

Date of Hearing: April 25, 2017

**ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS**

Evan Low, Chair

AB 1190 (Obernolte) – As Introduced February 17, 2017

**SUBJECT:** Department of Consumer Affairs: BreEZe system: annual report.

**SUMMARY:** Requires the Department of Consumer Affairs (DCA), on and after July 1, 2018, to submit an annual report to the Legislature that includes the DCA's plan for implementing phase three of the BreEZe system and related analyses, as specified.

**EXISTING LAW:**

- 1) Establishes the Department of Consumer Affairs (DCA) within the Business, Consumer Services, and Housing Agency. (Business and Professions Code (BPC) § 100)
- 2) Provides for the licensure and regulation of various professions and vocations by boards, bureaus, and other entities within the DCA. (Business and Professions Code (BPC) §§ 22, 100-144.5)
- 3) Specifies that the DCA is under the control of a civil executive officer who is known as the Director of Consumer Affairs and specifies the duties and authority of the director. (BPC §§ 150-166)
- 4) Authorizes the DCA to levy a charge for estimated administrative expenses, not to exceed the available balance in any appropriation for any one fiscal year, in advance on a pro rata share basis against any of the boards, bureaus, commissions, divisions, and agencies, at the discretion of the director and with the approval of the Department of Finance. (BPC § 201)
- 5) Specifies that, upon proper presentation of claims by the DCA to the State Controller, the State Controller shall draw his or her warrant against any of the funds of any one of the boards to cover its share of the estimated administrative expenses of the DCA, but prohibits the use of a board's fund to pay the expenses of any other board. (BPC § 202(a))
- 6) Establishes in the State Treasury the Professions and Vocations Fund and establishes the individual special funds for each DCA entities, as specified. (BPC § 205 (a))
- 7) Authorizes the DCA to enter into a contract with a vendor for the BreEZe system, the integrated, enterprisewide enforcement case management and licensing system described in the DCA's strategic plan, as specified, defines various budget and reporting requirements, and provides that the . (BPC § 210)

**THIS BILL:**

- 8) Requires the DCA, on or before July 1 of each year, commencing July 1, 2018, to submit an annual report to the Legislature that includes all of the following:

- a) The DCA's plan for implementing the BreEZe system at the regulatory entities in the department's third phase of the implementation project, including, but not limited to, a timeline for implementation.
  - b) The total estimated costs of implementation of the BreEZe system at the regulatory entities in the DCA's third phase of the implementation project and the results of any cost-benefit analysis the department conducted for the third phase of the implementation project.
  - c) A description of whether and to what extent the BreEZe system will achieve any operational efficiencies resulting from implementation by the boards and regulatory entities within the DCA's jurisdiction.
- 9) Requires the report to be submitted in compliance with Government Code § 9795, which specifies the procedures for submitting reports to the Legislature.
- 10) Defines, for purposes of the report, "the regulatory entities in the department's third phase of the implementation project" to include all of the following:
- a) Acupuncture Board.
  - b) Board for Professional Engineers, Land Surveyors, and Geologists.
  - c) Bureau of Automotive Repair.
  - d) Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.
  - e) Bureau for Private Postsecondary Education.
  - f) California Architects Board.
  - g) California Board of Accountancy.
  - h) California State Board of Pharmacy.
  - i) Cemetery and Funeral Bureau.
  - j) Contractors' State License Board.
  - k) Court Reporters Board of California.
  - l) Landscape Architects Technical Committee.
  - m) Professional Fiduciaries Bureau.
  - n) Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.
  - o) State Athletic Commission.
  - p) State Board of Chiropractic Examiners.

- q) State Board of Guide Dogs for the Blind.
- r) Structural Pest Control Board.
- s) Telephone Medical Advice Services Bureau.

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by the Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is author sponsored. According to the author, “[s]ince its original implementation, the BreEZe system has been one problem after another, leaving the licensees paying the cost. [This bill] requires DCA to report annually to the legislature on the plan for implementation. It is finally time to implement the State Auditor’s recommendation and require these reports in order to finally fully implement the BreEZe system.”

**Background.** In California, many professions require a license to legally practice. Many of the professional licenses are administered by licensing boards, bureaus, and other entities within the DCA. The DCA supports and oversees the licensing entities. The mission of the DCA, as stated in its 2016 Annual Report, is “[t]o protect consumers through effective enforcement activities and oversight of California’s licensed professionals.”

*DCA Licensing Entities.* The individual licensing entities are established to protect the people of California through adequate regulation of businesses and professions that engage in activities that risk harm to the health, safety, and welfare of the public (BPC § 101.6). To that end, applicants seeking a license to practice are required to demonstrate minimum competency to the licensing entities through education, examination, and experience or other training.

Applicants are required to apply, pay fees, submit documentation, and undergo background checks. Active licensees are also usually required to renew their licenses annually or biennially, pay renewal fees, and sometimes complete continuing education or competence. The licensing entities are responsible for the administration and processing of the licenses but often rely on the DCA for central support services.

The licensing and renewal fees fund the entities’ licensing, administrative, and enforcement programs. As special fund agencies, the entities are fully funded by the fee revenues deposited into the respective entity’s fund within the Professions and Vocations Fund. Therefore, they receive no funding from the General Fund or other special funds. Further, the use of revenues from an entity’s fund is restricted to the functions or activities of that entity.

As a result, each entity is required by law to pay for its share of any administrative support provided by other agencies in the form of statewide and DCA Pro Rata charges. For example, when central service agencies (such as the State Controller’s Office) provide statewide support services upfront, the entities (and other special fund agencies) owe statewide Pro Rata in the following fiscal year. Agencies like the State Controller’s Office are funded by the General Fund; therefore statewide Pro Rata reimburses the General Fund for the services provided in the prior fiscal year, maintaining the entities’ special fund status.

The DCA entities also pay Pro Rata for the admin support services specifically provided by the DCA. Since the DCA is almost fully funded by the entities it oversees, the DCA charges an estimated Pro Rata one fiscal year in advance of when it provides the services. Each entity must pay for its share so that no it receives no funds from the other entities. Among other things, the DCA Pro Rata funds the DCA's technology solutions for use by the entities.

*BreEZe.* In 2009, the DCA proposed a new information technology (IT) system called BreEZe. BreEZe was intended to be the answer to the DCA's out-of-date legacy systems, the Applicant Tracking System (ATS) and the Consumer Affairs System (CAS), and to provide updated applicant tracking licensing, renewal, enforcement monitoring, and cashiering support for 37 of the 40 licensing entities housed within the DCA at the time.

The project began in 2011 and scheduled to be launched in three phases (releases). Release 1 occurred in 2013, implementing BreEZe for 10 of the scheduled entities. Release 2 occurred in 2016 for another 8 of the entities. Release 3 has been cancelled. All 37 entities, including those that were scheduled for release 3, have paid BreEZe implementation costs through DCA Pro Rata. Release 3 boards have paid over \$4 million for BreEZe and are projected to pay \$11 million through fiscal year 2016–17. It is not clear if the boards scheduled for release 3 will be reimbursed or whether the funds will be used for BreEZe or another technology solution at a later date.

*2015 State Auditor Report.* During implementation of BreEZe releases 1 and 2, the DCA's management of the BreEZe project came under public scrutiny from a variety of sources, including nursing students and graduates. The students and graduates were having difficulty getting their applications for licensure and examination processed by the Board of Registered Nursing—one of the licensing boards within the DCA.

In response to the concerns, in 2014 the Joint Legislative Audit Committee requested an audit by the California State Auditor concerning the DCA's planning, development, and implementation of BreEZe. In February 2015, the State Auditor released the report, entitled *California Department of Consumer Affairs' BreEZe System: Inadequate Planning and Oversight Led to Implementation at Far Fewer Regulatory Entities at a Significantly Higher Cost* (Report 2014-116).

In the report's public letter, the State Auditor concluded that BreEZe "has been plagued with performance problems, significant delays, and escalating costs, which based on a January 2015 estimate were \$96 million—more than triple the original cost estimate—for implementation of a system at only half of the regulatory entities originally planned for BreEZe." The State Auditor noted failures on the part of the DCA, the California Department of Technology (CalTech), and the Department of General Services (DGS).

To address concerns about the lack of oversight and transparency at the time, the State Auditor recommended enacting legislation that requires the DCA to submit a report annually, beginning on October 1, 2015, that includes the following:

- The DCA's plan for implementing BreEZe for release 3 entities, including a timeline for the implementation.

- The estimated costs of implementing BreEZe for the remaining entities and the results of any cost-benefit analysis the DCA conducted for release 3.
- A description of whether and to what extent BreEZe will achieve operational efficiencies for the entities.

In the DCA's January 22, 2015 response, it stated, "The Department appreciates your office's review of the BreEZe system and agrees with its recommendations. The Audit findings reflect a number of areas of concern that the Department has been in the process of correcting, and in many cases, has already corrected."

*2017 Audit Accountability Report.* In January 2017, State Auditor released its annual report under the Omnibus Audit Accountability Act of 2006, entitled *Recommendations Not Fully Implemented After One Year* (Report 2016-041). Regarding BreEZe, the report noted the following:

17) To the extent that Consumer Affairs chooses to implement BreEZe at the phase 3 regulatory entities, it should first complete a formal cost-benefit analysis to ensure that BreEZe is a cost-effective solution to meet these regulatory entities' business needs. To make certain this analysis is complete, it should include an assessment of the potential changes these regulatory entities may require to be made of the BreEZe system and the associated costs. Consumer Affairs should complete the cost-benefit analysis before investing any more resources into the implementation of BreEZe at the phase 3 regulatory entities, and it should update this analysis periodically as significant assumptions change.

35) To ensure that future training for BreEZe system rollouts is timely and effective, Consumer Affairs should provide training on the BreEZe system as close to the rollout date as possible to ensure that staff retain the information for using the system as it is implemented.

36) To ensure that future training for BreEZe system rollouts is timely and effective, Consumer Affairs should work with the regulatory entities to develop training that is specific to each entity's business processes.

*2017 Sunset Review Hearings.* Annually, the Assembly Business and Professions Committee and the Senate Business, Professions and Economic Development Committee hold joint sunset review hearings to review the DCA and its licensing entities. During the February 27, 2017 sunset hearing, the committee staff background paper for the DCA raised BreEZe release 3 under Issue #2:

DCA's effective implementation of a dynamic information technology (IT) for all entities remains delayed and it is unclear what steps the DCA is taking to address the IT needs of a large number of its programs, including those with significant IT operational challenges. What is the plan for Release 3 entities, some of which rely on insecure, inefficient options like Excel spreadsheets to track critical licensing data? What is the status of the cost benefit analysis DCA advised it was conducting in 2016 for Release 3 entities? Why are these entities still paying for BreEZe costs when they may never actually be a part of the BreEZe system?

**Staff Recommendation:** The DCA needs to finally provide the Committees information about the steps the DCA is taking to upgrade IT systems for Release 3 entities, in many cases moving entities away from Excel spreadsheets used to backfill data collection system needs. How can the Legislature assist DCA in its efforts to implement technological efficiencies? Is DCA planning to move forward with Accela for Release 3 entities? What is actually happening today at DCA to assess the needs of Release 3 entities? What is actually happening today to assess the cost of BreEZe for these entities and benefit of that system, versus another system? How does the DCA suggest the Legislature respond to licensees of Release 3 entities who continue to voice concerns that staff is redirected from important regulatory functions to provide input on IT systems that appear to be a mirage – and what does the DCA suggest the Legislature should tell licensees who are concerned about the impact of IT costs on funds that could lead to fee increases?

During the hearing, the DCA responded in its testimony that, while there is no official implementation plan for release 3, it plans to perform individual cost-benefit analyses for the remaining entities to determine whether BreEZe is or is not appropriate. In its 30-day response to the Committees, the DCA responded in greater detail as follows:

1) The plan for release 3 entities:

The Department has learned many lessons from Release one (eight programs) and Release two (ten programs) of the BreEZe system. Going forward, programs that were previously scheduled for the third release of BreEZe will be utilizing the Department of Technology's Project Approval Lifecycle process to determine what IT solution best meets their individual business needs.

The objective of the Department of Technology's four-step process is to match an entity's organizational readiness and business needs with the most appropriate IT solution. In the State Auditor's report regarding BreEZe a recommendation was made that in order to ensure each of the remaining boards and bureaus receives an IT update that addresses their business needs, a cost benefit analysis should be completed. The Department has identified that the best approach to achieving this mandate is during the second stage of the Department of Technology process for each individual board.

The Department's expectation is that in some cases, the process will determine that BreEZe is the best solution. In other cases, such as the Bureau of Medical Cannabis Regulation, a different platform may better meet the business needs. However, the resources that each of these programs has already committed to this effort will still provide value regardless of which IT solution is ultimately implemented. This includes staff training, documentation of business processes, and general expertise and knowledge of the process of transitioning into a new system. For example, the Department's training division, SOLID, which actively worked with programs in earlier releases, will continue to provide support to boards as they transition into new IT systems. Ultimately, the lessons and

experiences of the first two releases will benefit the remaining boards and bureaus and their licensees regardless of which IT solution is chosen.

2) The status of the plan as of March 29, 2017:

The Department is organizing the remaining 18 programs into groups based on their individual readiness to move through the Department of Technology's process. Currently there are five entities preparing to enter stage 1 of that process. They are actively mapping their business processes, creating their business documentation, and determining their business needs.

3) Ongoing BCPs related to the plan:

The Department currently has two Budget Change Proposals (BCPs) related to IT efforts. The first BCP would allow the Department to hire additional staff to begin transitioning the ongoing maintenance of the BreEZe system away from the vendor, Accenture, and to the Department, reducing costs in the long-term.

The second BCP would allow the Department to respond to the State Auditor's recommendation to implement effective organizational change management to ensure the success of future IT projects. Specifically, the BCP would allow the Department to hire ten additional staff to assist the remaining boards and bureaus with organizational change management and business process mapping. These positions are critical to ensuring that the remaining boards and bureaus are able to properly identify what requirements must be met by a new IT system. The Department is placing a great deal of emphasis on organizational change management as a direct response to lessons learned during Release one and two of the BreEZe system. During the first release, boards and bureaus did not adequately document how they performed basic functions such as licensing and enforcement. As a result, the system was not designed to meet the needs of each board and bureau, which required extensive system changes to address. During the second release the Department provided additional assistance to boards in documenting business processes. This documentation resulted in a better understanding of the requirements of each board and bureau and led to a better overall design of the system. With 18 boards and bureaus still awaiting an IT system upgrade, the Department requires additional staff to provide organizational change management services to these entities in order to ensure the specific needs of each board and bureau are addressed. The Department appreciates the Legislature's consideration of these BCPs and looks forward to continued discussions throughout the legislative and budget processes.

4) Ongoing status updates:

In addition, the Department is committed to working with the Legislature to address constituent concerns regarding the BreEZe system. Currently, the Department is unaware of staff being redirected to provide input on IT efforts; however, as previously stated, each of the remaining boards and bureaus will take part in the Department of Technology's process. While the Department will

provide assistance during this effort, each of the boards and bureaus will be required to map business processes and complete a cost benefit analysis. The Department will update legislative staff quarterly and often times monthly in collaboration with the Department of Technology as the remaining boards and bureaus move through the process.

5) Potential fee increases:

Finally, regarding potential fee increases for any board or bureau, while BreEZe may be one factor in increasing license fees there are a number of other issues that impact a board or bureau's fund condition. For example, some boards or bureaus have not raised fees for many years while the cost of doing business has continued to increase. The Department will continue to work with all boards and bureaus regularly to assess fund conditions, assist in fee audits, and determine when and why fee increases will be needed.

**Prior Related Legislation.** AB 507 (Olsen) of 2015 was substantially similar to this bill but would have required the annual report on and after October 1, 2015, and included an urgency clause. *NOTE: this bill was held in the Senate Committee on Business, Professions, and Economic Development.*

**AMENDMENTS:**

This bill is based on the State Auditor's 2015 recommendations. However, given the amount of time that has passed and the DCA's 30-day sunset response, the information noted by the State Auditor may be outdated. Therefore, the author should amend the bill as follows:

Strike the current contents and insert:

***SECTION 1.*** *Section 210.5 is added to the Business and Professions Code to read:*

*210.5. (a) In connection with the department's ongoing commitment to provide quarterly and monthly updates to the Legislature on the entities that were previously scheduled for the third release of BreEZe, the department shall publish on its Internet Web site the following:*

*(1) The estimated start and completion date of the Department of Technology's Project Approval Lifecycle process for the programs that were previously scheduled for the third release of BreEZe.*

*(2) The status of the programs that have started the project approval process, including the programs' current stage in the process.*

*(3) The results and recommendations made for each program that has completed the Department of Technology's Project Approval Lifecycle process, including the results of the Alternatives and Cost-Benefit analyses made during Stage 2 of the process.*



*(b) The department shall publish the information specified in subdivision (a) a minimum of once quarterly.*

**REGISTERED SUPPORT:**

None on file.

**REGISTERED OPPOSITION:**

None on file.

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