

**STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND
GEOLOGISTS**

INITIAL STATEMENT OF REASONS

Hearing Date: Month, Day, Year

Subject Matter of Proposed Regulations: Applicant Fingerprint Submittal and Review

(1) Section(s) Affected: Add Sections 420.1 and 3021.1 of Title 16, Division 5 and Division 29 of the California Code of Regulations (CCR).

Specific Purpose of each adoption, amendment, or repeal: The Board for Professional Engineers, Land Surveyors, and Geologists (Board) is mandated to protect the public health, safety, and welfare by ensuring only those individuals who meet the qualifications for licensure are granted an engineering, land surveyor, or geologist license in California. The Board further meets its mandate by ensuring that engineers, land surveyors, and geologists who violate specific sections of the Business and Professions (B&P) Code or other applicable codes, or otherwise demonstrate their unfitness for licensure, via the application and qualification process, are denied licensure.

In 1974, the Legislature adopted B&P Code Section 480 to allow licensing boards, in the interest of the public's health, safety, and welfare, to deny the license of applicants who had committed crimes or done other acts that demonstrated the applicant's unfitness for licensure provided that the crimes or acts that were the grounds for denial were substantially related to the qualifications, functions, or duties of the business or profession. The Legislature mandated in B&P Code Section 481 that each board develop criteria to aid in determining whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession.

The Legislature adopted B&P Code Section 482 to mandate that each board develop criteria to evaluate the rehabilitation of a person when considering the denial of a license pursuant to B&P Code Section 480.

In 2011, Senate Bill (SB) 543 (Steinberg & Price, Chapter 448, Statutes of 2011) was passed amending B&P Code Section 144 requiring the Board to verify all applicants' fingerprints for criminal history prior to approval. Pursuant to the Professional Engineers Act, Land Surveyors Act, and Geologists and Geophysicists Act and Board Rules and Regulations all applicants must meet specific requirements prior to licensure with the Board. To that extent, the Board is proposing this regulation to adopt changes to the

application and licensing process currently administered. Requiring fingerprints from applicants and receiving criminal history information is an essential and basic requirement that must be met to receive a license from the Board. The purpose and desired result is to assist the Board in meeting its obligatory mandates to license qualified candidates while denying those applicants who may jeopardize public safety. The additions will maintain the Board's mission to safeguard the life, health, property, and welfare of the public.

To achieve this goal, staff is recommending the following sections be adopted:

- Sections 420.1 and 3021.1 – Applicant Fingerprint Submittal and Review
1. Problem being addressed: The sections added relate to fingerprinting and disclosure requirements for the processing and approval of an application for licensure. The Board is requesting authority to obtain and review criminal offender record information. The additional requirement will be a condition for licensure with the Board. This information shall be obtained as a result of fingerprinting and is necessary to determine whether the applicant is subject to denial of licensure pursuant to the Board's authority in B&P Code Sections 6716, 7818, and 8710.
 2. Anticipated benefits from this regulatory action: Applicants need to be made aware that fingerprinting will be required as a condition of licensure, and this regulation would authorize the Board to require fingerprinting. This regulation will maintain the Board's mission, match the Board's authority, and protect applicants, licensees and most importantly consumers.

Factual Basis/Rationale

To ensure that the Board is able to meet its mandates of protecting the public health, safety, and welfare, it is essential that specific regulatory procedures are established. Pursuant to authority in B&P Code Sections 6716, 7818, and 8710 granting authority and power to administer each act and enforcement rules and regulations it is necessary to adopt fingerprint criteria for licensure. The fundamental reason and rationale behind the request is protection of the public. The ultimate goal of the Department of Consumer Affairs and its Board's and Bureaus is consumer protection. This regulation is necessary to preserve and maintain this protection while taking every precaution to defend the public welfare. Therefore, based on the regulatory request an applicant may apply for licensure with the Board as long as fingerprint records accompany the application. The Board will work with the Department of Justice (DOJ) and the Federal Bureau of Investigations (FBI) to conduct criminal history record checks. If it is determined that the individual committed crimes or done other acts that demonstrated the applicant's unfitness for licensure then this would be grounds for denial of a license. The proposed regulatory package will provide necessary regulatory procedures, as applicable to the professions, consistently throughout the Professional Engineers Act,

Professional Land Surveyors' Act, and the Geologist and Geophysicist Act.

Underlying Data

Technical, theoretical or empirical studies, reports, or documents relied upon:

1. Board for Professional Engineers, Land Surveyors, and Geologists 2011-2014 Strategic Plan, Strategic Goal 2 and 2.1.
2. Agenda Item 10A, Proposed Additions to Divisions 5 and 29 of the California Code of Regulations, March 8/9, 2012 Board Meeting.
3. Minutes from the March 8/9, 2012 Board Meeting.

Business Impact

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony: The Board does not license businesses; the Board licenses individuals.

Economic Impact Assessment

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because it is merely establishing an additional requirement upon submittal of an application for licensure.
- It will not create new business or eliminate existing businesses within the State of California because businesses are already established that can provide fingerprinting services.
- It will not affect the expansion of businesses currently doing business within the State of California because businesses are currently established can provide fingerprinting services.
- This regulatory proposal benefits the health and welfare of California residents because it establishes an additional requirement for licensure that safeguards the public health, safety and welfare of consumers.
- This regulatory proposal benefits worker safety because it guarantees that workers shall be compliant with all laws and regulations according to Board statutes and regulations.
- This regulatory proposal does not affect the state's environment because the

proposal is not making any changes to 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.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

- Continue to accept applications without requesting fingerprints for a criminal history background check. This goes against the Board's mission to safeguard the life, health, property, and welfare of the public.
- Require fingerprints without regulatory authority. The Board cannot operate without regulatory authority and SB 543 requires the Board to verify applicants' fingerprints for criminal history prior to approval.
- The use of performance standards rather than prescriptive standards. This is the standard practice currently administered by the Board. Over time, the Board and the Department has witnessed an increase in the number of enforcement cases as a result of prior criminal history within the licensing population. In order to mitigate further growth fingerprinting provides early detection and immediate action, if required. This will safeguard California consumers.