

**BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND  
GEOLOGISTS**

**INITIAL STATEMENT OF REASONS**

Hearing Date: None Scheduled

Subject Matter of Proposed Regulations: Code of Professional Conduct

Sections Affected:

- Amend Section 475 of Article 3 in Division 5 of Title 16 of the California Code of Regulations.
- Amend Section 476 of Article 3 in Division 5 of Title 16 of the California Code of Regulations.
- Amend Section 3065 of Article 3 in Division 29 of Title 16 of the California Code of Regulations.

Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

Section 475 applies to the practice of professional engineering; Section 476 applies to the practice of land surveying. Each Section would be amended to remove language regarding a licensee's misappropriation of the work of others. This language implies a reference to copyright infringement incidents, which are not within the jurisdiction of the Board. Copyright matters are handled through the civil or criminal courts. Removing this language will clarify some confusion regarding the Board's oversight of copyright matters and may prevent future complaints against licensees who are believed to have violated copyright laws. Previous references to copyright infringement were removed during the original rulemaking process; however, this language was overlooked. This amendment would correct the oversight.

Section 3065 applies to the practice of professional geology and geophysics. This amendment would, as described in the paragraph above, remove language referencing copyright infringement matters, which are not within the jurisdiction of the Board. This regulatory action would also add subsection (d)(5) to Section 3065 indicating that a licensee engaged by a governmental agency cannot, while engaging in a separate geological or geophysical task, review his own work,

unless authorized in writing by the agency. Currently, there is no state law prohibiting a Professional Geologist or Geophysicist who is employed with a public agency from performing work privately and then approving his or her own work as an agency representative. The Board is not aware of any situation in which this has occurred with professional geologists or geophysicists, but is proposing to prohibit the practice before it occurs. This subsection addition will mirror language already included in Sections 475 and 476 and would eliminate the possibility of a conflict of interest in a Professional Geologist or Geophysicist reviewing and approving his or her own work.

In addition, grammatical and punctuation errors would be corrected in Section 3065.

2. Anticipated benefits from this regulatory action:

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.

Factual Basis/Rationale

The Board is mandated to protect the public health, safety, and welfare by ensuring that licensees are practicing within the industry standard of practice and within state law. The Board must constantly review and amend its regulations to ensure that the laws are appropriate in order to meet the Board's mandate. Accordingly, Section 3065 needs to be amended to prevent a licensee from reviewing or approving his or her own work since doing so would impede due process and would enable the licensee to circumvent the approval process to benefit themselves. This could pose a risk to the public health and safety. Additionally, this amendment would bring consistency to all of the laws that are within the purview of the Board since professional engineers and land surveyors already have this stipulation in their laws.

The proposed amendments to Sections 475, 476, and 3065 should not put any additional requirements onto licensees. It is impossible to quantify any economic impact because the Board is not aware of a situation in which a licensee has reviewed or approved his or her own work.

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 matter whose proper jurisdiction is in civil or criminal courts. Therefore, the language should be removed from the Board's laws.

### Underlying Data

Technical, theoretical or empirical studies or reports relied upon (if any):

1. Agenda Item X, Consideration of Rulemaking Proposals, Proposed amendments to Division 5 and 9 of Title 16, California Code of Regulations
2. Goal 2, Board for Professional Engineers, Land Surveyors, and Geologists 2011-2014 Strategic Plan

### Business Impact

This proposed regulatory action will not have a significant adverse economic impact on businesses. This initial determination is being made since the amendment affects only licensees who work for both public agencies and private practices and attempts to review or approve their own private work through their public agency representation. This proposed regulatory action does not create or eliminate any jobs since it only affects the review of submitted work to a public agency. Compliance of this amendment should not jeopardize any jobs.

### Economic Impact Assessment

This proposed regulatory action will have the following effects:

- Sections 475 and 476 will not create or eliminate jobs within the State of California because they are simply eliminating language that applies to copyright infringement, which is not within the Board's jurisdiction. Section 3065 is simply adding language to prevent certain individuals from circumventing the approval process. Jobs should not be affected.
- It will not create new businesses or eliminate existing businesses within the State of California because businesses should not be affected by this regulatory action.
- It will not affect the expansion of businesses currently doing business within the State of California because businesses should not be affected by this regulatory action.
- This proposed regulatory action benefits the health and welfare of California residents because it ensures that work is being approved fairly and in accordance with the industry standard of practice.
- This proposed regulatory action benefits worker safety because it ensures that work is being approved fairly and within the industry standard of practice.
- This proposed regulatory action does not affect the state's environment because the proposal is not making any amendments that would affect the state's

environment.

#### Specific Technologies or Equipment

This proposed regulatory action does not mandate the use of specific technologies or equipment.

#### Consideration of Alternatives

No reasonable alternative to the proposed regulatory action 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 law being implemented or made specific.

Not removing the language in Sections 475, 476, and 3065 relating to copyright infringement would result in the law continuing to be unclear and misleading to the public as to the jurisdiction of the Board.

If Section 3065 is not amended, certain licensees may attempt to circumvent the approval process and approve their own work. This may pose a risk to the public safety and welfare since the approval would not have been performed fairly and with due diligence.