

TITLE 16. BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS

NOTICE IS HEREBY GIVEN that the Board for Professional Engineers, Land Surveyors, and Geologists (Board) is proposing to take the action described in the Informative Digest. The Board does not intend to hold a hearing in this matter. If an interested party wishes that a hearing be held, he or she must make the request in writing to the Board no later than 5 p.m. on April 22, 2013. 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 the 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.

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 May 7, 2013.

Authority and Reference: Pursuant to the authority vested by Sections 6716, 7818, 7860, and 8710 of the Business and Professions Code, and to implement, interpret, or make specific Sections 6716, 6775, 7818, 7860, 8710, and 8780 of said Code, the Board is considering changes to Division 5 and Division 29 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

It is the intent of the Board to ensure that its laws are clear, concise, efficient, and necessary. To that extent, staff is proposing this regulatory action to the enforcement components of the Professional Engineers Act, Professional Land Surveyors' Act, and Geologist and Geophysicist Act so that they are all similar in content and form. These modifications would make it easier for the consumers of California and our Board's licensees and certificate holders to comprehend and follow the laws and regulations and would provide consistency with the Board's current procedures and maintain the Board's mission to safeguard the life, health, property, and welfare of the public.

Title 16, California Code of Regulations section 475 would be amended to remove from subsection (c)(8) the following words: "and shall not misappropriate the professional work of others." This is an implicit reference to copyright infringement, which is not in the Board's jurisdiction to address, since copyright infringement is a civil or criminal

matter. Other references to copyright infringement were previously removed from the Board's regulations during the original rulemaking process. This section, however, was overlooked. This amendment would correct the previous oversight by removing the language from the subsection.

Similarly, this amendment to Section 476 would remove from subsection (c)(8) the following words: "and shall not misappropriate the professional work of others." This is also an implicit reference to copyright infringement, which is not in the Board's jurisdiction to address since copyright infringement is a civil or criminal matter. As noted above, references to copyright infringement were previously removed from the Board's regulations during the original rulemaking process. This section, however, was overlooked. This amendment would correct the previous oversight by removing the language from the subsection.

In addition to correcting grammatical errors and removing the aforementioned reference to copyright infringement, Section 3065 would be amended to add a subsection indicating that a licensee engaged by a governmental agency cannot, while engaging in a separate geological or geophysical task, review his or her own work unless authorized in writing by the agency. This would mirror Sections 475(b)(4) and 476(b)(4) pertaining to professional engineers and land surveyors and provide consistency among all three Acts that lie under the purview of the Board. Although the Board is not aware of any situations in which a geologist or geophysicist licensee, as a public agency representative, has circumvented the approval process and approved his or her own work, the opportunity to do so must be prohibited so that proper due process is being conducted by our licensees during the approval process.

AMEND SECTIONS 475, 476, AND 3065 OF TITLE 16 OF THE CALIFORNIA CODE OF REGULATIONS

Section 3065 is being amended to eliminate the opportunity for a licensed geologist or geophysicist who works for a public agency to review or approve his or her own work, since doing so would impede due process and may enable the licensee to circumvent the approval process to benefit themselves. This could pose a risk to the public health and safety. Professional engineers and land surveyors already have a regulation in effect to prohibit them from approving their work, Section 475(b)(4) and 476(b)(4). This amendment would provide consistency among all of the laws under the purview of the Board.

Section 3065 is also being amended, as are Sections 475 and 476, to remove unnecessary language that implies references to copyright infringement. It is a civil matter whose proper jurisdiction is in civil courts. Therefore, the language should be removed from the Board's laws.

POLICY STATEMENT OVERVIEW / ANTICIPATED BENEFITS OF PROPOSAL

The purpose and benefit of this proposed regulatory action is to ensure that the approval process at local agencies by licensees will be performed fairly and with due process so that certain individuals cannot circumvent the process. This amendment would also benefit consumers in that it would make it clearer in our laws that copyright infringement is not within the jurisdiction of the Board. These amendments will help to maintain the Board's mission to safeguard the life, health, property, and welfare of the public.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

The Board has evaluated this proposed regulatory action and it is neither inconsistent nor incompatible 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:

This proposed regulatory action does not result in a fiscal impact to public or state agencies.

Nondiscretionary Costs / Savings to Local Agencies:

This proposed regulatory action does not result in nondiscretionary costs or savings to local agencies.

Local Mandate:

This proposed regulatory action does not impose a mandate on local agencies or school districts.

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.

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal will not have an 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.

Cost Impact on Representative Private Person or Business:

This proposed regulatory action would not have a cost impact on licensees or businesses. There may be a slight economic impact on the licensee if he has to submit work to someone at the public agency (other than the licensee) for a fee. However, this fee would have to be paid regardless of who reviewed the work.

Effect on Housing Costs:

None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. The amendments to Sections 475 and 476 remove a reference to civil law and the addition of Subsection 3065(d)(5) only clarifies that the licensee cannot review and approve his or her own work.

RESULTS OF ECONOMIC IMPACT ASSESSMENT / ANALYSIS:

Impact of Jobs / Businesses:

The Board has determined that this regulatory proposal will not have a significant 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.

Benefits of Regulations:

The Board has determined that this regulatory proposal will have the following benefits to health and welfare of California residents, worker safety, and the State's government:

The purpose and benefit of this proposed regulatory action is to ensure that the approval process at local agencies by licensees will be performed fairly and with due process so that certain individuals cannot circumvent the process. This amendment would also benefit consumers in that it would make it clearer in our laws that copyright infringement is not within the jurisdiction of the Board. These amendments will help to maintain the Board's mission to safeguard the life, health, property, and welfare of the public.

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, 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.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of 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 regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board at 2535 Capitol Oaks Drive, Suite 300, Sacramento, California 95833.

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 below.

CONTACT PERSON

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

Name: Larry Kereszt
Address: 2535 Capitol Oaks Drive, Suite 300
Sacramento, CA 95833
Telephone No.: (916) 263-2240
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The backup contact person is:

Name: Erin LaPerle
Address: 2535 Capitol Oaks Drive, Suite 300
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WEBSITE ACCESS

Materials regarding this proposal can be found at www.bpelsg.ca.gov.