

Memorandum

ECC Agenda Item V.
May 18, 2011

To : ECC Members

Date : May 5, 2011

Telephone : (916) 561-4310

Facsimile : (916) 263-3672

E-mail : dfranzella@cba.ca.gov

From : Dominic Franzella, Manager
Licensing Division

Subject : ECC Timeline and Future Agenda Items

As staff reported at the ECC's inaugural meeting in September 2010, Senate Bill (SB) 819 requires the ECC to provide the California Board of Accountancy (CBA) with guidelines for the 10 units of ethics study by June 1, 2012. Provided the ECC adopts guidelines at this meeting, the ECC will provide the guidelines to the CBA at the July 2011 CBA meeting. Thus, the ECC will have completed its work on providing the ethics study guidelines to the CBA almost a full year before the deadline in SB 819.

Although the guidelines for the 10 units of ethics study represent the most time consuming and important activity undertaken by the ECC, SB 819 requires the ECC to complete two additional activities. This memorandum is being provided to overview those remaining activities.

SB 819 requires the ECC to issue a report during the public comment period. Although SB 819 does not specifically state to whom the report should go, the content of the report, or what form the report should take, given the timing of the report (during the public comment period), staff interpret this requirement to mean that the ECC must issue a public comment in the form of a letter to the CBA regarding whether the proposed regulations met the ECC-provided ethics study guidelines.

As previously mentioned, staff anticipate that the ECC will provide the CBA with the ethics study guidelines at the CBA's July 2011 meeting. SB 819 requires the CBA to adopt the ECC's guidelines via regulations without making any substantive changes. Therefore, the CBA may opine on the guidelines, but the ECC has final say on whether any changes should be made.

Provided the ECC elects not to make any modifications after the July 2011 CBA meeting, the CBA will undertake the rulemaking activities associated with adopting the ethics study guidelines via regulation. At this time, staff expect the public comment period for the rulemaking to take place between September 30 and

ECC Timeline and Future Agenda Items

Page 2 of 3

November 14, 2011. Therefore, the ECC will need to convene during this 45-day period to review and approve a proposed letter.

The final item that will require the ECC to meet relates to SB 819's requirement that the ECC issue a report no later than 30 days after the regulations are final. Although SB 819 provides what the report must include – an opinion as to whether the regulations will implement the ECC's ethics study guidelines – it does not define to whom the ECC shall issue the report, nor what the term "after the regulations are final" means.

For this requirement, staff have come to interpret that the ECC should issue its report to the Legislature, and that the term "after the regulations are final" to mean when the regulations are included in the California Code of Regulations (CCR). Regulations become codified in the CCR 30 days after the Office of Administrative Law (OAL) files the approved regulations with the Secretary of State. Staff, generally, cannot accurately predict when the OAL will provide approval on rulemaking files; however, staff can provide some parameters of when the latest this could occur.

The Administrative Procedure Act requires all agencies to provide public notice for any proposed rulemaking activities. This is achieved by having notice of the proposed actions posted in OAL's *California Regulatory Notice Register*. Once the notice is published, a one-year clock starts during which the rulemaking activities must be finalized, which culminate in submission of a completed rulemaking file to the OAL. Staff anticipate that the notice of proposed rulemaking activities will run in the September 30, 2011 issue. As such, the CBA will have until September 29, 2012 to submit a final rulemaking file to OAL. OAL will have a maximum of 30-working days to approve or disapprove the rulemaking file.

If the OAL took the entire allotted time to render a decision on the rulemaking file, the CBA would receive the OAL's decision no later than November 9, 2012. Presuming the rulemaking file is approved, the Secretary of State will codify the regulations in the CCR on December 10, 2012. Using this date, the committee would have until January 10, 2013 to issue a report to the Legislature. Again, the January 10, 2013 date represents the latest date this could occur. It is entirely possible that the CBA could complete the process sooner, which would move up the due date for the final report to the Legislature.

With this information in mind, staff anticipate the ECC will need to convene for two additional meetings after the upcoming June 7, 2011 joint Accounting Education Committee and ECC meeting. (See **ECC Agenda Item IV.**) The first meeting

ECC Timeline and Future Agenda Items

Page 3 of 3

would be to approve the letter that the ECC must issue during the public comment period, with the second meeting to approve the report to the Legislature.

The ECC will need to discuss the logistics for developing the letter and report, as well as holding the meetings to approve the documents. Members could defer to the ECC Chair to work with staff in developing the letter and report, or continue use of the subcommittee. As for conducting the meetings, given that minutes from a previous meeting and either a letter or report will likely be the only topics on the agenda, the ECC may choose to simply have a teleconference meeting.

Staff will be available at the meeting to answer questions.