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MEETING OF THE BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS

BOARD MEETING

MARCH 8-9, 2012

Board for Professional Engineers, Land Surveyors, and Geologists
2535 Capitol Oaks Drive, Suite 300
Sacramento, CA 95833
(916) 263-2222

BOARD MEMBERS

Jerry Silva, President; Paul Wilburn, Vice President; Carl Josephson; Mike Modugno; Philip Quartararo; Hong Beom Rhee; Ray Satorre; Patrick Tami; Michael Trujillo; and Erik Zinn.

1. ROLL CALL TO ESTABLISH A QUORUM

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2. PUBLIC COMMENT

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NOTE: The Board cannot take action on items not on the agenda. The Board will allow for Public Comment on both days, as well as during the discussion of each item on the agenda.

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A. Rodolfo Dimalanta v. Board for Professional Engineers and Land Surveyors, Court of Appeal, First Appellate District, Case. No. A131485 [Superior Court of Alameda County Case No. RG10513640]

B. Michael James O'Malley v. Board for Professional Engineers and Land Surveyors, Superior Court of Riverside County Case No. RIC 1116681

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1. **ROLL CALL TO ESTABLISH A QUORUM**

2. **PUBLIC COMMENT**

NOTE: The Board cannot take action on items not on the agenda. The Board will allow for Public Comment on both days, as well as during the discussion of each item on the agenda.

3. HEARING ON THE PETITION FOR REINSTATEMENT OF REVOKED LICENSE OF
GEORGE DICKEY

4. **CLOSED SESSION**

Personnel Matters, Examination Procedures and Results, Administrative Adjudication, and Pending Litigation (As Needed) [Pursuant to Government Code sections 11126(a) and (b), 11126(c)(1), 11126(c)(3), 11126 (e)(1), and 11126(e)(2)(B)(i)]

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- B. Michael James O'Malley v. Board for Professional Engineers and Land Surveyors, Superior Court of Riverside County Case No. RIC 1116681

5. **OPEN SESSION TO ANNOUNCE THE RESULTS OF CLOSED SESSION**

6. **ADDENDUM TO EXECUTIVE OFFICER'S REPORT**

A. Legislation

1. Discussion of Legislation for 2011-2012 (Possible Action)

- a. Pending Legislation: AB 1588, SB 692, SB 975, SB 1061(Possible Action)

Board for Professional Engineers and Land Surveyors

2012 Legislative Session

- AB 1588** Atkins. Professions and vocations: reservist licensees: fees and continuing education. This bill would require the boards within Consumer Affairs to waive the renewal fees and continuing education requirements, if applicable, of any licensee who is a reservist called to active duty as a member of the United States Military Reserve or the California National Guard if certain requirements are met.
STATUS: Introduced 2/6/12.
RECOMMENDED POSITION: Support
- SB 692** Walters. Professional Engineers. This bill would change the disciplines currently licensed as "title act" engineers to "practice act" engineers.
STATUS: **Introduced 2/18/11**. Last amended 1/4/12. Passed Senate BP&ED Committee 4/25/11. Held in SEN Appropriations 5/26/11 – withdrawn from Committee. Bill was amended 8/22/11 and 1/4/12. Re-referred to Senate BP&ED Committee 1/9/12. Failed passage in Committee – reconsideration granted. Was not scheduled - bill failed passage.
BOARD POSITION: Watch
- SB 975** Wright. Professions and vocations: regulatory authority. This bill would provide that all boards and bureaus and commissions of Consumer Affairs have sole authority to license and regulate the practice of the professions they regulate. No licensing requirements, as specified, shall be imposed upon a person licensed to practice one of those professions by code or by regulation promulgated except by the applicable board, bureau, or commission.
STATUS: Introduced 1/19/12.
RECOMMENDED POSITION: Watch
- SB 1061** Walters. Professional Engineers. This bill (which is identical to last year's SB 692) would change the disciplines currently licensed as "title act" engineers to "practice act" engineers. This bill also would authorize any licensed engineer to practice engineering work in any of those fields in which he or she is competent and proficient – but not necessarily licensed.
STATUS: Introduced 2/13/12.
RECOMMENDED POSITION: Oppose

**Board for Professional Engineers and Land Surveyors
Bill Analysis
2012 Legislative Session**

BILL: AB 1588

AUTHOR: Atkins

TOPIC: Professions and vocations: reservist licensees

DATE OF INTRODUCTION: 2/6/12

MOST RECENT VERSION: 2/6/12

ANALYSIS DATE: 2/23/12

BILL'S LEGISLATIVE HISTORY:

RECOMMENDED POSITION: Support

BOARD POSITION:

SUMMARY:

This bill would require the boards within the Department of Consumer Affairs to waive the renewal fees and continuing education requirements, if either is applicable, of any licensee who is a reservist called to active duty as a member of the United States Military Reserve or the California National Guard if certain requirements are met.

COMMENT:

This bill would only affect renewal fees for this Board since continuing education is not required for any of this Board's licensees.

Board for Professional Engineers and Land Surveyors
Bill Analysis
2012 Legislative Session

BILL: SB 692

AUTHOR: Walters

TOPIC: Professional Engineers

DATE OF INTRODUCTION: 2/18/11

MOST RECENT VERSION: 1/4/12

ANALYSIS DATE: 2/23/12

BILLS LEGISLATIVE HISTORY: Passed Senate Business, Professions & Economic Development Committee 4/25/11. Held in Senate Appropriations 5/26/11. Bill was amended 8/22/11 and 1/4/12. Re-referred to Senate BP&ED Committee for hearing on 1/9/12. Failed passage in Committee – reconsideration granted. Bill was not scheduled to be heard again – bill is dead.

BOARD POSITION: Watch

SUMMARY: This bill would prohibit the practice of agricultural, chemical, control system, fire protection, industrial, metallurgical, nuclear, petroleum, and traffic engineering by any person who has not passed a specified examination and who is not appropriately licensed by the Board for Professional Engineers and Land Surveyors in the particular discipline. In other words, this bill converts “title act” disciplines to “practice act” disciplines.

HISTORY: The issue of title acts and what should be done about them has been a concern of the Board for over 25 years. After various studies, task forces, and legislation, the Board continues to arrive at the same conclusion that it would be best to leave “title acts” as they are or to leave some of them as they are and to eliminate others. In 2000, the Joint Legislative Sunset Review Committee (JLSRC), the Department of Consumer Affairs (DCA), and the Board decided that the best way to address the “title act” issue was to contract with an independent consultant to perform a review of all of the title act branches of engineering. The report that was prepared by the independent consultant (ISR) was completed in November of 2002. The report concluded, among other things, that the state should eliminate title protection and offer practice protection to all regulated disciplines. A Task Force was then appointed by the Board consisting of two members of the Board, Committee consultants of the Legislature, a representative from DCA, and other various members of the public and two professional engineers (not members of the Board). The Task Force began meeting in August of 2003 and held five meetings throughout the state to discuss the ISR recommendations and receive public comment regarding those recommendations or others being considered by the Task Force. The Task Force completed its work in January of 2004 and made its recommendations to the Board. The Board, with minor changes, approved the Task Force recommendations in May of 2004. The JLSRC met in June 2004, adopted all the Board’s recommendations and the next year, on June 20, 2005, placed them into a bill, SB 246. SB 246 included language that established chemical, control systems, fire protection, nuclear, petroleum, and traffic engineering as “practice acts” and discontinued examinations for the title disciplines of agricultural, industrial, and metallurgical engineering. Among other things, SB 246 provided that the professional practice of engineering in the branches recognized by the Board may overlap, but with specified provisions. SB 246 was met with vigorous opposition and was having difficulty making it through the Legislature. In July 2005, it was scheduled to be heard in the Assembly Committee on Business and Professions (B&P), but due to the opposition it was “held” in Committee.

Board for Professional Engineers and Land Surveyors
Bill Analysis
2012 Legislative Session

In 2005/2006, the Assembly B&P Committee held a number of meetings regarding the issue of converting the "title act" disciplines to "practice acts." The meetings were comprised of numerous groups and individuals who expressed an interest – both pro and con – to the language in SB 246 to make such conversions. The goal of the meetings was to arrive at language that was acceptable to most, if not all, of the parties. Agreeable language could not be reached, so after much discussion between the Board and the JLSRC, the decision was made that the language to convert "title act" disciplines to "practice acts" should be dropped from the bill. The Board voted at its March 17, 2006, meeting to support the removal of the language to convert "title act" disciplines to "practice act" disciplines.

In 2009, SB 275, which was virtually identical to SB 692 was introduced. It was sponsored by the Farm Bureau and Chemical Industry Council. American Council of Engineering Companies (ACEC CA) and Professional Engineers in California Government (PECG) were opposed to the bill. The Board had a "watch" position. SB 275 failed passage out of its first Committee hearing.

COMMENT: Many people who are currently licensed in "title act" disciplines were grandfathered (licensed without examination) into those disciplines, although it is becoming fewer and fewer each year. This brings up another issue: most of the "title act" disciplines are shrinking (see below) and may eventually go away on their own through attrition. The Board needs to consider that many unlicensed people are currently legally doing work that would suddenly become protected if "title acts" are converted to "practice acts"; these people would no longer be able to do their jobs. Therefore, SB 692 could be seen as a "job killer" and, in this economy, may reflect poorly on this bill.

Branch of Engineering	Number of Licensees FY 1999/2000	Number of Licensees As of 6/30/2010	Number of Licensees As of 1/1/12
Agricultural	309	193	158
Chemical	2140	1954	2010
Control System	2410	1416	1257
Fire Protection	883	760	751
Industrial	854	467	404
Metallurgical	417	277	261
Nuclear	1038	613	529
Petroleum	482	389	367
Traffic	1398	1512	1503

Board for Professional Engineers and Land Surveyors
Bill Analysis
2012 Legislative Session

BILL: SB 975

AUTHOR: Wright

TOPIC: Professions and vocations: regulatory authority

DATE OF INTRODUCTION: 1/19/12

MOST RECENT VERSION:

ANALYSIS DATE: 2/27/12

BILL'S LEGISLATIVE HISTORY:

RECOMMENDED POSITION: Watch

BOARD POSITION:

SUMMARY:

Existing law provides for the licensure and regulation of various professions and vocations by boards, bureaus, and commissions within the Department of Consumer Affairs. This bill would amend B&P Code section 101.2 to provide that all boards, bureaus, and commissions have the sole and exclusive authority in state government to license and regulate the practice of professions and vocations regulated by those boards pursuant to provisions of the code. And that no licensing requirements, as specified, shall be imposed upon a person licensed to practice one of those professions other than under that code or by regulation promulgated by the applicable board through its authority granted under that code.

For purposes of this section, "licensing requirements" include, but are not limited to:

- Additional training or certification requirements to practice within the licensed scope of practice.
- Continuing education requirements for renewal or continuation of licensure.
- Any additional requirements beyond those provided in the B&P Code or pursuant to a board's regulations.

COMMENT:

This bill is a follow-up to last year's AB 1210 (Garrick), which was vetoed by the Governor. AB 1210 stated that a licensed civil engineer shall not be required to satisfy any additional experience, training, or certification requirements in order to perform activities in the preparation of storm water pollution prevention plans (SWPPP).

This bill, as was AB 1210, is being sponsored by American Council of Engineering Companies (ACEC - CA).

The Governor's veto message –

This bill would exempt license civil engineers from training requirements related to the preparation of Storm Water Pollution Prevention Plans.

Many of these storm plans are found to be deficient and those preparing them need a much better understanding of the necessary elements of a solid plan. It is not feasible to inspect every plan or every construction site but it is essential to have some process in place to ensure compliance in preparing complete and sound storm water plans.

The current process depends on a training education program for all professionals who prepare

**Board for Professional Engineers and Land Surveyors
Bill Analysis
2012 Legislative Session**

storm plans – engineers, geologists, hydrologists, and land scape architects. This bill, a piecemeal approach, exempts only one profession, the civil engineers. A more comprehensive solution would be better.

I am directing the State Water Board to review the entire program and evaluate compliance alternatives that are more efficient and workable for all professionals.

I can't speak to the impact of this bill to other boards, bureaus and commissions of DCA but I would think that it would cause many different agencies to start making amendments to this Board's B&P Codes.

Board for Professional Engineers and Land Surveyors
Bill Analysis
2012 Legislative Session

BILL: SB 1061

AUTHOR: Walters

TOPIC: Professional Engineers
DATE OF INTRODUCTION: 2/13/12
MOST RECENT VERSION:
ANALYSIS DATE: 2/29/12
BILLS LEGISLATIVE HISTORY:
RECOMMENDED POSITION: Oppose
BOARD POSITION:

SUMMARY: This bill would prohibit the practice of agricultural, chemical, control system, fire protection, industrial, metallurgical, nuclear, petroleum, and traffic engineering by any person who has not passed a specified examination and who is not appropriately licensed by the Board for Professional Engineers, Land Surveyors, and Geologists in the particular discipline. In other words, this bill converts all engineering "title act" disciplines to "practice act" disciplines. This bill would also authorize any licensed engineer to practice engineering work in any of those fields in which he or she is competent and proficient – but not necessarily licensed.

HISTORY: The issue of title acts and what should be done about them has been a concern of the Board for over 25 years. After various studies, task forces, and legislation, the Board continues to arrive at the same conclusion that it would be best to leave "title acts" as they are or to leave some of them as they are and to eliminate others. In 2000, the Joint Legislative Sunset Review Committee (JLSRC), the Department of Consumer Affairs (DCA), and the Board decided that the best way to address the "title act" issue was to contract with an independent consultant to perform a review of all of the title act branches of engineering. The report that was prepared by the independent consultant (ISR) was completed in November of 2002. The report concluded, among other things, that the state should eliminate title protection and offer practice protection to all regulated disciplines. A Task Force was then appointed by the Board consisting of two members of the Board, Committee consultants of the Legislature, a representative from DCA, and other various members of the public and two professional engineers (not members of the Board). The Task Force began meeting in August of 2003 and held five meetings throughout the state to discuss the ISR recommendations and receive public comment regarding those recommendations or others being considered by the Task Force. The Task Force completed its work in January of 2004 and made its recommendations to the Board. The Board, with minor changes, approved the Task Force recommendations in May of 2004. The JLSRC met in June 2004, adopted all the Board's recommendations and the next year, on June 20, 2005, placed them into a bill, SB 246. SB 246 included language that established chemical, control systems, fire protection, nuclear, petroleum, and traffic engineering as "practice acts" and discontinued examinations for the title disciplines of agricultural, industrial, and metallurgical engineering. Among other things, SB 246 provided that the professional practice of engineering in the branches recognized by the Board may overlap, but with specified provisions. SB 246 was met with vigorous opposition and was having difficulty making it through the Legislature. In July 2005, it was scheduled to be heard in the Assembly Committee on Business and Professions (B&P), but due to the opposition it was "held" in Committee.

Board for Professional Engineers and Land Surveyors
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In 2005/2006, the Assembly B&P Committee held a number of meetings regarding the issue of converting the "title act" disciplines to "practice acts." The meetings were comprised of numerous groups and individuals who expressed an interest – both pro and con – to the language in SB 246 to make such conversions. The goal of the meetings was to arrive at language that was acceptable to most, if not all, of the parties. Agreeable language could not be reached, so after much discussion between the Board and the JLSRC, the decision was made that the language to convert "title act" disciplines to "practice acts" should be dropped from the bill. The Board voted at its March 17, 2006, meeting to support the removal of the language to convert "title act" disciplines to "practice act" disciplines.

In 2009, SB 275 (Walters), sponsored by the California Farm Bureau and Chemical Industry Council was introduced. SB 275 converted all "title act" engineers to "practice acts." American Council of Engineering Companies (ACEC CA) and Professional Engineers in California Government (PECG) were opposed to the bill. The Board had a "watch" position. SB 275 failed passage out of its first Committee hearing.

In 2010, SB 692 (Walters), sponsored by the California Farm Bureau, and identical to SB 275, was introduced. In addition to converting all "title act" engineers to "practice act" engineers, this bill would have authorized an engineer to practice engineering only in the field or fields in which he or she is by education or experience competent. It further specified that the "title acts" to be converted to "practice acts" could practice without limitation or restriction in those specific disciplines – (but not into civil, electrical and mechanical engineering). SB 692 was then amended on 8/22/11 and again on 1/4/12. These amendments were made in response to a Legislative Counsel Opinion (#1101097) which was issued on July 22, 2011 due to a request by the Author. The amendments to AB 692 allowed any validly licensed engineer to practice without limitation or restriction in any branch of engineering (including civil, electrical, and mechanical engineering) provided they are competent and proficient by education or experience in that engineering practice. AB 692 failed to pass out of the Senate Business, Professions and Economic Development Committee on 1/9/12.

This bill, SB 1061 (Walters), again sponsored by the California Farm Bureau, is identical to the latest amended version of last year's SB 692 (1/4/12).

COMMENT: The latest amendments to last year's SB 692, and the language in this bill, SB 1062, are in response to issues raised in the Legislative Counsel Opinion (#1101097) which was issued on July 22, 2011. Unfortunately, it appears that the Sponsors of SB 1061 either have not correctly interpreted the Legislative Counsel Opinion or they are intentionally putting a spin on their reading of the Opinion. In the 1/9/12 analysis of SB 692 the Sponsors indicated to the Committee Consultant that, "The determination that only a licensed civil engineer may provide any civil engineering services for fixed works, eliminates the reforms which the bill intended by converting the title acts to practice acts. Even if each of the title acts were established as practice disciplines, no engineer licensed in any of the new practice disciplines would be able to practice engineering work on any project involving fixed works, unless they were licensed as a civil engineer."

The Sponsors further stated to the Consultant that, "converting title acts to practice acts is still important, it is also necessary to allow overlap across all engineering disciplines if the licensed professional engineer is by education or experience competent and proficient to do the work."

The Legislative Counsel Opinion (#1101097) clearly states that "a professional engineer who is not a civil engineer may provide services for portions of, or to add to or modify, a project engineered

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under the responsible charge of another licensed engineer as long as the professional engineer exercises the requisite extent of control and assumes responsibility for the engineering decisions as specified in Section 404.1 of Title 16 of the California Code of Regulations. In our view, therefore, even if an engineering project contains fixed work components, a professional engineer who is not licensed as a civil engineer may be in responsible charge of a portion of the project that does not involve those fixed work components if the criteria for the exercise of responsible charge are otherwise met.”

The author of the Opinion ends her document by again stating “a licensed professional engineer who is not a civil engineer may be in responsible charge of designs, plans and specifications, and engineering reports for the components of an engineering project that are not fixed works.”

The Legislative Counsel Opinion supports how this Board has been interpreting the Engineers Act and Title 16 of the California Code of Regulations.

Furthermore, a result of SB 1062 would be that many people who are currently licensed in “title act” disciplines were grandfathered (licensed without examination) into those disciplines, although it is becoming fewer and fewer each year, but those people would be allowed to practice in all branches of engineering. This brings up another issue: most of the “title act” disciplines are shrinking (see below) and may eventually go away on their own through attrition. The Board also needs to consider that many unlicensed people are currently legally doing work that would suddenly become protected if “title acts” are converted to “practice acts”; these people would no longer be able to do their jobs. Therefore, SB 1061 could be seen as a “job killer” and, in this economy, may reflect poorly on this bill.

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Industrial	854	467	404
Metallurgical	417	277	261
Nuclear	1038	613	529
Petroleum	482	389	367
Traffic	1398	1512	1503



CHIEF DEPUTIES
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Daniel A. Weitzman

PRINCIPAL DEPUTIES
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Cindy M. Cardullo
Thomas J. Kerbs
Kirk S. Little

J. Christopher Dawson
Galdev S. Heir
Michael R. Kelly
Romulo I. Lopez
Fred A. Messerer
William E. Modellmog
Lara Bierman Nelson
Gerardo Parilla
Robert A. Pinn
Patricia Cates Rhodes
Janice L. Thustson
Richard B. Weisberg

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Noel A. Calvillo
Sergio E. Carpio
William Chan
Flame Chu
Byron D. Damiani, Jr.
Stephen G. Debeer
Eric D. Dye
Sharon L. Everett
Krista M. Ferris
Sharon R. Fisher
Lisa C. Goldkuhl
Lauren T. Goshen
Miri C. Guzman
Marta Hlakos Flanke
Amy J. Havili
Jacob B. Heninger
Stephanie F. Hochstetler
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July 22, 2011

Honorable Mimi Walters
Room 3082, State Capitol

PROFESSIONAL ENGINEERS: FIXED WORKS - #1101097

Dear Senator Walters:

You have asked whether a licensed professional engineer who is not licensed as a civil engineer may be in responsible charge of designs, plans and specifications, and engineering reports for a project that has components involving fixed works as described in Sections 6731 and 6731.1 of the Business and Professions Code.

By way of background, the Professional Engineers Act (Ch. 7 (commencing with Sec. 6700), Div. 3, B.& P.C.)¹ establishes the Board for Professional Engineers, Land Surveyors, and Geologists (hereafter the board) within the Department of Consumer Affairs and provides for the licensure and regulation of professional engineers² by the board. In order to safeguard life, health, property, and public welfare, the act requires a person who practices, or offers to practice, civil, electrical, or mechanical engineering in this state to submit evidence

¹ All section references are to the Business and Professions Code, unless otherwise indicated.

² Section 6701 defines the term "professional engineer" for purposes of the act, as follows:

"6701. 'Professional engineer,' within the meaning and intent of this act, refers to a person engaged in the professional practice of rendering service or creative work requiring education, training and experience in engineering sciences and the application of special knowledge of the mathematical, physical and engineering sciences in such professional or creative work as consultation, investigation, evaluation, planning or design of public or private utilities, structures, machines, processes, circuits, buildings, equipment or projects, and supervision of construction for the purpose of securing compliance with specifications and design for any such work."

that he or she is qualified to practice and requires the person to be licensed by the board as a civil, electrical, or mechanical engineer (Sec. 6730). The act makes it unlawful for a person other than a licensed professional engineer to stamp or seal any plans, specifications, plats, reports, or other documents with the seal or stamp of a professional engineer or to use specified titles without a license (Sec. 6732). The act also makes it a crime for a person to practice or offer to practice civil, electrical, or mechanical engineering in this state without legal authorization (Sec. 6787).

Section 6702 defines the term "civil engineer" for purposes of the act, as follows:

"6702. 'Civil engineer' as used in this chapter means a professional engineer in the branch of civil engineering and refers to one who practices or offers to practice civil engineering in any of its phases."

Furthermore, Sections 6731 and 6731.1 set forth specific practices that constitute civil engineering and provide as follows:

"6731. Civil engineering embraces the following studies or activities in connection with fixed works for irrigation, drainage, waterpower, water supply, flood control, inland waterways, harbors, municipal improvements, railroads, highways, tunnels, airports and airways, purification of water, sewerage, refuse disposal, foundations, grading, framed and homogeneous structures, buildings, or bridges:

"(a) The economics of, the use and design of, materials of construction and the determination of their physical qualities.

"(b) The supervision of the construction of engineering structures.

"(c) The investigation of the laws, phenomena and forces of nature.

"(d) Appraisals or valuations.

"(e) The preparation or submission of designs, plans and specifications and engineering reports.

"(f) Coordination of the work of professional, technical, or special consultants.

"(g) Creation, preparation, or modification of electronic or computerized data in the performance of the activities described in subdivisions (a) through (f).

"Civil engineering also includes city and regional planning insofar as any of the above features are concerned therein.

"Civil engineers registered prior to January 1, 1982, shall be authorized to practice all land surveying as defined in Chapter 15 (commencing with Section 8700) of Division 3." (Emphasis added.)

"6731.1. Civil engineering also includes the practice or offer to practice, either in a public or private capacity, all of the following:

"(a) Locates, relocates, establishes, reestablishes, or retraces the alignment or elevation for any of the fixed works embraced within the practice of civil engineering, as described in Section 6731.

"(b) Determines the configuration or contour of the earth's surface or the position of fixed objects above, on, or below the surface of earth by applying the principles of trigonometry or photogrammetry.

"(c) Creates, prepares, or modifies electronic or computerized data in the performance of the activities described in subdivisions (a) and (b).

"(d) Renders a statement regarding the accuracy of maps or measured survey data pursuant to subdivisions (a), (b), and (c)."

(Emphasis added.)³

Thus, under Sections 6731 and 6731.1, the practice of civil engineering embraces various studies and activities in connection with fixed works for irrigation, drainage, waterpower, water supply, flood control, inland waterways, harbors, municipal improvements, railroads, highways, tunnels, airports and airways, purification of water, sewerage, refuse disposal, foundations, grading, framed and homogeneous structures, buildings, or bridges. The term "fixed works" is not defined. However, the word "fixed" connotes a sense of permanency, and has been defined as settled, or established (*San Francisco Pioneer Woolen Factory v. Brickwedel* (1882) 60 Cal. 166, 173). Thus, "fixed works" as used in the act may be construed to mean permanent established works of the type set forth in Section 6731.

Section 6734 additionally guides the scope of practice of civil engineers, and subdivision (a) of Section 6735 specifies requirements regarding the preparation of civil engineering plans. These provisions read, in pertinent part, as follows:

"6734. Any person practices civil engineering when he professes to be a civil engineer or is in responsible charge of civil engineering work."

"6735. (a) All civil (including structural and geotechnical) engineering plans, calculations, specifications, and reports (hereinafter referred to as 'documents') shall be prepared by, or under the responsible charge of, a licensed civil engineer and shall include his or her name and license number."⁴

³ See Section 2 of Chapter 625 of the Statutes of 1983 for another Section 6731.1, which includes language that has the same effect as subdivisions (a) and (b) of Section 6731.1 set forth above.

⁴ The term "responsible charge" is defined in both statute and regulation. Section 6703 provides that "responsible charge of work" means the independent control and direction, by the use of initiative, skill, and independent judgment, of the investigation or design of professional engineering work or the direct engineering control of those projects. Regulations (continued...)

* * *

The act also defines “electrical engineers” and “mechanical engineers”; however, those practice areas are not defined to include engineering involving studies or activities in connection with fixed works (Secs. 6702.1, 6702.2, 6731.5, and 6731.6). Instead, under the act, engineering involving studies or activities in connection with fixed works is only included within the practice of civil engineering.

The board has adopted regulations pursuant to the act applicable to the practice of professional engineering. These regulations, set forth in Division 5 (commencing with Section 400) of Title 16 of the California Code of Regulations, among other things, require a professional engineer to practice and perform engineering work only in the field or fields in which the professional engineer is by education or experience fully competent and proficient (16 Cal. Code Regs. 415).

Turning now to the question presented, that is, whether a licensed professional engineer who is not licensed as a civil engineer may be in responsible charge of designs, plans and specifications, and engineering reports for a project that has components involving fixed works as described in Sections 6731 and 6731.1, we are guided by rules of statutory construction. The primary task of statutory interpretation is to ascertain the legislative intent so as to effectuate the purpose of the law consistent with the language of the statute (*Hsu v. Abbata* (1995) 9 Cal.4th 863, 871). The intent of the enacting body, whether that be the Legislature or the electorate, is the paramount consideration (*Legislature v. Eu* (1991) 54 Cal.3d 492, 505). Statutory terms are construed in accordance with the usual, ordinary import of the language employed, in harmony with the overall legislative scheme (*IT Corp. v. Solano County Bd. of Supervisors* (1991) 1 Cal.4th 81, 98). Furthermore, statutory principles of construction also apply to administrative regulations (*Duke Molner Wholesale Liquor Co. v. Martin* (1960) 180 Cal.App.2d 873, 884).

As discussed above, a person is practicing civil engineering when the person is in responsible charge of civil engineering work (Sec. 6734). Thus, to the extent a professional engineer is in responsible charge of designs, plans and specifications, and engineering reports for the fixed work components of a project, the professional engineer would be practicing civil

(...continued)

adopted by the board, which further defines “responsible charge,” provide that responsible charge directly relates to the extent of control a professional engineer is required to maintain while exercising independent control and direction of professional engineering services or creative work and to the engineering decisions that can be made only by a professional engineer (16 Cal. Code Regs. 404.1(a)). For the purpose of evaluating whether an engineer is in responsible charge, the regulations require the consideration of specified factors, including whether the professional engineer who signs engineering documents is capable of answering questions asked by individuals who are licensed by the board in the appropriate branch of professional engineering relevant to the project (16 Cal. Code Regs. 404.1(b)).

engineering (Secs. 6731, 6731.1, and 6734). Furthermore, all civil engineering plans, calculations, specifications, and reports are required to be prepared by, or under the responsible charge of, a licensed civil engineer (Sec. 6735). Of the definitions of civil, mechanical, and electrical engineers set forth in the act, only civil engineering includes professional engineering work connected with fixed works (Secs. 6731 and 6731.1). Thus, reading these provisions of the act together, we believe that only licensed civil engineers may be in responsible charge of designs, plans and specifications, and engineering reports for the fixed works components of projects described in Sections 6731 and 6731.1.

However, with regard to the components of an engineering project that are not connected with fixed works, subdivision (d) of Section 404.1 of Title 16 of the California Code of Regulations provides as follows:

“(d) Portions of Projects. Nothing in this section prohibits a professional engineer from providing services for portions of or to add to or to modify an engineering project engineered under the responsible charge of another licensee as long as the professional engineer exercises the requisite extent of control and assumes responsibility for the engineering decisions as required by subdivision (a) and meets the criteria described in subdivision (b), as well as meeting the requirements of the Professional Engineers Act and Sections 411 and 415.^[5] The professional engineer need only be in responsible charge of the portions, additions, or modifications or the portion of the project affected by the addition or modification and not of the entire project. Except as provided in Sections 6735(b), 6735.3(b), and 6735.4(b) of the Code,^[6] the original licensee is not relieved of any responsibility arising from the engineering services of which he or she was in responsible charge.”

Thus, a professional engineer who is not a civil engineer may provide services for portions of, or to add to or modify, a project engineered under the responsible charge of another licensed engineer as long as the professional engineer exercises the requisite extent of control and assumes responsibility for the engineering decisions as specified in Section 404.1 of Title 16 of the California Code of Regulations. In our view, therefore, even if an

⁵ Section 411 of Title 16 of the California Code of Regulations establishes requirements relating to an engineer's seal and, as described above, Section 415 of these regulations require that an engineer shall practice only in the field in which he or she is fully competent and proficient.

⁶ These sections provide that a civil engineer, electrical engineer, or mechanical engineer is not responsible for damage caused by subsequent changes to documents prepared by, or under the responsible charge of, the respective licensed engineer if the subsequent changes or uses are not authorized or approved by the engineer, provided the engineering service rendered by the engineer who signed the documents was not also a proximate cause of the damage.

engineering project contains fixed work components, a professional engineer who is not licensed as a civil engineer may be in responsible charge of a portion of the project that does not involve those fixed work components if the criteria for the exercise of responsible charge are otherwise met.

Accordingly, it is our opinion that only a licensed civil engineer may be in responsible charge of designs, plans and specifications, and engineering reports for the fixed work components of an engineering project, as described in Sections 6731 and 6731.1 of the Business and Professions Code. However, a licensed professional engineer who is not a civil engineer may be in responsible charge of designs, plans and specifications, and engineering reports for the components of an engineering project that are not fixed works.

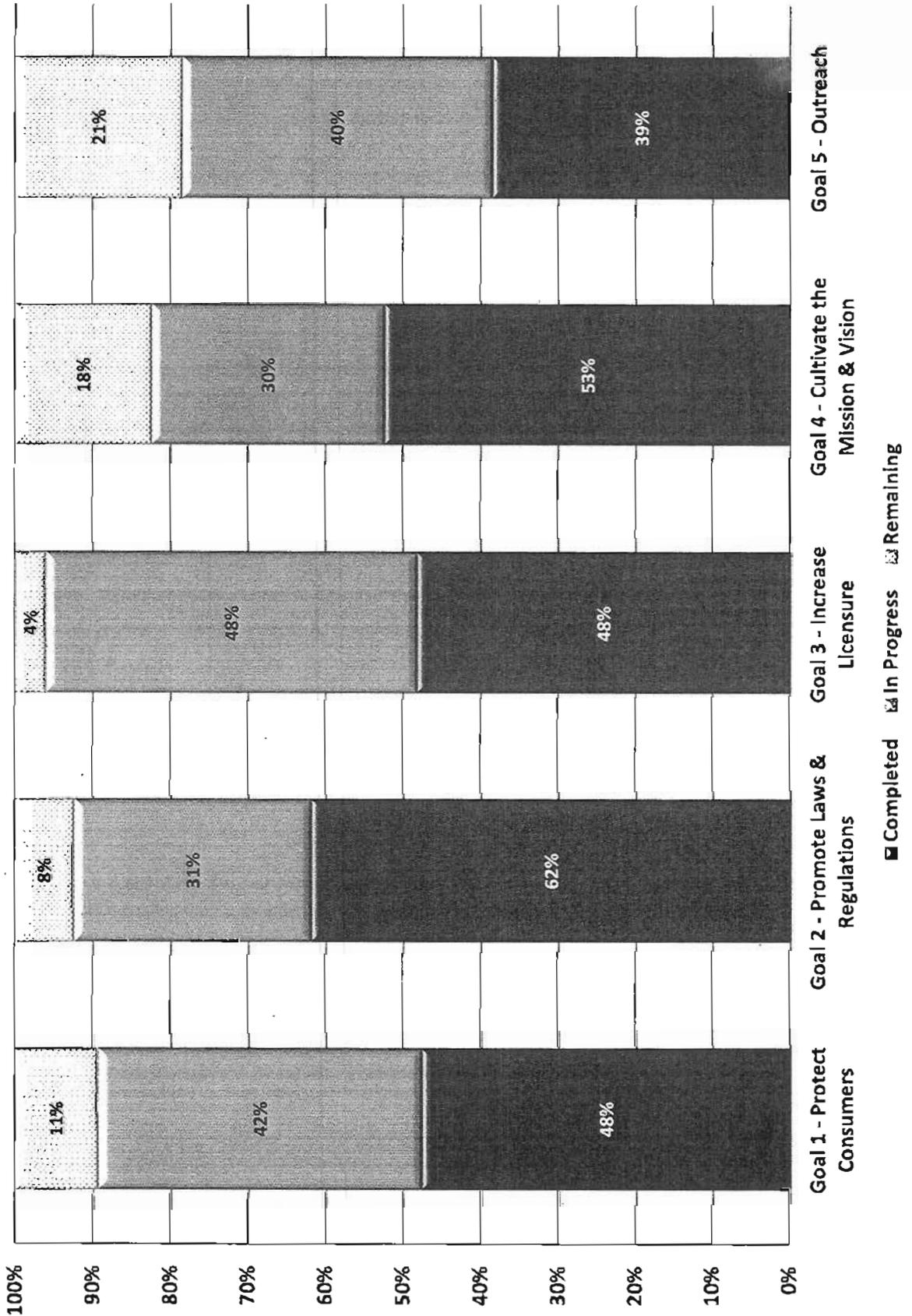
Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

By 
Sergio E. Carpio
Deputy Legislative Counsel

SEC:ktn

BPELSG Action Plan Summary FY 2011-12



7. **ENFORCEMENT**

FY2011/2012 SUMMARY OF ENGINEERING AND LAND SURVEYING ENFORCEMENT CASES
Through December 2011

	IN-HOUSE					DIV. OF INVEST.			ATTORNEY GENERAL				
	Cases Opened	Cases Closed	Cases Pend.	Mean/Median Age of Cases Pending (in days)	Pending Cases Over 365 Days	Cases Subm.	Cases Ret'd	Cases Pend.	Cases Subm.	Cases Closed	Cases Pend.	SOIs Pend.	ACCs Pend.
JULY	26	23	323	278/182	98	3	6	19	2	0	110	0	110
AUG	18	21	320	290/213	97	5	3	21	5	0	115	0	115
SEPT	40	18	342	277/227	98	3	0	24	3	12	106	0	106
OCT	24	21	345	284/221	102	0	3	21	1	7	100	0	100
NOV	34	24	355	280/246	103	5	0	26	2	3	99	0	99
DEC	36	23	369	279/226	111	2	2	26	4	4	99	0	99
JAN													
FEB													
MARCH													
APRIL													
MAY													
JUNE													
TOTALS	178	129				18	14		17	26			

Explanation of Terms:

"In-House" totals represent the number of complaints opened, closed, and pending in a given month. In addition, the mean and median age of pending cases and the number of pending cases over 365 days are provided.

"Div. Of Invest." totals represent the number of complaints which are referred to, returned from, and still pending with the Division of Investigation in a given month. These cases are a subset of the "In-House" cases.

"Attorney General" totals represent the number of cases submitted to, closed, and pending with the Office of the Attorney General, as well as a breakdown of how many cases are Statements of Issues (SOIs), which are not generated by enforcement/complaint activity, and how many cases are Accusations (ACCs), which are generated by enforcement/complaint activity. (SOIs are generated by denials of applications for registration or licensure.)

SUMMARY OF ENGINEERING AND LAND SURVEYING ENFORCEMENT CASES BY FISCAL YEAR

Through December 2011

	IN-HOUSE					DIV. OF INVEST.				ATTORNEY GENERAL				
	Cases Opened	Cases Closed	Cases Pend.	Mean & Median Age of Pend. Cases	Cases Pend. Over 365 Days	Cases Subm.	Cases Ret'd	Cases Pend.	Cases Subm.	Cases Closed	Cases Pend.*	SOLs Pend.	ACCs Pend.*	
04/05	276	262	570	586/506	368	31	23	42	20	24	38	3	35	
05/06	452	374	648	504/366	326	74	24	92	30	29	39	2	37	
06/07	559	569	637	513/405	353	50	42	100	15	28	26	3	23	
07/08	457	612	482	446/294	213	54	62	92	17	9	34	3	31	
08/09	458	558	382	405/260	151	34	64	62	59	12	67*	4***	66***	
09/10	456	541	298	321/192	100	28	51	29**	88	38	117	1***	117***	
10/11	418	400	320	269/182	86	32	39	22	52	61	108	0	108	
11/12	178	129	369	279/226	111	18	14	26	17	26	99	0	99	

The Division of Investigation cases are a subset of the In-House Complaint Investigation Cases.

* In preparing the July 2008 statistics, it was discovered that the Accusations Pending (ACCs Pend.) number was incorrect. It is not possible to go back through the years to determine when the error in the statistics occurred; therefore, we have not changed the previous years' numbers.

** In preparing the June 2010 statistics, it was discovered that the Division of Investigation Cases Pending (DIV. OF INVEST. Cases Pend.) number was incorrect. It is not possible to go back through the years to determine when the error in the statistics occurred; therefore, we have not changed the previous years' numbers.

*** Some of the cases pending at the Attorney General's Office involve both a Statement of Issues (denial of licensure) and an Accusation (disciplinary action against a license or certificate). Therefore, the number of SOLs Pending and the number of ACCs Pending total more than the number of Cases Pending at the Attorney General's Office.

Explanation of Terms:
 "In-House" totals represent the number of complaints opened, closed, and pending in a given month. In addition, the mean and median age of pending cases and the number of pending cases over 365 days are provided.

"Div. Of Invest." totals represent the number of complaints which are referred to, returned from, and still pending with the Division of Investigation in a given month. These cases are a subset of the "In-House" cases.

"Attorney General" totals represent the number of cases submitted to, closed, and pending with the Office of the Attorney General, as well as a breakdown of how many cases are Statements of Issues (SOLs), which are not generated by enforcement/complaint activity, and how many cases are Accusations (ACCs), which are generated by enforcement/complaint activity. (SOLs are generated by denials of applications for registration or licensure.)

ENGINEERING AND LAND SURVEYING COMPLAINT CATEGORY STATISTICS
Through December 2011

Because the Professional Engineers Act and Professional Land Surveyors' Act have general/all-inclusive statutes which address violations (for example, Section 6775 includes fraud, deceit, misrepresentation, breach or violation of contract, negligence, incompetence, aiding/abetting, and violating the Code of Professional Conduct in the practice of professional engineering, and Section 8780 includes fraud, deceit, misrepresentation, breach or violation of contract, negligence, incompetence, aiding/abetting, and violating the Code of Professional Conduct in the practice of professional land surveying), the Enforcement Unit does not classify complaints by the specific type of violation; in general, we investigate the complaint as if all of these violations have been alleged. However, the Department of Consumer Affairs (DCA) has standard category types for complaint statistics which we use when a complaint case is initially opened. These categories are contractual, fraud, health and safety, non-jurisdictional, competence/negligence, other category, personal conduct, product quality, unprofessional conduct, and unlicensed or unregistered activity. Therefore, when a complaint is received and opened as a formal complaint the information provided by the complainant is reviewed and one or two of the DCA categories are chosen for statistical purposes.

CATEGORY	FY04/05	FY05/06	FY06/07	FY07/08	FY08/09	FY09/10	FY10/11	FY11/12
Competence/Negligence	84	110	114	105	159	124	170	73
Contractual*	72	96	87	84	78	60	76	21
Fraud	33	68	56	49	53	41	40	27
Unlicensed Activity	84	105	98	103	108	82	85	44
Other Category	6	7	6	28	22	18	16	6
Record of Survey**	35	52	29	23	74	55	88	28
Delinquents**	1	1	2	0	2	2	1	0
Examination Subversion**	31	106	271	149	94	167	83	24
Code of Professional Conduct	5	16	9	16	10	8	7	1
Reporting of Legal Actions Program**	N/A	N/A	N/A	1	18	38	74	29

* Contractual includes failure to use a written contract or failure to include all required elements in the written contract as well as breach of contract.
** These are not DCA categories; they are Board categories.

(Please note: These numbers may total more than the number of complaints we opened in a given year because a complaint may fall within more than one category.)

AREA OF PRACTICE OF ENGINEERING & LAND SURVEYING COMPLAINT INVESTIGATION CASES OPENED
Through December 2011

This chart provides statistical information regarding the area of practice/discipline of the complaints opened each month. The data is based on the allegations provided with the initial complaint and the branch of licensure of the subject.

Month	Exam Subversion		Unlicensed Activity			Land Surveying		Civil Engineering	Electrical Engineering	Mechanical Engineering	Other Engineering
	w/	PE	LS	PE	LS	PLS	RCE				
FY04/05	27	4	0	62 {1}	19	41	29	97	6	6	2 - Ch
FY05/06	101	5	0	78 {1}	26	83	37	130	7	9	3 - FP, Ch, QU
FY06/07	261	10	0	73 {2}	29	60	27	113	3	2	4 - MF, 3 TR
FY07/08	138	11	0	84	31	81	31	99	3	2	1 - Ch
FY08/09	87	7	0	83 {2}	31	109	36	121	0	5	0
FY09/10	167	0	0	56 {1}	27	77	25	104	3	8	1 - PS/CO
FY10/11	80	3	0	56 {1}	25	96	33	127	7	4	2 - QU, CR
July	0	0	0	3	3	1	1	16	0	1	0
Aug	0	0	0	6	2	2	4	4	1	0	0
Sept	0	0	0	6	8	13	5	11	0	2	1 - TR
Oct	0	0	0	5	3	9	0	6	0	0	0
Nov	0	0	0	1	1	12	3	15	1	1	1 - TR
Dec	22	2	0	5	1	2	1	5	0	0	0
Jan											
Feb											
March											
April											
May											
June											
Totals	22	2	0	26	18	39	14	57	2	4	2

The data is broken down as follows:

- Exam Subversion (involving a non-licensed individual, a PE, or a PLS)
- Unlicensed Activity (involving engineering or land surveying, also includes delinquents in curly brackets as a subset)
- Land Surveying (involving a PLS or a Pre-82 RCE)
- Civil Engineering (which includes structural and soils engineering)
- Electrical Engineering
- Mechanical Engineering
- Other Engineering (Title Act disciplines)

SOURCE OF ENGINEERING AND LAND SURVEYING COMPLAINT INVESTIGATION CASES OPENED
Through December 2011

This chart provides statistical information regarding the source of the complaints opened each month.

Month	Public	Government/Law Enforcement	Profession	Internal/Other
FY04/05 Totals	128	23	52	79
FY05/06 Totals	193	54	50	155
FY06/07 Totals	158	24	62	324
FY07/08 Totals	152	42	64	194
FY08/09 Totals	157	41	90	169
FY09/10 Totals	179	22	81	186
FY10/11 Totals	137	65	70	157
July	10	2	3	11
August	4	1	8	5
September	17	1	7	15
October	14	2	1	7
November	8	0	13	13
December	27	1	1	7
January				
February				
March				
April				
May				
June				
Totals	80	7	33	58

The following provides a general definition/description of each of the categories:

Public – Consumers, non-licensees, non-governmental/non-licensee organization (such as consumer groups)

Government/Law Enforcement – Cities, counties, other State of California agencies, other states, federal government, police departments, district attorneys; also includes individuals filing on behalf of an agency (such as the County Surveyor)

Profession – Licensees, professional societies (also includes individuals filing on behalf of a professional society)

Internal/Other – No complainant (such as exam subversion cases), inquiries from individuals/agencies/organizations which lead to the opening of a complaint, anonymous

AGING OF ENGINEERING AND LAND SURVEYING COMPLAINT INVESTIGATION CASES
Through December 2011

AGE (DAYS)	7/11	8/11	9/11	10/11	11/11	12/11	1/12	2/12	3/12	4/12	5/12	6/12
1-30 Days (Under 1 Month)	26	17	39	24	34	36						
31-60 Days (1-2 Months)	23	23	15	33	24	33						
61-90 Days (2-3 Months)	16	22	23	15	32	23						
91-120 Days (3-4 Months)	23	16	20	22	15	31						
121-180 Days (4-6 Months)	51	61	36	35	35	31						
181-270 Days (6-9 Months)	54	54	77	61	62	40						
271-365 Days (9-12 Months)	32	30	34	53	50	64						
366-730 Days (1-2 Years)	83	82	85	90	88	96						
731-1095 Days (2-3 Years)	11	10	11	10	14	15						
1096-1460 Days (3-4 Years)	2	3	0	0	0	0						
1461-1826 Days (4-5 Years)	2	2	2	2	1	0						
1827-2192 Days (5-6 Years)	0	0	0	0	0	0						
2193-2558 Days (6-7 Years)	0	0	0	0	0	0						
TOTAL	323	320	342	345	355	369						

ENGINEERING & LAND SURVEYING COMPLAINT INVESTIGATION CASE RESOLUTION STATISTICS
Through December 2011

This table shows the general closing categories used by the Enforcement Unit when closing a complaint investigation case; these categories are based on categories from the Department of Consumer Affairs.

Fiscal Year	No Violation & Insufficient Evidence	Compliance Obtained	Mediated	RAIN	Warning Letter	Citation to be Issued	Referred to		Other
							DA	AG	
04/05	62	83	7	11	12	32	2	32	11
05/06	92	86	28	19	25	52	5	61	9
06/07	171	199	7	10	34	70	12	48	18
07/08	135	183	9	8	76	113	11*	63*	12
08/09	130	112	11	17	91	112	3	77	5
09/10	150	104	2	5	59	98	5	103	14
10/11	122	71	6	11	51	58	10*	60*	13
11/12	31	18	1	1	17	31	9	16	5

* In FY07/08, two cases were submitted to both the District Attorney and the Attorney General. In FY10/11, one case was submitted to both the District Attorney and the Attorney General.

“No Violation & Insufficient Evidence” also includes “No Jurisdiction” (the alleged violations do not fall within the Board’s Jurisdiction). “RAIN” stands for “Resolved After Initial Notification.” “Other” includes such categories as Subject Deceased, Unable to Locate Subject, Non-Cooperation of Complainant, No Response from Exam Subversion Subjects (Applications Voided).

In addition to investigating formal complaints, the Enforcement Unit staff assists consumers and licensees in resolving problems before they actually become complaints. Most of these matters involve a breakdown of communication between the licensee and the client. The Enforcement Analysts assist both parties in re-opening the lines of communication; the analysts act only as mediators, not arbitrators. In these situations, it is generally the parties involved who resolve the problem rather than the analysts. Most of these matters are generally handled through telephone contact rather than with correspondence.

ENGINEERING AND LAND SURVEYING CITATION ORDER STATISTICS

Through December 2011

Month	Number Issued	Violation Type of Citations Issued*											Informal Conferences and/or Appeal Hearings Requested	Informal Conferences and/or Appeal Hearings Held	Number Modified, Affirmed, or Dismissed	Number Final	Order of Final Citations	
		Unlicensed					Licensed										Abate Only	Abate & Fine (w/amt of fine)
		Title	Rep as able to practice	Offer	Practice	Other	Failure to File	Neg	Misrep	Other								
FY04/05	16	1	0	3	6	3	6	0	0	4	4	4	23	21	N/A	\$10,850		
FY05/06	9	1	1	5	3	0	0	2	0	3	6	4	5	N/A	\$11,500			
FY06/07	9	1	1	5	6	4	1	3	0	2	2	2	4	N/A	\$11,250			
FY07/08	71	1	3	30	27	7	22	13	3	36	29	21	16	N/A	\$89,600			
FY08/09	60	0	0	21	20	7	7	15	6	29	35	6	27	N/A	\$43,350			
FY09/10	38	5	0	19	15	11	11	10	0	24	13	15	16	N/A	\$38,750			
FY10/11	71	2	3	14	9	12	19	24	2	51	36	33	36	N/A	\$54,250			
July	13	0	0	1	1	0	7	8	1	17	8	3	2	N/A	\$5,050			
August	11	0	1	2	3	1	4	5	0	8	6	7	10	N/A	\$5,750			
September	6	0	0	2	0	2	0	3	0	10	4	3	2	N/A	\$10,900			
October	10	0	0	0	0	0	1	10	0	5	3	3	5	N/A	\$2,000			
November	28	7	3	14	7	20	2	3	2	13	11	2	3	N/A	\$12,500			
December	24	0	0	14	10	18	3	4	1	23	17	4	5	N/A	\$37,500			
January																		
February																		
March																		
April																		
May																		
June																		
Totals	92	7	4	33	21	41	17	33	4	76	49	22	27	N/A	\$73,700			

*Violation Type of Citations Issued - a single citation may include multiple violations

Unlicensed - Title = Use of any restricted title

Unlicensed - Rep as able to practice = Representing self as able to practice one of the 4 practice acts (CE/SE/GE; EE; ME; & LS) by using any of the titles associated with those practice acts or in any other way representing that one is authorized to practice in those areas

Unlicensed - Offer = Offering to perform any of the 4 practice acts (includes offers in advertisements)

Unlicensed - Practice = Actually practicing any of the 4 practice acts

Unlicensed - Other = Any other violations involving unlicensed activity

Licensed - Failure to File = Failure to file records of survey/corner records in the time and/or manner required by law

Licensed - Neg = Negligence in the professional practice

Licensed - Misrep = Misrepresentation in the professional practice

Licensed - Other = Any other violations in the professional practice

A citation order is final 30 days after it is issued unless a request for an informal conference and/or an appeal hearing is received. Following an informal conference, the citation order may be modified, affirmed, or dismissed. An informal conference may be commenced and continued to provide for the receipt and review of additional information. The cited person may also withdraw his/her request for an informal conference and/or appeal hearing; the citation then becomes final 30 days after the date of issuance.

OUTCOME OF ENGINEERING & LAND SURVEYING CASES SUBMITTED TO THE DISTRICT/CITY ATTORNEY
Through December 2011

The table below indicates the outcome of complaint cases submitted to the District/City Attorney for criminal prosecution, as requested by the Enforcement Committee.

Once a complaint investigation case is submitted to the appropriate District or City Attorney for criminal prosecution, we close our complaint case and notify the complainant. We also request certified court records from the appropriate court in order to monitor the outcome of the criminal action (cases for which we have not yet received the certified records are shown as "Pending"). An article describing the result of the criminal action is printed in the Board's Bulletin.

Fiscal Year	Conviction	Dismissed/Withdrawn*	Statute of Limitations Expired	Bench Warrant Issued	Pending
03/04	5	4	1	0	2
04/05	1	0	0	0	1
05/06	1	6	0	0	0
06/07	4	1	0	0	7
07/08	5	3	0	0	1
08/09	1	0	0	0	2
09/10	1	1	0	0	3
10/11	1	4	0	0	5
11/12	0	0	0	0	9

35

* A case is listed as "Dismissed/Withdrawn" if the matter is dismissed through the courts ("in the interest of justice") or if the District/City Attorney withdraws the case and does not file criminal charges. Of the 12 cases listed in this category, 7 were withdrawn by the DA due to insufficient evidence to prove beyond a reasonable doubt that a crime had occurred; 2 were dismissed "in the interest of justice" pursuant to Penal Code section 1385; and 3 were dismissed because the suspect was no longer within the jurisdiction of the DA's Office (the subject was out of the state or could not be located).

ENGINEERING AND LAND SURVEYING
 ACCUSATION AND PROBATION VIOLATION CASES SUBMITTED TO THE AG'S OFFICE
 Through December 2011

	04/05	05/06	06/07	07/08	08/09	09/10	10/11	11/12
LA	8	3	6	7	18	40	19	3
SA	4	11	2	3	16	6	7	4
SD	1	8	3	2	9	22	17	9
SF	5	4	2	4	16	20	9	1
Totals	18	26	13	16	59	88	52	17

Multiple complaint cases against the same individual are combined into one Accusation case. In addition, cases submitted to the AG's Office for probation violation proceedings are also included.

36 Counties handled by each AG Office:

- LA Inyo, Kern, Los Angeles, San Bernardino, San Luis Obispo, Santa Barbara, Ventura
- SA Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Kings, Lassen, Madera, Mariposa, Merced, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, Yuba
- SD Imperial, Orange, Riverside, San Diego
- SF Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma

AGING OF ENGINEERING AND LAND SURVEYING
 ACCUSATION & PROBATION VIOLATION CASES ASSIGNED TO THE ATTORNEY GENERAL
 Through December 2011

	0-91 DAYS	92-182 DAYS	183-274 DAYS	275-365 DAYS	1-2 YEARS	2-3 YEARS	OVER 3 YEARS
PRE-ACCUSATION CASES	7	6	3	1	3	1	0
POST-ACCUSATION CASES	4	7	23	2	12	1	0

“Pre-Accusation” are cases for which an Accusation has not yet been filed and is calculated from the date the case is submitted to the AG’s Office to the current date.

“Post-Accusation” are cases for which an Accusation has been filed and is calculated from the date the Accusation is filed to the current date.

OUTCOME OF ENGINEERING & LAND SURVEYING CASES SUBMITTED TO THE ATTORNEY GENERAL'S OFFICE

Through December 2011

Based on the Effective Date of the Decision
(Including Proposed Decisions, Stipulations, Defaults, and Decisions After Reconsideration)

Fiscal Year	Total	Revoked or Voluntary Surrender	Rev/Stay (with probation)	Susp/Stay (with probation)	Other (i.e., Suspension Only, Probation Only)	Dismissed**	Withdrawn*	
							Acc Filed	No Acc Filed
04/05	27	3	15	3	5	0	1	0
05/06	24	7	10	1	3	1	0	2
06/07	28	10	8	0	3	0	3	4
07/08	7	2	1	0	3	1	0	0
08/09	12	4	5	0	1	0	0	2
09/10	38	11	11	0	8	0	1	7
10/11	61	20	24	1	6	0	5	5
11/12	26	5	12	1	2	2	3	1

* For statistical tracking purposes, we use the term "Withdrawn" to apply to both cases which are returned by the AG's Office with the recommendation that an Accusation not be filed as well as cases in which an Accusation is filed and then formally withdrawn (through a Notice of Withdrawal signed by the Executive Officer as the Complainant in the Accusation) prior to the issuance of a Final Decision by the Board. Generally, the DAG will recommend that an Accusation not be filed if he believes, after reviewing all of the evidence provided, the case is too old or there is insufficient evidence or if the subject/respondent complies with the law (such as filing the Record of Survey or completing the terms of the contract). Additionally, Accusations are withdrawn (after filing) if additional evidence indicates that the respondent is in compliance with the law.

** An Accusation is dismissed (with or without prejudice) through a Final Decision by the Board (generally, by adopting a Proposed Decision which orders dismissal or by granting a Petition for Reconsideration and ordering dismissal).

(It is rare that a case will be opened as a complaint, submitted to the AG's Office, and have a final decision issued in the same fiscal year. In addition, multiple complaint cases against the same individual are combined into one case when submitted to the AG's Office.)

OUTCOME OF ENGINEERING & LAND SURVEYING CASES SUBMITTED TO THE ATTORNEY GENERAL'S OFFICE
BY TYPE OF DECISION

Through December 2011 (Based on the Effective Date of the Board's Decision)

Fiscal Year	Default Decision	Proposed Decision	Stipulation	Decision After Rejection or Reduced Proposed Decision	Decision After Reconsideration (following Proposed Decision or Decision After Rejection)
04/05	Revoked-1	Revoked-1 Rev/Stay-2 Susp/Stay-1 Prob extended-1	Rev/Stay-13 Vol Surr & New CE-2 Vol Surr-1 Susp/Stay-2 Public Reapproval w/cond-1 Probation continued-1	0	0
05/06	Revoked-2	Revoked-3 Rev/Stay-2 Dismissed-1	Vol Surr-2 Rev/Stay-8 Susp/Stay-1 Public Reapproval w/cond-1 Probation continued-2	0	0
06/07	Revoked-1	Revoked-3 Rev/Stay-1	Public Reapproval w/cond-1 Rev/Stay-7 Vol Surr-6 Probation continued-2	0	0
07/08	Revoked-2	Dismissed-1 Prob extended-1 Public Reapproval w/costs-1	W/draw ACC & Issue Cite-1 Rev/Stay-1	0	0
08/09	0	Revoked-2 Rev/Stay-1 Susp/Prob extended-1	Rev/Stay-4 Vol Surr-2	0	0
09/10	Revoked-3	Revoked-4 Rev/Stay-1	Rev/Stay-10 Vol Surr-4 Public Reapproval w/cond-7 W/draw AC & Issue Cite-1	0	0
10/11	Revoked-9	Revoked-3 Susp/Stay-1	Rev/Stay-24 Vol Surr-8 Vol Surr & New CE-1 Public Reapproval w/cond-5	0	0
11/12	Revoked-1	Dismissed-1 Rev/Stay-1 Susp/Stay-1	Rev/Stay-11 Vol Surr-4 Public Reapproval w/cond-2	0	Dismissed-1

ADOPTION vs. REJECTION OF ENGINEERING AND LAND SURVEYING
PROPOSED DECISIONS PREPARED BY ADMINISTRATIVE LAW JUDGES

Also Includes Reduction of Penalty Ordered Proposed Decision
Through December 2011 (Based on the Effective Date of the Decision)

YEAR	Number Of Proposed Decisions	Number Adopted	Percent Adopted	Number Rejected	Percent Rejected	CHANGE IN DECISION & ORDER (PD = Proposed Decision; DAR = Decision After Rejection)
04/05	5	5	100%	0	0%	N/A
05/06	6	6	100%	0	0%	1 PD was adopted, but the penalty order was reduced
06/07	4	4	100%	0	0%	1 PD was adopted, but the penalty order was reduced
07/08	3	3	100%	0	0%	
08/09	4	4	100%	0	0%	
09/10	6	6	100%	0	0%	1 PD was adopted, but the penalty order was reduced
10/11	4	4	100%	0	0%	1 PD was adopted as a Precedential Decision
11/12	4	4	100%	0	0%	The adoption of 1 PD was set aside and the Accusation dismissed following a Petition for Reconsideration

**RESTITUTION AND RECOVERY OF BOARD COSTS ORDERED IN ENGINEERING AND LAND SURVEYING BOARD DECISIONS
Through December 2011 (based on the effective date of the Board's decision)**

Fiscal Year	Number of Decisions requiring:		Total Dollar Amount ordered as Restitution with breakdown by type of decision		Total Dollar Amount ordered as Recovery of Board Costs with breakdown by type of decision	
	Restitution	Recovery of Board Costs	(PD = Proposed Decision; Recon = Decision After Reconsideration; Stip = Stipulation; PV = Probation Violation)	(PD = Proposed Decision; Recon = Decision After Reconsideration; Stip = Stipulation; PV = Probation Violation)	(PD = Proposed Decision; Recon = Decision After Reconsideration; Stip = Stipulation; PV = Probation Violation)	(PD = Proposed Decision; Recon = Decision After Reconsideration; Stip = Stipulation; PV = Probation Violation)
04/05	3	14	\$40,410.00	\$36,280.00 - 2 Stips - \$18,500 Paid; \$20,780 Not paid (PV) \$4,130.00 - 1 PD - Paid in full	\$117,609.53	\$55,892.50 - 4 PDs - \$4,300 Paid; \$7,814 Not yet paid; \$43,778.50 pay if reinstated \$61,717.03 - 17 Stips - \$43,809 Paid; \$17,908.03 Not paid (PV)
05/06	6	15	\$70,972.50	\$34,345.00* - 1 PD - Not paid (PV) \$36,627.50 - 5 Stips - Paid in full	\$88,239.25	\$34,468.50* - 3 PDs - \$11,117.50 re-ordered in FY08/09; \$2,743 Pay if reinstate; \$20,608 Not paid (PV) \$53,770.75 - 12 Stips - \$44,004.25 Paid; \$3,967 Not paid (probationer deceased); \$5,799.50 Not paid (PV)
06/07	1	7	\$16,000.00	\$16,000.00 - 1 Stip - Not yet paid	\$37,306.50	\$2,500.00 - 1 PD - Pay if reinstate \$34,806.50 - 7 Stips - \$25,905 Paid; \$1,660.50 Not paid (PV); \$7,241 Not yet paid
07/08	0	1	0	N/A	\$2,639.25	\$2,639.25 - 1 PD - Paid in full
08/09	0	4	0	N/A	\$27,525.75	\$12,617.25 - 2 PDs - \$7,901.25 Not yet paid; \$4,716 Pay if reinstate \$14,908.50* - 3 Stips - \$2,291 Paid; \$12,617.50 Not yet paid
09/10 10/11	0 1	18 32	0 \$400.00	N/A \$400 - 1 Stip - Not yet paid	\$85,731.34 \$123,859.59	\$30,135.69 - 4 PDs - Not yet paid \$55,595.55 - 14 Stips - Not yet paid \$93,858.78 - 28 Stips - Not yet paid \$30,000.81 - 4 PDs - \$9,513.13 Not yet paid; \$20,487.68 Pay if reinstate
11/12	0	13	0	N/A	\$60,647.00	\$48,357.00 - 11 Stips - Not yet paid \$12,290.00 - 2 PDs - Not yet paid

* 1 Stipulation in FY04/05 re-ordered payments ordered in a Reinstatement decision in FY03/04. 1 Proposed Decision in FY05/06 re-ordered Board costs and reduced and re-ordered restitution from FY03/04. 1 Stipulation in FY08/09 re-ordered payments ordered in a Proposed Decision in FY04/05. "Not yet paid" indicates that the respondent still has time to pay the amount owed before violating probation by failing to pay.

COMPARISON BETWEEN CERTAIN ENGINEERING AND LAND SURVEYING
MONTHLY STATISTICS AND ENFORCEMENT PERFORMANCE MEASURES

Category	Standard	Actual*
Mean Age of Complaint Cases	120 days	279 days
Median Age of Complaint Cases	120 days	226 days
Percentage of Cases Over 365 Days Old	≤10%	30%
Percentage of Cases Over 180 Days Old	≤35%	58%
Complaint Cases Opened per Month per Analyst**	6 cases	6 cases ***
Complaint Cases Closed per Month per Analyst**	6 cases	3.83 cases ***
Complaint Cases Pending per Month per Analyst**	30 cases	61.5 cases

* "Actual" represents the data for December 2011.

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** The "standard" is based on 4 full-time analyst positions. From July through November, we had 4 analysts working cases full-time and 3 analysts working cases part-time; therefore, the "actual" for those five months was based on 5.5 positions. Beginning in December, we have 5 analysts working cases full-time and 2 analysts working cases part-time; therefore, the "actual" is based on 6 positions.

*** Average for July through November for these two categories was 5.163 cases opened and 3.890 cases closed. Average for December for these two categories was 6 cases opened and 3.83 cases closed.

ENFORCEMENT PERFORMANCE MEASURES

Adopted July 1996

Revised October 1997

Mean <i>and</i> Median Age of Complaint Cases	120 days
Aging of Complaint Cases	
Percentage of Complaint Cases Over 365 Days Old	10%
Percentage of Complaint Cases Over 180 Days Old	35%
Complaint Case Workload per Analyst	
Complaint Cases Opened <i>and</i> Closed per Month	6 cases
Complaint Cases Pending per Month	30 cases
Technical Expert Hours per Complaint Case	15 hours
Division of Investigation Hours per Complaint Case	10 hours
Aging of Division of Investigation Case Investigations	90 days
Attorney General Hours per Accusation Case	25 hours
Aging of Accusation Cases	
From Submittal to the AG's Office to Filing of an Accusation	90 days
From Filing of an Accusation to Request to Set Hearing	75 days
From Filing of an Accusation to Final Resolution	1 year

**CASE AGING STATISTICS AS REPORTED TO DCA
ENGINEERING & LAND SURVEYING CASES**

Average Days to Complete Investigation Portion of Cases

includes time from initiation of complaint investigation case to completion of investigative portion – may include time at DOI if case referred; does not include time for formal disciplinary action or citation

FY	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June
09-10	n/a	n/a	n/a	n/a	n/a	n/a	270	218	405	435	274	279
10-11	318	167	343	383	309	244	222	362	481	646	266	228
11-12	270	345	464	354	375	358						

**Average Days from Initiation of Complaint Investigation Case to
Effective Date of Final Formal Disciplinary Decision**

includes time during investigation [may include time at DOI], time preparing file for submittal to the AG's Office, time at the AG's Office, time at OAH [if hearing held], time waiting for Board to take action [at Board meeting or via mail ballot], and time between action by Board and effective day [usually 30 days, but longer if respondent appeals]

FY	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June
09-10	n/a	n/a	n/a	n/a	n/a	n/a	NDA	1274	NDA	2413	NDA	2096
10-11	NDA	NDA	1815	1739	NDA	1813	2307	1347	2263	1682	2384	1308
11-12	NDA	NDA	2104	1156	1426	1391						

**Average Days from Initiation of Complaint Investigation Case to
Date Citation Becomes Final**

includes time during investigation [may include time at DOI]; time preparing citation order, time pending receipt of appeal request [30 days]; time during appeal [may include informal conference, referral to the AG's Office for formal appeal hearing conducted by OAH, or both; time waiting for Board to take action on formal appeal hearing decision if one was held [at Board meeting or via mail ballot]; and time between issuance of final decision [from informal conference or formal appeal hearing] and date citation becomes final [30 days]

FY	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June
09-10	n/a	n/a	n/a	n/a	n/a	n/a	1589	1475	1116	1317	1066	1307
10-11	1763	1858	1805	1219	NDA	NDA	NDA	NDA	1428	1339	NDA	1862
11-12	1729	1654	1226	1270	1176	1532						

n/a – statistics were not reported to DCA until January 2010

NDA – no data to report (no final decisions or final citations during that month)

0-30 days = 0-1 month

31-60 days = 1-2 months

61-90 days = 2-3 months

91-120 days = 3-4 months

121-150 days = 4-5 months

151-180 days = 5-6 months

181-210 days = 6-7 months

211-240 days = 7-8 months

241-270 days = 8-9 months

271-300 days = 9-10 months

301-330 days = 10-11 months

331-365 days = 11-12 months

0-365 days = 0-1 year

366-730 = 1-2 years

731-1095 = 2-3 years

1096-1461 = 3-4 years

1462-1826 = 4-5 years

1827-2192 = 5-6 years

2193-2557 = 6-7 years

**GEOLOGISTS & GEOPHYSICISTS PROGRAM
ENFORCEMENT STATISTICS**

FOR FISCAL YEAR 2011-2012

	IN HOUSE COMPLAINT INVESTIGATION CASES			DIVISION OF INVESTIGATION (DOI)		CITATIONS		ATTORNEY GENERAL		
	Opened	Closed	Pending	Referred To	Returned From	Pending	Final	Submitted	Closed	Pending
July	1	1	80	0	0	0	0	0	0	0
August	0	0	80	0	0	0	1	0	0	0
September	0	5	75	0	0	0	0	1	0	1
October	2	6	71	1	0	1	1	0	0	0
November	0	10	61	0	1	0	0	0	0	1
December	1	14	48	0	0	0	0	0	0	1
January										
February										
March										
April										
May										
June										
Totals	4	36		1	1	1	2	1	0	0

Explanation of Terms:

“In House Complaint Investigation Cases” totals represent the number of complaints opened, closed, and pending in a given month.

“Division Of Investigation (DOI)” totals represent the number of complaints which are referred to, returned from, and still pending with DOI in a given month. These totals are a subset of the “In House Complaint Investigation Cases” totals.

“Citations” totals represent the number of final citations (after all appeal periods have ended) in a given month (informal enforcement action against unlicensed individuals and licensees).

“Attorney General” totals represent the number of cases submitted to, closed, and pending with the Office of the Attorney General in a given month (formal disciplinary action against a licensee).

CASE AGING STATISTICS AS REPORTED TO DCA GEOLOGY & GEOPHYSICS CASES

Average Days to Complete Investigation Portion of Cases

includes time from initiation of complaint investigation case to completion of investigative portion – may include time at DOI if case referred; does not include time for formal disciplinary action or citation

FY	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June
09-10	n/a	n/a	n/a	n/a	n/a	n/a	996	NDA	NDA	NDA	866	NDA
10-11	NDA	NDA	NDA	700	NDA	417	NDA	677	NDA	1781	954	1512
11-12	522	NDA	821	1906	1230	893						

Average Days from Initiation of Complaint Investigation Case to Effective Date of Final Formal Disciplinary Decision

includes time during investigation [may include time at DOI], time preparing file for submittal to the AG's Office, time at the AG's Office, time at OAH [if hearing held], time waiting for Board to take action [at Board meeting or via mail ballot]; and time between action by Board and effective day [usually 30 days, but longer if respondent appeals]

FY	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June
09-10	n/a	n/a	n/a	n/a	n/a	n/a	NDA	NDA	NDA	NDA	NDA	NDA
10-11	NDA	NDA	NDA	NDA	NDA	NDA	NDA	NDA	NDA	NDA	NDA	NDA
11-12	NDA	NDA	NDA	NDA	NDA	NDA						

Average Days from Initiation of Complaint Investigation Case to Date Citation Becomes Final

includes time during investigation [may include time at DOI]; time preparing citation order, time pending receipt of appeal request [30 days]; time during appeal [may include informal conference, referral to the AG's Office for formal appeal hearing conducted by OAH, or both; time waiting for Board to take action on formal appeal hearing decision if one was held [at Board meeting or via mail ballot]; and time between issuance of final decision [from informal conference or formal appeal hearing] and date citation becomes final [30 days]

FY	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June
09-10	n/a	n/a	n/a	n/a	n/a	n/a	NDA	NDA	NDA	904	453	NDA
10-11	NDA	NDA	NDA	NDA	NDA	NDA	NDA	NDA	NDA	NDA	1226	613
11-12	NDA	1171	NDA	1258	NDA	NDA						

n/a – statistics were not reported to DCA until January 2010

NDA – no data to report (no final decisions or final citations during that month)

0-30 days = 0-1 month

31-60 days = 1-2 months

61-90 days = 2-3 months

91-120 days = 3-4 months

121-150 days = 4-5 months

151-180 days = 5-6 months

181-210 days = 6-7 months

211-240 days = 7-8 months

241-270 days = 8-9 months

271-300 days = 9-10 months

301-330 days = 10-11 months

331-365 days = 11-12 months

0-365 days = 0-1 year

366-730 = 1-2 years

731-1095 = 2-3 years

1096-1461 = 3-4 years

1462-1826 = 4-5 years

1827-2192 = 5-6 years

2193-2557 = 6-7 years

8. **EXAMS/LICENSING**

- A. September/October 2011 Examination Results Report
- B. Spring 2012 Examination Update
- C. NCEES Approval of Fundamentals of Engineering (FE) and Fundamentals of Surveying (FS) Examinees

9. **OUTREACH**

A. Newsletter

10. **CONSIDERATION OF RULEMAKING PROPOSALS, AS FOLLOWS:**

- A. Proposed Regulations to Implement the Fingerprint Program – Addition of Sections to Divisions 5 and 29 of Title 16 of the California Code of Regulations
- B. Proposed Amendments to Divisions 5 and 29 of the California Code of Regulations, as follows:
 - i. Sections 411 and 3008 – Seal and Signature
 - ii. Sections 412 and 3009 – Address Change
 - iii. Sections 442 and 3035 – Examination Subversion
 - iv. Section 3060 – Substantial Relationship Criteria
 - v. Section 3061 – Criteria for Rehabilitation
 - vi. Sections 472-473.4 and 3062-3063.4 – Citation Program
 - vii. Section 3064 – Disciplinary Orders
 - viii. Sections 475, 476, and 3065 – Code of Professional Conduct

**Adoption of Board Rules 420.1 & 3021.1
(Applicant Fingerprint Submittal)**

The Board is seeking adoption of Board Rules 420.1 & 3021.1 describing the requirements for applicant fingerprint submittal as a condition of licensure. Pursuant to Chapter 448, Statutes 2011 (SB 543), the Board was added to the list of boards in Business and Professions Code section 144 that are required to collect fingerprints from their applicants in order to check their criminal history. An applicant must furnish a full set of fingerprints to the Department of Justice (“DOJ”) as a condition of processing an application with the Board. These regulations would implement the new statutory requirement by specifying how and when the applicants must submit the fingerprints, what the fingerprints would be used for, and the consequences of not submitting fingerprints.

For the following reasons, staff recommends that Board Rules 420.1 & 3021.1 be adopted:

- a. Safeguarding life, health, property and welfare of the public is the Board’s mission; fingerprinting applicants will assist the Board with this endeavor.
- b. Implement the statutory requirement of SB 543 and make an applicant aware that fingerprinting will be required as a condition of licensure.
- c. Reviewing criminal history to determine licensure provides greater compliance with the Professional Engineers Act, Professional Land Surveyors’ Act, and the Geologist and Geophysicist Act.

During the rulemaking process, amendments may be made to the language either by the Board’s own motion or based on comments received during the initial 45-day public comment period. Substantive amendments would require additional noticed comment periods after the 45-day comment period.

The recommended adoptions of Board Rules 420.1 & 3021.1 are included in this agenda. Additions are shown in underlined text. At this time, staff recommends that the Board approve these adoptions and direct staff to begin the formal rulemaking process to amend these regulations.

RECOMMENDED MOTION:

Approve the proposed adoption to Board Rules 420.1 & 3021.1 (Application Fingerprint Submittal), as shown and direct staff to begin the formal rulemaking process to adopt the regulations.

PROPOSED AMENDMENTS TO DIVISIONS 5 AND 29 OF THE CALIFORNIA CODE OF REGULATIONS

It is the responsibility of the Board for Professional Engineers, Land Surveyors, and Geologists to enforce the statutes set forth within the Professional Engineers Act, Professional Land Surveyors' Act, and the Geologist and Geophysicist Act. It is also the responsibility of the Board to promulgate regulations to implement these statutes. The Board's regulations are contained within Division 5 (commencing with Section 400, pertaining to engineering and land surveying) and Division 29 (commencing with Section 3000, pertaining to geology and geophysics) of Title 16 of the California Code of Regulations.

Goal 2 of the Board's 2011-2014 Strategic Plan is to promote laws and regulations that are clear, relevant, unambiguous, and functional. Objective 2.1 of this Goal is to evaluate current laws and regulations and pursue changes where appropriate, with due consideration for economic impact.

For the sake of clarity, consistency, efficiency, simplification, and necessity, staff is proposing that the regulations pertaining to the enforcement component of these Acts be modified 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. Additionally, this proposal would meet the goals and objectives of the Board's Strategic Plan.

Staff recommends the following sections be amended:

- Sections 411 and 3008 – Seal and Signature
Amend Section 411(e) to remove the term 'opaque,' which is vague and unnecessary. Amend Section 3008 to match Section 411 to provide detail to the seal and to add language clarifying when and how the seal is to be used.
- Sections 412 and 3009 – Address Change
Amend Section 412 to add language to indicate that address changes must be made "in writing." Amend Section 3009 to update terminology used and to add the requirement that changes must be in writing and must be made within 30 days, rather than 60 days.
- Sections 442 and 3035 – Examination Subversion
Amend Section 442 to provide for permissive avoidance of examinations, rather than mandatory. Amend Section 3035 to match Section 442.
- Section 3060 – Substantial Relationship Criteria
Amend Section 3060 to add language concerning aiding and abetting violations and convictions of crimes arising from the practices of geology and geophysics and to update other terminology used.

- Section 3061 – Criteria for Rehabilitation
Amend Section 3061 to match Section 418 and to update other terminology used.
- Section 3064 – Disciplinary Orders
Amend Section 3064 to match Section 419 and to update other terminology used.
- Sections 475, 476, and 3065 – Code of Professional Conduct
Amend Section 3065 to correct grammar and punctuation and 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 own work unless authorized in writing by the agency, as in provided for in Sections 475 and 476. Amend Sections 475, 476, and 3065 to remove implicit references to copyright infringement, which is not within the Board's jurisdiction to address.
- Sections 472-473.4 and 3062-3063.4 – Citation Program
Amend Sections 472-473.4 and 3062-3063.4 to provide consistency within the Board's Citation Program.

During the rulemaking process, amendments may be made to the language either by the Board's own motion or based on comments received during the initial 45-day public comment period. Substantive amendments would require additional noticed comment periods after the 45-day comment period. The recommended amendments to Board Rule 443 are included in this agenda. Deletions are shown in ~~strikethrough~~ text; additions are shown in underlined text. At this time, staff recommends that the Board approve these amendments and direct staff to begin the formal rulemaking process to amend these regulations.

RECOMMENDED MOTION:

Approve the proposed amendments to Sections 411, 412, 442, 472, 472.1, 472.2, 472.3, 472.4, 473, 473.1, 473.2, 473.3, 473.4, 475, 476, 3008, 3009, 3035, 3060, 3061, 3062, 3062.1, 3062.2, 3062.3, 3062.4, 3063, 3063.1, 3063.3, 3063.4, 3064, and 3065, as shown, and direct staff to begin the formal rulemaking process to amend the regulations.

Sections 411 and 3008 – Seal and Signature

411. Seal and Signature.

(a) The seal required by Section 6764 of the Code shall be not less than one and one-half (1½) inches in diameter and shall contain the following information:

(1) Within the top border of seal: Either “Professional Engineer,” “Registered Professional Engineer,” or “Licensed Professional Engineer.”

(2) Within the bottom border of seal: “State of California.”

(3) In the center of seal:

(A) Licensee’s name as it appears on the certificate issued by the Board or as abbreviated pursuant to subdivision (d);

(B) Number of certificate or authority; and,

(C) Branch or authority of engineering in which licensed.

The seal shall be of a design similar to those shown below and shall bear at minimum those elements specified above.



(b) The seal authorized by Section 8750 of the Code shall be not less than one and one-half (1 ½) inches in diameter and shall contain the following information:

(1) Within the top border of the seal: Either “Professional Land Surveyor” or “Licensed Land Surveyor.”

(2) Within the bottom border of the seal: “State of California.”

(3) In the center of the seal:

(A) Licensee’s name as it appears on the certificate issued by the Board or as abbreviated pursuant to subdivision (d); and,

(B) Number of certificate.

The seal shall be of a design similar to those shown below and shall bear at minimum those elements specified above.

(c) The seal may be obtained by the licensee from any source.

(d) The seal may contain an abbreviated form of the licensee’s given name or a combination of initials representing the licensee’s given name provided the surname listed with the Board appears on the seal and in the signature.

(e) The seal shall be capable of leaving a permanent ink representation, ~~an opaque and a~~ permanent impression, or an electronically-generated representation on the documents. The signature may be applied to the documents electronically.

(f) Preprinting of blank forms with the seal or signature, the use of decals of the seal or signature, or the use of a rubber stamp of the signature is prohibited.

(g) (1) All professional engineering plans, specifications, reports, or documents (hereinafter referred to as “documents”) shall be signed and sealed in accordance with the requirements of the Professional Engineers Act and any other laws related to the practice of professional engineering and shall be signed and sealed in a manner such that all work can be clearly attributed to the licensee(s) in responsible charge of the work.

(2) All maps, plats, reports, descriptions, or other professional land surveying documents (hereinafter referred to as "documents") shall be signed and sealed in accordance with the requirements of the Professional Land Surveyors' Act and any other laws related to the practice of professional land surveying and shall be signed and sealed in a manner such that all work can be clearly attributed to the licensee(s) in responsible charge of the work.

(3) When signing and sealing documents containing work done by, or under the responsible charge of, two or more licensees, the signature and seal of each licensee in responsible charge shall be placed on the documents with a notation describing the work done under each licensee's responsible charge.

(h) Each licensee shall include the date of signing and sealing immediately below or next to the signature and seal.

3008. Seal.

(a) The seal authorized by Section 7852 of the Code may be purchased by the ~~registrant~~ licensee from any convenient source. It ~~shall be of the design shown here and~~ shall not be less than one and one-half (~~1 1/2~~ 1 1/2) inches in diameter, ~~and shall contain the following information:~~

(1) The licensee's name as it appears on the certificate issued by the Board or as abbreviated pursuant to subdivision (e);

(2) Number of license or authority.

The seal shall be of a design similar to that shown below and shall bear at minimum those elements specified above.



(b) The certified specialty geologist seal ~~shall be of the design shown here and~~ shall not be less than one and one-half (~~1 1/2~~ 1 1/2) inches in diameter, ~~and shall contain the following information:~~

(1) The licensee's name as it appears on the certificate issued by the Board or as abbreviated pursuant to subdivision (e);

(2) Number of certification or authority;

(3) Either "Certified Engineering Geologist" or "Certified Hydrogeologist," depending on the certification of the licensee.

The seal shall be of a design similar to that shown below and shall bear at minimum those elements specified above.

(2) All professional geophysical plans, specifications, reports, or documents (hereinafter referred to as "documents") shall be signed and sealed in accordance with the requirements of the Geologist and Geophysicist Act and any other laws related to the practice of professional geophysics and shall be signed and sealed in a manner such that all work can be clearly attributed to the licensee(s) in responsible charge of the work.

(3) When signing and sealing documents containing work done by or under the responsible charge of two or more licensees, the signature and seal of each licensee in responsible charge shall be placed on the documents with a notation describing the work done under each licensee's responsible charge.

(i) Each licensee shall include the date of signing and sealing immediately below or next to the signature and seal.

Section 412 and 3009 – Address Change

412. Address Change.

Each person who is an applicant for, or a holder of, a certificate or license issued by the Board ~~under provisions of the Professional Engineers Act or the Professional Land Surveyors' Act~~ shall file his/or her address of record with the Board ~~office~~. Within thirty (30) days after ~~changing addresses~~ any change to his or her address of record, he/ or she shall notify the Board ~~office~~ in writing of such change.

3009. Address Change.

Each person who is an applicant for ~~registration~~ or a holder of a certificate ~~of registration~~, or license or permit from issued by the Board shall file his or her address of record with ~~notify~~ the Board, ~~at its Sacramento office~~ Within ~~60~~ thirty (30) days after ~~any of any and all~~ changes, ~~giving both~~ to his or her old and new address: of record, he or she shall notify the Board in writing of such change.

Sections 442 and 3035 – Examination Subversion

442. Examination Subversion.

(a) Examination subversion is the use of any means to alter the results of an examination to cause the results to inaccurately represent the competency of an examinee. Examination subversion includes, but is not limited to:

- (1) Communication between examinees inside of the examination room.
- (2) Giving or receiving any unauthorized assistance on the examination while an examination is in progress.
- (3) Having any unauthorized printed or written matter or other devices in his or her possession which might serve to aid the examinee on the examination.
- (4) Obtaining, using, buying, selling, distributing, having possession of, or having unauthorized access to secured examination questions or other secured examination material prior to, during or after the administration of the examination.
- (5) Copying another examinee's answers or looking at another examinee's materials while an examination is in progress.
- (6) Permitting anyone to copy answers to the examination.
- (7) Removing any secured examination materials from the examination facility.
- (8) Allowing another person to take the examination in the examinee's place.
- (9) Placing any identifying mark upon his or her examination papers other than his or her identification number or other identifiers as directed by the examination administrator.
- (10) Use by an examinee of any written material, audio material, video material, digital material, or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination.
- (11) Writing on anything other than designated examination material.
- (12) Writing or erasing anything after time is called.

(b) At the discretion of the Executive Officer, if there is evidence of examination subversion by an examinee prior to, during, or after the administration of the examination, one or more of the following may occur:

- (1) The examinee may be denied the privilege of taking the examination if examination subversion is detected before the administration of the examination.
- (2) If the examination subversion detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further examination subversion shall be taken, and the examinee may be permitted to continue with the examination.
- (3) The examinee may be requested to leave the examination facility if examination subversion is detected during the examination.
- (4) The examinee may be requested to submit written advisement of his or her understanding of and intent to comply with ~~and understanding of~~ the law.
- (5) The examination results may be voided and the application fee forfeited.
- (6) The examinee may not be allowed to sit for an examination for up to three (3) years.

(c) If examination subversion is detected after the administration of the examination, the Executive Officer shall make appropriate inquiry to determine the facts concerning the examination subversion and may take any of the actions as described in subdivision (b).

(d) The Executive Officer reserves the right not to release the examination results to the examinee pending the outcome of any investigation of examination subversion.

(e) Removal from or voidance of one part of a multiple-part examination taken during a single examination administration ~~shall constitute~~ may be cause for removal from or voidance of all other parts of the multiple-part examination.

3035. Examination Irregularities Subversion.

~~(a) Examinees are forbidden to receive any unauthorized assistance during the examination. Communication between examinees or possession of unauthorized matter or devices during the examination is strictly prohibited.~~

~~(b) Only scheduled examinees, board members, the executive officer and authorized examination personnel shall be admitted to the examination room.~~

(a) Examination subversion is the use of any means to alter the results of an examination to cause the results to inaccurately represent the competency of an examinee. Examination subversion includes, but is not limited to:

(1) Communication between examinees inside of the examination room.

(2) Giving or receiving any unauthorized assistance on the examination while an examination is in progress.

(3) Having any unauthorized printed or written matter or other devices in his or her possession which might serve to aid the examinee on the examination.

(4) Obtaining, using, buying, selling, distributing, having possession of, or having unauthorized access to secured examination questions or other secured examination material prior to, during, or after the administration of the examination.

(5) Copying another examinee's answers or looking at another examinee's materials while an examination is in progress.

(6) Permitting anyone to copy answers to the examination.

(7) Removing any secured examination materials from the examination facility.

(8) Allowing another person to take the examination in the examinee's place.

(9) Placing any identifying mark upon his or her examination papers other than his or her identification number or other identifiers as directed by the examination administrator.

(10) Use by an examinee of any written material, audio material, video material, digital material, or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination.

(11) Writing on anything other than designated examination material.

(12) Writing or erasing anything after time is called.

(b) At the discretion of the Executive Officer, if there is evidence of examination subversion by an examinee prior to, during, or after the administration of the examination, one or more of the following may occur:

(1) The examinee may be denied the privilege of taking the examination if examination subversion is detected before the administration of the examination.

(2) If the examination subversion detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further examination subversion shall be taken, and the examinee may be permitted to continue with the examination.

(3) The examinee may be requested to leave the examination facility if examination subversion is detected during the examination.

(4) The examinee may be requested to submit written advisement of his or her understanding of and intent to comply with the law.

(5) The examination results may be voided and the application fee forfeited.

(6) The examinee may not be allowed to sit for an examination for up to ~~three (3)~~ years.

(c) If examination subversion is detected after the administration of the examination, the Executive Officer shall make appropriate inquiry to determine the facts concerning the examination subversion and may take any of the actions as described in subdivision (b) of this section.

(d) The Executive Officer reserves the right not to release the examination results to the examinee pending the outcome of any investigation of examination subversion.

(e) Removal from or voidance of one part of a multiple-part examination taken during a single examination administration may be cause for removal from or voidance of all other parts of the multiple-part examination.

Sections 3060 – Substantial Relationship Criteria

3060. Substantial Relationship Criteria.

For the purpose of denial, suspension, or revocation of the ~~registration~~ license of a ~~professional~~ geologist, specialty geologist, professional geophysicists, or specialty geophysicists pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions, and duties of a professional geologist, specialty geologist, professional geophysicists, or specialty geophysicists if to a substantial degree it evidences present or potential unfitness of such professional geologist, specialty geologist, professional geophysicist, or specialty geophysicists to perform the functions authorized by his or her registration license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, the following:

- (a) Any violation of the provisions of Chapter 12.5 of Division 3 of the Business and Professions Code- or aiding and abetting any person in such a violation.
- (b) A conviction of a crime arising from or in connection with the practice of professional geology or geophysics.

Section 3061 – Criteria for Rehabilitation

3061. Criteria for Determining Rehabilitation or Appropriate Discipline.

(a) When considering the denial of ~~the registration of an application for licensure as a professional geologist, or professional geophysicist, or certification as a specialty geologist, geophysicist or specialty geophysicist, or geologist-in-training~~ under Section 480 of the Code, the Board, in evaluating the rehabilitation of the applicant and his or her present eligibility for ~~registration~~ such a license or certification, will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed prior to or subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

(6) Total criminal record.

(7) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(b) When considering the suspension or revocation of the ~~registration license of a professional geologist, or specialty geologist, professional geophysicist, or certification of a specialty geologist, specialty geophysicist, or geologist-in-training on the grounds that the registrant has been convicted of a crime or violation of the Geologist and Geophysicist Act, the board or administrative law judge, in evaluating the appropriate level of discipline or rehabilitation of such person and his or her present eligibility for registration will consider the following criteria~~ under Section 490 of the Code, the Board will consider the following criteria in evaluating the rehabilitation of such person and his or her present eligibility to retain his or her license:

(1) Nature and severity of the act(s) or offense(s) under consideration as grounds for suspension or revocation.

(2) ~~Total criminal record.~~ Evidence of any act(s) committed prior to or subsequent to the act(s) or offense(s) under consideration as grounds for suspension or revocation under Section 490 of the Code.

(3) The time that has elapsed since commission of the act(s) or offense(s) referred to in subdivision (1) or (2).

(4) ~~Whether~~ The extent to which the licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

(7) ~~Actual or potential harm to the public, client, or employee.~~ Total criminal record.

(8) ~~Prior disciplinary record.~~

(9) ~~Number and/or variety of current violations.~~

(c) When considering a petition of reinstatement of the ~~registration certification of as a geologist-in-training, specialty geologist, or specialty geophysicist, or the license of a professional geologist, specialty geologist, or professional geophysicist or specialty geophysicist.~~ the Board shall evaluate evidence of rehabilitation submitted by the petitioner, ~~considering those criteria specified in subsection (b).~~ including but not limited to the following:

(1) Educational courses, including college-level courses, seminars, and continuing professional development courses, completed after the effective date of the Board's decision ordering revocation.

(2) Professional geological or geophysical work done under the responsible charge of a licensee in good standing or under the direction of a person legally authorized to practice.

(3) Payment of restitution to the consumer(s) by the petitioner.

(4) Actual or potential harm to the public, client(s), employer(s), and/or employee(s) caused by the action(s) that led to the revocation or that could be caused by the reinstatement of the certificate, license, or authority.

(5) The criteria specified in subsection (b)(1) through (7), as applicable.

(6) Disciplinary history, other than criminal actions, after the revocation.

(7) Recognition by the petitioner of his or her own actions and/or behavior that led to the revocation.

(8) Correction of the petitioner's actions and/or behavior that led to the revocation.

Section 472-473.4 and 3062-3063.4 – Citation Program

472. Citations of Unlicensed Persons.

(a) The Executive Officer or his or her designee may issue a citation for any violation of any provision of law enforced by the Board to an unlicensed person who, unless otherwise exempt, is acting in the capacity of a professional engineer or a professional land surveyor .

(b) Each citation

(1) shall be in writing;

(2) shall describe with particularity the ~~nature~~ basis of the ~~violation~~ citation, including specific reference to the provision or provisions of law determined to have been violated;

(3) shall contain an assessment of an administrative fine, an order of abatement fixing a reasonable period of time for abatement of the violation, or both an administrative fine and an order of abatement;

(4) shall be served on the cited person at the last known business or residence address personally or by certified mail with return receipt requested;

(5) shall inform the cited person that failure to pay the fine within 30 calendar days of the date of assessment, unless the citation is being appealed, may result in the Executive Officer applying to the appropriate superior court for a judgment in the amount of the administrative fine;

(6) shall inform the cited person that, if he/she desires an informal conference to contest the finding of a violation, the informal conference shall be requested by written notice to the Board within 30 calendar days from service of the citation;

(7) shall inform the cited person that, if he or she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the Board within 30 calendar days from service of the citation.

472.1. Assessment of Administrative Fine.

(a) In no event shall the administrative fine be less than \$50 or exceed \$5,000 for each violation.

(b) In determining the amount of an administrative fine , the Executive Officer shall consider the following factors:

(1) The nature and severity of the violation;

(2) The good or bad faith exhibited by the cited person;

(3) The history of previous violations;

(4) The extent to which the cited person has cooperated with the Board and the Board's investigation;

(5) The extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by his/ or her violation;

(6) Any factors in extenuation or aggravation related to the violation;

(7) Other matters as may be appropriate.

472.2. Appeal of Citations.

(a) Any person served with a citation issued pursuant to Section 472 may ~~contest~~ appeal the citation by submitting a written request for a hearing to the Board within 30 calendar days of ~~service~~ the date of issuance of the citation. Such hearings shall be conducted pursuant to

the Administrative Procedure Act, Chapters 4.5 and 5, commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) In addition to requesting a hearing as described in subsection (a), the cited person may, within 30 calendar days of ~~service~~ the date of issuance of the citation, submit a written request for an informal conference with the Executive Officer.

(c) The Executive Officer may, within 30 working days from receipt of a written request for an informal conference as provided in subsection (b), hold an informal conference with the cited person and/or his or her legal counsel or authorized representative. The 30-day period may be extended by the Executive Officer for good cause. Following the informal conference, the Executive Officer ~~may~~ shall affirm, modify, or dismiss the citation, including any administrative fine assessed or order of abatement issued. An order affirming, modifying, or dismissing the original citation shall be served on the cited person within 30 calendar days from the informal conference. Said 30-day period may be extended by the Executive Officer for good cause. Said order shall state in writing the reasons for the affirmation, modification, or dismissal of the original citation. If the order affirms or modifies the original citation, said order shall fix a reasonable period of time for abatement of the violation or payment of the fine. Service of this order shall be made as provided in Section 472. This order shall be considered the conclusion of the informal conference proceedings.

(d) If the citation is affirmed or modified following the informal conference, the cited person may request a hearing as provided in subsection (a) within 30 calendar days from service of the order described in subsection (c). The cited person shall not be permitted to request another informal conference.

(e) If the citation is dismissed after the informal conference, the request for a hearing, if any, shall be deemed to be withdrawn.

(f) Submittal of a written request for a hearing as provided in subsection (a), an informal conference as provided in subsection (b), or both stays the time period in which to abate the violation and/or to pay the fine.

(g) If the written request for a hearing as provided in subsection (a) or an informal conference as provided in subsection (b) or both is not submitted within 30 calendar days from ~~service~~ the date of issuance of the citation, the cited person is deemed to have waived his/ or her right to a hearing or an informal conference.

472.3. Compliance with Order.

(a) If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his/ or her control after the exercise of reasonable diligence, then he/ or she may request from the Executive Officer an extension of time within which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) Failure of an applicant for licensure as a professional engineer or as a professional land surveyor to abate the violation or to pay the fine within the time allowed is a ground for denial of licensure.

(c) Notwithstanding any other provision of the law, the Executive Officer may waive all or part of an administrative fine if the cited person ~~against whom the citation is assessed~~ satisfactorily completes all the requirements for, and is issued, a license.

(d) If the cited person fails to pay all of the assessed fine within the time allowed, the Executive Officer may apply to the appropriate superior court for a judgment in the amount of the administrative fine.

(e) If a hearing as provided in Section 472.2(a) is not requested, payment of the fine shall not constitute an admission of the violation charged.

(f) Payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

472.4. Disconnection of Telephone Service.

(a) If, upon investigation, the Executive Officer has cause to believe that an unlicensed individual acting in the capacity of a professional engineer or a professional land surveyor, who is not otherwise exempted from the provisions of the Professional Engineers Act or the Professional Land Surveyors' Act, has violated Sections 6787 or 8792 of the Code by advertising in a telephone directory, without being properly licensed, the Executive Officer may issue a citation under Section 472 containing an order of abatement which requires the cited person to both cease the unlawful advertising and notify the telephone company furnishing services to the cited person to disconnect the telephone services furnished to any telephone number contained in the unlawful advertising, and that subsequent calls to that number shall not be referred by the telephone company to any new telephone number obtained by that person. The cited person shall provide written evidence of compliance to the Executive Officer.

(b) If the cited person fails to comply with an order of abatement as described in subsection (a) within the time allowed, the Executive Officer shall inform the Public Utilities Commission of the violation in accordance with Business and Professions Code section 149.

473. Citations of Licensed Persons.

(a) The Executive Officer or his or her designee may issue a citation for any violation of any provision of law enforced by the Board to any person who holds a license issued by the Board.

(b) Prior to the issuance of a citation in any case involving allegations of negligence and/or incompetence, as defined in Section 404, in the professional practice, the Executive Officer shall submit the alleged violation for review to at least one licensee of the Board who is competent in the branch of professional engineering or professional land surveying most relevant to the subject matter of the citation. The licensee reviewing the alleged violation shall be either a member of the Board's professional staff, a technical advisory committee member, or an expert consultant. Upon conclusion of the review, the reviewer shall prepare a finding of fact and a recommendation based upon that finding to which the Executive Officer shall give due consideration in determining whether cause exists to issue a citation.

(c) Each citation

(1) shall be in writing;

(2) shall describe with particularity the nature basis of the violation citation, including specific reference to the provision or provisions of law determined to have been violated;

(3) may contain an assessment of an administrative fine, an order of abatement fixing a reasonable period of time for abatement of the violation, or both an administrative fine and an order of abatement;

(4) shall be served on the cited person at the address of record on file with the Board personally or by certified mail with return receipt requested;

(5) shall inform the cited person that failure to pay the fine within 30 calendar days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the Board. ~~If a citation is not contested and the fine is not paid, may result in~~ the full amount of the assessed fine shall be being added to the fee for renewal of the license. ~~A, and that the~~ license shall not be renewed without the payment of the renewal fee and fine;

(6) shall inform the cited person that, if he ~~or~~ she desires an informal conference to contest the finding of a violation, the informal conference shall be requested by written notice to the Board within 30 calendar days from ~~service~~ the date of issuance of the citation;

(7) shall inform the cited person that, if he or she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the Board within 30 calendar days from ~~service~~ the date of issuance of the citation.

473.1. Assessment of Administrative Fines.

(a) In no event shall the administrative fine be less than \$50 or exceed \$5,000 for each violation.

(b) In determining the amount of an administrative fine, the Executive Officer shall consider the following factors:

- (1) The nature and severity of the violation;
- (2) The good or bad faith exhibited by the cited person;
- (3) The history of previous violations;
- (4) The extent to which the cited person has cooperated with the Board and the Board's investigation;
- (5) The extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by his ~~or~~ her violation;
- (6) Any factors in extenuation or aggravation related to the violation;
- (7) Other matters as may be appropriate.

473.2. Appeal of Citations.

(a) Any person served with a citation issued pursuant to Section 473 may ~~contest~~ appeal the citation by submitting a written request for a hearing to the Board within 30 calendar days of ~~service~~ the date of issuance of the citation. Such hearings shall be conducted pursuant to the Administrative Procedure Act, Chapters 4.5 and 5, commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) In addition to requesting a hearing as described in subsection (a), the cited person may, within 30 calendar days of ~~service~~ the date of issuance of the citation, submit a written request for an informal conference with the Executive Officer.

(c) The Executive Officer ~~shall~~ may, within 30 working days ~~of~~ from receipt of a written request for an informal conference as provided in subsection (b), hold an informal conference with the cited person and/or his or her legal counsel or authorized representative. The 30-day period may be extended by the Executive Officer for good cause. Following the informal conference, the Executive Officer ~~may~~ shall affirm, modify, or dismiss the citation, including any administrative fine assessed or order of abatement issued. An order affirming, modifying, or

dismissing the original citation shall be served on the cited person within 30 calendar days from the informal conference. Said 30-day period may be extended by the Executive Officer for good cause. Said order shall state in writing the reasons for the affirmation, modification, or dismissal of the original citation. If the order affirms or modifies the original citation, said order shall fix a reasonable period of time for abatement of the violation or payment of the fine. Service of this order shall be made as provided in Section 473. This order shall be considered the conclusion of the informal conference proceedings.

(d) If the citation is affirmed or modified following the informal conference, the cited person may request a hearing as provided in subsection (a) within 30 calendar days from service of the order described in subsection (c). The cited person shall not be permitted to request another informal conference. ,

(e) If the citation is dismissed after the informal conference, the request for a hearing, if any, shall be deemed to be withdrawn.

(f) Submittal of a written request for a hearing as provided in subsection (a), an informal conference as provided in subsection (b), or both stays the time period in which to abate the violation and/or to pay the fine.

(g) If the written request for a hearing as provided in subsection (a) or an informal conference as provided in subsection (b) or both is not submitted within 30 calendar days from service the date of issuance of the citation, the cited person is deemed to have waived his/ or her right to a hearing or an informal conference.

473.3. Compliance with Citations Order.

(a) If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his/ or her control after the exercise of reasonable diligence, then he/ or she may request from the Executive Officer an extension of time within which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) Failure of the cited person to abate the violation or to pay all of the assessed fine within the time allowed is grounds for suspension or revocation of the cited person's license.

(c) If the cited person fails to pay all of the assessed fine within the time allowed, the balance due for the fine shall be added to the renewal fee for the license, and the license shall not be renewed until the fine is paid in full.

(d) If a hearing as provided in Section 473.2(a) is not requested, payment of the fine shall not constitute an admission of the violation charged.

(e) Payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

473.4. Disconnection of Telephone Service.

(a) If, upon investigation, the Executive Officer has cause to believe that a professional engineer or a professional land surveyor, who is not otherwise exempted from the provisions of the Professional Engineers Act or the Professional Land Surveyors' Act, has violated Sections 6787 or 8792 of the Code by advertising in a telephone directory, without being properly licensed, the Executive Officer may issue a citation under Section 473 containing an order of abatement which requires the cited person to both cease the unlawful advertising and notify the telephone company furnishing services to the cited person to disconnect the telephone services furnished to any telephone number contained in the unlawful advertising, and that

subsequent calls to that number shall not be referred by the telephone company to any new telephone number obtained by that person. The cited person shall provide written evidence of compliance to the Executive Officer.

(b) If the cited person fails to comply with an order of abatement as described in subsection (a) within the time allowed, the Executive Officer shall inform the Public Utilities Commission of the violation in accordance with Business and Professions Code section 149.

3062. Citations of ~~Unregistered Unlicensed~~ Persons.

(a) ~~The executive officer is authorized to issue citations containing orders of abatement or administrative fines pursuant to Business and Professions Code sections 148 and 149 against persons~~ Executive Officer or his or her designee may issue a citation for any violation of any provision of law enforced by the Board to an unlicensed person who, unless otherwise exempt, is acting in the capacity of ~~or engaging in the practice of a geologist, geophysicist, or certified specialist within this state without registration or certification in any discipline as a geologist, geophysicist, or certified specialist~~ a professional geologist or a professional geophysicist.

(b) ~~If the executive officer has reasonable cause to believe that a person is acting in the capacity of, or engaging in the practice of, a geologist, geophysicist or certified specialist within this state without having a registration to so act or engage, the executive officer may issue a citation to that person.~~

(c) Each citation

(1) ~~for violation~~ shall be in writing; and

(2) shall describe with particularity the basis of the citation, including specific reference to the provision or provisions of law determined to have been violated;

~~(d) (3) Each citation may~~ shall contain an assessment of an administrative fine, an order of abatement fixing a reasonable period of time for abatement of the violation, or both ~~or may contain an assessment of an administrative fine in an amount not more than two thousand five hundred dollars (\$2,500), and an order of abatement;~~

~~(e) (4) Service of a citation issued under this section shall be made by certified mail~~ shall be served on the cited person at the last known business address or residence address ~~of the person cited and shall include information regarding appeal rights and copies of the applicable code sections violated.~~ personally or by certified mail with return receipt requested;

(5) shall inform the cited person that failure to pay the fine within 30 calendar days of the date of assessment, unless the citation is being appealed, may result in the Executive Officer applying to the appropriate superior court for a judgment in the amount of the administrative fine;

(6) shall inform the cited person that, if he/she desires an informal conference to contest the finding of a violation, the informal conference shall be requested by written notice to the Board within 30 calendar days from service of the citation;

(7) shall inform the cited person that, if he or she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the Board within 30 calendar days from service of the citation.

3062.1. Assessment of Administrative Fines.

(a) In no event shall the administrative fine be less than \$50 or exceed \$5,000 for each violation.

(b) In determining the amount of an administrative fine, the Executive Officer shall consider the following factors:

~~Before assessing an administrative fine pursuant to Section 3062, the executive officer shall give due consideration to the gravity~~

(1) The nature and severity of the violation;

(2) ~~the~~ The good or bad faith of the person exhibited by the cited person;

(3) ~~and the~~ The history of previous violations;

(4) The extent to which the cited person has cooperated with the Board and the Board's investigation;

(5) The extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by his or her violation;

(6) Any factors in extenuation or aggravation related to the violation;

(7) Other matters as may be appropriate.

(b) ~~In no event shall the administrative fine be assessed in an amount greater than two thousand five hundred dollars (\$2,500) for each inspection or each investigation made with respect to any violation of the following provisions:~~

~~Business and Professions Code Section and Description~~

~~7830 Title Professional Geologist, or Certified Engineering Geologist, or Hydrogeologist~~

~~7830.1 Title of Professional Geophysicist~~

~~7832 Offers to Practice or Practices Geology or Geophysics for Others~~

~~7834 Unregistered Practice by Partnership or Corporation~~

~~7835 Sign or Seal Reports (Geology)~~

~~7835.1 Sign or Seal Reports (Geophysics)~~

~~7872(a) Unregistered Practice~~

~~7872(b) Presents or Attempts to File as His/Her Own the Certificate of Another~~

~~7872(d) Impersonates or Uses the Seal of Any Other Practitioner~~

~~7872(e) Uses Expired or Revoked Certificate of Registration~~

~~7872(g) Unregistered Manager, Proprietor, or Agent of Business from Which Geological or Geophysical Work is Solicited, Performed, or Practiced for Others~~

~~7872(h) Violation of Any Provision of the Geologist and Geophysicist Act~~

(e) ~~Notwithstanding the administrative fine amounts specified in this section, a citation may include a fine between \$2,501 and \$5,000 if one or more of the following circumstances apply:~~

~~1. The citation involves a violation that has an immediate relationship to the health and safety of another person;~~

~~2. The cited person has a history of two or more prior citations of the same or similar violations;~~

~~3. The citation involves multiple violations that demonstrate a willful disregard of the law;~~

~~4. The citation involves a violation or violations perpetrated against a child, elderly person or person with a disability.~~

3062.2. Appeal of Citations.

(a) Any person served with a citation pursuant to Section 3062 may ~~submit appeal the citation by submitting a written request for appeal to the executive officer for a hearing to the Board~~ submit appeal the citation by submitting a written request for appeal to the executive officer for a hearing to the Board within 30 calendar days of the date of issuance of the citation. Such hearings shall be conducted pursuant to the Administrative Procedure Act, Chapters 4.5 and 5, commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

~~(b) The person cited, also, In addition to requesting a hearing as described in subsection (a), the cited person may, within 30 calendar days of the date of issuance of the citation, submit a written request within 30 days of the date of issuance of the citation for an informal conference with the eExecutive eOfficer with respect to violations alleged, scope of the order of abatement, or amount of administrative fine assessed.~~

~~(b) (c) The eExecutive eOfficer shall may, within 30 working days from receipt of the a written request for an informal conference as provided in subsection (b), hold an informal conference with the person cited and/or his or her legal counsel or authorized representative. The 30-day period may be extended by the eExecutive eOfficer for good cause. At the conclusion of Following the informal conference, the eExecutive eOfficer shall either affirm, modify, or dismiss the citation, including any administrative fine levied assessed or order of abatement issued. An order affirming, modifying, or dismissing the original citation shall be served on the cited person within 30 calendar days from the informal conference. Said 30-day period may be extended by the Executive Officer for good cause. Said order The executive officer shall state in writing the reasons for his or her action and serve a copy of the findings and decision to the cited person within 30 days from the date of the informal conference the affirmation, modification, or dismissal of the original citation. If the order affirms or modifies the original citation, said order shall fix a reasonable period of time for abatement of the violation or payment of the fine. Service of this order shall be made by certified mail at the last known business address or residence address of the person cited as provided in Section 3062. The decision shall be deemed to be a final order of the executive officer. This order shall be considered the conclusion of the informal conference proceedings.~~

~~(e) (d) If the person cited submits a written request to appeal the citation within 30 days of the citation's issuance, the cited person shall be afforded an opportunity for a hearing, as provided for in subsection (b)(4) of section 125.9 of the Business and Professions Code citation is affirmed or modified following the informal conference, the cited person may request a hearing as provided in subsection (a) within 30 calendar days from service of the order described in subsection (c). The cited person shall not be permitted to request another informal conference.~~

~~(d) The cited person does not waive his or her right to request a hearing to appeal the citation by requesting an informal conference after which conference the citation is affirmed by the executive officer.~~

~~(e) If the citation is dismissed after the informal conference, the request for a hearing, if any, on the matter of the citation shall be deemed to be withdrawn. If the citation is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If a hearing is requested for the subsequent citation, it shall be requested in writing within 30 days of issuance of the subsequent citation in accordance with subsection (b)(4) of Section 125.9 of the Business and Professions Code.~~

(e) ~~If, within 30 days of the date of issuance of the citation, the person cited has failed to file a written request to appeal the citation with the executive officer, the citation shall be deemed a final order.~~

(f) Submittal of a written request for a hearing as provided in subsection (a), an informal conference as provided in subsection (b), or both stays the time period in which to abate the violation and/or to pay the fine.

(g) If the written request for a hearing as provided in subsection (a) or an informal conference as provided in subsection (b) or both is not submitted within 30 calendar days from the date of issuance of the citation, the cited person is deemed to have waived his or her right to a hearing or an informal conference.

3062.3. ~~Failure to Comply~~ Compliance with Order.

(a) If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, then he or she may request from the Executive Officer an extension of time within which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) ~~The failure of an unregistered person acting as applicant for licensure as a professional geologist, a professional geophysicist, or a certified specialist to comply with a citation~~ abate the violation or pay a the fine after it is final within the time allowed is a ground for denial of registration licensure.

~~(c) Notwithstanding any other provisions of the law, the Executive Officer may waive all or part of the an administrative fine if the cited person satisfactorily completes all the requirements for, and is issued, a registration license or certification. Any outstanding injury to the public shall be settled to the satisfaction of a majority of the Board members prior to issuance of the registration.~~

(d) If the cited person fails to pay the assessed fine within the time allowed, the Executive Officer may apply to the appropriate superior court for a judgment in the amount of the administrative fine.

(e) If a hearing as provided in Section 3062.2(a) is not requested, payment of the fine shall not constitute an admission of the violation charged.

(f) Payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

3062.4. Disconnection of Telephone Service.

(a) If, upon investigation, the ~~Executive Officer~~ Executive Officer has probable cause to believe that an ~~unregistered unlicensed~~ unlicensed individual acting in the capacity of a professional geologist, a professional geophysicist, or a certified specialist, who is not otherwise exempted from the provisions of the Geologist and Geophysicist Act, ~~and is has violated Section 7872 of the Code by advertising in a telephone directory, without being properly registered, licensed or certified,~~ the ~~Executive Officer~~ Executive Officer may issue a citation under Section 3062 containing an order of abatement which requires the cited person to both cease the unlawful advertising and notify the telephone company furnishing services to the cited person to disconnect the telephone services furnished to any telephone number contained in the unlawful advertising, and that subsequent calls to that number shall not be referred by the telephone company to any new telephone

number obtained by that person. The cited person shall provide written evidence of compliance to the ~~e~~Executive ~~e~~Officer.

~~(b) The citation shall be stayed if the person to whom a citation is issued under subdivision (a) submits a written request to the executive officer for a hearing to appeal the citation. The executive officer shall afford an opportunity for a hearing, as specified in Section 3062.2.~~

~~(c) If the cited person to whom a citation and order of abatement is issued under subdivision (a) fails to comply with the order of abatement after the order is final as provided in Section 3062.2 as described in subsection (a) within the time allowed, the eExecutive eOfficer shall inform the Public Utilities Commission of the violation in accordance with Business and Professions Code section 149.~~

3063. Citations of Registered Licensed Persons.

~~(a) The executive officer is authorized to issue citations containing orders of abatement or administrative fines pursuant to Business and Professions Code section 125.9.~~

~~(b) If the executive officer has reasonable cause to believe that a geologist, geophysicist or certified specialist has committed any act or omission where the registrant is in violation of the Geologist and Geophysicist Act, the The eExecutive eOfficer or his or her designee may, in lieu of filing an accusation, issue a citation to the registrant any person who holds a license issued by the Board.~~

~~(e) (b) Each citation for violation~~

~~(1) shall be in writing and;~~

~~(2) shall describe with particularity the basis of the citation, including specific reference to the provision or provisions of law determined to have been violated;~~

~~(3) may contain an assessment of an administrative fine, an order of abatement fixing a reasonable period of time for abatement of the violation, or both an administrative fine and an order of abatement;~~

~~(4) shall be served on the cited person at the address of record on file with the Board personally or by certified mail with return receipt requested;~~

~~(5) shall inform the cited person that failure to pay the fine within 30 calendar days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the Board, may result in the full amount of the assessed fine being added to the fee for renewal of the license, and that the license shall not be renewed without the payment of the renewal fee and fine;~~

~~(6) shall inform the cited person that, if he or she desires an informal conference to contest the finding of a violation, the informal conference shall be requested by written notice to the Board within 30 calendar days from the date of issuance of the citation;~~

~~(7) shall inform the cited person that, if he or she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the Board within 30 calendar days from the date of issuance of the citation.~~

~~(d) Each citation may contain: (1) an order of abatement, which may include the fixing of a reasonable time for abatement of the violation; or (2) an assessment of an administrative fine in an amount not more than two thousand five hundred dollars (\$2,500).~~

~~(e) — Service of a citation issued under this section shall be made by certified mail to the registrant's address of record and shall include information regarding appeal rights and copies of the applicable code sections violated.~~

3063.1. Assessment of Administrative Fines.

~~(a) In no event shall the administrative fine be less than \$50 or exceed \$5,000 for each violation.~~

~~(b) In determining the amount of an administrative fine, the Executive Officer shall consider the following factors:~~

~~Before assessing an administrative fine under section 3063, the executive officer shall give due consideration to the gravity~~

~~(1) The nature and severity of the violation;~~

~~(2) the The good or bad faith of exhibited by the cited person;~~

~~(3) and the The history of previous violations;~~

~~(4) The extent to which the cited person has cooperated with the Board and the Board's investigation;~~

~~(5) The extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by his or her violation;~~

~~(6) Any factors in extenuation or aggravation related to the violation;~~

~~(7) Other matters as may be appropriate.~~

~~(b) — In no event shall the administrative fine be assessed in an amount greater than two thousand five hundred dollars (\$2,500) for each inspection or each investigation made with respect to any violation of the following provisions:~~

~~Business and Professions Code section and Description~~

~~7831 Use of Expired, Suspended, or Revoked Registration~~

~~7839 Practice or Attempts to Practice Civil Engineering~~

~~7839.1 Geologist or Geophysicist Practicing Outside Area of Registered Practice~~

~~7860(b) Committed Deceit, Misrepresentation, Violation of Contract, Fraud, Negligence, Incompetence in Practice~~

~~7860(d) Aiding and Abetting in the Violation of Any Provision of the Geologist and Geophysicist Act~~

~~7872(b) Presents or Attempts to File as His/Her Own the Certificate of Another~~

~~7872(d) Impersonates or Uses the Seal of Any Other Practitioner~~

~~7872(e) Uses Expired or Revoked Certificate of Registration~~

~~7872(h) Violation of Any Provision of the Geologist and Geophysicist Act~~

~~(c) — Notwithstanding the administrative fine amounts specified in this section, a citation may include a fine between \$2,501 and \$5,000 if one or more of the following circumstances apply:~~

~~1. — The citation involves a violation that has an immediate relationship to the health and safety of another person;~~

~~2. — The cited person has a history of two or more prior citations of the same or similar violations;~~

~~3. — The citation involves multiple violations that demonstrate a willful disregard of the law;~~

~~4. — The citation involves a violation or violations perpetrated against a child, elderly person or person with a disability.~~

3063.2. Appeal of Citations.

(a) Any geologist, geophysicist or certified specialist person served with a citation pursuant to Section 3063, may submit a written request for ~~appeal a hearing~~ to the executive officer Board within 30 calendar days of the date of issuance of the citation. Such hearings shall be conducted pursuant to the Administrative Procedure Act, Chapters 4.5 and 5, commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) In addition to requesting a hearing as described in subsection (a), the cited person, also, may, within 30 calendar days of the date of issuance of the citation, submit a written request within 30 days of the date of issuance of the citation for an informal conference with the eExecutive eOfficer with respect to violations alleged, abatement periods, amount of fines, and the reasonableness of the action required to abate the violation.

(b) (c) The eExecutive eOfficer shall may, within 30 working days from receipt of the a written request for an informal conference as provided in subsection (b), hold an informal conference with the person cited and/or his or her legal counsel or authorized representative. The 30-day period may be extended by the eExecutive eOfficer for good cause. At the conclusion of Following the informal conference, the eExecutive eOfficer shall either affirm, modify, or dismiss the citation, including any administrative fine levied assessed or order of abatement issued. An order affirming, modifying, or dismissing the original citation shall be served on the cited person within 30 calendar days from the informal conference. Said 30-day period may be extended by the Executive Officer for good cause. Said order The executive officer shall state in writing the reasons for his or her action and serve a copy of the findings and decision to the cited person within 30 days from the date of the informal conference the affirmation, modification, or dismissal of the original citation. If the order affirms or modifies the original citation, said order shall fix a reasonable period of time for abatement of the violation or payment of the fine. Service of this order shall be made by certified mail at the last known business address or residence address of the person cited as provided in Section 3063. The decision shall be deemed to be a final order of the executive officer. This order shall be considered the conclusion of the informal conference proceedings.

(e) (d) If the geologist, geophysicist or certified specialist cited submits a written request for a hearing to appeal the citation within 30 days of the citation's issuance, the cited person shall be afforded an opportunity for a hearing, as provided for in subsection (b)(4) of section 125.9 of the Business and Professions Code citation is affirmed or modified following the informal conference, the cited person may request a hearing as provided in subsection (a) within 30 calendar days from service of the order described in subsection (c). The cited person shall not be permitted to request another informal conference.

(d) The cited person does not waive his or her right to request a hearing to appeal the citation by requesting an informal conference, after which conference the citation is affirmed by the executive officer.

(e) If the citation is dismissed after the informal conference, the request for a hearing, if any, on the matter of the citation shall be deemed to be withdrawn. If the citation is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If a hearing is requested for the subsequent citation, it shall be requested in writing within 30 days of issuance of the subsequent citation in accordance with subsection (b)(4) of Section 125.9 of the Business and Professions Code.

~~(e) If, within 30 days of the date of issuance of the citation, the geologist, geophysicist or certified specialist cited has failed to file a written request to appeal the citation with the Executive Officer, the citation shall be deemed a final order.~~

(f) Submittal of a written request for a hearing as provided in subsection (a), an informal conference as provided in subsection (b), or both stays the time period in which to abate the violation and/or to pay the fine.

(g) If the written request for a hearing as provided in subsection (a) or an informal conference as provided in subsection (b) or both is not submitted within 30 calendar days from the date of issuance of the citation, the cited person is deemed to have waived his or her right to a hearing or an informal conference.

3063.4 3063.3. Failure to Comply Compliance with Citations Order.

(a) If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, then he or she may request from the Executive Officer an extension of time within which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) ~~The failure of a geologist, geophysicist or certified specialist~~ the cited person to ~~comply with a citation~~ abate the violation or to pay a all of the assessed fine after it is final within the time allowed is grounds for suspension or revocation of ~~a registration~~ the cited person's license.

(b) (c) If a geologist, geophysicist or certified specialist does not appeal a citation and the cited person fails to pay all of the assessed fine within the time allowed, the balance due for the fine shall be added to the renewal fee for the registration license, and the registration license shall not be renewed until the fine is paid in full pursuant to subsection (b)(5) of Section 125.9 of the Business and Professions Code.

(d) If a hearing as provided in Section 3063.2(a) is not requested, payment of the fine shall not constitute an admission of the violation charged.

(e) Payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

3063.4. Disconnection of Telephone Service.

(a) If, upon investigation, the Executive Officer has cause to believe that a professional geologist, a professional geophysicist, or a certified specialist, who is not otherwise exempted from the provisions of the Geologist and Geophysicist Act, has violated Section 7872 of the Code by advertising in a telephone directory, without being properly licensed or certified, the Executive Officer may issue a citation under Section 3063 containing an order of abatement which requires the cited person to both cease the unlawful advertising and notify the telephone company furnishing services to the cited person to disconnect the telephone services furnished to any telephone number contained in the unlawful advertising, and that subsequent calls to that number shall not be referred by the telephone company to any new telephone number obtained by that person. The cited person shall provide written evidence of compliance to the Executive Officer.

(b) If the cited person fails to comply with an order of abatement as described in subsection (a) within the time allowed, the Executive Officer shall inform the Public Utilities Commission of the violation in accordance with Business and Professions Code section 149.

Section 3064 – Disciplinary Orders

3064. Disciplinary Guidelines Orders.

~~In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines" (initially published July 1992, republished January 1996, revised June 1998) which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board in its sole discretion determines that the facts of the particular case warrant such a deviation for example: the presence of mitigating factors; the age of the case; evidentiary problems.~~

For violations of Business and Professions Code sections 7860 which result in an order issued in accordance with Chapters 4.5 and 5 of Part 1 of Division 3 of Title 2 of the Government Code against a professional geologist and/or a professional geophysicist license, the following provisions shall apply to disciplinary orders contained in decisions of the Board:

(a) The minimum disciplinary order shall be reproof. The maximum disciplinary order shall be revocation of the license.

(b) If warranted by extenuating and/or mitigating factors in the matter, the disciplinary order may be stayed by an express condition that the respondent comply with probationary conditions. The minimum time period in which the respondent shall have to comply with the conditions shall be two years. For purposes of this section, this time period shall be known as the "period of probation."

(c) All decisions containing stayed disciplinary orders as described in subdivision (b) shall include the following probationary conditions:

(1) The respondent shall obey all laws and regulations related to the practices of professional geology and geophysics.

(2) The respondent shall submit such special reports as the Board may require.

(3) The period of probation shall be tolled during the time the respondent is practicing exclusively outside the state of California. If, during the period of probation, the respondent practices exclusively outside the state of California, the respondent shall immediately notify the Board in writing.

(4) If the respondent violates the probationary conditions in any respect, the Board, after giving the respondent notice and the opportunity to be heard, may vacate the stay and reinstate the disciplinary order which was stayed. If, during the period of probation, an accusation or petition to vacate stay is filed against the respondent, or if the matter has been submitted to the Office of the Attorney General for the filing of such, the Board shall have continuing jurisdiction until all matters are final, and the period of probation shall be extended until all matters are final.

(5) Upon successful completion of all of the probationary conditions and the expiration of the period of probation, the respondent's license shall be unconditionally restored.

(d) All decisions containing stayed disciplinary orders as described in subdivision (b) may include one or more of the following probationary conditions:

(1) The respondent's license shall be suspended for a period not to exceed two years. If a suspension of the license is ordered, it shall begin on the effective date of the decision.

(2) The respondent shall successfully complete and pass a course in professional ethics, approved in advance by the Board or its designee. The probationary condition

shall include a time period in which this course shall be successfully completed which time period shall be at least 60 days less than the time period ordered for the period of probation.

(3) Within 30 days of the effective date of the decision, the respondent shall provide the Board with evidence that he or she has provided all persons or entities with whom he or she has a contractual or employment relationship such that the relationship is in the area of practice of professional geology and/or professional geophysics in which the violation occurred with a copy of the decision and order of the Board and shall provide the Board with the name and business address of each person or entity required to be so notified. During the period of probation, the respondent may be required to provide the same notification to each new person or entity with whom he or she has a contractual or employment relationship such that the relationship is in the area of practice of professional geology and/or professional geophysics in which the violation occurred and shall report to the Board the name and address of each person or entity so notified.

(4) The respondent shall provide verifiable proof to the Board that restitution has been paid as ordered. The probationary condition shall include a time period in which the verifiable proof shall be provided to the Board which time period shall be at least 60 days less than the time period ordered for the period of probation.

(e) In addition to the conditions as may be ordered pursuant to subdivisions (c) and/or (d), the following conditions shall be included for the following specific violations:

(1) Incompetency in the practice of professional geology and/or professional geophysics:

(A) The respondent shall successfully complete and pass, with a grade of "C" or better, a minimum of one and a maximum of three college-level courses, approved in advance by the Board or its designee. Such courses shall be specifically related to the area of violation. For purposes of this subdivision, "college-level course" shall mean a course offered by a community college or a four-year university of three semester units or the equivalent; "college-level course" does not include seminars. The probationary condition shall include a time period in which the course(s) shall be successfully completed which time period shall be at least 60 days less than the time period ordered for the period of probation.

(B) The respondent shall take and achieve the passing score for the Professional Geologist or Professional Geophysicist examination, provided that in the event the respondent holds multiple licenses, the Board shall select the examination in the area of practice of professional geology and/or professional geophysics in which the violation occurred and in the area of professional geology and/or professional geophysics in which the respondent is licensed. The Board or its designee may select the specific examination questions such that the questions relate to the specific area of violation and comprise an examination of the same duration as that required of an applicant for licensure. The respondent shall be required to pay the application fee as described in Section 3005 and shall be afforded all examination appeal rights as described in 3036.1 and 3037.1. The probationary condition shall include a time period in which the examination(s) shall be successfully completed which time period shall be at least 60 days less than the time period ordered for the period of probation.

(C) During the period of probation, the respondent may practice professional geology and/or professional geophysics only under the review of a professional geologist and/or professional geophysicist licensed in the same branch as the respondent. This person or persons shall be approved in advance by the Board or its designee. Such reviewing professional geologist and/or professional geophysicist shall initial every stamped or sealed document in close proximity to the respondent's stamp or seal.

(2) Negligence in the practice of professional geology and/or professional geophysics:

(A) The respondent shall successfully complete and pass, with a grade of "C" or better, a minimum of one and a maximum of three college-level courses, approved in advance by the Board or its designee. Such courses shall be specifically related to the area of violation. For purposes of this subdivision, "college-level course" shall mean a course offered by a community college or a four-year university of three semester units or the equivalent; "college-level course" does not include seminars. The probationary condition shall include a time period in which the course(s) shall be successfully completed which time period shall be at least 60 days less than the time period ordered for the period of probation.

(3) Violation and/or breach of contract in the practice of professional geology and/or professional geophysics:

(A) The respondent shall successfully complete and pass, with a grade of "C" or better, a minimum of one and a maximum of three college-level courses, approved in advance by the Board or its designee. Such courses shall be specifically related to the area of violation. For purposes of this subdivision, "college-level course" shall mean a course offered by a community college or a four-year university of three semester units or the equivalent; "college-level course" does not include seminars. The probationary condition shall include a time period in which the course(s) shall be successfully completed which time period shall be at least 60 days less than the time period ordered for the period of probation.

In addition to the disciplinary orders described in this section, all decisions shall address recovery of the Board's investigation and enforcement costs, as described in and authorized by Business and Professions Code section 125.3.

Notwithstanding this section, non-conforming terms and conditions may be included as part of the disciplinary order, including such other further or lesser action as the Board deems appropriate, in the interest of protecting the public health, safety, and welfare.

Sections 475, 476, and 3065 – Code of Professional Conduct

475. Code of Professional Conduct – Professional Engineering

To protect and safeguard the health, safety, welfare, and property of the public, every person who is licensed by the Board as a professional engineer, including licensees employed in any manner by a governmental entity or in private practice, shall comply with this Code of Professional Conduct. A violation of this Code of Professional Conduct in the practice of professional engineering constitutes unprofessional conduct and is grounds for disciplinary action pursuant to Section 6775 of the Code. This Code of Professional Conduct shall be used for the sole purpose of investigating complaints and making findings thereon under Section 6775 of the Code.

(a) Compliance with Laws Applicable to a Project:

A licensee shall provide professional services for a project in a manner that is consistent with the laws, codes, ordinances, rules, and regulations applicable to that project. A licensee may obtain and rely upon the advice of other professionals (e.g., architects, attorneys, professional engineers, professional land surveyors, and other qualified persons) as to the intent and meaning of such laws, codes, and regulations.

(b) Conflict of Interest:

(1) If a licensee provides professional services for two or more clients on a project or related projects, the licensee shall disclose in writing to those clients and property owners or their authorized representatives his or her relationship to those clients.

(2) If a licensee has a business association or a financial interest which may influence his or her judgment in connection with the performance of professional services, the licensee shall fully disclose in writing to his or her client(s) or employer(s) the nature of the business association or the financial interest.

(3) A licensee shall not solicit or accept payments, rebates, refunds, or commissions, whether in the form of money or otherwise, from contractors or suppliers of material, systems, or equipment in return for specifying their products to a client or employer of the licensee.

(4) A licensee, while engaged by a governmental agency as an officer, employee, appointee, agent, or consultant of that agency shall not engage in a professional engineering business or activity that may be subject to that licensee's direct or indirect control, inspection, review, audit, or enforcement on behalf of that agency, unless the circumstances are disclosed to and approved by that agency in writing prior to such engagement.

(c) Representations:

(1) A licensee shall not misrepresent his or her qualifications to a prospective or existing client or employer.

(2) A licensee shall not misrepresent to a prospective or existing client the licensee's scope of responsibility in connection with projects or services for which the licensee is receiving or will receive compensation from that client.

(3) A licensee shall not misrepresent his or her scope of responsibility in connection with projects or services for which the licensee is claiming credit.

(4) A licensee shall not misrepresent nor permit the misrepresentation of his or her professional qualifications, or affiliations or the affiliations or purposes of the institutions, organizations, or other businesses with which he or she is associated.

(5) When providing information in connection with a person's application for a license to practice professional engineering, a licensee shall accurately represent his or her knowledge of the applicant's qualifications.

(6) A licensee may advertise or solicit for any services for which he or she is authorized by licensure.

(7) A licensee shall only express professional opinions that have a basis in fact or experience or accepted engineering principles.

~~(8) A licensee shall attribute proper credit to others for their professional work or professional contribution and shall not misappropriate the professional work of others.~~

~~(9)~~(8) A licensee shall not knowingly permit the publication or use of his or her data, reports, plans, or other professional documents for unlawful purposes.

~~(10)~~(9) A licensee shall not falsely or maliciously injure or attempt to injure the reputation or business of others.

~~(11)~~(10) A licensee shall not misrepresent data and/or its relative significance in any professional engineering report.

(d) Confidential Information:

Confidential information obtained by a licensee, in his or her professional capacity, concerning a client, employer, or other related party shall not be disclosed by the licensee without the permission of the client, employer, or other related party except for the following:

(1) Disclosures made in response to an order of the court or to a subpoena or summons enforceable by an order of the court.

(2) Disclosures made in an adjudicatory proceeding.

(3) Disclosures made in response to an official inquiry from a governmental regulatory agency.

(4) Disclosures made when required by law.

(5) Disclosures made upon discovering a hazard within the licensee's field of professional expertise which may threaten the health, safety, and welfare of the public.

(6) Disclosures made when providing evidence to the Board regarding other licensees or unlicensed individuals who may have violated the Professional Engineers Act.

(7) Disclosures made regarding illegal conduct.

As used in this section, "confidential information" means information identified as confidential by the licensee's client, employer, or other related party.

(e) Document Submittal:

(1) A licensee shall not misrepresent the completeness of the professional documents he or she submits to a governmental agency.

(2) A licensee shall not misrepresent the completeness of the professional documents he or she prepared to his or her client or to other involved parties.

476. Code of Professional Conduct – Professional Land Surveying

To protect and safeguard the health, safety, welfare, and property of the public, every person who is licensed by the Board as a professional land surveyor or professional civil engineer legally authorized to practice land surveying, including licensees employed in any manner by a governmental entity or in private practice, shall comply with this Code of Professional Conduct. A violation of this Code of Professional Conduct in the practice of

professional land surveying constitutes unprofessional conduct and is grounds for disciplinary action pursuant to Section 8780 of the Code. This Code of Professional Conduct shall be used for the sole purpose of investigating complaints and making findings thereon under Section 8780 of the Code.

(a) Compliance with Laws Applicable to a Project:

A licensee shall provide professional services for a project in a manner that is consistent with the laws, codes, ordinances, rules, and regulations applicable to that project. A licensee may obtain and rely upon the advice of other professionals (e.g., architects, attorneys, professional engineers, professional land surveyors, and other qualified persons) as to the intent and meaning of such laws, codes, and regulations.

(b) Conflict of Interest:

(1) If a licensee provides professional services for two or more clients on a project or related projects, the licensee shall disclose in writing to those clients and property owners or their authorized representatives his or her relationship to those clients.

(2) If a licensee has a business association or a financial interest which may influence his or her judgment in connection with the performance of professional services, the licensee shall fully disclose in writing to his or her client(s) or employer(s) the nature of the business association or the financial interest.

(3) A licensee shall not solicit or accept payments, rebates, refunds, or commissions, whether in the form of money or otherwise, from contractors or suppliers of material, systems, or equipment in return for specifying their products to a client or employer of the licensee.

(4) A licensee, while engaged by a governmental agency as an officer, employee, appointee, agent, or consultant of that agency shall not engage in a professional land surveying business or activity that may be subject to that licensee's direct or indirect control, inspection, review, audit, or enforcement on behalf of that agency, unless the circumstances are disclosed to and approved by that agency in writing prior to such engagement.

(c) Representations:

(1) A licensee shall not misrepresent his or her qualifications to a prospective or existing client or employer.

(2) A licensee shall not misrepresent to a prospective or existing client the licensee's scope of responsibility in connection with projects or services for which the licensee is receiving or will receive compensation from that client.

(3) A licensee shall not misrepresent his or her scope of responsibility in connection with projects or services for which the licensee is claiming credit.

(4) A licensee shall not misrepresent nor permit the misrepresentation of his or her professional qualifications, or affiliations or the affiliations or purposes of the institutions, organizations, or other businesses with which he or she is associated.

(5) When providing information in connection with a person's application for a license to practice professional land surveying, a licensee shall accurately represent his or her knowledge of the applicant's qualifications.

(6) A licensee may advertise or solicit for any services for which he or she is authorized by licensure.

(7) A licensee shall only express professional opinions that have a basis in fact or experience or accepted land surveying principles.

~~(8) A licensee shall attribute proper credit to others for their professional work or professional contribution and shall not misappropriate the professional work of others.~~

~~(9)~~(8) A licensee shall not knowingly permit the publication or use of his or her data, reports, maps, or other professional documents for unlawful purposes.

~~(10)~~(9) A licensee shall not falsely or maliciously injure or attempt to injure the reputation or business of others.

~~(11)~~(10) A licensee shall not misrepresent data and/or its relative significance in any professional land surveying report.

(d) Confidential Information:

Confidential information obtained by a licensee, in his or her professional capacity, concerning a client, employer, or other related party shall not be disclosed by the licensee without the permission of the client, employer, or other related party except for the following:

(1) Disclosures made in response to an order of the court or to a subpoena or summons enforceable by an order of the court.

(2) Disclosures made in an adjudicatory proceeding.

(3) Disclosures made in response to an official inquiry from a governmental regulatory agency.

(4) Disclosures made when required by law.

(5) Disclosures made upon discovering a hazard within the licensee's field of professional expertise which may threaten the health, safety, and welfare of the public.

(6) Disclosures made when providing evidence to the Board regarding other licensees or unlicensed individuals who may have violated the Professional Land Surveyors' Act.

(7) Disclosures made regarding illegal conduct.

As used in this section, "confidential information" means information identified as confidential by the licensee's client, employer, or other related party.

(e) Document Submittal:

(1) A licensee shall not misrepresent the completeness of the professional documents he or she submits to a governmental agency.

(2) A licensee shall not misrepresent the completeness of the professional documents he or she prepared to his or her client or to other involved parties.

3065. Professional Standards and Code of Professional Conduct - Professional Geology and Professional Geophysics.

To protect and safeguard the health, safety, welfare, and property of the public, and California's environmental quality, every person who is licensed by the Board for Professional Engineers, Land Surveyors, and Geologists (Board) as a professional geologist or professional geophysicist, including licensees employed in any manner by a governmental entity or in private practice, shall comply with the professional standards in this section. A violation of any of the following professional standards shall constitute unprofessional conduct and shall be sufficient grounds for disciplinary action.

(a) Compliance with Applicable Law:

A licensee shall provide all geologic and geophysical services in a manner consistent with applicable laws, codes, ordinances, rules, and regulations. A licensee may obtain and rely upon the knowledge and advice of other professionals (e.g., architects, attorneys, professional engineers, other professional geologists and geophysicists, land surveyors, and other qualified persons) concerning the intent and meaning of such laws, codes, and regulations.

(b) Competence:

(1) Licensed geologists or licensed geophysicists (together with those whom the licensee may engage as consultants) shall perform, or offer to perform, only those professional services for which they are qualified by education, training, experience, and licensure as required by law, in the specific technical and scientific areas involved.

(2) When practicing geology or geophysics, a licensee shall act with competence and reasonable care, and shall apply the technical knowledge and skill which is ordinarily practiced by licensees in good standing, practicing in this state under similar circumstances and conditions.

(c) Representations:

(1) A licensee shall not misrepresent, or permit the misrepresentation, of his or her professional qualifications, affiliations, or purposes, or those of the institutions, organizations, or other businesses with which they are associated.

(2) A licensee may advertise or solicit those professional services for which he or she is authorized by licensure, provided such services are within his or her field of competence.

(3) A licensee shall not misrepresent his or her qualifications to a prospective or existing client or employer.

(4) A licensee shall not misrepresent to a prospective or existing client, the licensee's scope of responsibility in connection with those professional services for which the licensee is receiving or will receive compensation, whether directly or indirectly. Specifically, a licensee who represents that a project was completed under his or her responsible charge (i.e., stamped and/or signed) must also have maintained responsible charge of the work.

(5) A licensee shall only express professional opinions which have a basis in fact, are within the scope of the licensee's own experience or knowledge, and are generally accepted geologic or geophysical principles.

~~(6) A licensee shall attribute proper credit to others for their professional work or professional contribution, and shall not misappropriate the professional work of others.~~

~~(7)~~(6) A licensee shall not knowingly permit the publication or use of his or her data, reports, maps, plans, or other professional documents for any unlawful purpose.

~~(8)~~(7) A licensee shall not falsely or maliciously attempt to injure, impugn, or, ~~in fact~~ injure the professional reputation or business of others.

~~(9)~~(8) A licensee shall not misrepresent data or its relative significance in any geologic or geophysical work product or oral conveyance of his or her professional opinion.

~~(10)~~(9) A licensee shall not misrepresent or conceal the scope of his or her professional responsibility in connection with those professional services for which the licensee is claiming any responsibility or credit, or for which the licensee is receiving any compensation.

~~(11)~~(10) When providing information to the Board pursuant to another's application for licensure to practice professional geology or geophysics, a licensee shall accurately represent his or her knowledge of the applicant's qualifications and qualifying experience.

(d) Conflict of Interest:

(1) A licensee shall not concurrently engage in any other business, occupation, or have a financial interest in any entity that may impair his or her independent judgement, and/or objectivity; or which may create a conflict of interest in rendering his or her professional services.

(2) A licensee shall not accept compensation for his or her professional services from more than one party on any project, endeavor, or proceeding unless the circumstances are fully disclosed and agreed to in writing by all concerned parties.

(3) If a licensee has any business association or financial interest which is substantial enough to influence his or her judgment in connection with the performance of professional services, the licensee shall fully disclose in writing to his or her client(s) or employer(s) the nature of the business association or financial interest. If the client(s) or employer(s) object(s) to such association or financial interest, the licensee shall either terminate such association or interest; or offer to give up the project or employment.

(4) A licensee shall not solicit or accept payments, rebates, refunds, commissions, or compensation, whether in the form of money or otherwise from other professionals, contractors, suppliers of materials, systems, or equipment in return for specifying their products or professional services to a client or employer of the licensee.

(5) A licensee, while engaged by a governmental agency as an officer, employee, appointee, agent, or consultant of that agency shall not engage in a professional geological or geophysical business or activity that may be subject to that licensee's direct or indirect control, inspection, review, audit, or enforcement on behalf of that agency, unless the circumstances are disclosed to and approved by that agency in writing prior to such engagement.

(e) Confidential Information:

As used in this section, "confidential information" ~~means~~ includes all information, specifically identified as confidential by the licensee's client, employer, representative, or other related entity. Confidential information obtained by a licensee in his or her professional capacity, shall not be disclosed by the licensee without prior permission, except under the following specific conditions:

(1) Disclosures made in response to a subpoena or summons enforceable by an order of a court;

(2) Disclosures made in response to an official inquiry from a governmental regulatory agency;

(3) Disclosures made by a licensee to another licensee to the extent necessary for purposes of professional consultation;

(4) Disclosures made when required by law, code, or regulation.

(5) Disclosures made upon discovery of a hazard within the licensee's field of professional expertise, which, in the licensee's professional opinion, is a threat to the health, safety, and welfare of the public;

(6) Disclosures made when providing evidence to the Board concerning another licensee or unlicensed individual, who may have violated any part of the Geologist and Geophysicist Act or this Section;

(7) Disclosures made regarding alleged illegal conduct; or

(8) Disclosures made in an adjudicatory proceeding or pursuant to an order of the court.

(f) Document Submittal:

(1) A licensee shall not misrepresent the completeness of any professional geologic or geophysical document submitted to any governmental or regulatory agency.

(2) A licensee shall not misrepresent the completeness of any professional geologic or geophysical document prepared for his or her client, employer, or other involved party.

11. **APPROVAL OF DELINQUENT REINSTATEMENTS**

APPROVAL OF DELINQUENT REINSTATEMENTS

Motion: Approve the following 3 and 5-year delinquent reinstatement applications.

CIVIL

CHANG, HSIAO-LUNG

Reinstate applicant's civil license once he/she takes and passes the Board's Laws and Regulations Examination, and pays all delinquent and renewal fees.

HARRINGTON, JOHN RYAN

Reinstate applicant's civil license once he/she takes and passes the Board's Laws and Regulations Examination, and pays all delinquent and renewal fees.

JOHNSON, DANIEL LEE

Reinstate applicant's civil license once he/she takes and passes the Board's Laws and Regulations Examination, and pays all delinquent and renewal fees.

LIMAYE, GOPAL SHANKAR

Reinstate applicant's civil license once he/she takes and passes the seismic principles examination, the engineering surveying examination, and the Board's Laws and Regulations Examination, and pays all delinquent and renewal fees.

RASOULI, MAX MAJID

Reinstate applicant's civil license once he/she takes and passes the Board's Laws and Regulations Examination, and pays all delinquent and renewal fees.

ELECTRICAL

GUSTAFSON, JOHN STEPHEN

Reinstate applicant's electrical license once he/she takes and passes the Board's Laws and Regulations Examination.

MECHANICAL

LE, THIEN C

Reinstate applicant's mechanical license once he/she takes and passes the Board's Laws and Regulations Examination, and pays all delinquent and renewal fees.

MURRAY, SHANNON THOMAS

Reinstate applicant's mechanical license once he/she takes and passes the NCEES mechanical engineering examination, Board's Laws and Regulations Examination, and pays all delinquent and renewal fees.

12. **INFORMATION TECHNOLOGY UPDATES**

- A. BreZE Implementation Status
- B. Credit Card Renewal Update

13. **ADMINISTRATION**

- A. 2011/12 Fund Condition
- B. FY 2011/12 Budgets

A. Fund Condition Overview:

The fund conditions for the Engineers & Land Surveyors Board and the Geologists & Geophysicists Account are identified in **Attachments A and B**. The final FY 2011-12 revenue and expenditure figures will change slightly from the figures included in the fund conditions once all year-end revenue and expenditures are realized.

The **Engineers and Land Surveyors (PELS) Fund** as of November 30, 2011:

	FY 11/12	FY 10/11
Expenditures	\$7.2 Million	\$5.7 Million
Revenue	\$5.9 Million	\$5.3 Million
Applications	7,553	7,948
Renewals	19,411	16,276

Notes: Application & Renewal stats captured since November 30, 2011.

Applications received have decreased slightly versus last year's figures. Renewals have increased based on the cyclical nature of the PELS population. Overall, revenue should increase by \$1M as a result.

The **Geologist and Geophysicists (GEO) Fund** as of November 30, 2011:

	FY 11/12	FY 10/11
Expenditures	\$412 Thousand	\$425 Thousand
Revenue	\$440 Thousand	\$466 Thousand
Applications	124	150
Renewals	1,706	1,947

Notes: Application & Renewal stats captured since November 30, 2011.

Applications and renewals have decreased slightly versus last year's figures which will decrease revenue as a result for the Geology and Geophysicists Account this FY.

ATTACHMENT A

Board for Professional Engineers and Land Surveyors
Analysis of Fund Condition

As of November 30, 2011

FUND CONDITION:	ACTUAL 2010-11	CY 2011-12	Governor's Budget		
			BY 2012-13	BY+1 2013-14	BY+2 2014-15
Totals, Reserves, July 1	\$ 5,649	\$ 5,707	\$ 348	\$ 1,215	\$ 2,795
REVENUE:					
License & Permit Fees	\$ 3,535	\$ 3,388	\$ -	\$ -	\$ -
Proposed Board Rule 407 Fee Regulations	\$ 5,356	\$ 6,600	\$ 3,705	\$ 3,890	\$ 3,890
Renewal Fees	\$ 72	\$ 81	\$ 4,965	\$ 5,887	\$ 4,965
Proposed Board Rule 407 Fee Regulations			\$ -	\$ -	\$ -
Delinquent Fees	\$ 39	\$ 18	\$ 75	\$ 75	\$ 75
Proposed Board Rule 407 Fee Regulations	\$ 24	\$ 36	\$ 9	\$ 22	\$ 23
Surplus Money Investments	\$ 9,026	\$ 10,123	\$ 30	\$ 30	\$ 30
Miscellaneous Revenue			\$ 8,784	\$ 9,904	\$ 8,983
Totals, Revenues	\$ 14,675	\$ 10,830	\$ 9,132	\$ 11,119	\$ 11,778
Proposed GF Loan FY 11-12		\$ -5,000			
Totals, Resources	\$ 8,947	\$ 10,301	\$ 10,444	\$ 10,653	\$ 10,866
EXPENDITURES:					
Program Expenditures			\$ -1,124	\$ -1,124	\$ -1,124
NCEES Exam administration funding			\$ -1,500	\$ -1,500	\$ -1,500
Exam Administration Savings			\$ 161	\$ 359	\$ 366
Breeze SPR Funding	\$ 21	\$ 51	\$ -	\$ -	\$ -
State Operations (SCO & FISCA)			\$ -64	\$ -64	\$ -64
BLs - Cell Phone reduction, Savings Plan			\$ 7,917	\$ 8,324	\$ 8,544
Totals, Expenditures	\$ 8,968	\$ 10,482	\$ 7,917	\$ 8,324	\$ 8,544
FUND BALANCE	\$ 5,707	\$ 348	\$ 1,215	\$ 2,795	\$ 3,234
Months In Reserve	6.5	0.5	1.8	3.9	4.4

NOTES:

- A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED FOR 2011-12 AND ON-GOING.
- B. EXPENDITURE GROWTH PROJECTED AT 2% BEGINNING FY 2012-13
- C. REVENUE PROJECTIONS FOR BOARD RULE 407 ARE PRELIMINARY ESTIMATES

ATTACHMENT B

**Geology and Geophysics Account
Analysis of Fund Condition**

As of November 30, 2011

	ACTUAL	CY	Governor's Budget	BY	BY+1	BY+2
	2010-11	2011-12	2012-13	2013-14	2014-15	
FUND CONDITION:						
Totals, Reserves, July 1	\$ 847	\$ 1,011	\$ 670	\$ 394	\$ 76	
REVENUE:						
License & Permit Fees	\$ 178	\$ 105	\$ 249	\$ 249	\$ 249	\$ 249
Renewal Fees	\$ 815	\$ 767	\$ 821	\$ 821	\$ 821	\$ 821
Delinquent Fees	\$ 14	\$ 50	\$ 14	\$ 14	\$ 14	\$ 14
Surplus Money Investments	\$ 6	\$ 3	\$ -	\$ -	\$ -	\$ -
Miscellaneous Revenue	\$ 4	\$ 2	\$ 3	\$ 3	\$ 3	\$ 3
Totals, Revenues	<u>\$ 1,017</u>	<u>\$ 927</u>	<u>\$ 1,087</u>	<u>\$ 1,087</u>	<u>\$ 1,087</u>	<u>\$ 1,087</u>
Proposed GF Loan FY 11-12	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Totals, Resources	<u>\$ 1,864</u>	<u>\$ 1,938</u>	<u>\$ 1,757</u>	<u>\$ 1,481</u>	<u>\$ 1,481</u>	<u>\$ 1,163</u>
EXPENDITURES:						
Program Expenditures	\$ 850	\$ 889	\$ 1,365	\$ 1,387	\$ 1,415	\$ 1,415
Breeze SPR Funding	\$ 3	\$ 4	\$ -	\$ 10	\$ 7	\$ 7
State Operations (SCO & FISCA)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
BLs - Cell Phone reduction, Savings Plan	\$ -	\$ -8	\$ -8	\$ -8	\$ -8	\$ -8
Totals, Expenditures	<u>\$ 853</u>	<u>\$ 898</u>	<u>\$ 1,368</u>	<u>\$ 1,389</u>	<u>\$ 1,414</u>	<u>\$ 1,414</u>
FUND BALANCE	<u>\$ 1,011</u>	<u>\$ 1,040</u>	<u>\$ 389</u>	<u>\$ 92</u>	<u>\$ -251</u>	
Months in Reserve	13.5	9.1	3.4	0.8	-2.1	

NOTES:

- A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED FOR 2011-12 AND ON-GOING.
- B. EXPENDITURE GROWTH PROJECTED AT 2% BEGINNING FY 2012-13
- C. REVENUE PROJECTIONS FOR BOARD RULE 407 ARE PRELIMINARY ESTIMATES

B. FY 2011-12 Budget Projections:

The FY 2011-12 budget and projected expenditures are listed below for the Engineers and Geology Funds. As of November 30, 2011, the Engineers Fund have expended \$7.246 Million, after reimbursements, that is 69% of FY 2011-12 expenditure appropriation. The Geology Fund have expended \$413 Thousand that is 31% of their FY 2011-12 expenditure appropriation. The projected expenditures, through year end, are provided in the third column. The Engineers Fund is projected to revert \$135 Thousand or 1% of their appropriation and the Geology Fund is projected to revert \$446 Thousand or 33% of their appropriation.

Expense Description	Budget Allotment	Expenditures as of 11/30/11	Projection to Year End	Balance at Year End
ENGINEERS/LAND SURVEYORS:				
Personal Services	\$ 3,173	\$ 1,244	\$ 3,069	\$ 104
General Operating Expenses	\$ 646	\$ 647	\$ 898	\$ (252)
Examinations	\$ 4,120	\$ 4,305	\$ 3,535	\$ 585
Enforcement	\$ 1,115	\$ 504	\$ 1,420	\$ (305)
Departmental Pro-Rata	\$ 1,467	\$ 630	\$ 1,464	\$ 3
<i>Subtotal Expense</i>	\$ 10,521	\$ 7,330	\$ 10,386	\$ 135
<i>Less: Reimbursements</i>	\$ (84)	\$ (84)	\$ (84)	\$ -
Net Appropriation	\$ 10,437	\$ 7,246	\$ 10,302	\$ 135
GEOLOGISTS/ GEOPHYSICISTS:				
Personal Services	\$ 350	\$ 118	\$ 288	\$ 62
General Operating Expenses	\$ 126	\$ 16	\$ 136	\$ (10)
Examinations	\$ 476	\$ 157	\$ 240	\$ 236
Enforcement	\$ 235	\$ 16	\$ 51	\$ 184
Departmental Pro-Rata	\$ 148	\$ 105	\$ 174	\$ (26)
<i>Subtotal Expense</i>	\$ 1,335	\$ 412	\$ 889	\$ 446
<i>Less: Reimbursements</i>	\$ -	\$ -	\$ -	\$ -
Net Appropriation	\$ 1,335	\$ 412	\$ 889	\$ 446

14. **TECHNICAL ADVISORY COMMITTEES (TACs)**

- A. Board Assignments to TACs
- B. Appointment of TAC Members
- C. Reports from the TACs

15. **LIAISON REPORTS**

- A. ASBOG
- B. ABET
- C. NCEES
- D. Technical and Professional Societies

16. **PRESIDENT'S REPORT/BOARD MEMBER ACTIVITIES**

17. **OTHER ITEMS NOT REQUIRING BOARD ACTION**

18. **APPROVAL OF CONSENT ITEMS**

(These items are before the Board for consent and will be approved with a single motion following the completion of Closed Session. Any item that a Board member wishes to discuss will be removed from the consent items and considered separately.)

- A. Approval of the Minutes of the November 18, 2011, Board Meeting

PRELIMINARY DRAFT

MINUTES OF THE MEETING OF THE BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS

2535 Capitol Oaks Drive, Suite 300
Sacramento, CA 95833
(916) 263-2222

November 18, 2011, beginning at 10:00 a.m.

Board Members Present: Jerry Silva, President; Paul Wilburn, Vice President; Carl Josephson; Mike Modugno; Hong Beom Rhee; Ray Satorre; Patrick Tami; Michael Trujillo; and Erik Zinn.

Board Members Absent: Philip Quartararo

Board Staff Present: Ric Moore (Executive Officer); Joanne Arnold (Assistant Executive Officer); Celina Calderone (Board Liaison); Nancy Eissler (Enforcement Manager); Larry Kereszt (Enforcement Analyst); Jeff Alameida (Budget Analyst); Susan Christ (Licensing Unit Manager); and Gary Duke (Legal Counsel).

1. **Roll Call to Establish a Quorum** - The meeting was called to order by President Silva at 9:05 a.m. Roll call was taken, and a quorum was established.
2. **Public Comment** - Annette Lockhart representing CLSA thanked the Board for their assistance in assisting them in securing space at the Sacramento examination site to distribute lunch to all those taking the land surveyor examinations. She indicated that this is a great benefit to those taking the examination to have that opportunity to relax and not worry about lunch.

Mr. Moore indicated that there is a group of people from northern California who requested that a comment be read at the Board meeting. Ms. Calderone read the statement from Ms. Wauldbaum. Their issue that was discussed is the actual standards that have been used in the past differ from those that are used now in evaluating the work of geologists. Mr. Zinn commented briefly that this Board does not set standards of care nor did the original Geologists and Geophysicists Board. They were a licensing board. The Board does not have control over geologists as the letter implies in terms of standards of care. The implication that old notes issued by the Mining and Geology Board are somehow are the standard of today is antiquated. He believes it would be good to discuss with the Geologist and Geophysicist TAC. Mr. Duke reiterated what Mr. Zinn discussed by

indicating that the standards are set by the profession and they evolve.

Michael Trujillo joined the meeting 9:14 a.m.

5. **Executive Officer's Report**

A. Legislation

1. Discussion of Legislation for 2011-2012:

AB 275 Solorio. Rainwater Capture Act of 2011. This bill would, among other things, authorize landscape contractors, holding a specified classification, to design and install all exterior components of a rainwater capture system.

BOARD POSITION: Support
VETOED BY THE GOVERNOR

AB 1023 Wagner. Maintenance of the codes. This bill would make technical changes to various provisions of law based on the recommendations made by the Legislative Counsel to the Legislature. This bill repeals duplicate Sections 6731.1, 6731.2, 8726.1, and 8761.1 of the Business and Professions Code.

BOARD POSITION: Watch
SIGNED BY THE GOVERNOR – CHAPTER 296, STATUTES OF 2011

AB 1210 Garrick. Civil Engineering - relating to water quality. This bill was amended to exempt civil engineers from any additional requirements to perform activities in the preparation of storm water pollution plans.

BOARD POSITION: Support
VETOED BY THE GOVERNOR

AB 1424 Perea. Franchise Tax Board: delinquent tax debt. This bill would permit a state agency that issues professional licenses, to suspend, revoke, or refuse to issue a license if the licensee's name is included on the list of the 500 largest tax delinquencies of the State Board of Equalization and the Franchise Tax Board.

BOARD POSITION: Oppose
SIGNED BY THE GOVERNOR – CHAPTER 455, STATUTES OF 2011.

SB 541 Price. Regulatory Boards: expert consultants. This bill would authorize the boards of DCA to continue to utilize expert consultants, as done in the past, without going through formal contracting process.

BOARD POSITION: Support
SIGNED BY THE GOVERNOR - CHAPTER 339, STATUTES OF 2011.

SB 543 Price. Business and professions: regulatory boards. This bill extends the sunset dates for various DCA regulatory boards and bureaus that are being evaluated by the Joint Sunset Review Committee. It also makes various changes to the Engineer's Act, Land Surveyor's Act, and Geologist and Geophysicist Act.
BOARD POSITION: Support
SIGNED BY THE GOVERNOR – CHAPTER 448, STATUTES OF 2011.

SB 692 Walters. Professional Engineers. This bill would change the disciplines currently licensed as "title act" engineers to "practice act" engineers.
BOARD POSITION: Watch

SB 944 Senate Business Professions & Economic Development Committee. This is one of the Committee's Omnibus bills. It includes some minor changes to the Engineer's Act, the Land Surveyor's Act, and the Geologist and Geophysicist Act.
BOARD POSITION: Support

a. Temporary Authorization Repeal (Business and Professions Code Section 6760)

Ms. Christ explained that the recommendation to repeal of the temporary authorization has been around for a long time. She stated that she believes if it is used judiciously, there is a place for it. The last temporary authorization issued was for a very specialized engineer and one of the few in the U.S. who could do the design work involved in the project; therefore, he was granted temporary authorization. Mr. Moore indicated that in the Board agenda, staff has asked the Board to consider a proposed motion to pursue legislation to repeal it in accordance with the Strategic Plan. Mr. Josephson agreed that there are times when it is appropriate. Mr. Tami added that with the amount of intelligence that is here in California, it is extremely rare if not completely out of the question that one could not find one person who is licensed here and could be in responsible charge of any project. One of his concerns is with the legality of denying some and granting others. Ms. Christ indicated that only civil engineers apply because the other disciplines can acquire their license by comity; the civil engineer applicants have to take the two California special civil examinations. She advised that very few people who apply for temporary authorization complete their licensure due to failing the examinations or they are simply never taken.

Motion: Mr. Tami and Mr. Satorre moved to direct staff to pursue legislation to repeal Business and Professions Code section 6760.

Vote: 2-6-1 Motion Failed

Since the motion failed, President Silva indicated it would be very advantageous to gather more information and present that to the Board at a future meeting. Mr. Moore suggested researching other boards in other states.

B. Strategic Plan Goals for 2011-2012

Mr. Moore indicated that staff met with DCA to implement an action plan to achieve objectives in the Strategic Plan. This plan set forth specific actionable items which need to be accomplished in order to achieve the objectives. The committee reviewed all items using guidelines. Each item has to be specific, which means it had to be clear and detailed, measureable, accountable, realistic, and time specific to achieve each action.

The committee identified thirteen action items for Goal One, thirteen for Goal Two, sixteen for Goal Three, nine for Goal Four, and five for goal Five. Approximately 40% of action items for this Fiscal Year have been completed. The majority of the remaining items are ongoing. Mr. Moore expects a final copy of the action plan soon and will forward a copy to all Board members. President Silva requested that a one page summary sheet be compiled with the Board's accomplishments to communicate both internally and externally what the Board does.

6. Examination/Licensing

Ms. Hirano introduced herself and sought approval from the Board for the following test plans. Mr. Moore indicated that a survey was conducted, and while it did not get the response the Board was looking for, the response was more than sufficient for this occupational analysis.

- A. Approval of New Test Plan Specifications – Civil Seismic Principles
- B. Approval of New Test Plan Specifications – Civil Engineering Surveying
- C. Approval of New Test Plan Specifications – Land Surveyor

Motion: Mr. Tami and Mr. Zinn moved to approve

Vote: 9-0, motion carried

7. Consideration of Rulemaking Proposals, as follows:

- A. Adoption of Proposed Amendments to Board Rules 407 and 428 (16 CCR 407 and 428), Engineers and Land Surveyors Fees and Abandoned Applications

Mr. Alameida indicated that a review of the original proposal revealed that the fee changes as originally proposed would not create fiscal solvency for the Board; therefore, the proposal was amended and a 15-day noticed public comment period was held regarding the new fees. He explained that separate application and state examination administration fees will be

established; the renewal fee will decrease; and there will be adjustments to the retirement and delinquency fees. At this time, staff is requesting that the Board adopt the final language and direct staff to move forward with the final rulemaking proposal, including submittal to DCA and the Office of Administrative Law for final approval.

Mr. Alameida added that since the Board is giving up administration of NCEES examinations, separating the fees could result in a savings to licensees and applicants. Mr. Duke said it is a trend to separate the fees. Mr. Alameida also stated that with a pass-thru of fees, as is currently done, it is very difficult to control the flow the money from the applicant to the Board, then to NCEES. It is much easier to segregate the fees. The applicant will pay NCEES for the examination as opposed to the Board being involved as a middleman. Mr. Moore added that these fees more closely reflect the Board's actual cost, and much research was performed to determine the appropriate fees. Mr. Alameida explained that fees were based on 3- and 5-year averages with a conservative estimate for an increase in workload built in. Since the Board is not for profit, it is important to maintain the exact revenue for exact expenditures. The Board would still need to maintain a higher balance of revenue as opposed to expenditures just to maintain solvency. Mr. Wilburn clarified that a new applicant will have to pay an application fee and state examination fee, if needed, and Mr. Moore added that if the applicant is deemed not eligible, the state examination fee would be refunded. Over the next two to three cycles, the Board's objective is to have the Board's final filing dates align to where there is ample time to review applications before registering for the NCEES examinations. Another goal is to be able to notify the applicant whether they are qualified before they register with NCEES. In the past, there would be a \$275.00 fee to pay for staff time, technical review, development, and cost for NCEES to provide a book, administration and grading of examinations. It was identified what it costs to process an application. If the applicant was deemed to be ineligible, we would refund half the fee. Therefore, \$125.00 closely represents the cost of the application review. Approximately 10% of applicants each cycle are deemed ineligible.

Mr. Moore pointed out that applicants are applying for licensure, not an examination. They are not approved because they did not meet the minimum qualifications for licensure. Mr. Tami stated that he prefers the Nevada Board's application method: candidates take the examination and if the candidate passes then their application is then reviewed.

Mr. Alameida indicated there will be a minimal surplus for the Board to take care of enforcement, administration, and licensing. The Department of Finance prefers to see months in reserve which is based on the fund balance. Based on the appropriation, it is minimal. The surplus was not an

exorbitant amount, just a solvency to handle the enforcement, registration, and licensing. He added that if the Board maintains the \$275.00 application fee the Board will be insolvent in 3 years.

Bob DeWitt representing ACEC asked when this will become effective. Mr. Alameida indicated around May or June 2012. Mr. Copelan representing PEGG indicated that PEGG is opposed to changes within Section 407 that would allow a person who is unqualified to receive only a partial refund. Mr. Tami clarified that the proposal is to grant a reimbursement of the examination fee for an applicant in which their application is reviewed and staff time is used to evaluate the application. Mr. Moore pointed out that before the application fee was \$275.00. If the applicant was found ineligible the Board would refund half the amount, or \$137.50. The Board is proposing the application fee to cover the cost of just the application review and processing. In the civil engineer's case, they pay \$150.00 for the California Seismic Principles examination and another \$150.00 for the California Engineering Surveying examination, for a total of \$300.00. If they are found ineligible the Board would refund \$300.00 back to the applicant. He added that the examination fee encompasses all development and administration costs.

Motion: Mr. Wilburn and Mr. Modugno moved to adopt the proposed changes and direct staff to proceed with the rulemaking process.

Vote: 9-0, motion carried

B. Adoption of Proposed Amendments to Board Rule 443 (16 CCR 443), Inspection of examinations

Mr. Kereszt indicated this would repeal section (c)(1).

Motion: Mr. Josephson and Mr. Zinn moved to adopt the proposed changes and direct staff to proceed with the rulemaking process.

Vote: 9-0, motion carried

C. Proposed Amendments to Regulations Pertaining to Geology and Geophysics (16 CCR 3000, et seq.)

No report was given

8. **Approval of Delinquent Reinstatements**

Motion: Mr. Modugno and Mr. Wilburn moved to approve

Vote: 9-0, motion carried

9. **Liaison Reports**

A. NCEES

1. Appointment of Associate Member

Mr. Moore indicated that the Board approved Jim Foley as Emeritus Member for NCEES and Mike Donelson as Associate Member. The Board needs to appoint another Associate Member.

Motion: Mr. Satorre and Mr. Josephson moved to appoint the Board's Executive Officer, Ric Moore, as Associate Member to NCEES.

Vote: 9-0, motion carried

Mr. Moore advised that Jerry Carter, NCEES Executive Director, contacted him about serving on the Member Board Administrator Task Force. The NCEES president appointed Mr. Moore to the Task Force.

10. **2012 Board Meeting Dates**

After reviewing the 2012 calendar of meeting dates, it was determined that Mr. Tami would not be available for the January 12-13, 2012, meeting; however, those dates would be pursued if a quorum could be established. The May 3-4, 2012 was changed to a one-day teleconference meeting on May 15 as President Silva would not be available prior to that date. The Board is contemplating whether March 8-9 or June 28-29 would be best to have a meeting in Southern California.

11. **Other Items Not Requiring Board Action**

President Silva presented Mr. Modugno a gavel plaque for his service as prior Board President.

Mr. Silva would like to communicate to the Department what our Board is doing in recognizing licensees for their tenure.

Mr. Modugno spoke at California State University Northridge. He recommends further outreach. Mr. Zinn spoke to the International Building Code Organization (IBCO) Mr. Josephson attended a refugee session in San Diego to explain the process of becoming licensed in California. President Silva attended Pomona's examination administration. Mr. Wilburn attended Sacramento's examination administration. Mr. Josephson attended San Diego's examination administration.

Mr. Tami would like to see a new Advisory Committee that involves general items of interest such as strategic planning and other administrative type items. He would like to discuss this at a future meeting.

12. **Approval of Consent Items**

(These items are before the Board for consent and will be approved with a single motion following the completion of Closed Session. Any item that a Board member wishes to discuss will be removed from the consent items and considered separately.)

A. Approval of the Minutes of the July 28, 2011 and September 8, 2011,

Board Meeting

Motion: Mr. Wilburn and Mr. Satorre moved to approve
Vote: 9-0, motion carried

3. **Closed Session** – Personnel Matters, Examination Procedures and Results, Administrative Adjudication, and Pending Litigation (As Needed) [Pursuant to Government Code sections 11126(a) and (b), 11126(c)(1), 11126(c)(3), 11126 (e)(1), and 11126(e)(2)(B)(i)]
 - A. Rodolfo Dimalanta v. Board for Professional Engineers and Land Surveyors, Court of Appeal, First Appellate District, Case. No. A131485 [Superior Court of Alameda County Case No. RG10513640]
4. **Open Session to Announce the Results of Closed Session**

Ms. Eissler indicated that the Board discussed litigation as noticed and adopted four stipulations and a default decision. Mr. Duke indicated that a proposed decision was also adopted.
13. **Adjourn**

The meeting adjourned at 12:03 p.m.

PUBLIC PRESENT

Annette Lockhart, CLSA
Roger Hanlin, CLSA
Jonathan Tarkowski
Robert DeWitt, ACEC

19. ADJOURN
