



Item: **Consideration of and Possible Action to Adopt Proposed Regulatory Amendments to Section 1399.395 of Division 13.6 of Title 16 of the California Code of Regulations to Increase Fees**

Item Summary: The Board is presented with proposed regulatory language that will in effect, raise the renewal, inactive and delinquent renewal fees as follows:

	Current	Effective 7/1/18	Effective 7/1/19	Effective 7/1/20
Biennial Renewal Fee	\$250	\$275	\$300	\$330
Delinquent Fee	\$250	\$275	\$300	\$330
Delinquent Fee > 2 years	\$500	\$550	\$600	\$660
Inactive License Fee	\$250	\$275	\$300	\$330

- Board Action:
1. President calls the agenda item and it is presented by or as directed by the President.
 2. President asks for motion to adopt the regulation as presented.
 3. President may request if there is a second to the motion, if not already made.
 4. Board member discussion/edits (if applicable).
 5. Inquire for public comment / Further Board discussion as applicable
 6. Repeat motion and vote: 1) aye, in favor, 2) no, not in favor, or 3) abstain

At its June 30, 2017 meeting, the Board approved the proposed language to amend CCR section 1399.395, related to increasing the renewal, inactive and delinquent fees. The Board noticed the proposal, and the 45-day comment period began on November 17, 2017 and ended on January 2, 2018. The Board did not receive any comments related to this regulatory proposal.

For your consideration, please find attached:

- Proposed Regulatory Language
- Draft Final Statement of Reasons
- Notice of Proposed Changes
- Initial Statement of Reasons

RESPIRATORY CARE BOARD
Department of Consumer Affairs
California Code of Regulations. Title 16. Division 13.6 Respiratory Care Board
Fees

PROPOSED LANGUAGE

ARTICLE 9. FEES

Amend Section 1399.395 of Division 13.6 of Title 16 of the California Code of Regulations as follows:

§ 1399.395. Fee Schedule.

The following schedule of fees is hereby adopted pursuant to sections 3775 and 3775.5 of the B&P:

(a) Application fee	\$300
(b) Examination fee	Actual cost
(c) Re-examination fee	Actual cost
(d) Renewal fee	\$250
(1) For licenses expiring on or after July 1, 2018, the renewal fee shall be	\$275
(2) For licenses expiring on or after July 1, 2019, the renewal fee shall be	\$300
(3) For licenses expiring on or after July 1, 2020, the renewal fee shall be	\$330
(e) Delinquency fee (not more than 2 years after expiration)	\$250
(1) For licenses expiring on or after July 1, 2018, the delinquency fee shall be	\$275
(2) For licenses expiring on or after July 1, 2019, the delinquency fee shall be	\$300
(3) For licenses expiring on or after July 1, 2020, the delinquency fee shall be	\$330
(f) Delinquency fee (after 2 years but not more than 3 years after expiration)	\$500
(1) For licenses expiring on or after July 1, 2018, the delinquency fee shall be	\$550
(2) For licenses expiring on or after July 1, 2019, the delinquency fee shall be	\$600
(3) For licenses expiring on or after July 1, 2020, the delinquency fee shall be	\$660
(g) Inactive license fee	\$250
(1) For licenses expiring on or after July 1, 2018, the inactive license fee shall be	\$275
(2) For licenses expiring on or after July 1, 2019, the inactive license fee shall be	\$300
(3) For licenses expiring on or after July 1, 2020, the inactive license fee shall be	\$330
(h) Duplicate license fee	\$25
(i) Endorsement fee	\$25

Note: Authority cited: Section 3722, Business and Professions Code. Reference: Sections 3775 and 3775.5, Business and Professions Code.

RESPIRATORY CARE BOARD
Department of Consumer Affairs
California Code of Regulations, Title 16, Division 13.6 Respiratory Care Board
Fees

FINAL STATEMENT OF REASONS

Hearing Date: January 2, 2018

Subject Matter of Proposed Regulations: Biennial Renewal, Delinquent, and Inactive Fee Increases

Section Affected: Section 1399.395 of Division 13.6, Title 16 of the California Code of Regulations (CCR).

Updated Information

The Initial Statement of Reasons is included in the file. No changes have been made which would warrant a change to the information contained therein.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Small Business Impact

This action will not have a significant adverse economic impact on small businesses. This initial determination is based on the fact that licensees will be required to incur a 10% step increase in biennial renewal fees ranging from \$25 - \$30. Licensees will initially be subject to a \$25 increase in their renewal fee in FY 18/19 and FY 19/20, and a \$30 increase in their renewal fee in FY 20/21. Delinquent renewals within two years of the license expiration date will be subject to an additional \$25 - \$30 increase in the delinquency fee. Delinquent renewals two years after the license expiration date will be subject to an additional \$50 - \$60 increase in the delinquency fee over a period of three years.

This proposal benefits consumer protection as it is designed to enable the Board to maintain its licensing and oversight operations while also ensuring significant surpluses are not created. The proposed fee increase ensures licensing revenues are more in line with expenditures, thereby protecting the Board's fund from insolvency.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the board would be more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons than the adopted regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

There were no written or oral comments received regarding the proposed action.

Finding of Necessity

The Respiratory Care Board of California hereby finds that it is necessary for the public health, safety, and welfare of consumers. This proposal ensures sufficient resources are available to maintain current operations which allow the Board to meet its mandate of consumer protection. As specified in Business and Professions Code section 3710.1, protection of the public shall be the highest priority for the Board when exercising its regulatory functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

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NOTICE OF PROPOSED CHANGES

Fees Respiratory Care Board of California

NOTICE IS HEREBY GIVEN that the Respiratory Care Board of California (Board) is proposing to take the action described in the Informative Digest.

Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Respiratory Care Board of California at 3750 Rosin Court, Suite 100, Sacramento, California 95834, at 10:00 a.m. on January 2, 2018. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on January 2, 2018, or must be received by the Board at the hearing.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference

Pursuant to the authority vested by Section 3722 of the Business and Professions Code (B & PC), and to implement, interpret or make specific sections 3775, and 3775.5 of said Code, the Board is considering amendments to Section 1399.395 of Division 13.6 of Title 16 of the California Code of Regulations (CCR) as follows:

A. Informative Digest

In accordance with the provisions of the Administrative Procedures Act, B & PC section 3722 authorizes the Board to adopt rules and regulations declaring policy of the Board, and for the administration of Chapter 8.3, of said code, known as the Respiratory Care Practice Act.

B & PC section 3775 establishes the statutory maximum fee schedule for biennial renewal of a respiratory care practitioner license. B & PC section 3775 also establishes the criteria to determine the delinquency fee for licenses that are not renewed prior to their expiration, as well as licenses renewed more than two years following license expiration. B & PC section 3775.5 establishes the fee for an inactive license.

This rulemaking action seeks to amend Division 13.6 of Title 16 of CCR section 1399.395 to increase the license renewal and delinquent fees for a respiratory care practitioner license. Under existing law, CCR section 1399.395 states the Board's fee schedule shall be adopted pursuant to sections 3775 and 3775.5 of the B & PC. CCR section 1399.395 sets forth the fee schedule for the biennial renewal of a respiratory care practitioner license. Prior to the increase from \$230 to \$250 effective July 1, 2017, the renewal fee was last increased on January 1, 2002.

Due to statutory constraints, the Board is unable to implement a single fee increase to stabilize its fund. Instead, the Board proposes a step increase to its renewal, delinquent and inactive fees, as follows: The implementation of the fee increases will make the following changes to the existing regulation, beginning July 1, 2018:

FEE	EXISTING	PROPOSED 7/1/18	PROPOSED 7/1/19	PROPOSED 7/1/20
Biennial Renewal Fee	\$250	\$275	\$300	\$330
Delinquent Fee	\$250	\$275	\$300	\$330
Delinquent Fee > 2 years	\$500	\$550	\$600	\$660
Inactive License Fee	\$250	\$275	\$300	\$330

Amend section 1399.395 of Division 13.6 of Title 16 of the California Code of Regulations:

The proposed amendments raise the renewal fee for respiratory care practitioners from \$250 to \$275 effective July 1, 2018; from \$275 to \$300 effective July 1, 2019; and from \$300 to \$330 effective July 1, 2020.

Pursuant to B & PC section 3775, and in response to the proposed renewal fee increase, the delinquency fee imposed on those that fail to renew their license prior to expiration will also increase. As mandated by section 3775, if renewed not more than two years from the date of expiration, a delinquency fee shall be 100 percent of the renewal fee in effect at the time of renewal. However, if the license is renewed after two years, but not more than three years from the date of the expiration of the license, the delinquency fee shall be 200 percent of the renewal in effect at the time of renewal.

The need for this proposed regulatory action is to ensure future fiscal solvency for the Board. The Board's current fund condition indicates there will be insufficient funds to support Board operations after FY 17/18. Analysis of the Board's Fund Balance measured by Months in Reserve projects that at the end of the current fiscal year 2017/18, a 0.8 month reserve will exist. However, the reserve is projected to steadily decline in the following fiscal years to the point where there will be a -2.2 month deficit at the end of FY 2018/19 and a -5.3 month deficit at the end of FY 2019/20. Correcting the Board's structural imbalance will be unattainable without a renewal fee increase.

The fund balance provides specific information on the Board's current fund as well as projections for future years. There are several factors that have contributed to the fund's imbalance such as the BreEZe system, employee benefits, and enforcement expenses, to name a few. In addition, renewal and delinquency fees have remained unchanged since 2002, with the exception of the increase on July 1, 2017, while inflation has increased steadily over the years. According to the Consumer Price Index, the rate of inflation is calculated at 30.75 percent since 2002, and 58.00 percent since 1994. A review of the Board's fund condition demonstrates that while the overall revenue of the Board has increased by 43 percent between FY 2002/03 and FY 2015/16, Board expenditures for the same period have increased by 80 percent.

B. Policy Statement Overview/Anticipated Benefits of the Proposed Regulations

The Board regulates approximately 24,000 licensed respiratory care practitioners. Through this rulemaking, the Board proposes to amend section 1399.395 of the CCR to increase renewal and delinquent fees. This proposal is necessary to ensure sufficient resources are available to maintain current Board operations to meet its consumer protection mandate.

B & PC section 3710.1 specifies, "Protection of the public shall be the highest priority for the [Board] in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be performed, the protection of the public shall be paramount."

Adoption and implementation of this proposed action would neutralize and correct the aforementioned Fund Balance decline and provide for a modest reserve for economic uncertainties through FY 2020/21. Without sufficient funding levels the Board will not be able to carry out its mandate to protect the health, safety, and welfare of California consumers.

C. Consistency and Compatibility With Existing Regulations

After conducting a review for any regulations that would relate to or affect this area, the Board has concluded that this is the only regulation that concerns renewal and delinquent fees for respiratory care practitioners. This proposed regulatory action is consistent and compatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

It is estimated that the proposed fee increases will result in an increase in Board revenues by approximately \$247,000 beginning FY 18/19; \$247,125 beginning FY 19/20; and \$296,550 beginning FY 20/21.

The Board does not anticipate any impact on federal funding.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500-17630 Requires Reimbursement: None.

Business Impact

The Board has made an initial determination that the proposed regulatory action would have no significant statewide *adverse* economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Representative Private Person or Business:

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Board are costs associated with the increased renewal fee for a respiratory care practitioner from to \$250 to \$275 during FY 18/19, from \$275 to \$300 during FY 19/20, and from \$300 to \$330 during FY 20/21. Those costs are estimated to be between \$25 and \$80 every renewal cycle (two years) for each active or inactive licensed respiratory care practitioner.

Effect on Housing Costs: None

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/New Businesses

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Effect on Small Business

The Board has determined that this regulatory proposal will not impact small businesses in the State of California, as the proposed amendments affect only individual respiratory care practitioners renewing their Board issued license.

Benefits of Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The Board has determined that this regulatory proposal will primarily benefit California consumers by ensuring sufficient revenue levels are maintained for the Board to administer and enforce the provisions of the Respiratory Care Practice Act. Specifically, this proposal is designed to enable the Board to continue its licensing, disciplinary, and oversight operations in the interest of the health, safety, and welfare of California consumers by ensuring only actively licensed practitioners are providing respiratory care services.

This proposed rulemaking is not anticipated to have an impact on worker safety or the State's environment.

Consideration of Alternatives

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present written statements relevant to the above determinations to the Board at the address indicated under contact person.

Initial Statement of Reasons and Information

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

Text of Proposal

Copies of the exact language of the proposed regulation, and of the initial statement of reasons, including any document incorporated by reference, and all of the information upon which the proposal is based, may be obtained upon request to the Board at 3750 Rosin Court, Suite 100, Sacramento, CA 95834 or on the Board's website at www.rcb.ca.gov.

Availability and Location of the Final Statement of Reasons and Rulemaking File

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below. You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below, or by accessing the website listed, on the following page.

Contact Person

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Christine Molina
Address: 3750 Rosin Court, Suite 100
Sacramento, CA 95834
Telephone No.: (916) 999.2190
Fax No.: (916) 263.7311
E-Mail Address: rcbinfo@dca.ca.gov

The backup contact person is:

Name: Stephanie Nunez
Address: 3750 Rosin Court, Suite 100
Sacramento, CA 95834
Telephone No.: (916) 999.2190
Fax No.: (916) 263.7311
E-Mail Address: rcbinfo@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.rcb.ca.gov.

RESPIRATORY CARE BOARD OF CALIFORNIA
Department of Consumer Affairs
California Code of Regulations, Title 16, Division 13.6, Respiratory Care Board
Fees

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulation: Biennial Renewal, Delinquent, and Inactive Fee Increases

Sections Affected: Section 1399.395 of Division 13.6, Title 16 of the California Code of Regulations (CCR).

Specific Purpose of the Proposed Changes

The Respiratory Care Board of California (Board) proposes to amend section 1399.395 of Division 13.6 of Title 16 of the CCR. The purpose for amending the regulation is to allow the Board to raise fees to address structural imbalances in the Board's fund.

Business and Professions Code (B & PC) section 3722 authorizes the Board to adopt regulations, including amending rules and regulations as necessary, to effectuate the administration of Division 2, Chapter 8.3 of the B & PC (commencing with section 3700).

B & PC section 3775 authorizes the Board to increase the renewal fee by regulation, and establishes the statutory maximum fee for biennial license renewal, as well as other fees for the Board's respiratory care practitioner licensees. Additionally, B & PC section 3775 establishes the criteria to determine the delinquency fees for licenses that are not renewed prior to their expiration date.

In this proposed rulemaking, the Board seeks to amend Title 16 of the CCR, section 1399.395 to increase its renewal, delinquent, and inactive fees as detailed below.

FEE	EXISTING	PROPOSED 7/1/18	PROPOSED 7/1/19	PROPOSED 7/1/20
Biennial Renewal Fee	\$250	\$275	\$300	\$330
Delinquent Fee	\$250	\$275	\$300	\$330
Delinquent Fee > 2 years	\$500	\$550	\$600	\$660
Inactive License Fee	\$250	\$275	\$300	\$330

The proposed fee increases intend to address the Board's structural imbalance and will protect the Respiratory Care Board Fund (Fund) from becoming insolvent as projected in FY 18/19. Analysis of the Board's fund balance measured by months in reserve projects that at the end of the current fiscal year 2017/18, a 0.8-month reserve will exist. However, the reserve is projected to steadily decline in the following fiscal years to the point where there will be a -2.2-month deficit at the conclusion of FY 2018/19, and a -5.3-month deficit at the conclusion of FY 2019/20. Correcting the Board's structural imbalance is vital to the Board's solvency and will be unattainable without renewal fee increases.

Impact to Renewal

The proposed fee increase will equate to \$25 during FY 18/19, \$25 during FY 19/20, and \$30 during FY 20/21 for those renewing as active or inactive licensed respiratory care practitioners.

Impact to Delinquent Fees

Pursuant to B & PC section 3775, and in response to the implementation of the proposed renewal fee increase, the delinquency fees imposed on practitioners who fail to timely renew their license prior to expiration will also increase. Upon expiration, if renewed not more than two years from the date of expiration, a delinquency fee shall be 100 percent of the renewal fee in effect at the time of renewal. However, if the license is renewed after two years, but not more than three years from the date of the expiration of the license, the delinquency fee shall be 200 percent of the renewal fee in effect at the time of renewal. Depending on when the renewal is paid by the practitioner, the increase to the delinquent fee will range from \$25 to \$50 during FY 18/19 and FY 19/20, and \$30 to \$60 during FY 20/21.

Problem Being Addressed

The Fund balance provides specific information on the Board's current fund condition, as well as projections for future years. There are several factors that have contributed to the Fund's imbalance, including the BreEZe system, staff salaries and benefits, pro rata, and enforcement expenses. In addition, the renewal and delinquent fees remained unchanged from 2002 - 2017, while the Consumer Price Index increased over the years. The rate of inflation is calculated at 30.75 percent since 2002 and 58.00 percent since 1991 (See, The Bureau of Labor Statistics' Consumer Price Index Detailed Report Data for December 2015 – Table 24).

Further, a review of the Board's Fund condition report demonstrates that while the overall revenue for the Board has increased by 43 percent between FY 2002/03 and FY 2015/16, Board expenditures have increased by 80 percent during the same time period.

The increase in revenue correlates directly to the increase in the number of applications received. In FY 02/03 the Board received 680 applications and had 15,202 licenses active. At its height in FY 12/13, the Board collected 1655 new applications and had 21,473 active licensees. Since that time, the number of new applications has dropped to 1158 in FY 16/17 with 23,473 active licensees. The number of new applications accounts for the increase in revenue over the last 15 years because these figures are tied to new application fees, initial licensure fees, and renewal fees.

The increase in expenditures over the last 16 years is tied to employee salaries and benefits, pro rata, and enforcement costs as follows:

- Salaries and Benefits: In 2002, the Board had 23 PYs with 22 positions staffed. Currently, the Board has 17.4 PYs and 18 positions staffed. Even though the Board was able to reduce its staffing due to reengineered processes, costs have increased. Expenditures in FY 02/03 for salaries and benefits was \$1,086,000 whereas expenditures in FY 16/17 were \$1,693,106 (56% increase).

- Pro Rata: In FY 02/03 the Board was charged \$403,000 in statewide and departmental Pro Rata and in FY 16/17, the Board was charged \$804,000 (a 99% increase). Increases are attributed to general salary increases and benefit costs as well as costs for BreEZe. The Board does not control the amount or rates of Pro Rata expenses levied upon it by the State and the DCA for required services or availability of services.

- Attorney General Expenses: In FY 02/03, the Attorney General expenses charged to the Board were \$246,000. In FY 16/17, the Board was charged \$455,000 (an 85% increase). While the number can fluctuate each year, there have been significantly fewer cases sent to the AG each year for processing since FY 02/03 from an average of 112 to 70 as result of greater efficiencies achieved in-house. The Board monitors costs for each case closely and brings excessive costs to the attention of the Senior Attorney General, which in many cases has resulted in a credit. But beyond this, the Board has little control on how many hours the AG charges or their hourly rates. Though increases in salaries and benefits contribute to the additional expenses, it should be noted that the Board submitted a negative BCP in FY 03/04, reducing its budget allotment for the AG by \$132,000 as a means to keep costs in check.

Evidence and Witnesses – Costs associated with expert witnesses, court reporting fees, or other court fees has climbed from \$25,000 in FY 02/03 to \$34,000 in FY 16/17 (a 37% increase). This increase is attributed to the shift in enforcement cases the Board is seeing that require expert review.

All of the aforementioned expenditures have shown a steady increase each year for four years or greater.

Other costs that have contributed to additional expenditures in the last three years include a one-time cost of \$160,000 for a workforce study, and investigative and administrative hearing costs. In FY 15/16 the costs for investigation and administrative hearing costs were abnormally high. For example, for the last three fiscal years, the Division of Investigation (DOI) has charged the Board \$0, \$0 and \$79,000. This number will fluctuate depending on whether the Board sends any cases to DOI. The Office of Administrative Hearings charged the Board \$62,000 in FY 16/17, but charged \$90,000 the preceding year. This figure will fluctuate greatly as well depending on how many enforcement cases go to hearing. Expenses for postage and travel also increased \$3,000 and \$6,000 since FY 02/03.

Notwithstanding the increases in expenditures, the Board has taken a number of measures to increase efficiencies while reducing expenditures over the years including:

In 2001, the Board secured additional legislative authority that provided staff greater access and authority to retrieve records as part of an investigation. This legislative amendment increased the number of records that were provided to the Board, without the use of a subpoena as part of an investigation. At that time the Board was pursuing, but did not yet have, the authority to issue an investigative subpoena. Nearly all investigations are now being performed in-house, which resulted in significant cost savings and faster turn-around times. Only a small number of cases, usually those requiring a subpoena, were referred to DOI. Currently, only cases where a viable threat may be posed are forwarded to DOI.

In 2002, the Board established “In-House Review and Penalty Determination” guidelines to address a large majority of the types of complaints received. The guidelines help provide consistency in the discipline imposed and prioritize the cases that should be referred to the Office of the Attorney General for formal discipline.

In 2002, and in concert with the establishment of the In-House Review and Penalty Determination guidelines, the Board expanded its citation and fine program to provide an alternative “penalty” to formal discipline for various violations. A citation allows the Board to establish a public record for consumer and employer awareness, as well as for use if any future violations were to occur. This measure provided greater efficiency and ensured the availability of funds to prosecute high priority complaints.

In 2003, the Board contracted for services to perform random drug screenings for licensees placed on probation who are subject to abstention and testing. Since implementation of this contract, each probationer subject to biological fluid testing is required to check-in directly with the contracted vendor on a daily basis to determine if he or she has been selected to provide a specimen. If selected, the probationer visits a collection site approved by the drug testing contractor by 11:59 p.m. on the day selected. As a result, drug tests are performed more often and an increase in positive drug tests has resulted. Productivity has significantly increased as probation monitors are no longer required to travel to perform regular specimen collection resulting in substantial ongoing savings in staff and travel expenditures, and allowing for the probation monitors to proactively focus on monitoring other areas of probation compliance.

In 2003, the Board established its own cost recovery database with regular monthly invoices. In nearly every disciplinary decision, the Board orders respondents to repay the Board for its actual costs. In those cases where the Board revokes or accepts surrender of licenses, respondents rarely make an effort to repay the Board. In other cases where the Board disciplines the licenses but the license remains valid, some respondents delay payment. Until 2003, the Board had tracked payments manually and never invoiced respondents. In 2003, Board staff created a database for automated monthly invoicing and tracking. The effort was successful in increasing the collection of outstanding costs, as well as providing for greater efficiency and record management. The Board later used the database to collect outstanding fines as well.

In 2003, the Board sought and gained legislative authority to release personal information such as birth date and social security number for the purposes of contracting with a collection agency. In 2004, the Board implemented its contract with a collection agency to collect outstanding cost recovery/fines. The Board has recouped over \$210,000 since then. This is significant when added to the Board's internal recovery efforts, and that of the Intercept Program administered by the Franchise Tax Board.

In 2009, the Board obtained a delegation of investigative subpoena authority from the director of the Department of Consumer Affairs by completing the requisite training. Since that time, the Board has only referred anywhere from 0 to 5 cases to DOI each year, rather than an average of 46 cases per year that require investigative subpoenas, lending to additional savings.

In 2010, the Governor issued several Executive Orders placing budgetary restrictions on the Board and other state agencies; at the same time, the Board was an integral part of developing the Consumer Protection Enforcement Initiative (CPEI) and focused on increasing efficiencies with the overriding goal to complete the entire enforcement process for a licensee in less than 18 months. Again, the Board reengineered its processes and shifted duties to ensure its highest priority of consumer protection. To address enforcement workload, the Board reevaluated the strengths of existing staff and reassigned duties accordingly. It also provided some staff with additional training. The Board altered its outreach campaign significantly, reducing it to a website and mailings. It redirected resources that were slated for staff visits to high schools and colleges to the Enforcement Program instead.

In December 2009, SB 1441 (Chapter 548, Statutes of 2008) required implementation of uniform standards to provide some consistency among healing arts boards and their methods for addressing substance using/abusing licensees. The Board completed the implementation of these standards in June 2012 with no additional staffing. As a result, the Board increased testing of probationers from 16 times per year to as much as 52 times per year and strengthened several other probation monitoring techniques.

In 2010, the Board expanded its background checks to include an additional national database search on applicants. In addition, the Board implemented an automated process established by DCA to automate fingerprint background reports, thereby reducing application processing times.

Since the launch of the BreEZe system in October 2013, the Board has reduced its overall average application processing time from 49 days in FY 2013/14 to 27 days in FY 2016/17. This is due to system functionality which provides management the ability to closely monitor stages of the application process, including any areas of delay which can then be promptly addressed. The license subscription feature within BreEZe has also led to a reduction in the number of inquiries related to license verification checks. In turn, the Board has now been able to redirect staff resources toward meeting continuing education (CE) audit and record retention targets.

Anticipated benefits from this regulatory action:

The proposed fee increases address the Board's structural imbalance and is aimed at protecting the Fund from becoming insolvent. This proposal is designed to enable the Board to maintain its licensing, disciplinary, and oversight operations to protect California's consumers, while also ensuring any projected surpluses are within the reserve limits permitted by B & PC section 3775.

Factual Basis/Rationale

Currently, B & PC section 3775 provides a statutory ceiling of \$330 for license renewal. Prior to increasing its renewal, delinquent and inactive fees in July 2017 from \$230 to \$250, a fee increase had not occurred since 2002. The demonstrated increase in costs is a fraction of the 30.75 percent inflation on the United States dollar since 2002 and 58.00 percent inflation since 1994.

The Board's current fund condition shows the Board's fund balance as measured in months in reserve, will steadily decline to the point where there will be a -2.2-month deficit by the end of FY 2018/19, and a -5.3-month deficit at the conclusion of FY 2019/20. Therefore, the Board proposes to increase fees to preserve its fiscal solvency.

Documents Relied Upon

As identified above, the increase in fees is based on the following materials, including the Consideration to Amend Section 1399.395 of Division 13.6 of Title 16 of the California Code of Regulations to Increase Fees (Item 2) which was presented for the Board's consideration during the June 30, 2017 Board meeting, and RCB's BreEZe Project Costs (Item 3) noted below, which was presented for the Board's consideration during the October 7, 2016 Board meeting:

1. Consumer Price Index – Table 24 (December 2015)
2. Consideration to Amend Section 1399.395 of Division 13.6 of Title 16 of the California Code of Regulations to Increase Fees
3. RCB's BreEZe Project Costs – 2011/12 through 2022/23
4. RCB Historical Expenditures

Business Impact

The proposed amendments to section 1399.395 will not have a significant adverse economic impact on businesses as the fee increases only impact individual respiratory care practitioners (RCPs).

Economic Impact Assessment

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the step renewal fee increase will range from \$25 - \$30 biennially and is anticipated to have a minimal

impact on businesses. Respiratory care practitioners are mandated to work under the supervision of a medical director, in accordance with the prescription of a licensed physician. The Board does not anticipate the fee increase will have any impact on current business practices or licensing trends that would necessitate the creation or elimination of jobs.

- It will not create new business or eliminate existing businesses within the State of California because the step renewal fee increase will range from \$25 to \$30 biennially and is anticipated to have minimal impact on businesses. The Board does not anticipate the fee increase will have any impact on current business practices or licensing trends, including the loss of any jobs, that would result in the creation or elimination of businesses.
- It will not result in expansion of any businesses currently doing business within the State of California because the step renewal fee increase will range from \$25 to \$30 biennially and is anticipated to have minimal impact on businesses. The Board does not anticipate the fee increases will impact the expansion of businesses, as licensed respiratory care practitioners are mandated to work under the supervision of a medical director, and in accordance with the prescription of a licensed physician.
- This regulatory proposal will benefit the health and welfare of California residents because this proposal ensures the Board will remain fiscally solvent to administer and enforce the provisions of the Respiratory Care Practice Act, in the interests of consumer protection.
- This regulatory proposal does not affect worker safety because this proposal is specific to fee increases and it is not anticipated to impact current business practices or registration trends affecting worker safety.
- This regulatory proposal does not affect the state's environmental safety because it is specific to an increase in fees and is not anticipated to impact current business practices that may affect the state's environment.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

The Board is restricted by subdivision (d), section 3775 of the Business and Professions Code to increasing its renewal fee by no more than 10 percent of the fee charged in the preceding year. The Board currently charges \$250, so the most the Board can increase its current fee is \$25 to \$275 in FY 18/19, which by itself is insufficient to stabilize the Board's Fund. Accordingly, the Board has chosen to increase its renewal fee by another \$25 in FY19/20 to establish an even \$300 amount, and a final step increase of \$30 in FY 20/21 to remain fiscally solvent and to move toward meeting the additional provision within section 3775 of the Business and Profession Code which also requires the Board to increase its renewal fee so that it has a six-month reserve.

Keeping fees at the current levels would prevent the Board from fulfilling its consumer protection mandate because it would no longer have the available funds to perform many of the services required by law by the end of FY 19/20.