff now proposes to add back a testing

accommodations site in Sacramento for 45 applicants. The tables below set forth the current proposal for test sites for the February Exam, with a comparison to the “as is” model and the total projected costs for each model.<sup>1</sup>

**Table 1. Test Sites**

<b>“As Is” Model: Standard Test Sites</b>	<b>Contract Amount*</b>	<b>Staff Proposal: Standard Test Sites</b>	<b>Contract Amount*</b>
Ontario Convention Center	\$127,750**	Ontario Convention Center	\$127,750**
Pasadena Convention Center	\$86,500	Pasadena Convention Center	\$86,500
Town & Country Resort (San Diego)	\$115,600		
Oakland Convention Center	\$135,250	Cow Palace (Daly City)	\$129,000**
@The Grounds (Sacramento)	\$111,600		
<b>“As Is” Model: Testing Accommodation Sites</b>	<b>Contract Amount</b>	<b>Staff Proposal: Testing Accommodation Sites</b>	<b>Contract Amount</b>
Sheraton Gateway LAX	\$178,500	State Bar LA Office	
Doubletree Orange	\$167,000	Doubletree Orange	\$167,000
Crowne Plaza Burlingame	\$138,700	Judicial Council (Downtown SF)	
		Cow Palace	See above
Hilton Arden West	\$84,750	Hilton Arden West	\$84,750
Sheraton Mission Valley (San Diego)	\$91,500		
		Ontario Convention Center	See above
<b>Total</b>	<b>\$1,237,150</b>		<b>\$595,000</b>

\* Contract amount includes the costs for meeting rooms or hotel rooms for testing, sleeping rooms and parking for State Bar staff, proctor parking, rental of tables and chairs, A/V, electrical, and water for applicants.

\*\*The contract amount listed includes the cost for standard space and testing accommodation space.

<sup>1</sup> Although the cost for the two standard test sites included in both models are the same, the staff proposal increases the seating capacity at those sites by a combined 1,274 seats.

**Table 2. Exam Costs**

	As is Model for Feb 2024	Recommended Model for Feb 2024
Proctor Costs	\$816,000	\$816,000
Staff Travel*	\$9,000	\$9,000
ExamSoft License	\$179,000	\$179,000
Facilities and Facility-Related Expenses	\$1,237,150	\$595,000
MBE Books and Scoring	\$256,600	\$256,600
Other Expenses**	\$153,000	\$150,000
Total Cost	\$2,650,600	\$2,005,600
Savings		\$645,000

\* The costs of sleeping rooms and parking at the test locations are included in facility related expenses; this staff travel line is limited to meals, mileage, and flights.

\*\* Other expenses include exam administration items not covered by the contracts with facilities, including off-duty security officers, computers, phones, printing of materials, and delivery of materials to test sites.

## **PUBLIC COMMENT**

The proposal for reduced exam testing locations was circulated to nearly 17,000 individuals for a period just short of 30 days. Those individuals are comprised of those who have signed up to receive updates and related to the committee and was sent to exam applicants contained in AIMS who were scheduled to take the July 2023 bar exam or had taken a previous exam but had not passed and therefore might repeat. An email was also sent to all California law school deans and was included in the weekly emails sent to applicants for the July 2023 bar exam in the weeks leading up to the exam.

Six hundred seventy-nine comments were received, 58 percent (394) from attorneys, 35 percent (236) from law student and others currently studying to take the bar, 4 percent (28) law school administrators, and 6.3 percent (43) who didn't identify as any of those.<sup>2</sup> Eighty-three percent (566) of commenters disagreed with the proposal; 5.7 percent (39) agreed; 9.6 percent (65) agreed if the proposal is modified; and 1.3 percent (9) did not state a position. Those who agreed or agreed if the proposal were modified were roughly evenly split between attorneys and those studying to take the bar exam. The public comments are accessible [here](#).

Many commenters expressed their strenuous disagreement with the proposal. Key themes from the comments include:

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<sup>2</sup> Numbers exceed 100 percent as all but 6 of those identifying themselves as law school administrators also identified either as a bar applicant or an attorney.

- This proposal shifts costs from the State Bar to bar applicants who are not in a position to afford the added financial burdens of travel costs, hotel accommodations, eating out, etc. This is especially true in light of the increase in admissions fees.
- The cost doesn't pencil out. The savings for the State Bar is estimated by commenters at \$150 per applicant, but the cost for applicants who no longer have a venue in their area is significantly higher than that.
- Applicants have childcare and other needs that they will have to figure out how to address if they must travel to a further away location to take the exam which requires them to spend the night (causing additional financial burdens and anxiety).
- The larger venues will increase anxiety and stress during the exam, will create long lines for restrooms taking time away from the exam, and will require more time to get the exam started and to dismiss all the applicants at the end of the day.
- Eliminating sites, requiring travel, staying in hotels due to distance from home, and the added expenses will have a particular impact on people of color, people of lower socioeconomic status, and people with disabilities. While the State Bar says that it is committed to increasing diversity, equity, and inclusion, this proposal goes in the opposite direction.
- San Diego one of the largest cities in California, and in the nation; it has three law schools; it has a thriving attorney population. This proposal makes every person who would have tested in San Diego travel out of county and incur the additional time and costs of testing in a distant location.
- The proposal disadvantages those from any area other than Los Angeles or San Francisco. Applicants from Los Angeles or San Francisco do not have to travel, can stay in their homes, do not have the extra stress and cost of finding hotel accommodations, finding food away from home, finding childcare or adult care, etc. Other applicants have this added cost and stress, making it harder for them to succeed on the exam vis-à-vis applicants from Los Angeles or San Francisco.

The issue most frequently raised by commenters related to the elimination of San Diego as a test location, with 40 percent (273) of the commenters urging the Board to retain San Diego as a test site. Many of these comments also included other themes noted above, such as the financial burdens, stress, and disparate impact on those from disadvantaged communities. Fifteen percent (100) of the commenters focused on the financial burden that applicants would face. Five percent of commenters (37) focused their comments on support or opposition to the anticipated adoption of a partially remote exam.

Staff do not relish the elimination of any exam site and are sympathetic to all of the issues raised by the commenters. This proposal does shift costs from the State Bar to applicants. The proposal was made to address the very real budget difficulties faced by the Office of Admissions. The Office of Admissions is committed to identifying other efficiencies to reduce costs, but at this time, staff believe this proposal is necessary to address the budget situation. In response to the comments regarding San Diego, specifically, staff notes that the cost of the two San Diego sites is over \$200,000. Additionally, due to the use of larger sites, more staff will need to be deployed to each of the larger sites, resulting in the seven recommended sites being

the maximum we believe we can staff at this time. If the Board were to desire adding the San Diego sites back in, we would need to return to the “as is” model and forego any cost savings for the February 2024 exam.

### **APPROVAL OF CONTRACTS**

Pursuant to Business and Professions Code section 6008.6, the Board is required to approve all contracts for goods, services, or both in an aggregate amount more than \$50,000 (or \$100,000 for contracts related to information technology goods and services). The contracts listed in Table 2, above, are more than \$50,000 and have met the standards established by article 4 of the Public Contract Code, as implemented through the State Bar’s Procurement Policy. The State Bar has delayed entering into contracts for the February bar exam while the decision as to the bar exam sites was pending. Board approval is required to execute the contracts. Whether the Board elects the staff recommendation, the “as is” model, or another approach, approval of contracts at this time is essential. Previously identified sites have been lost or costs increased as the more time passes. These recurring services are part of core business operations and will be included in the 2024 budget.

### **FISCAL/PERSONNEL IMPACT**

The costs for the February Bar Exam under the “as is” model are \$2,650,600. Anticipated savings of \$645,000 will be realized if the staff recommendation to reduce the number of test sites is adopted. Staff will revisit the fee proposal to determine whether changes should be made in light of the projected costs of administering the February Bar Exam under the model adopted by the Board. Any revisions to the fee proposal will be presented to the Board in September 2023.

### **AMENDMENTS TO RULES**

None

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

None

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

None – core business operations

### **RECOMMENDATIONS**

**Should the Board Executive Committee concur in the proposed action, passage of the following resolution is recommended:**

**RESOLVED**, that the Board Executive Committee approves the staff proposal set forth in Table 1, above; and it is



**FURTHER RESOLVED**, that the Board Executive Committee approves execution of the contracts listed in Table 1 to implement the staff proposal.

**In the alternative, should the Board Executive Committee determine that the “as is” model should be adopted for the February Bar exam, passage of the following resolution is recommended:**

**RESOLVED**, that the Board Executive Committee approves the “as is” model set forth in Table 1, above; and it is

**FURTHER RESOLVED**, that the Board Executive Committee approves execution of the contracts listed in Table 1 to implement the “as is” model.

## **ATTACHMENT LIST**

None