



**Board for Professional Engineers,
Land Surveyors, and Geologists**

Meeting of the Board for Professional Engineers, Land Surveyors, and Geologists

November 13-14, 2014

Thursday, November 13 beginning at
10:00 a.m. and continuing on
Friday, November 14, beginning at 9:00
a.m., if necessary

Department of General Services
3737 Main Street, 2nd Floor
Highgrove Room
Riverside, CA 92501

TABLE OF CONTENTS

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

BOARD MEETING LOCATION

NOVEMBER 13 14, 2014

DEPARTMENT OF GENERAL SERVICES
3737 MAIN STREET, HIGHGROVE ROOM
RIVERSIDE, CA 95404

BOARD MEMBERS

Board Members: Kathy Jones Irish, President; Robert Stockton, Vice President; Natalie Alavi; Asha Brooks; Diane Hamwi; Eric Johnson; Coby King; Philip Quartararo; Mohammad Qureshi; Hong Beom Rhee; Karen Roberts; Ray Satorre; Jerry Silva; Patrick Tami and Erik Zinn

I. Roll Call to Establish a Quorum	7
II. Public Comment NOTE: The Board cannot take action on items not on the agenda. The Board will also allow for Public Comment during the discussion of each item on the agenda.	9
III. Legislation A. Legislative Calendar B. Chaptered Legislation: AB 186, AB 1702, AB 2396 , SB 1467	11
IV. Consideration of Rulemaking Proposals (Possible Action) A. Request from CalGeo to Amend Title 16, California Code of Regulations Section 461 (Testing Laboratory Reports) B. Proposed Amendments to Title 16, California Code of Regulations Sections 416 and 3060 (Substantial Relationship Criteria)	17
V. Administration A. FY 2014/15 Budget Summary (Possible Action)	55
VI. Enforcement A. Enforcement Statistical Reports (Possible Action) B. Disclosure of Complaints and Enforcement Actions (Possible Action)	61
VII. Executive Officer's Report A. Strategic Plan B. Sunset Report C. Personnel D. BreEZe Update	75
VIII. Exams/Licensing A. Fall 2014 Examination Update	77
IX. Approval of Delinquent Reinstatements (Possible Action)	79

<p>X. Technical Advisory Committees (TACs) A. Board Assignments to TACs (Possible Action) B. Appointment of TAC Members (Possible Action) C. Reports from the TACs (Possible Action)</p>	81
<p>XI. Liaison Reports A. ASBOG (Possible Action) B. ABET (Possible Action) C. NCEES (Possible Action) D. Technical and Professional Societies (Possible Action)</p>	83
<p>XII. President’s Report/Board Member Activities</p>	85
<p>XIII. Approval of Consent Items (Possible Action) (These items are before the Board for consent and will be approved with a single motion. 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 September 25, 2014, Board Meeting</p>	87
<p>XIV. Other Items Not Requiring Board Action A. 2015 Board Meeting Schedule</p>	97
<p>XV. 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. Civil Litigation 1. <u>Dennis William McCreary vs. Board for Professional Engineers, Land Surveyors, and Geologists</u>, Sierra County Superior Court Case No. 7361 2. <u>Thomas Lutge v. Board for Professional Engineers, Land Surveyors, and Geologists</u>, Department of Consumer Affairs, Court of Appeal, Third Appellate District, Case No. C075779 (Sacramento Superior Court Case No. 34-2012-80001329-CU-WM-GDS) 3. <u>Ruin Grutman v. Board for Professional Engineers, Land Surveyors, and Geologists</u>, Los Angeles Superior Court Case No. BS145675 4. <u>Ruin Grutman v. Board for Professional Engineers, Land Surveyors, and Geologists</u>, Los Angeles Superior Court Case No. BS145796 5. <u>Sassan Salehipour v. Board for Professional Engineers, Land Surveyors, and Geologists</u>, Los Angeles County Superior Court Case No. BS146185 6. Paul Christopher Ehe v. Board for Professional Engineers, Land Surveyors, and Geologists (San Bernardino Superior Court, Case</p>	101

No. CIVDS1413253)

XVI. Open Session to Announce the Results of Closed Session

103

XVII. Adjourn

105

I. Roll Call to Establish a Quorum

II. Public Comment

III. Legislation

A. Legislative Calendar

B. Chaptered Legislation: AB 186, AB 1702, AB 2396 , SB 1467

JANUARY							
	S	M	T	W	TH	F	S
				1	2	3	4
Wk. 1	5	6	7	8	9	10	11
Wk. 2	12	13	14	15	16	17	18
Wk. 3	19	20	21	22	23	24	25
Wk. 4	26	27	28	29	30	31	

IMPORTANT DATES

2014

- Nov. 30 Adjournment *sine die* at midnight (Art. IV, Sec. 3(a)).
- Dec. 1 2015-16 Regular Session convenes for Organizational Session at 12 noon. (Art. IV, Sec.3(a)).

2015

January Deadlines

- Jan. 1 Statutes take effect (Art. IV, Sec. 8(c)).
- Jan. 6 Legislature reconvenes (J.R. 51(a)(4)).
- Jan. 10 Budget Bill must be submitted by Governor (Art. IV, Sec. 12(a)).
- Jan. 17 Last day for policy committees to meet and report bills introduced in their house in 2013 for referral to fiscal committees (J.R. 61(b)(1)).
- Jan. 20 Martin Luther King, Jr. Day observed.
- Jan. 24 Last day to submit bill requests to the Office of Legislative Counsel. Last day for any committee to meet and report to the Floor bills introduced in their house in 2013 (J.R. 61(b)(2)).
- Jan. 31 Last day for each house to pass bills introduced in their house in 2013 (Art. IV. Sec. 10(c)) (J.R. 61(b)(3)).

Legislative Update

Assembly Bill 186 (Maienschein R)

Professions and vocations: military spouses: temporary licenses.

Introduced: 1/28/2013

Status: Chaptered by Secretary of State - Chapter 640, Statutes of 2014.

Laws: Adds Section 115.6 to the Business and Professions Code.

Bill Summary: This Bill requires the Board to issue a 12 month temporary licenses to an applicant who is a spouse or domestic partner of an active duty member of the Armed Forces and holds a current, active, and unrestricted license in another state, district or territory of the U.S. Additionally, applicants seeking temporary license must pass the appropriate California specific examinations.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1/28/13	2/7/13	4/30/13	5/24/13	5/29/13	6/17/14	6/30/14	8/25/14				
1st House				2nd House				8/25/14	8/26/14		9/27/14

Assembly Bill 1702 (Maienschein R)

Professions and vocations: incarceration.

Introduced: 2/13/2014

Status: Chaptered by Secretary of State - Chapter 410, Statutes of 2014

Laws: Adds Section 480.5 to the Business and Professions Code.

Bill Summary: This bill provides an individual who has satisfied the requirements needed to obtain a license while incarcerated, who upon release from incarceration, shall not be subject to a delay in processing the application or a denial of the license solely based on the prior incarceration, except when the incarceration was for a crime substantially related to the qualifications, functions, or duties of the business or profession.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
2/13/14	4/22/14	5/7/14	5/15/14	5/15/14	6/17/14	7/1/14	8/13/14				
1st House				2nd House					8/19/14		9/18/14

Assembly Bill 2396 (Bonta D)
Convictions: expungement: licenses.

Introduced: 2/21/2014

Status: Chaptered by Secretary of State - Chapter 737, Statutes of 2014

Laws: Amends Section 480 of the Business and Professions Code.

Bill Summary: This bill prohibits boards within the Department of Consumer Affairs (DCA) from denying a professional license based solely on a criminal conviction that has been withdrawn, set aside or dismissed by the court.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
2/21/14	4/30/14	5/7/14	5/23/14	6/5/14	6/24/14	8/14/14	8/21/14				
1st House				2nd House				8/21/14	8/26/14		9/28/14

Senate Bill 1467

(Committee on Business, Professions and Economic Development)

Professions and vocations.

Introduced: 3/25/2014

Location: SENATE ENROLLED- 8/28/2014

Status: Enrolled and presented to the Governor- 8/28/2014

Laws: Amends Sections 6730.2, 6735, 6759, 7842, 7860, 8771, add Sections 7864 and 8725.1 to, the Business and Professions Code.

Bill Summary: This was one of the Committee’s omnibus bills. Removing reference to title “Petroleum Geologist” and adds petition for reinstatement language to the Geology and Geophysicist Act to mirror Professional Engineers (PE) Act and Professional Land Surveyors (PLS) Act. Cross-references existing authority to the Education Code and Health and Safety Code sections. Modifies language to clarify monument preservation requirements in the PLS Act. Requires an authorized land surveyor be designated as the person in responsible charge of professional land surveying work practiced in any public agency.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
3/25/14	4/30/14	5/12/14	5/15/14	5/23/14	6/24/14	8/7/14	8/20/14				
1st House				2nd House				8/22/14	8/28/14		9/17/14

IV. Consideration of Rulemaking Proposals (Possible Action)

- A. Request from CalGeo to Amend Title 16, California Code of Regulations Section 461 (Testing Laboratory Reports)
- B. Proposed Amendments to Title 16, California Code of Regulations Sections 416 and 3060 (Substantial Relationship Criteria)

Recommendation and Proposal to Amend Title 16, California Code of Regulations (CCR) Sections 416 and 3060

At the August 28-29, 2013 Board Meeting the Board made a motion to direct staff to review the Substantial Relationship Criteria regulations of other Department of Consumer Affairs Board's and provide a recommendation for changes to Title 16, California Code of Regulations (CCR) Sections 416 and 3060.

At the February 12-13, 2014 Board Meeting the Board approved proposed language amendments and directed Board staff to begin the rulemaking process.

The Notice of Proposed Changes was publically noticed on May 23, 2014. During the public comment period, written comments were received and a hearing was requested. On July 8, 2014 a Notice of Regulatory Hearing was publically noticed, and a hearing took place on July 18, 2014.

The comments received are included in the Board Meeting materials. The following is a summary of comments received, as well as a response:

Comment (1)

David E. Woolley, PLS, D. Woolley & Associates, Inc.: Mr. Woolley objects to the proposed amendments. He objects to the language "crimes or acts" because he feels that it deprives a licensee or applicant of their due process rights and gives the Board too much authority in the processing of enforcement cases. He indicates that dishonesty is not a crime and feels that the Board is overstepping their authority by trying to enforce this as criteria. Mr. Woolley says that the statute indicates that crimes must be substantially related to the qualifications, functions or duties of the business or profession for which the license was issued, and crimes or acts involving physical violence do not relate to the professions that the Board regulates. He feels that the Board is overstepping its authority in regards to the proposed language.

Response to Comment (1)

The Board rejects but partially accepts this comment. A decision has been made to modify the proposed text of Title 16, CCR Sections 416 (c) and 3060 (b). The modified text of Title 16, CCR Sections 416 (c) and 3060 (b) has been changed from "crimes or acts" to "a conviction of a crime" in regards to the practice of professional engineering, land surveying, geology or geophysics; however, it has been determined that the language "crimes or acts" is relevant to the remaining subsections. The language "crimes and acts" and "acts" is derived directly from Business and Professions (B&P) Code Sections 480 and 481 which are the statutes that provide the Board with the authority to deny a license and the authority to develop criteria to determine if a crime or act is substantially related to the qualifications, functions or duties of the regulated professions.

Pursuant to B&P Code Sections 6710.1, 7810.1, and 8710.1, the Board's highest priority is the protection of the public through the administration of its licensing, regulatory, and disciplinary functions. It has been decided that the way in which a licensee behaves, whether it is in the course of work in their profession or whether it is in their personal life may be a factor in the propensity towards committing a crime involving a client in their profession; therefore, the factors of physical violence and dishonesty are seen as important factors that are substantially related to the practices of engineering, land surveying, geology and geophysics. Specifically, B&P Code Section 480(a)(2) gives the Board the authority to deny a license based on an "act" involving dishonestly, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another. The Board already has the authority to take action based on a crime or act of deceit and is not overstepping its authority to do so.

Comment (2)

Charles O. Greenlaw, SE: Mr. Greenlaw objects to the proposed amendments. He believes that the proposed language changes do not meet the necessity, consistency and clarity criteria set forth by the Administrative Procedures Act. Mr. Greenlaw feels that the language is not clear to licensees and applicants and he has a concern regarding how the Substantial Relationship Criteria will be applied to licensees and applicants. He feels that the proposed language is unnecessary and places unreasonable expectations on licensees and applicants. He feels that that the proposed changes are inconsistent with statute. Mr. Greenlaw also objects to the language crimes or acts because he feels that it deprives a licensee or applicant of their due process rights and gives the Board too much authority in the processing of enforcement cases.

Response to Comment (2)

The Board rejects but partially accepts this comment. Same response as Response to Comment (1) above.

Comment (3)

Keith W. Spencer, PLS: Mr. Spencer believes that the modification to Title 16, CCR Section 416 (c) are redundant and they do not add any additional clarification. He also believes that the proposed language makes “acts”, in connection to the practice of professional engineering or land surveying, punishable without due process and conviction.

Response to Comment (3)

The Board accepts this comment. A decision has been made to modify the proposed text of Title 16, CCR Sections 416 (c) and 3060 (b). The modified text of Title 16, CCR Sections 416 (c) and 3060 (b) has been changed from “crimes or acts” to “a conviction of a crime” in regards to the practice of professional engineering, land surveying, geology or geophysics.

Comment (4)

Gerald James, Legal Counsel and Craig A. Copelan, CE, Professional Engineers in California Government (PECG): PECG believes that the proposed amendments to Title 16, CCR Section 416 are unnecessary, inconsistent with statute, and exceed the statutory authority of the Business and Professions Code. PECG indicates that statute allows for discipline on the grounds of acts or crimes related to the practices of engineering and land surveying, but that the proposed language of subsections (d), (e) and (f) of Title 16, CCR Section 416 oversteps the Board’s statutory authority.

Response to Comment (4)

The Board rejects but partially accepts this comment. It has been determined that the proposed text of Title 16, CCR Section 416 (d), (e) and (f) falls within the Board’s statutory authority established by B&P Code Sections 480, 481 and 490, 6775, 7860, and 8780. For additional information, see the Response to Comment (1) above.

Comment (5)

Roger Hanlin, PLS, California Land Surveyors Association (CLSA): Mr. Hanlin provided comment on the behalf of CLSA. His comment indicates that CLSA's Legislative Committee did not come to a consensus regarding the proposed language for Title 16, CCR Section 416; however, he indicated that some of the members that were for and against the language commented that the language is too vague and broad and needs clarification.

Response to Comment (5)

The Board rejects this comment. It has been determined that it is unrealistic to list every possible act or crime that may be considered, or conversely, not considered, as substantially related. The intent of the proposed changes is to provide a basic framework of the possible crimes or acts that could be a basis for license denial or enforcement action against a license.

Comment (6)

Michael Butcher, PLS: Mr. Butcher believes that the proposed language changes to Title 16, CCR Section 416 conflicts with the existing language of B&P Code Section 490, and that it gives more strength in the enforcement of B&P Code Section 480, but he believes that it would not change B&P Code Section 490 and the need for there to be a conviction of a crime as a basis for disciplinary action.

Response to Comment (6)

The Board rejects but partially accepts this comment. A decision has been made to modify the proposed text of Title 16, CCR Sections 416 (c) and 3060 (b). The modified text of Title 16, CCR Sections 416 (c) and 3060 (b) has been changed from "crimes or acts" to "a conviction of a crime" in regards to the practice of professional engineering, land surveying, geology or geophysics; however, it has determined that the language "crimes or acts" is relevant to the remaining subsections.

It has been determined that the remaining proposed subsections of Title 16, CCR Sections 416 and 3060, do not exceed the authority established by statute. B&P Code Section 481 specifically gives the Board the authority to develop criteria to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the regulated professions.

Modified Text

A decision has been made to modify the proposed text of Title 16, CCR Sections 416 (c) and 3060 (b). The modified text of Title 16, CCR Sections 416 (c) and 3060 (b) has been changed from “crimes or acts” to “a conviction of a crime” in regards to the practice of professional engineering, land surveying, geology or geophysics; however, it has been determined that the language “crimes or acts” is relevant to the remaining subsections. The Board is changing Title 16, CCR Sections 416 (c) and 3060 (b) for the purposes of clarity, in response to the public comments.

RECOMMENDED MOTION:

Board staff recommends that the Board approve the modified text and direct staff to issue a 15 day notice regarding the modified text for changes to Title 16, CCR Sections 416 and 3060.

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

Modified Text

Changes to the originally proposed language are shown by double underline for new text and double strikeout for deleted text.

(1) Amend Section 416 of Division 5 of Title 16 of the California Code of Regulations to read as follows:

416. Substantial Relationship Criteria.

For the purpose of denial, suspension, or revocation of the license of a professional engineer or a land surveyor 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 engineer or land surveyor if, to a substantial degree, it evidences present or potential unfitness of a professional engineer or land surveyor to perform the functions authorized by his or her license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, those involving the following:

(a) For professional engineers, any violations of the provisions of the Professional Engineers Act or aiding and abetting any person in such a violation;

(b) For land surveyors, any violations of the provisions of the Professional Land Surveyors' Act or aiding and abetting any person in such a violation;

(c) ~~A conviction of a crime~~ ~~Crimes or acts~~ A conviction of a crime arising from or in connection with the practice of professional engineering or land surveying;

(d) Crimes or acts involving dishonesty, fraud, deceit, or theft with the intent to substantially benefit oneself or another or to substantially harm another;

(e) Crimes or acts involving physical violence;

(f) Crimes or acts that indicate a substantial or repeated disregard for the health, safety, or welfare of the public.

Note: Authority cited: Sections 481, 6716 and 8710, Business and Professions Code. Reference: Sections 480, 481, 490, 493, ~~6706.3~~, ~~6710~~, ~~6732~~, 6775, 6779, 8780 and 8783, Business and Professions Code.

(2) Amend Section 3060 of Division 29 of Title 16 of the California Code of Regulations to read as follows:

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 a~~ a professional geologist, specialty geologist, professional geophysicist, or specialty geophysicist 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, those involving the following:

(a) ~~Any violations of the provisions of Chapter 12.5 of Division 3 of the Business and Professions Code. the Geologist and Geophysicist Act or aiding and abetting any person in such a violation;~~

~~(b) Crimes or acts—A conviction of a crime arising from or in connection with the practice of professional geology or geophysics;~~

~~(c) Crimes or acts involving dishonesty, fraud, deceit, or theft with the intent to substantially benefit oneself or another or to substantially harm another;~~

~~(d) Crimes or acts involving physical violence;~~

~~(e) Crimes or acts that indicate a substantial or repeated disregard for the health, safety, or welfare of the public.~~

Note: Authority cited: Sections 481 and 7818, Business and Professions Code. Reference: Sections 480, 481, 490, ~~and~~ 493, 7860, and 7863, Business and Professions Code.

LaPerle, Erin@DCA

From: Dave Woolley [REDACTED]
Sent: Tuesday, June 10, 2014 3:27 PM
To: Kereszt, Larry@DCA; LaPerle, Erin@DCA
Cc: Moore, Ric@DCA
Subject: Formal Objection to Proposed Regulation Amendments
Attachments: Objection Proposed Amendment Reg 416 20140609 V1.0.pdf

Please find attached my formal objection and request for a hearing for the proposed amendments to the Regulations 416 and 3060 "Substantial Relationship Criteria".

I ask that you email Mr. Eric Zinn a copy of this letter.

Please confirm receipt.

Please call or email if I may be of any assistance.

Sincerely,
D. Woolley & Associates, Inc.

David E. Woolley
2832 Walnut Avenue, Suite A
Tustin, California 92780
P (714) 734-8462
F (714) 508-7521
[REDACTED]

June 9, 2014

VIA EMAIL AND CERTIFIED MAIL

Erin LaPerle
2535 Capitol Oaks Drive, Suite 300
Sacramento, California 95833
Erin.LaPerle@dca.ca.gov

Larry Kereszt
2535 Capitol Oaks Drive, Suite 300
Sacramento, California 95833
Larry.Kereszt@dca.ca.gov

RE: Objections and Request for Hearing Regarding:

1. *Proposed Amendment of Section 416 of Division 5 of Title 16 of the California Code of Regulations*
2. *Proposed Amendment to Section 3060 of Division 29 of Title 16 of the California Code of Regulations*

Dear Ms. LaPerle and Mr. Kereszt:

As a California Licensed Land Surveyor, President of the Orange County Chapter of the California Land Surveyors' Association, small business owner and California resident, I am writing to object to the proposed amendments to both Section 416 of Division 5 and Section 3060 of Division 29 of Title 16 of the California Code of Regulations for the reasons set forth below. Additionally, I am requesting a formal hearing on these amendments to discuss my objections and the objections of other citizens to these proposed amendments.

After reading these proposed amendments, it is clear to me that several factors and principles have not been properly and thoroughly considered by the individuals proposing these amendments and I fear that their passage will severely hurt the ability of the Board to manage licensee discipline while affording each individual the due process rights that they are constitutionally guaranteed. In explaining the basis for my objections, I will start by pointing out some fundamental principles:

I. In a criminal matter, a person is innocent until proven guilty in a court of law.

It is a fundamental principal that a person is innocent until proven guilty in a **court of law** (not a Board hearing). Due process "requires the prosecution to prove every element charged in a criminal offense

Page 1 of 4

2832 Walnut Avenue, Suite A | Tustin, California 92780
Phone: 714-734-8462 | Fax: 714-508-7521 | Website: www.dwoolley.com

beyond a reasonable doubt.” *Gibson v. Ortiz* (9th Cir. 2004) 387 F.3d 812, 820 (citing *In re Winship* (1970) 397 U.S. 358, 364). If the jury is not properly instructed concerning the presumption of **innocence until proven guilty** beyond a reasonable doubt, a due process denial results. See *Middleton v. McNeil* (2004) 541 U.S. 433, 437. “Any jury instruction that ‘reduce[s] the level of proof necessary for the Government to carry its burden ... is plainly inconsistent with the constitutionally rooted presumption of innocence.’ ” *Gibson*, 387 F.3d at 820 (alterations in original) (quoting *Cool v. United States* (1972) 409 U.S. 100, 104).

The Bill of Rights (the first 10 amendments to the U.S. Constitution) sets forth rights of criminal defendants. Mallor, Barnes, Bowers, Langvardt, *Business Law, The Ethical, Global, and E-Commerce Environment* (15th ed. 2013) pg. 140. For example, the Fourth Amendment protects persons against arbitrary and unreasonable governmental violations of privacy rights. *Id.* The Fifth and Fourteen Amendments’ Due Process Clauses guarantee basic procedural and substantive fairness to criminal defendants. *Id.* at 152. These two Amendments require that the federal government and the states observe due process before they deprive a person of life, liberty or property. *Id.* at 76.¹ The Sixth Amendment entitles a defendant to a speedy trial by an impartial jury and guarantees to the defendant that they will be able to confront and cross-examine witnesses against them. *Id.* at 157.

These fundamental protections are simply not afforded in a Board hearing to determine if a current licensee is guilty of a crime absent a conviction by a proper court of law. The Board has no authority to act on *alleged* criminal matters. The Attorney General’s office, in the prosecution of practice issues before an Administrative Law Judge, will not be able to introduce *alleged* criminal conduct. There are also jurisdictional issues between the Attorney General’s office, the local District Attorney’s office and in some instances, a City Attorney’s office to be reconciled.

2. Only a court of law can determine if an individual is guilty of a criminal act – by a “conviction” of the individual defendant.

In order to consider a criminal act grounds for discipline, suspension or expulsion, a **conviction** is required. Cal. Bus. & Prof. Code § 490. With regard to a Board’s ability to suspend or revoke a license pursuant to California Business & Professions Code § 490, a “conviction” is defined as “a plea or verdict of guilty or a conviction following a plea of nolo contendere. Cal. Bus. & Prof. Code § 490(c). “An action that a Board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.” Cal. Bus. & Prof. Code § 490(c).

¹ Procedural due process establishes the procedures that the government (federal or state) must follow when it takes life, liberty or property. *Id.* at 76. Their basic premise is that an individual is entitled to notice of the government action to be taken against him/her and some sort of fair trial or hearing before the action can occur. *Id.* Substantive due process has to do with social legislation in the early 20th Century such as freedom to contract and other economic rights into the liberty and property protected by the Fifth and Fourteenth Amendments. *Id.*

This is why the phrase “conviction of a crime” is crucial and the words crimes and acts cannot substitute for conviction when treating someone as having committed a crime. Their due process rights would be cast aside. This is unconstitutional and would never hold up to a court challenge. For this reason, other professional board regulations use the phrase “conviction of a crime” instead of “crimes or acts” when considering suspending or revoking current licensees’ licenses. Crimes and acts is insufficient, vague and denies the licensee due process. It also allows the Board an extraordinary amount of power in determining what is a “crime” without requiring a conviction.

While proponents of this amendment point to the similarities between the proposed language of “crimes and acts” and California Business & Professions Code § 480, there are significant differences. First, Section 480 deals with the denial of a license to a first time licensee who has less vested interest in his/her license than an existing licensee already earning a living in that profession. Secondly, Section 490 of the same Business & Professions Code requires conviction of a crime (not crimes or acts) to suspend or revoke the license of a current licensee – thus reflecting a higher standard for existing licensees’ protection.

3. Mere dishonesty is not a crime and determining dishonesty is beyond the scope of the Board for existing licensees.

Dishonesty in itself is not a crime. The Board cannot simply make up crimes that it wants to use against existing licensees. It is one thing to deny a license to an applicant based on dishonesty – e.g. in their application pursuant to California Business & Professions Code § 480(a)(2). It is quite another to suspend or revoke the license of an existing licensee based on “dishonesty.” This is simply not allowed pursuant to Section 490 requiring conviction of a crime.

4. The crime must substantially relate to the qualifications, functions or duties of the business or profession for which the license was issued – physical violence is not related to surveying.

As stated above, the crimes being considered by the Board must substantially relate to the qualifications, functions or duties of the business or profession for which the license was issued. This is true for existing licensees facing suspension or revocation (Cal. Bus. & Prof. Code § 490(a) and new applicants for licensure (Cal. Bus. & Prof. Code 480(B). Furthermore, Cal. Bus. & Prof. Code § 481 also requires that a “crime or act substantially relate to the qualifications, functions, or duties of the business or profession it regulates.”

Therefore, including crimes or acts involving physical violence simply does not relate to these businesses or professions. This is not in accordance with the current laws and is overreaching by the Board staff. Consider this hypothetical: What if a licensee defended himself in a bar fight but was arrested – should he lose his license? What if there was a situation of domestic violence and both parties were arrested – should the licensee lose his license? Again, the proposed language says “crimes or acts” and not convictions. In fact, the word “convictions” is removed from the existing language. This is a

Page 3 of 4

2832 Walnut Avenue, Suite A | Tustin, California 92780
Phone: 714-734-8462 | Fax: 714-508-7521 | Website: www.dwoolley.com

grave mistake. Even if a conviction is involved, however disturbing it might be, this is unrelated to the surveying profession in most every instance.

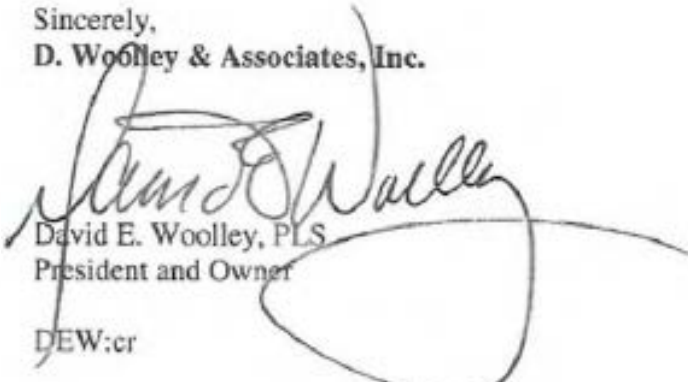
There is sure to be unfortunate examples when a licensee is involved in physical violence completely unrelated to his profession/practice and he will be required to defend his license at great expense. No conviction against this licensee may never be obtained in a court of law yet he will additionally be required to pay thousands of dollars to defend himself against the Board actions without any due process protections. This is blatantly unfair.

The issuance of citations for violations of the specific practice Acts, related to specific practice issues, is within the Executive Officer's authority. The adding of language to the Regulations does not broaden the Executive Officer's authority. The regulation process is intended to clarify with specificity the existing law-properly established by the Legislature. Based on the proposed language and accompanying Initial Statement of Reasons, I do not have confidence this principle is understood by those proposing the language. I believe the proposed language itself is proof positive we are likely to see future abuse of authority/abuse of process i.e. dishonesty as a practice issue rather than a license application issue. Yes, this is defensible in court, but at what expense to the licensee? We need to let the courts do their work and then, allow the licensing boards to react accordingly.

In closing, I caution all concerned not to allow licensing boards this type of authority to take away licenses using vague terms, removing the barrier word "conviction" without affording the court's protection. This is a mistake and personally, makes me wonder about the underlying motivations of the staff of the Board of Professional Engineers, Land Surveyors, and Geologists in suggesting these amendments. To this end, I am requesting a hearing on the proposed changes.

For all of these reasons, I object to these amendments and request a formal hearing to discuss and debate these issues further. If you have any questions about my request, please call me at (714) 734-8462.

Sincerely,
D. Woolley & Associates, Inc.



David E. Woolley, PLS
President and Owner

DEW:cr



Enclosures

cc: Eric Zinn, President
Richard Moore, Executive Officer

Page 4 of 4

2832 Walnut Avenue, Suite A | Tustin, California 92780
Phone: 714-734-8462 | Fax: 714-508-7521 | Website: www.dwoolley.com

Charles O. Greenlaw
Structural Engineer

[REDACTED]
[REDACTED]
[REDACTED] ph&fax
[REDACTED]

July 17, 2014 (date of revision – obsoletes my original of July 10, 2014)

Board for Professional Engineers, Land Surveyors and Geologists
2535 Capitol Oaks Drive, Suite 300
Sacramento CA 95833

Attn: Erin LaPerle, Associate Governmental Program Analyst

Subject: My Comments pursuant to 45-day noticed regulation revisions concerning **Substantial Relationship Criteria** provisions in Title 16, CCR, Sections 416 and 3060.

Greetings,

I offer these comments as an individual, independently of any professional organization or advocacy. I am a two-license registrant of this board, as is my brother, both of us having sole-proprietor private-practice careers in professional engineering, including abundant involvement in professional societies, SEAOC in my case and CSPE in his.

Of significance: When my brother and I are at the effect of every other person's licensed - or unlicensed – practice of engineering, land surveying, and geology, *he and I are ordinary members of the public*. We expect not to be discriminated against on account of also being licensed by this board.

Note: for simplicity, I will only refer to PE licensure and Sec 416 in my comments, while intending them to apply analogously to Land Surveying and Geology as may apply.

I have included my current resume as an inseparable part of my comments, to establish my claim to credible expertise in the subject matter at hand – this resume was originally prepared for my occasional roles in providing expert testimony for adversarial litigation, where an “expert” is what the court deems appropriate to the situation. My comments will make reference to a resume-covered selection of Board-related experiences I have had in the past and which color my trepidation about the subject proposed regulations.

A Clarity and Necessity set of concerns:

My initial alarm when I received the 45-day Notice is to wonder what I would have admitted to, had these proposed regs been in effect when I applied for and passed the EIT exam in 1964 and when I applied for and passed my CE and SE exams. *You see, I intentionally committed an act of deceit and misrepresentation and thereby gained for myself several hundred 1965 dollars' worth of merchandise awards which those whom I misled were deprived of.* What happened? It was in September 1965 when I was 22 and holder of an EIT. I was in the closing miles of an arduous,

86-mile bicycle road race in western San Mateo County, mentioned in my resume. Throughout the first third of the hilly race I doubted that I could finish this race at all and rode with utmost, energy-preserving defensiveness. But I gradually recovered and was in the lead group of four, traveling east on Hwy 84 toward La Honda where the finish line would be. Suddenly, the two strongest race-animating competitors in this lead foursome broke away (“attacked” in racing parlance) and got clear of myself and the fourth rider, the race favorite, who promptly cramped up. I chased on my own and to my surprise caught up, making a lead group of three who would be the first three finishers. Presently we departed from the 3-lap hilly circuit we’d been on and entered a crooked, narrow canyon we had not seen since the opening mile or so of the race. I noticed a highway sign that faced an intersecting road’s traffic. It pointed east and read, “La Honda 1/2”. Seeking to mislead the other two that the finish was so close, and noting their worry that the cramped favorite would somehow catch us, I said to them, “*We better keep on going; it must be a couple more miles.*” I soon dropped back, shifted silently to a higher gear, and accelerated with all I had, coming by them by total surprise and drawing to a 6-length lead so as to offer them no slipstream to ease their burdens in chasing me down. The road immediately bent left and opened to the 400-yard straightaway to the finish line banner at La Honda. I held my initial 6-length lead to win the race and the valuable prizes. The other two went on to be members of the 1967-68 US Pan Am Games and Olympic Cycling Teams, which the cramped 4th-placer, a vet of the 1959-60 teams, coached. (In 1967-68 I was an active duty Navy civil engineer officer as my resume notes.)

The question of Clarity and Necessity: was my successful “act” of deceit and misrepresentation for personal gain in that bicycle race an act disqualifying of my subsequent career as a CE and SE? Could it now be, belatedly? I can’t tell from how these proposed, putative “Substantial Relationship Criteria” read on their own – in the way intended – and therein lies a **Clarity** problem in APA terms. Further, is it **Necessary** that my career would be denied had these new revisions to sec 416 been in place back in 1971 when I applied for my first PE registration?

Then I wondered, what about that brief physical altercation myself and two fellow sophomore engineering students found ourselves in where one of them provoked three other young men driving by one night in East Sacramento into stopping to have a fight with us, resulting in some physical violence.

Now I wonder about former Civil Engineer Board Member (1970s), W.J. “Jim” Jurkovich, who committed numerous acts of both violence (suffering several concussions) and deception of others as an all-state fullback at Fresno HS in 1938 and who ran back a pass he intercepted in his own end zone for a 100-yard touchdown for Cal against USC in 1940. Would Jim be deemed unfit under the proposed 416 revisions to be the supervising CalTrans Bridge Engineer he became? Or unfit to be the colorful PE and LS Board Member who for verified good cause advocated adding many “title act” PE branches during his tenure?

What about all those innumerable teens and men who enjoy playing poker for monetary bets, where deceiving one’s opponents as to one’s hand is an essential, expected part of the activity? Must those people forego applying for their EIT and their PE licenses and resort to selling used cars?

And what of those who actually held summer jobs selling used cars, where misrepresenting the product to customers is notoriously endemic? There is nothing in the proposed new so-called “criteria” in 416 (d), (e) and (f) (which are actually prescriptive, “shall include” mandates which

reflect pre-made, staff use of unrevealed discretionary criteria) which might exempt commonplace, pre-licensure acts of the sort I have mentioned above. Is such sweeping perfectionism and purity really **Necessary**? Is it to be invariably enforced or is it overstated hyperbole to be haphazardly invoked? And what of still un-enumerated “crimes or acts”, which fall into the “but not be limited to” category ? I can’t guess what they might include; it’s just as unclear as the existing Sec 416 has been.

Another Necessity issue:

No data has been offered in any of the rulemaking documents or in the listed Underlying Data as to how many criminal convictions of this Board’s Licensees, or of applicants for licensure, are discovered per annum. I speculate it is rather few. How is it established that there is Necessity to emplace any new, prescriptively pre-judged-as-substantially related criminal offenses in Sec 416? Might it be sufficient to enhance the present top paragraph substantial relationship definition in sec 416 with genuinely informative additional criteria for case-by-case deliberative determination of an individual’s deeds with respect to forecasting his or her fitness to go into licensed practice or to remain in it? Licensees and applicants to the professions in question may read the same criteria for themselves; they must be assumed to be as capable as staff and Board Members in understanding appropriately clear, judgment-guiding criteria – should any ever get amended in to Sec 416. And as I propose later, “such as” examples can be selected and provided in sec 416.

Now for an Inconsistency problem:

In many ways the Initial Statement of Reasons (ISR) makes claims for the purpose of these Sec 416 additions, and for what they will accomplish as newly written, which cannot be credibly found manifested in the proposed regulatory text. Indeed, the text seems to merely add new offenses (in subsections (d), (e) and (f)) to the existing ones in (a) (b) and (c). Nothing in the proposed new language sets forth any enhancement at all in 416’s existing definition-only “criteria” for use of judgment in determining whether the deeds in question have that crucial “substantial relationship” to the individual’s area of licensure.

Additionally, the second paragraph in the “Problem Being Addressed” section of the ISR hints that the real purpose of this rulemaking effort is (in its 3rd sentence) primarily to “improve the Board’s ability to successfully pursue disciplinary action.” And the “Factual Basis” section of the ISR, in its last paragraph, echoes this same convenience improvement in pursuing disciplinary actions. As the second page of my attached resume indicates, I have experience in successfully defending civil engineers in two separate accusations the Board’s staff brought, seeking revocation. The Board’s staff needs to know its own and licensees’ work a lot better, it needs competency not convenience. And lifting licenses of the innocent professional is not synonymous with protection of the public, although it’s clearly a coveted enhancement of staff’s workplace ego and prestige – “rewards to the self-esteem”, as the late John W. Gardner, Common Cause founder, included in his definition of corruption in one of his books on organizational integrity.

Given the apparently heavy involvement of the board’s Enforcement Manager in originating and advancing this Sec 416 proposal, combined with the linguistically muddled and confusing presentation of it which inappropriately conflates “crimes” and “acts” in the same new provisions, I can’t avoid suspecting that the new language in 416 represents a self-serving conflict of interest within board staff. I believe that the ISR’s claims are false – that applicants and licensees (such as

myself as described above, or the now-retired Jim Jurkovich) will any better understand whether there is a substantial relationship to their PE career in what they have done or may do in their private life.

Another **Inconsistency** problem, which includes a **Clarity** problem:

The first inset paragraph of ISR page 2 explains that adding “or acts” to “crimes” is to gain consistency with B&P Code sec 481, which is generic language applying to all Consumer Affairs Boards as may apply. That’s cool, but doing so in a conflating way in this Board’s Rules creates an Inconsistency with B&P Code sec 6775, which lists the offenses for which already-licensed PE’s may be disciplined. Sub-section 6775(a) includes conviction of a crime, if substantially related. All other sub-sections of Sec 6775, (b) through (h), are inherently PE practice related and need no further determinations. But nowhere in Sec 6775 is there anything that makes “acts” outside of enumerated PE practice and board relations disciplinable! “Acts” in general, absent conviction of a crime, is meaningful only in the context of applying for licensure; see B&P Code sec 480 (a) (2), and note that no substantial relationship need be established at all in such acts, although the term “may” in the top line of 480(a) appears to give each board discretion via regulation, to limit license denial-eligible “acts” to only those having a substantial relationship to the PE practice being applied for.

This board appears not to have adopted such a limitation to date and a look at the Board’s application forms for EIT and for PE shows that only info regarding conviction of a “crime” is asked of the applicant. There is nothing on those forms which asks about “acts” covered by B&P Code sec 480 (a) (2) or (3), even though the PE Act section on applying for a PE license (Sec 6751) refers to B&P Code sec 480 as to not having committed acts covered therein, however without addressing any substantial relationship qualifier or clarifying the inconsistencies in these statutes. Since this rulemaking does not openly purport to interpret Sec 480 (a) (1) or (2) so as to condition denial of license on finding presence of a “substantial relationship,” this rulemaking cannot be deemed to have done so backhandedly.

Therefore conflating “crimes” with “acts” in the same sentences in Sec 416 as though what applies to applicants also applies to licensees easily creates a false impression that licensees are vulnerable to “acts” the same as applicants are – a **Clarity** problem as well as a **Consistency** problem and one of lack of **Authority** in statute- which could in the future prejudice licensees who have not parsed and harmonized the various B&P Code provisions as I have, and could find themselves “over the barrel” at the hands of board enforcement staff and board members who in their own naivete would be enforcing badly written regulations. The ISR promises better licensee understanding but the proposed Sec 416 text introduces misunderstanding instead – an **Inconsistency** in APA terms which favors Enforcement Staff alone.

A solution might be to separate the proposed CCR sec 416 into two, one for PE applicants to the extent that substantial relationship may be (or become) the Board’s adopted policy, and the other for PE license holders, to whom “acts” in the B&P Code sec 480 sense has no apparent applicability.

Now we come to an over-reach issue, involving **Inconsistency** with Statute.

The proposed new CCR sec 416 (e) and (f) exceed the statutory grounds in B&P Code sec 480 (a) (2) and (3) for “acts” for which denial of license is allowed. Only 416 (d) – “acts” involving dishonesty, etc. – comports with the authorizing sec 480. Otherwise there has to have been conviction of a crime; a mere “act” is insufficient.

For that matter, Underlying Board Meeting documents indicate that the staff study of other license boards’ ways of coping with the same Substantial Relationship concern led to “*it being determined*” – by whom and to what level of rigor going unstated – that “the Contractors State License Board’s solution was the ‘*most applicable*’ to [this] Board.” Just why a solution for rough and tumble tradesmen, most of whom cater to the layperson public in one-up ways is appropriate for this board, which only licenses college-grad professionals, has not been revealed. But for that anonymous, no-explanation staff “determination” to be accepted by the Board with scant discussion at its Feb 2014 meeting suggests doubtful diligence, lack of imagination, or both. Indeed, it seems that nothing which explains why CLSB adopted what staff proposes this Board now adopt in groupthink fashion has been offered in the Underlying Data for this Board’s perusal – and for Licensees of this board to examine so we can comment on its transferability. The ISR is inadequate for not setting forth with specificity why the CLSB adoption is a good one for this Board too. What follows suggests why it may not be.

I note that the State Board of Forestry, (BoF) which I have frequented 2003-2013 and whose members are subject to Senate confirmation, licenses both Registered Professional Foresters and Licensed Timber Operators as collateral duties to regulating forest practice and timber harvesting operations, all done outside the B&P Code and free of the Dept. of Consumer Affairs. The RPF’s are the equivalent to architects and engineers, consult with forest owners (of which I’m one) and design timber harvest plans. LTO’s are the equivalent to construction contractors and do the timber falling, slash removal, yarding and hauling of logs to the sawmills. The BoF’s licensing programs for RPF’s and LTO’s are totally separate from each other, much as in the military where officers and enlisted are handled in separate ways. One would think the same is warranted for PE’s, LS’s, and professional Geologists, if they are to be afforded professionalism-encouraging respect vis-à-vis contractors.

Discretionary vs Ministerial in Who Decides:

The “Criteria” part of this rulemaking has been extolled in the ISR but given short shrift in the actual text of CCR 416. There clearly is no **new** guidance to help in case-by-case determinations that might relate an individual’s crime to that same individual’s license-specific duties, etc. B&P Code sec 481 infers, and **sec 493 expressly provides**, that discretionary determinations on a case-by-case basis are entirely proper as a Board function – that’s why *criteria* rather than fixed, prescriptive outcomes are called for in sec 481. But I see in this CCR sec 416 revision only an attempt to turn such contemplative and discretion-rich, individual determinations which are thoughtfully informed by general guidance criteria, into mere prescriptive pre-determinations which enable judgment-free ministerial use by staff clerks.

A totally unaddressed matter in this rulemaking matter is, *who actually decides* presence or absence of Substantial Relationship? The Deputy AG who came to speak to the Board last August, per the minutes, spoke of *his people* being involved. The ISR only speaks of “the Board” without saying whether that means only the Board Members, or staff-proposed and Board-reviewed and approved, or only by staff and at what level, and whether it’s only by Enforcement

staff, or also by Examination Application-Processing staff – the only staff for whom “acts” aspect has any relevance, and then, only if the Board has acted to diminish acts and crimes in Sec 480 to only substantially related ones. In other words, the subject CCR 416 needs to be tailored to who uses it, as well as to those who are subject to its enforcement, so that its balance of discretionary vs. ministerial provisions will be suitably crafted.

Actually providing Guidance Criteria:

The “do nothing” option with regard to CCR 416 was disparaged by whoever wrote the ISR, yet the existing CCR Sec 416 provides a fine definition: a crime is substantially related to practice, etc., “*if, to a substantial degree, it evidences present or potential unfitness of a [professional] to perform the functions authorized by his or her license in a manner consistent...*” What finishes that excerpt is, “...with the ‘public health, safety, and welfare’.” This last part itself needs elaboration by regulations if it’s to have any useful specificity in fulfilling that existing definition—it’s too uncertain a term of art for the task. If however it has been authoritatively defined, that definition should be included in Sec 416, same as “substantial” should be, since at the Feb 2004 meeting, Board Member Tami asked about that but another, Mr. King, replied unhelpfully that it’s “typically interpreted by the courts.” It’s staff administrators, quasi-legislative Board Members, affected licensees plus members of the public, who need to know, right here in this regulation, if B&P Code sec 481 and the ISR’s claims are to be satisfied. If and when litigation happens the court can weigh in with its own interpretation in light of the case’s facts.

There is an impressive body of Substantial Relationship guidance criteria in the last three paragraphs of the Factual Basis section of page 3 of the ISR. That coverage could be given a close look, refined, and combined with what is already in CCR 416 to fulfill the mandate of B&P Code sec 481 to “develop criteria.”

Aside: Because so much good, actual criteria is in the Factual basis section of the staff-prepared ISR, its presence belies the ISR’s *Problem being addressed* statement that there’s a big problem with the Board and staff not knowing. There’s an inconsistency there, within the ISR, which again suggests a false claim of **Necessity** for this CCR 416 rulemaking.

Because judging a crime-convicted license applicant or licensee’s future “fitness or competence to practice” is a forecasting task demanding of life-experience and insight into the human condition, along with a balanced respect for licensees, their clients and the public, it seems that abilities found among mature board members might be augmented by some expert training, much as psychometric training has been employed in years past for writing of exams used by the Board to make the exams reflect the tasks that branch actually engages in.

You can tell that I strongly favor Criteria which enable very well informed discretionary (ie, “performance-based” determinations of case-by-case substantial relationship of crimes, rather than fixed prescriptive rules for ministerial use without judgment. So do the Legislative Declarations of the Administrative Procedures Act, at Govt Code sec 11340 (d) in your office copy of the OAL publication, *California Rulemaking Law*, which is the bible on state agency rulemaking.

An alternative or supplementary approach to relying on prescriptive, "shall include" statements of crimes or acts: Give a sampling of Examples along with truly informative Criteria

Since there can never be a "bright line" that precisely divides crimes that are substantially related from those that are not, given the variations of crime, individual, and branch of licensed practice, I suggest that consideration be given to creating example situations to be placed in the Criteria available to all interested parties in the way the ISR says is desirable. Five to nine examples each could be given for crimes that are normally "substantially related", for those that normally are not substantially related, and for some that are simply too close to generalize about. There is a recognized practice in law for enacting regulatory statutes and regs which making their point by supplying representative examples; it's known by its Latin name of *Ejusdem Generis*, "of the same kind, class, or nature" (per Black's law Dictionary.) I can think of no better way to inform everyone who wants to know, and in plain language. Oddly, the ISR said that there were no alternatives to what was proffered that one time to the Board.

Why I'm Commenting:

Much was made in the ISR of the Board's paramount role in protecting the public - protecting them from people like me I suppose.

Forgive my resume-detailed, experience-based cynicism, but this Board to my personal past knowledge protects the public the way the Veterans Administration protects ailing military veterans from becoming even more unhealthy, and the way the IRS so eagerly protects non-profit groups of political dissidents and whistle-blowers from having to pay taxes on funds voluntarily donated to them. It need not always be this way.

Most of my heavy involvement in Board watching and participating and reporting, over 20 straight years from 1983 through 2002, was knowingly and resolutely to protect applicants, some Board Members, licensees, and members of the public *from* excesses and derelictions of the rest of the Board and its staff... and there are a lot of skeletons from that era, more by far than are in my resume. My old motive is why I'm again commenting after a 12-year break from monitoring Board business, a break in which I enjoyed a very pleasant and productive involvement with the State Board of Forestry's many proceedings and kept up my commenting skills with them. I hope to be as well received here and as pleased by results as I was among the forestry people.

Sincerely yours,



Charles O. Greenlaw, S.E.

Attachment: Resume (2-pp)

Charles O. Greenlaw
Structural Engineer



Resume

- Son of an architect, grandson of a structural engineer, great-grandson of a superior court judge.
- B. Sci. in civil engineering, Cal State University, Sacramento (1965) plus one semester grad courses
- Naval Reserve Civil Engineer Corps Officer (LTjg) supervising Seabee and civilian repair and construction personnel at Naval Air Facility, El Centro CA, and at two on-shore locations in Vietnam, 1967-1970
- Professional structural engineering design and analysis on staff of Buehler, Cole, Yee and Schubert, Structural Engineers Inc., Sacramento CA, 1970-1979, for commercial, institutional, and industrial buildings
- Self-employed Structural Engineering Consultant, to architects, contractors, building designers, city building departments, other engineers, and layperson clients in matters of structural engineering, 1979 to present
- Member of the non-industrial, tree farming-oriented Forest Landowners of California, 2000-present, Director and Legislative Committee member, 2002-2010, Treasurer, 2003-2008
- Partner in Alliance 4 Family Forests, a two-man, part-time representation and advocacy business catering to small-scale owners of commercial-species timberland in California, 2009-2012
- Myers-Briggs Temperament Type: ENTP. For attributes, see <http://www.personalitypage.com/ENTP.html>
- Amateur bicycle racer, 1963-66, 72, 80-82, 84. Won the 100-mile All-California Road Championship and 86-mile Tour del Mar road races in 1965. Won four consecutive individual road time trials plus team leader of winning 4-man 100km (62.2 mile) team time trial in national record time, 1965-66; won Camellia Festival Criterium and Pinkie's Road Race in 35-up age class at age 41, Mar-Apr 1984.

California Registered Civil Engineer No. 22008 (since 1972)

California Registered Structural Engineer No. 1956 (since 1975)

Member of Structural Engineers Association of Central California, 1970-2000, including the following association activities: Four years as Newsletter Editor, two as Director, one year each as Vice President and President (1984-86 f.y.), two separate 2-yr terms as delegate to and Director of the statewide Structural Engineers Association of California (1986-88; 1990-92). Member of the code-writing Seismology Committee during a major rewrite of the building code for seismic resistance, with special involvement in wood-frame construction portions (1980-87). Member of the Code Committee during a complete rewrite of code provisions for wind load resistance (1980-81), and during controversial major revisions to conventional construction provisions for residential wood-frame construction and for earthquake retrofit provisions for same (1992-2000). Also, member of the Legislative Committee (1984-94, chair 1988-94); member of Professional Practice Committee (1994-2000, chair 1997-2000); liaison to Board of Registration for Professional Engineers and Land Surveyors (1988-2000). Contributor of numerous professional practice-related articles to the association newsletter, several of which were reprinted in newsletters of other regional S.E. associations.

Wrote and graded an examination problem dealing with lateral forces (wind and earthquake) design on the California Structural Engineer Licensing Examination (1981).

Professional engagements in last 37 years have primarily been wood-frame buildings, and the majority of those have been single-family residences. Nature of work includes new construction and alterations, plus damage analysis and design of repairs. Structural plan checking for cities of Davis and Stockton was a portion of engagements, 1980-89.

Presented to Seismology Committee in 1985 an original, statically determinate method of seismic analysis of the low-rise, 4-sided building without any lateral force-resisting elements along one of the four exterior walls (the vexing, so-called "rotation" problem typical of one-story "storefront" buildings). My simple method was later verified by others in a master's thesis performed at U.C. Davis under Dr. Karl Romstad.

In 1995, was part of a three-person design team (two contractor / AIBD-certified building designers and myself) that entered the Trus-Joist / MacMillan Corporation's "FrameWorks" Home Design Competition for demonstration of structural framing innovation and resource efficiency in an example home design's plans and specs. We were one of seven winning teams out of more than 2,000 entries across the U.S. and Canada, and received a \$10,000 prize.

Have submitted written or oral testimony in state agency administrative rulemaking hearings on more than 20 occasions, including, in 2001-02, rulemaking efforts by the P.E. and L.S. Board that created a prescriptive code of professional conduct and that improvidently crafted Board-specific definitions of negligence and of incompetence. This Board's first Consumer Guide to Professional Engineering pamphlet (1992) used verbatim many of my volunteered revision suggestions. Have testified on professional practice matters to the California Seismic Safety Commission and the California Law Revision Commission, and have testified before the following State Senate Committees: Judiciary, Education, Natural Resources, and Government Organization.

Have filed briefs and made oral argument in Superior Court and the Court of Appeal, 3rd District, and briefs to the State Supreme Court, in the role of an intervener respondent in pro per on the prevailing side. An original point that I introduced relating to city planning and consistency with general plan transportation element was incorporated into the court's published decision. (Headnote 9, *Friends of H Street v. City of Sacramento* (1993) 20 Cal App 4th 152)

Provided expert opinion in 1991 to the Division of Investigation of the Department of Consumer Affairs, which was investigating peculiar residential foundation designs for the P.E. and L.S. Board, to whom I had brought initial notice of the odd situation. Board staff got nowhere investigating on their own. The originator of those designs, as I'd soon suspected, proved to be the non-engineer Yolo County Chief Building Official (Fred McCrory), hired on unchecked false credentials. He ran a secret sideline business of using false names and altered stamps of real engineers as an unlicensed private consulting structural engineer to applicants for building permits in his rural jurisdiction. He would later approve in his official capacity his own illegal and incompetent engineering work and privately collect payment for the fictitious "engineer." He paid fines and restitution and served 5 months in his employer's jail following a plea bargain on one count each of four separate criminal charges—fraud, forgery, unlicensed PE practice, and violation of Fair Political Practice Act provisions.

Occasionally engaged for expert testimony in construction defect litigation. Clients have included plaintiff interests and defense interests. Two clients were civil engineers accused by the P.E. and L.S. Board's staff of negligence, incompetence and fraud in connection with residential repair and room addition designs; revocation of their licenses was sought. I provided defense tactics consulting over six months and gave testimony during protracted administrative law hearings in 1997-98 (G Frolenko), and 1999 (J. Sanders). In each case, blame was correctly fixed on the badly performing project contractors. Each engineer's work was ultimately vindicated in lengthy and costly Administrative Law Judge decisions and all Board charges were dismissed, but without any apology.

In 2001-2003, championed before the P.E. and L.S. Board the interests of a rural landowner (T. Morris in Amador County) who had filed consumer complaints alleging faulty and dishonest land surveying by a firm engaged by an adjoining neighbor. The Board's staff had not done any competent investigating and, embarrassed by the complainant's protests in person at several Board meetings, staff took to intimidating and stonewalling him. Following my several appeals on his behalf, citing the bogus engineer situation mentioned above, his case was revived and given to the Division of Investigation. A proper and productive investigation then ensued, in which I participated by assisting the investigator with issue-framing and by referring him to several percipient and expert witnesses. Board staff several years later disregarded the investigation's and complainant's established facts and dismissed the complaints. Morris's attorney had engaged a savvy land surveyor expert who, while under privilege, identified all the faulty LS conduct, but refused to openly finger the offending LS to the Board.

Which Direction for Building Codes?

The following article attempts to tie together several topics that have building codes, and their profound impacts on us, as the common thread. The opinions expressed are intended to be provocative and informative. They are not the official position of [SEAOC].

As an opener, I reprint a paragraph that appeared among some Seismology committee documents about twelve years ago, its author unknown but much appreciated:

The Code Problem

"The problem of code proliferation in an attempt to make the codes into hand books to replace analysis by engineers, and to make the code reflect all of the research results, has been well recognize

Engineers are in general agreement that this proliferation should be controlled because more complex codes are not the answer to the need for effective, efficient design. Engineers should do more than agree on this. They should go to work to streamline the present codes and restrict the complexities of new codes. This means resisting the inclusion in codes of any complicated criteria which cannot be readily understood by the practicing design engineer, and any restraints on design not fully justified."

In the last few years, the Central Section's Code Committee has been following the above principles consistently and resolutely. Other committees there and elsewhere, particularly code committees in other Sections, appear to be strongly inclined in the other direction, toward code expansion and "complexification".

Autonomous Committees

These autonomous committees are not recruited, and their membership is not screened to maintain any balance of diversity. The members are simply volunteers and those who show up run the committees. Central's Code Committee suddenly became heavily populated with members who specialize in small wood frame buildings. The prime reason was that word got out that radical changes in "conventional construction" provisions affecting these projects were being supported (although not officially originated) by the Statewide and other Sections' Code Committees. Vigorous opposition was raised and considerable controversy arose. Central's efforts failed to achieve much in the way of revisions and as a fallback we vetoed Statewide SEAOC official endorsement of the proposal before ICBO, where it failed. Our Code Committee's position and actions, I'm told, are still regarded as obstructive bad form elsewhere among SEAOC Sections. We were supposed to meekly join a consensus. I'm further told that organizational changes to prevent such future unpleasantness are in the works. SEAOC has

a terribly low threshold of tolerance for controversy, it seems.

Meanwhile, the conventional construction code revisers did heed some of our wishes, and also falsely claimed to limit their code revisions to Seismic Zone 4, thereby gaining ICBO approval the following year. You'll find their gem of clarity in the 1994 UBC in Sections 2326.1 through 2326.5; 2326.11.3 and 2326.11.4.

Other proposals for inclusion into code that Central's Committee successfully headed off include a very lengthy and detailed treatise on the design, detailing, and construction of plywood diaphragms and shear walls. This document instead will be distributed as an advisory guideline. Another was a manifold expansion of the old familiar embedded pole provisions in the foundation chapter. Its aim was to head off all possibility of "misuses" if the site had any slope, etc. This one was all prohibitions, with nothing to enable the user to cope with any of its complicating conditions. We claimed it lacked sufficient necessity and left code users in a quandary. Many, many of the code proposals coming before this committee would merely make fixed routines and rituals out of existing flexible and adaptable design principles — in effect, to prevent engineering from being applied in any thinking way. But, over our heads always hung this question: Are we mistaken and the others correct in these contrasting desires for what the code should be?

This year

Now this year comes very powerful backing, indeed almost total vindication of Central's vision for the building code. Just as the anonymous Seismology commentator said a dozen years ago, so does today's best-selling author on regulatory laws, Philip K. Howard in *The Death of Common Sense*: "Our regulatory system has become an instruction manual. Detailed rule after detailed rule addresses every eventuality, or at least every situation lawmakers and bureaucrats can think of."

He asks, "Is it a coincidence that almost every encounter with government is an exercise in frustration?" According to Howard the dominant theme in formulation of codes and regulations in recent years is "almost a religious tenet" to make rules as precise, comprehensive, and finely detailed as possible. The goal is to cover every eventuality so that the outcomes will be both certain and uniform for all. The use of flexibility and judgment by either the complying person or the enforcer is to be avoided at all costs. The words of the rules will tell us exactly what to do and not do, so that judgment will be precluded. The well-intended benefits of this approach are to prevent mistakes and errors, and to ensure fairness and non-discrimination, by means of covering everything

Continued on Page 9

Which Direction for Building Codes?

Continued from Page 8

in advance and by preventing use of discretion and possible abuse by officials. All that sounds rational and altruistic, but does it work? Author Howard, an Appalachian preacher's son now practicing law in New York City, says no. And, he says further, the harder this method is pushed and the more zealously refined, the worse it works. Fairness benefits backfire, the mistakes and errors aren't prevented, and the worthy purposes of the regulations are likely to get lost in the shuffle. As size and complexity overwhelms efforts at compliance, code violations become unavoidable and "enforcers, who supposedly have no discretion, have complete power." Then we quit trying. In the Code Committee we joked about becoming "code criminals." Testimony to Congress called it "the syndrome of involuntary noncompliance."

Construction defect lawsuits come visiting every so often, even when we've been alert to the needs of each project. How does it help when the other side's expert finds scads of nit picky code details you can't keep track of and didn't expressly demonstrate compliance within your calculations?

Human Judgment

Howard attributes the paradoxical failure of complexified codes to their insistence on eliminating the uncertainties of human judgment as applied case-by-case: "Modern regulatory law basically outlaws common sense." He says that when the law loses its connection to common sense, not internal compass can guide people as to right and wrong. Discretion-free regulations are equated to centralized planning in the Soviet Union: "It kills the human faculty that makes things work." It sure did to the Soviets, but how about in building construction and code administration?

The Building Code didn't start out big, thick, and inflexible. The Building Official is still given the discretionary powers to render interpretations, to issue clarifying supplemental regulation, and to rule on alternate materials, methods of design, and methods of construction not specifically prescribed. We engineers have long been given very libertine discretion in such sensitive matters as retaining walls, which "shall be designed to resist the lateral pressure of the retained material in accordance with accepted engineering practice." As for required

inspections, the Building Official has the discretionary power to make or require enough "other inspections of any construction work to ascertain compliance..." and to order special inspections and structural observation as the situation may warrant; Are these discretionary powers abused? If anything they are underutilized. The trend, to my eyes, is that engineers and building officials alike increasingly shy away from asserting their own common sense, judgment, and discretionary preroga-

tives⁽¹⁾ It's as though one can have a greater measure of authority than of responsibility, when those two things are just opposite faces of the same coin and can't be separated. Give away one and you've lost the other. Leave it lying around and it'll be stolen from you — by a SEAOC Committee, by ICBO, or by the Board of Registration.

Read the book

The anonymous piece quoted at the beginning urges taking action. Code users, writers, and enforcers alike would do well to take in Philip Howard's book. You'll be in good company. A full-page article in the March 27 [1995] Newsweek shows President Clinton touting the book and hosting its author. (If Clinton isn't your idea of good company, Senator Dole and others did the same). The cost in money and time to get this book is about the same as going to a monthly meeting, minus the cocktail. Take the book home and read for 20 minutes, then pour your own drink. You'll enjoy it. The first and fourth chapters of four, less than 70 pages, are on point for the future of our building code as it affects our professional lives. Forewarned is forearmed. Don't wait until the building code becomes totally comprehensive and totally incomprehensible before you act in your own interest.

⁽¹⁾Inability to interpret "unusual size and shape" in wood frame houses was given as the reason for adopting the arcane definitions now in the conventional construction sections listed earlier.

By Charles O. Greenlaw, S.E.

Reprinted from "In This Corner", a monthly feature of the SEAOC newsletter, April 1995

* Charles O. Greenlaw, S.E., resides in Central California and has been a regular contributor to the SEAint Listservice. He has been an active member of SEAOC (Central California) since 1970 where he served as chapter President in 1985-86. Mr. Greenlaw spent two two-year terms as a delegate to and Director of SEAOC (state SEA). He served as a member of the Seismology Committee from 1979-87, Member of the Legislative Committee from 1984-94 (chair 1988-94) and member of the Professional Practice Committee since 1994 (as chair since 1997). Mr. Greenlaw also has been a liaison to the California Board of Registration since 1988. He has contributed numerous professional practice-related articles to the association newsletter and has been published in numerous newspapers.

LaPerle, Erin@DCA

From: Moore, Ric@DCA
Sent: Wednesday, July 09, 2014 8:11 AM
To: Kereszt, Larry@DCA; LaPerle, Erin@DCA
Cc: Eissler, Nancy@DCA
Subject: FW: Proposed Changes to 416
Attachments: 416_3060_lang.pdf

Additional comments received

Ric Moore

From: Keith W. Spencer [mailto: [REDACTED]]
Sent: Wednesday, July 09, 2014 7:14 AM
To: Moore, Ric@DCA; Pat Tami
Subject: Proposed Changes to 416

Keith W. Spencer
LS 6406, CFedS 1454

[REDACTED]
[REDACTED] office
[REDACTED] cell

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

Proposed Language

(1) Amend Section 416 of Division 5 of Title 16 of the California Code of Regulations to read as follows:

416. Substantial Relationship Criteria.

For the purpose of denial, suspension, or revocation of the license of a professional engineer or a land surveyor 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 engineer or land surveyor if, to a substantial degree, it evidences present or potential unfitness of a professional engineer or land surveyor to perform the functions authorized by his or her license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, those involving the following:

(a) For professional engineers, any violations of the provisions of the Professional Engineers Act or aiding and abetting any person in such a violation;

(b) For land surveyors, any violations of the provisions of the Professional Land Surveyors' Act or aiding and abetting any person in such a violation;

(c) ~~A conviction of a crime~~ Crimes or acts arising from or in connection with the practice of professional engineering or land surveying.;

As modified this paragraph is now redundant.
It does not add any further clarification to the first paragraph and should be removed or left alone.

All it does is to make all
“...acts... in connection with the practice of professional engineering or land surveying”
punishable offenses without due process and conviction.

(d) Crimes or acts involving dishonesty, fraud, deceit, or theft with the intent to substantially benefit oneself or another or to substantially harm another;

(e) Crimes or acts involving physical violence;

(f) Crimes or acts that indicate a substantial or repeated disregard for the health, safety, or welfare of the public.

Note: Authority cited: Sections 481, 6716 and 8710, Business and Professions Code.
Reference: Sections 480, 481, 490, 493, ~~6706.3~~, ~~6710~~, ~~6732~~, 6775, 6779, 8780 and 8783,
Business and Professions Code.

LaPerle, Erin@DCA

From: Gerald James [REDACTED]
Sent: Thursday, July 10, 2014 12:34 PM
To: LaPerle, Erin@DCA
Subject: Rulemaking - Substantial Relationship Criteria
Attachments: 7 10 14 PECG Public Comments Rulemaking 416.pdf

Ms. LaPerle,

Attached please find comments from the Professional Engineers in California Government on the proposed rulemaking. We also plan on attending the July 18, 2014 hearing.

If you have any questions, please contact me at PECG's Sacramento office.

Thank you,

Gerald James
PECG Counsel
[REDACTED]



July 10, 2014

Submitted Via E-mail

Board for Professional Engineers, Land Surveyors and Geologists
Attention: Erin LaPerle
2535 Capitol Oaks Drive, Suite 300
Sacramento, CA 95833

Re: Proposed Regulation – Substantial Relationship Criteria

Members of the Board for Professional Engineers, Land Surveyors and Geologists,

Professional Engineers in California Government represents more than 13,000 engineers, land surveyors, engineering geologists, and related professionals working for the State of California. PECG submits these comments in response to the May 23, 2014 Notice of Proposed Rulemaking which seeks to amend Title 16, California Code of Regulations, Division 5, Section 416 (Substantial Relationship Criteria).

While PECG shares the Board's stated desire to protect the public, the proposed amendments to Rule 416 are unnecessary and exceed the statutory authority provided to the Board in the Business and Professions Code.

In Business and Professions Code section 6775, the Legislature authorizes the Board to discipline or revoke the license of a professional engineer under 8 specific grounds as follows:

The board may, upon its own initiative or upon the receipt of a complaint, investigate the actions of any professional engineer licensed under this chapter and make findings thereon.

By a majority vote, the board may publicly reprove, suspend for a period not to exceed two years, or revoke the certificate of any professional engineer licensed under this chapter on any of the following grounds:

(a) Any conviction of a crime substantially related to the qualifications, functions, and duties of a licensed professional engineer, in which case the certified record of conviction shall be conclusive evidence thereof.

HEADQUARTERS: 455 Capitol Mall, Suite 501, Sacramento, CA 95814 • (916) 446-0400
LOS ANGELES: 215 N. Marengo Avenue, Suite 185, Pasadena, CA 91101 • (818) 500-9941
SAN FRANCISCO: 1 Sutter Street, Suite 800, San Francisco, CA 94104 • (415) 861-5720
TELEFAX: Headquarters (916) 446-0489; Los Angeles (818) 247-2348; San Francisco (415) 861-5360

- (b) Any deceit, misrepresentation, or fraud in his or her practice.
- (c) Any negligence or incompetence in his or her practice.
- (d) A breach or violation of a contract to provide professional engineering services.
- (e) Any fraud, deceit, or misrepresentation in obtaining his or her certificate as a professional engineer.
- (f) Aiding or abetting any person in the violation of any provision of this chapter or any regulation adopted by the board pursuant to this chapter.
- (g) A violation in the course of the practice of professional engineering of a rule or regulation of unprofessional conduct adopted by the board.
- (h) A violation of any provision of this chapter or any other law relating to or involving the practice of professional engineering.

These statutory grounds to revoke a professional engineering license share a common theme of acts or crimes **related to the practice of engineering or fraud, deceit or misrepresentation in obtaining a professional engineering license.**¹

Each of the proposed revisions to Rule 416 would expand possible discipline to situations beyond the statutory grounds set by the Legislature. The proposed revisions would expand discipline to crimes or acts:

- (d) involving dishonesty, fraud, deceit or theft with the intent to substantially benefit oneself or another or to substantially harm another – *(which includes acts unrelated to the practice of engineering)*
- (e) involving physical violence –*(which includes acts unrelated to the practice of engineering)*
- (f) indicating a substantial or repeated disregard for the health, safety, or welfare of the public – *(which includes acts unrelated to the practice of engineering)*

Expanding the crimes or acts under which a licensee or applicant may be disciplined beyond that expressly authorized by the Legislature by including crimes or acts unrelated to the practice of engineering would exceed the Board's authority. Rather than assist the Board's ability to successfully pursue disciplinary action and provide additional information to members of the public or licensees, the proposed regulatory changes would instead lead to additional challenges and uncertainty over disciplinary actions unrelated to the practice of engineering as those items are beyond the purview of the Board to pursue discipline.

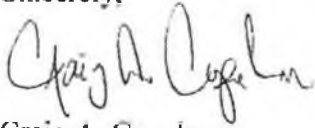
The statutory and regulatory provisions regarding discipline have been in place for decades. There does not appear to be a need to make any changes, especially when the proposed changes are inconsistent with the statute. PECG respectfully urges the Board to decline to adopt the proposed regulations as they are unnecessary and improperly exceed the authorizing statutes.

¹ Similar statutory grounds exist for land surveyors (B&P §7860) and Geologists or Geophysicists (B&P §8780). These comments apply equally to the application of proposed Rule 216 to land surveyors and to proposed Rule 3060 for Geologists and Geophysicists.

Proposed Rulemaking – Substantial Relationship Criteria
July 10, 2014
Page 3

Thank you for the opportunity to provide input in the rulemaking process.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig A. Copelan". The signature is written in a cursive, flowing style.

Craig A. Copelan
PECG Board of Registration Liaison

LaPerle, Erin@DCA

From: Moore, Ric@DCA
Sent: Thursday, July 17, 2014 1:58 PM
To: LaPerle, Erin@DCA; Kereszt, Larry@DCA; Eissler, Nancy@DCA
Cc: Duke, Gary@DCA
Subject: FW: Board Rule 416 hearing tomorrow

Written comments received from Roger Hanlin representing CLSA. It is expected that Roger will be in attendance to verbalize these comments.

Ric Moore

From: Roger Hanlin [mailto: [REDACTED]]
Sent: Thursday, July 17, 2014 1:56 PM
To: 'Michael Butcher'
Cc: Moore, Ric@DCA; 'clsa@californiasurveyors.org'; 'Dorothy Calegari'; 'Ralph Simoni'
Subject: RE: Board Rule 416 hearing tomorrow

Thank you Michael.

I will provide the comment below on behalf of CLSA at tomorrow's hearing.

Roger

Roger K. Hanlin, PLS

Voice Phone: [REDACTED]

Fax: [REDACTED]

From: Michael Butcher [mailto: [REDACTED]]
Sent: Thursday, July 17, 2014 1:46 PM
To: Roger Hanlin
Cc: Ric Moore; clsa@californiasurveyors.org; Dorothy Calegari; Ralph Simoni
Subject: Board Rule 416 hearing tomorrow

Hello Roger,

The Legislative Committee reviewed the proposed language with 16 of the 22 committee members responding, yet did not reach consensus on the proposed change to Board Rule 416. There were a few more votes on the "Against" side than the "For" side with the mode of the responses being "Oppose Unless Amended". Many of the pro & con comments stated the language is vague or too broad and still needs clarification. My committee recommendation to the CLSA BOD at this point would be a position of "Opposed Unless Amended" and an offer to work with BPELSG to see if we can reach palatable language. This of course is a preliminary position subject to a vote of the CLSA at the BOD next Saturday July 26. If called upon please provide the CLSA's preliminary position at the hearing with the "subject to CLSA BOD approval" qualifier.

Feel free to contact me if you have any questions of concerns

Michael Butcher
CLSA Legislative Chairman

Cell [REDACTED]

LaPerle, Erin@DCA

From: Moore, Ric@DCA
Sent: Thursday, July 17, 2014 8:37 AM
To: LaPerle, Erin@DCA; Kereszt, Larry@DCA; Eissler, Nancy@DCA
Subject: FW: Proposed BR 416

New written comments from Mike Butcher, representing himself and not CLSA or LSTAC.

Ric Moore

From: Michael Butcher [mailto: [REDACTED]]
Sent: Thursday, July 17, 2014 6:36 AM
To: Moore, Ric@DCA; Mathe, Raymond@DCA
Subject: Proposed BR 416

Ric,

Good morning to you both. Please consider this as a personal e-mail, not as a CLSA Leg. Comm. correspondence. Of course, it is muddled with due diligence fact finding for the many CLSA hats I wear.

In reviewing the proposed changes to Board Rule 416 I have a concern over how it will affect B&P 490. I believe that the new BR 416 would create conflicting language with existing B&P 490. I have an e-mail into to Ralph and will pose the same question to you. If conflicting language exists, is there a hierarchy of Code vs. Regulation. What would prevail between CCR and B&P Code?

New BR 416 would give greater latitude in interpreting/enforcing B&P 480, however, as currently proposed I think it wouldn't change B&P 490 and the need for a conviction of crime before grounds for revocation.

My apologies for coming in at the 11 hour. Have you considered/addressed these issues in your process of the proposed change?

PS = Side note: I believe Roger Hanlin will attend tomorrow's hearing as a CLSA Liaison and hopefully we will be able to provide some preliminary feedback from the Leg. Comm. review, subject to CLSA BOD approval of any official CLSA position.

Michael Butcher, L.S.
 [REDACTED]
 [REDACTED]
 [REDACTED] Ext. [REDACTED]
 [REDACTED] Fax [REDACTED]

V. Administration

A. FY 2014/15 Budget Summary

FY 2014/15 Budget Overview:

The information provided below is a summary of the Engineers and Land Surveyors Board fund and the Geologists & Geophysicists Account. The data is based on approved Governor’s Budget, projected expenditures & revenue, projections to year-end, applications received and renewals processed through September for the current FY 2014/15 and prior year 2013/14.

Engineers and Land Surveyors (PELS) Fund

Fiscal Month 3	FY 14/15	FY 13/14
Expenditures	\$2.46 Million	\$2.63 Million
Revenue	\$3.37 Million	\$3.84 Million
Applications	2,614	3,053
Renewals	24,467	27,898

Budget Allotment	\$9.64 Million
Projection to Year-End	\$7.82 Million
Surplus/Deficit	\$1.82 Million
Revenue (Year-End)	\$7.92 Million

Overall, the Board is generating more revenue than allocated expenses and is projected to have a surplus at the end of the year. Please note: Renewals cycles are cyclical depending on the FY. Additionally, the application fluctuations is a result of filing dates.

Geologist and Geophysicists (GEO) Fund

Fiscal Month 3	FY 14/15	FY 13/14
Expenditures	\$361 Thousand	\$334 Thousand
Revenue	\$383 Thousand	\$307 Thousand
Applications	198	83
Renewals	1,399	1,295

Budget Allotment	\$ 1.39 Million
Projection to Year-End	\$1.07 Million
Surplus/Deficit	\$327 Thousand
Revenue (Year-End)	\$1.06 Million

Applications have increased versus last FY because of different application final filing dates. (The final filing date for initial applications for the fall exams ended one week into the FY 14/15, whereas the exam final filing date for prior FY 13/14 ended July 1st, 2013. Our FY starts July 1st.)

0770 - Board for Prof. Engineers and Land Surveyors

Analysis of Fund Condition

Updated 10/30/14

(Dollars in Thousands)

Budget Act and GF Loan Repayments

NOTE: \$4.5 M GF Loan Outstanding

	CY 2014-15	Budget Act BY 2015-16	BY+1 2016-17
BEGINNING BALANCE	\$ 5,832	\$ 6,431	\$ 6,458
Prior Year Adjustment	\$ -	\$ -	\$ -
Adjusted Beginning Balance	<u>\$ 5,832</u>	<u>\$ 6,431</u>	<u>\$ 6,458</u>
REVENUES AND TRANSFERS			
Revenues:			
125600 Other regulatory fees	\$ 104	\$ 104	\$ 104
125700 Other regulatory licenses and permits	\$ 2,618	\$ 2,607	\$ 2,607
125800 Renewal fees	\$ 5,123	\$ 6,071	\$ 6,071
125900 Delinquent fees	\$ 65	\$ 61	\$ 61
141200 Sales of documents	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 7	\$ 7	\$ 1
150500 Interest Income from interfund loans	\$ -	\$ -	\$ -
160400 Sale of fixed assets	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ 9	\$ 9	\$ 9
161400 Miscellaneous revenues	\$ 1	\$ 1	\$ 1
Totals, Revenues	<u>\$ 7,927</u>	<u>\$ 8,860</u>	<u>\$ 8,854</u>
Transfers from Other Funds			
FO0001 Proposed GF Loan Repayment per item 1110-011-0770, Budget Act of 2008	\$ -	\$ -	\$ -
FO0001 Proposed GF Loan Repayment per item 1110-011-0770, Budget Act of 2011	\$ 500	\$ 1,000	\$ 800
Transfers to Other Funds			
TO0001 GF Loan per item 1110-011-0770 Budget Act of 2008	\$ -	\$ -	\$ -
TO0001 GF Loan per item 1110-011-0770 Budget Act of 2011	\$ -	\$ -	\$ -
Totals, Revenues and Transfers	<u>\$ 8,427</u>	<u>\$ 9,860</u>	<u>\$ 9,654</u>
Totals, Resources	<u>\$ 14,259</u>	<u>\$ 16,291</u>	<u>\$ 16,112</u>
EXPENDITURES			
Disbursements:			
1110 Program Expenditures (State Operations)	\$ 9,640	\$ 9,833	\$ 10,030
8840 SCO (State Operations)	\$ -	\$ -	\$ -
8880 Financial Information System for CA (State Operations)	\$ 8	\$ -	\$ -
SURPLUS/DEFICIT:	\$ (1,820)		
Total Disbursements	<u>\$ 7,828</u>	<u>\$ 9,833</u>	<u>\$ 10,030</u>
FUND BALANCE			
Reserve for economic uncertainties	\$ 6,431	\$ 6,458	\$ 6,082
Months in Reserve	7.8	7.7	7.1

0205 - Geology

Analysis of Fund Condition

Prepared 10/30/14

(Dollars in Thousands)

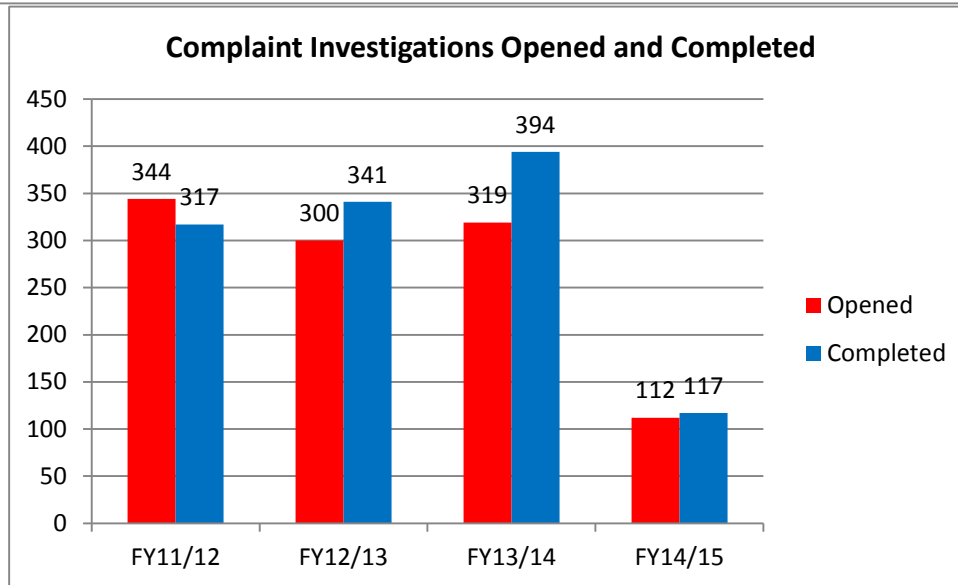
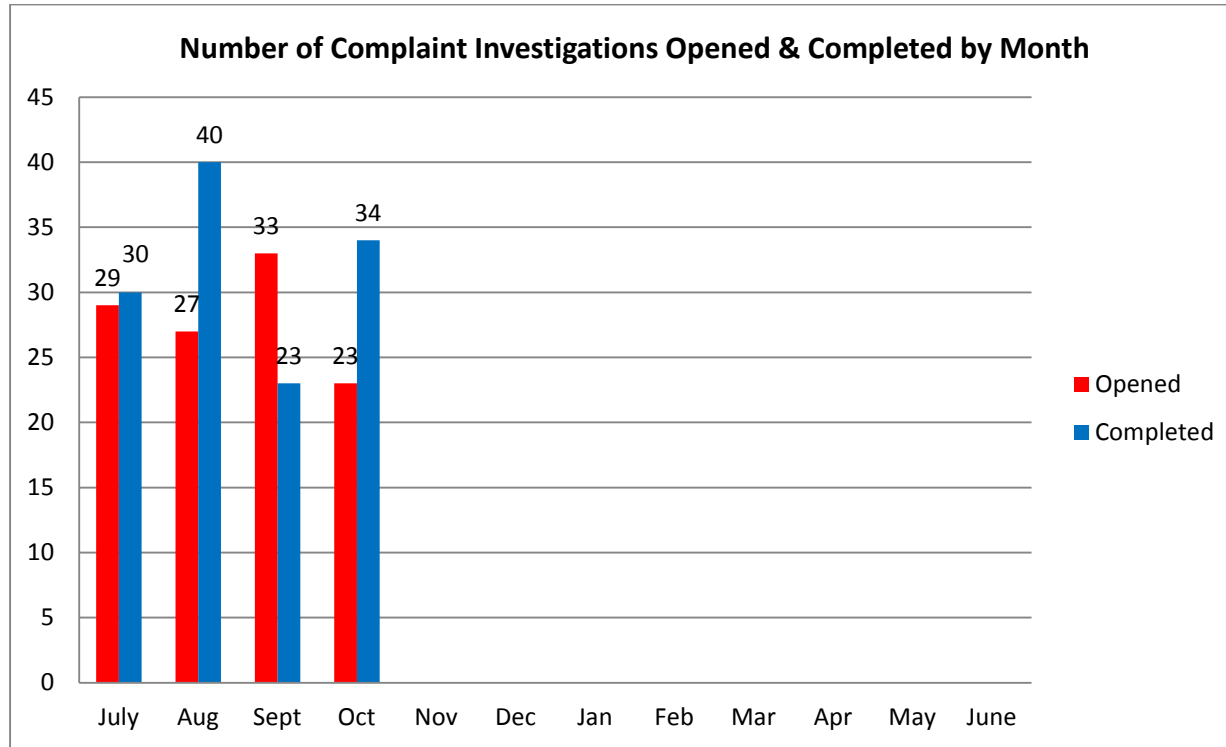
Governor's Budget	BUDGET		
	CY 2014-15	ACT BY 2015-16	BY + 1 2016-17
BEGINNING BALANCE	\$ 991	\$ 1,001	\$ 620
Prior Year Adjustment	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 991	\$ 1,001	\$ 620
REVENUES AND TRANSFERS			
Revenues:			
125600 Other regulatory fees	\$ 3	\$ 3	\$ 3
125700 Other regulatory licenses and permits	\$ 234	\$ 240	\$ 240
125800 Renewal fees	\$ 810	\$ 768	\$ 768
125900 Delinquent fees	\$ 12	\$ 12	\$ 12
141200 Sales of documents	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 3	\$ 3	\$ -
160400 Sale of fixed assets	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ 1	\$ 1	\$ 1
161400 Miscellaneous revenues	\$ -	\$ -	\$ -
Totals, Revenues	\$ 1,063	\$ 1,027	\$ 1,024
Totals, Revenues and Transfers	\$ 1,063	\$ 1,027	\$ 1,024
Totals, Resources	\$ 2,054	\$ 2,028	\$ 1,644
EXPENDITURES			
Disbursements:			
1110 Program Expenditures (State Operations)	\$ 1,380	\$ 1,408	\$ 1,436
8840 FSCU (State Operations)	\$ -	\$ -	\$ -
8880 Financial Information System for CA (State Operations)	\$ 1	\$ -	\$ -
SURPLUS/DEFICIT:	\$ (328)		
Total Disbursements	\$ 1,053	\$ 1,408	\$ 1,436
FUND BALANCE			
Reserve for economic uncertainties	\$ 1,001	\$ 620	\$ 208
Months in Reserve	8.5	5.2	1.7

VI. Enforcement

- A. Enforcement Statistical Reports
- B. Disclosure of Complaints and Enforcement Actions

PELS ENFORCEMENT PROGRAM

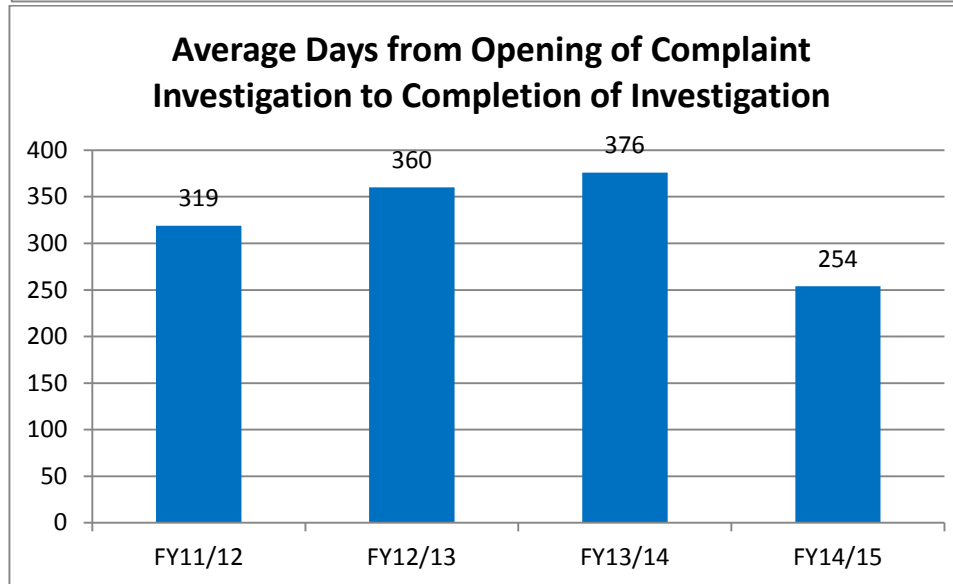
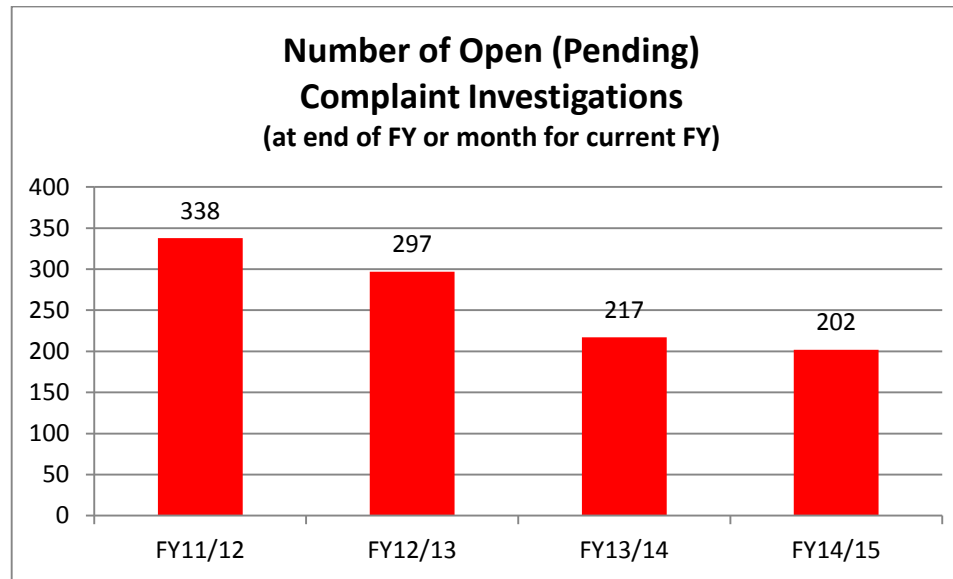
Complaint Investigation Phase



NOTE: FY14/15 statistics are through October 31, 2014

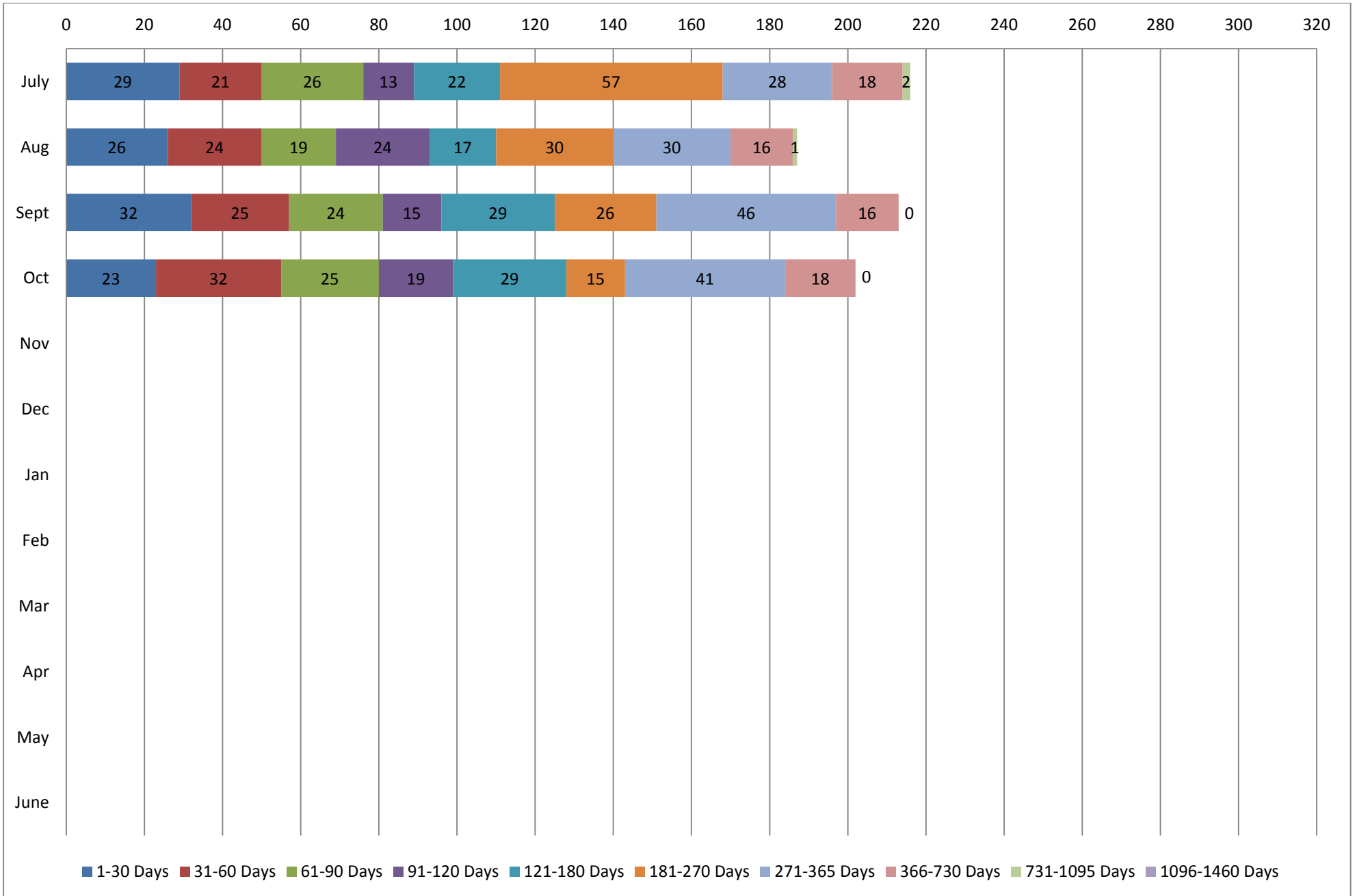
PELS ENFORCEMENT PROGRAM

Complaint Investigation Phase

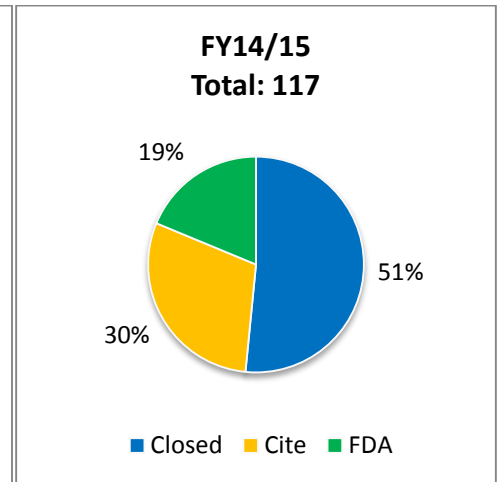
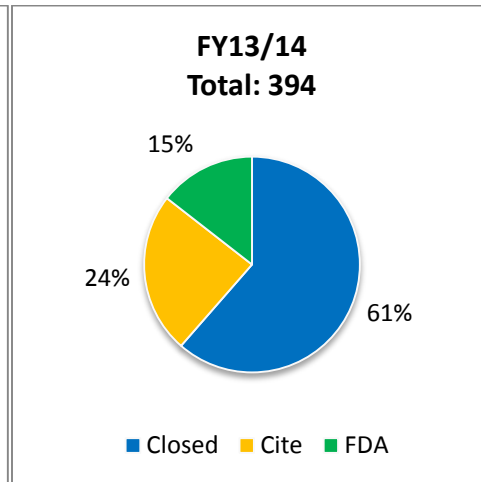
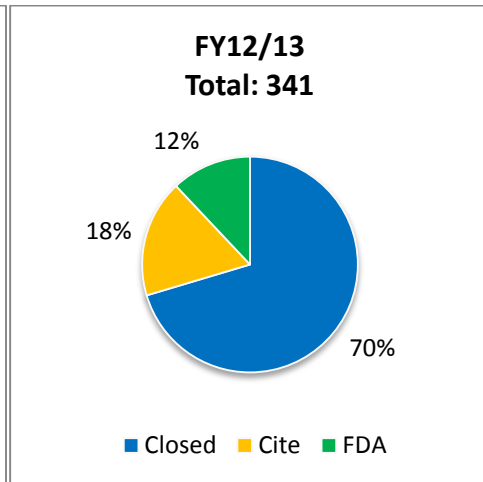
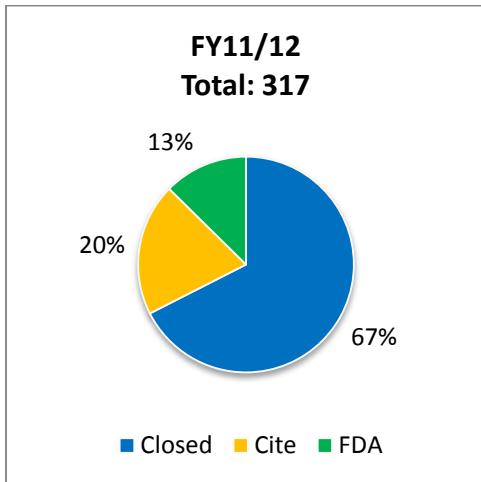
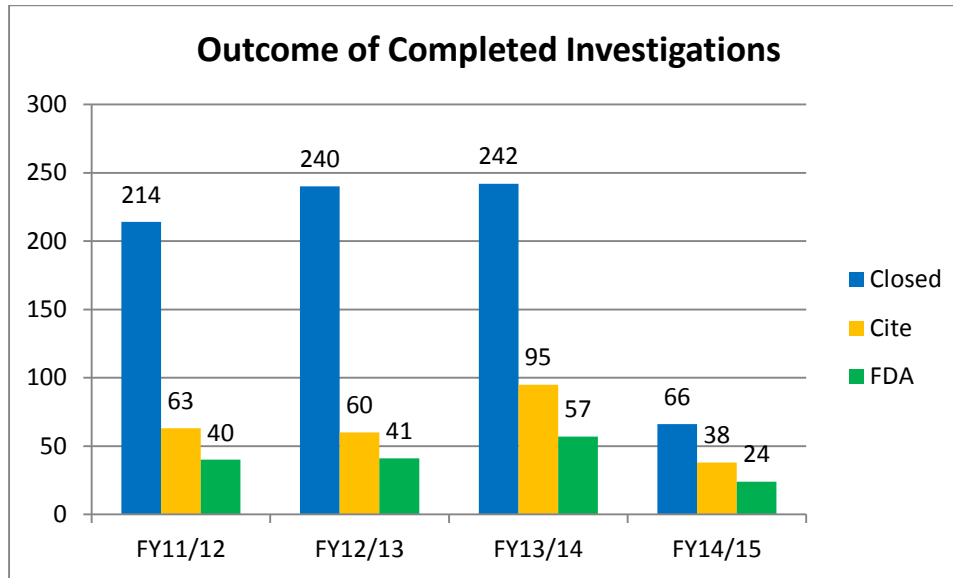


NOTE: FY14/15 statistics are through October 31, 2014

Aging of Open (Pending) Complaint Investigation Cases FY14/15



PELS ENFORCEMENT PROGRAM Outcome of Completed Investigations



NOTE: FY14/15 statistics are through October 31, 2014

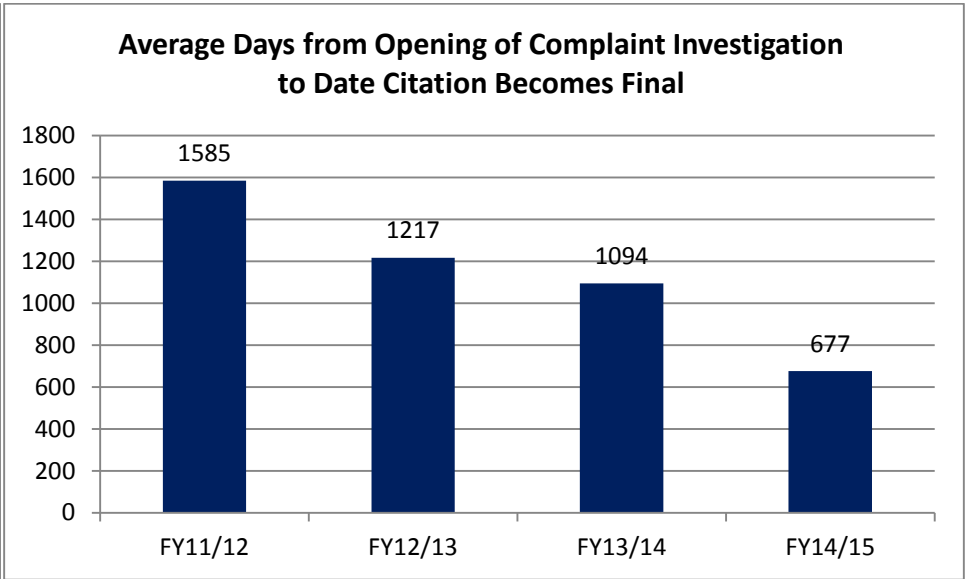
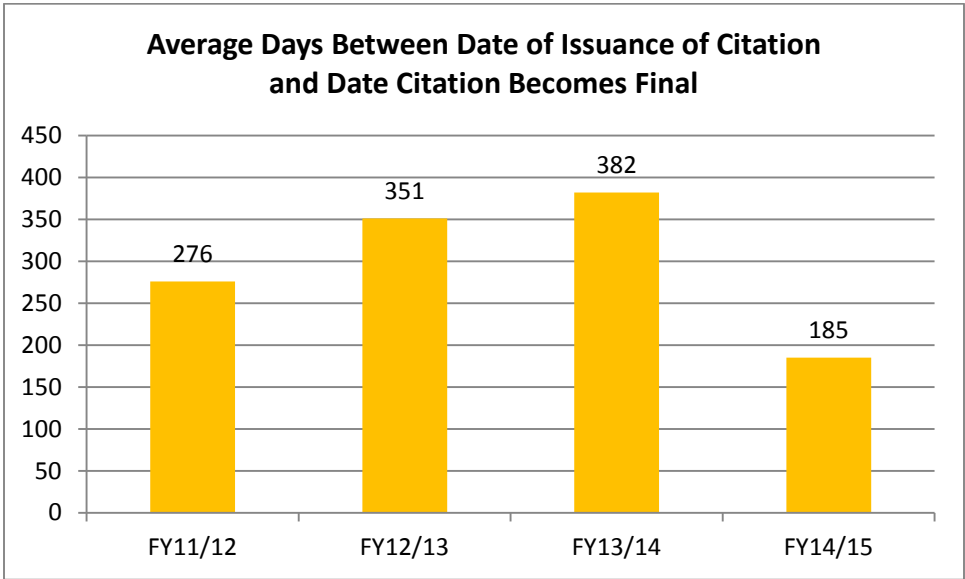
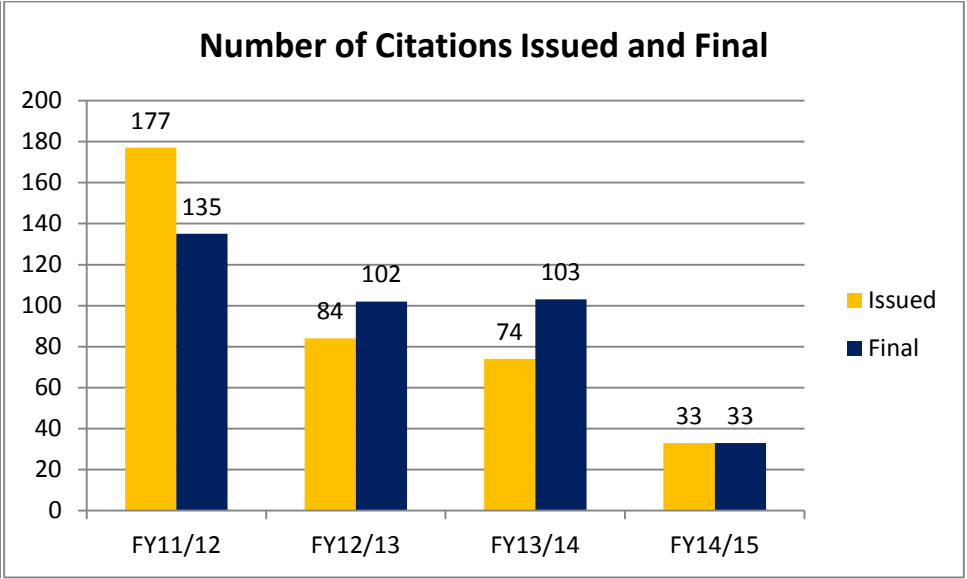
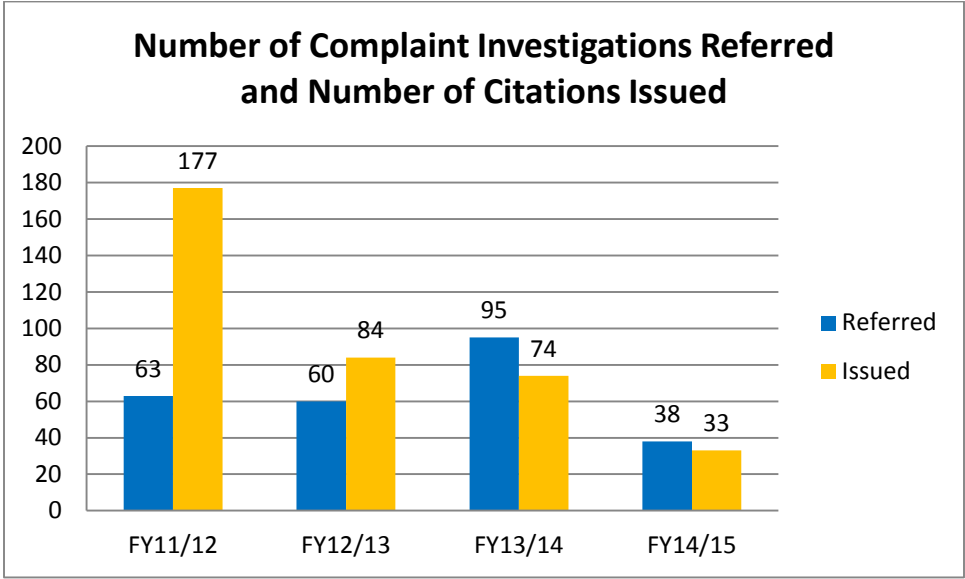
Closed = Closed with No Action Taken, includes the categories listed on the next page.

Cite = Referred for Issuance of Citation

FDA = Referred for Formal Disciplinary Action

PELS ENFORCEMENT PROGRAM

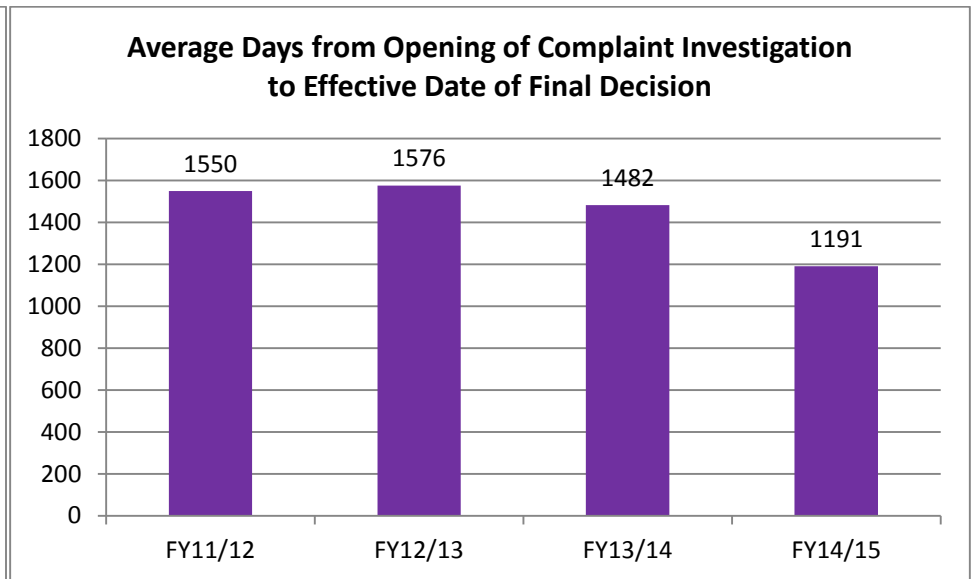
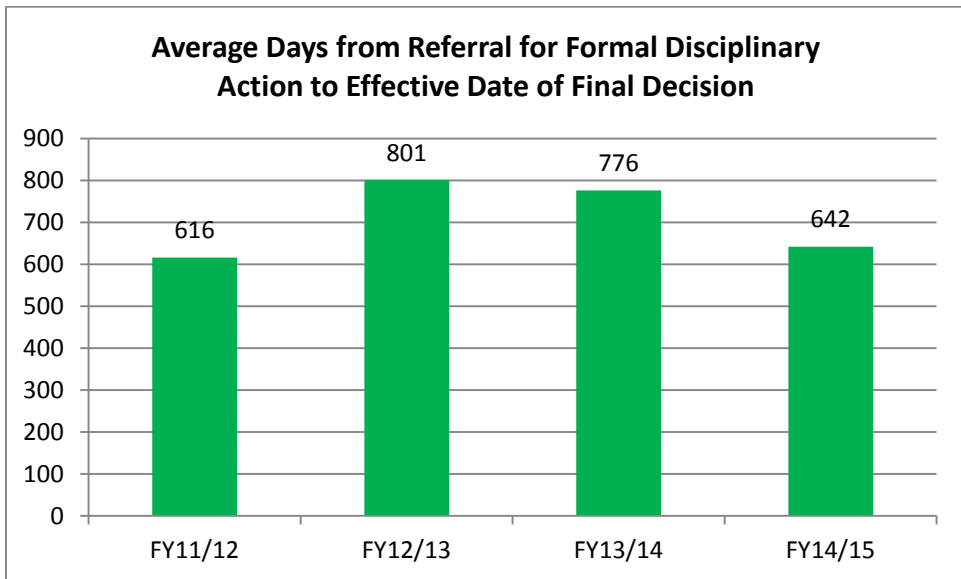
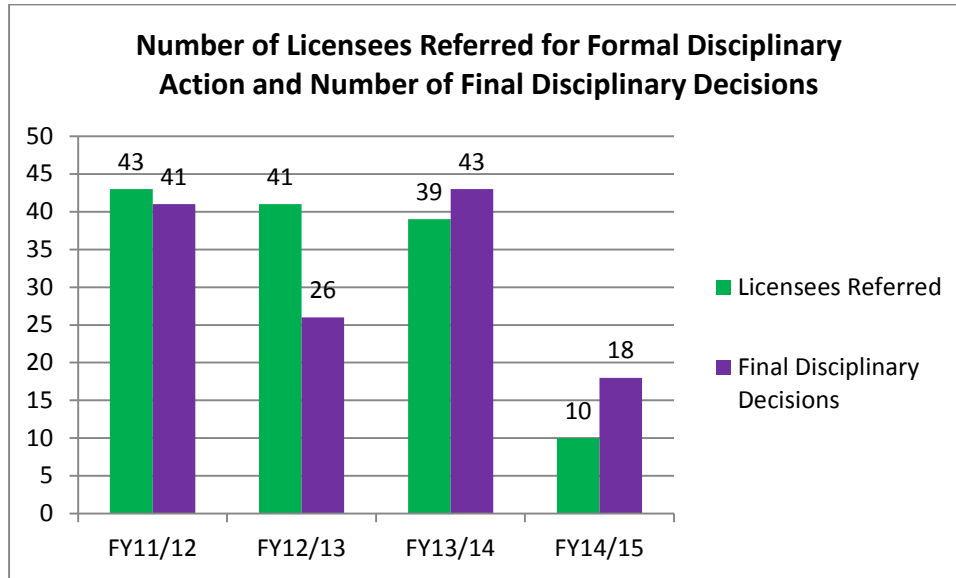
Citations (Informal Enforcement Actions)



NOTE: FY14/15 statistics are through October 31, 2014

PELS ENFORCEMENT PROGRAM

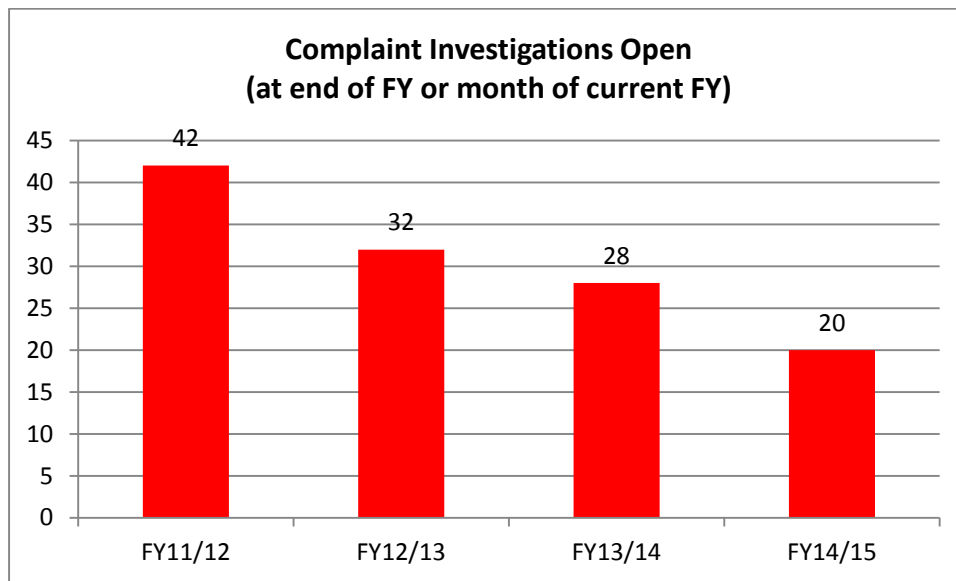
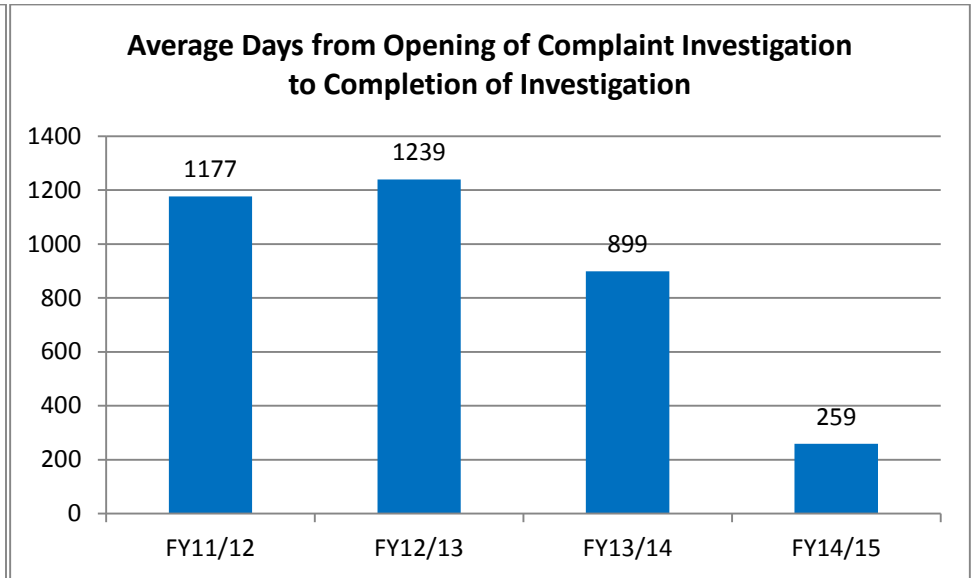
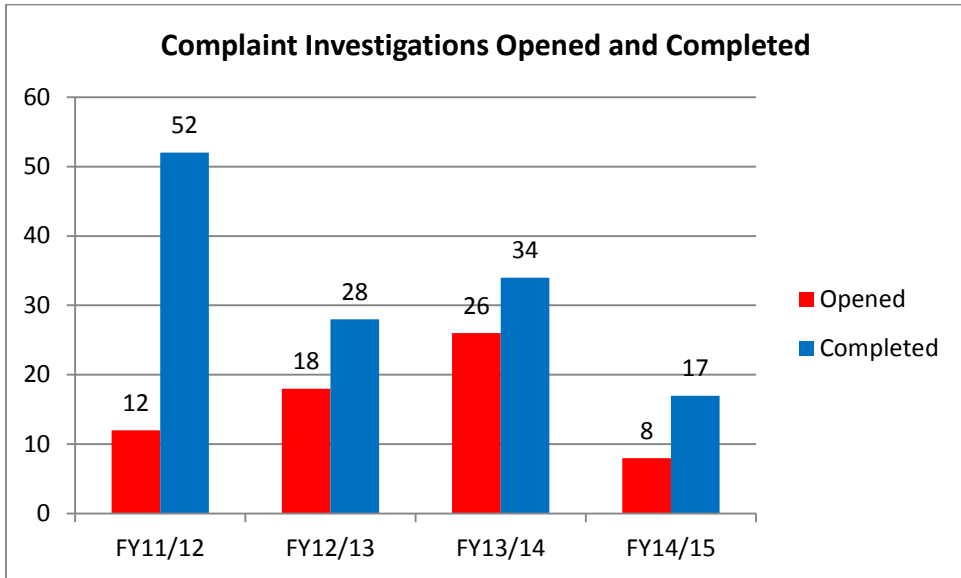
Formal Disciplinary Actions Against Licensees



NOTE: FY14/15 statistics are through October 31, 2014

G&G ENFORCEMENT PROGRAM

Complaint Investigation Phase

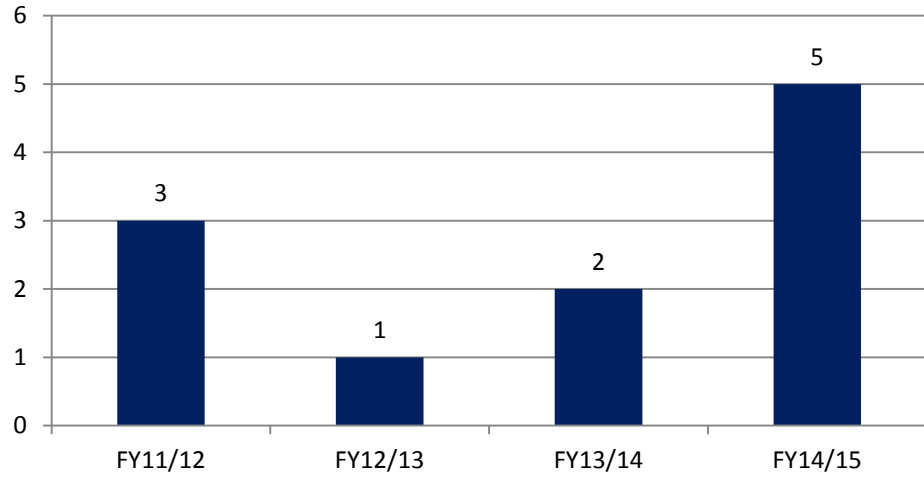


NOTE: FY14/15 statistics are through October 31, 2014

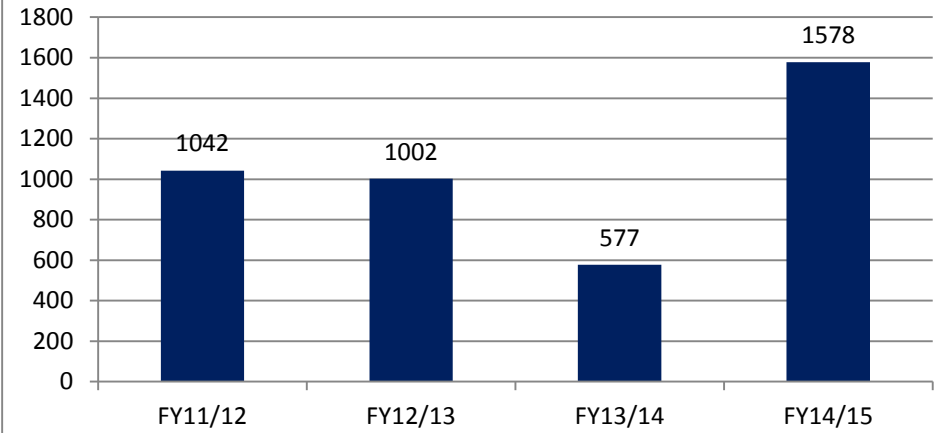
G&G ENFORCEMENT PROGRAM

Citations (Informal Enforcement Actions)

Number of Final Citations



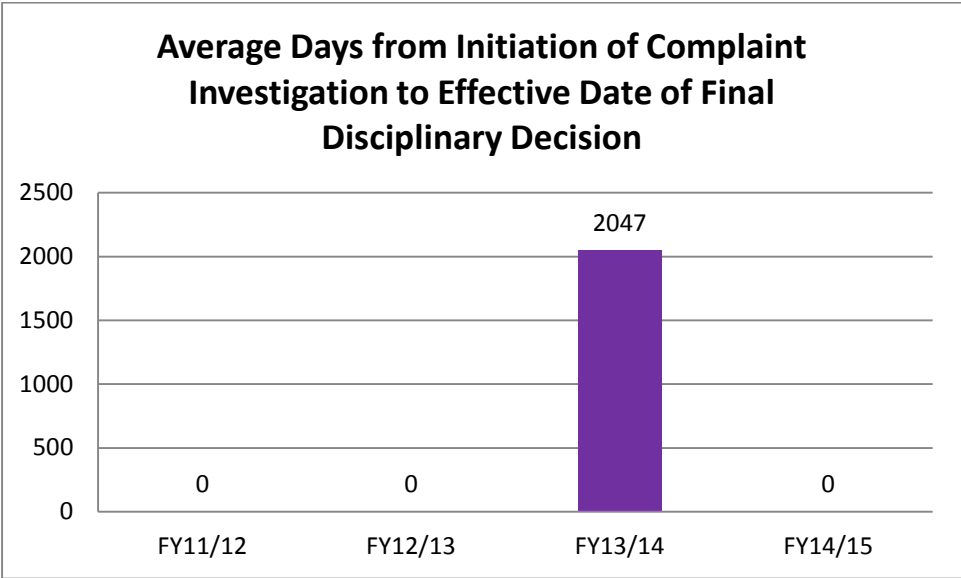
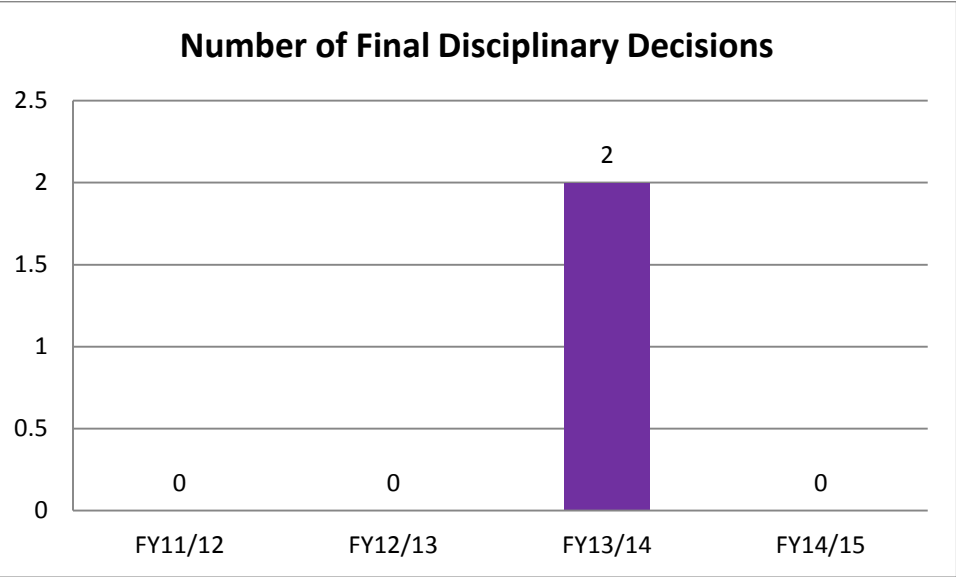
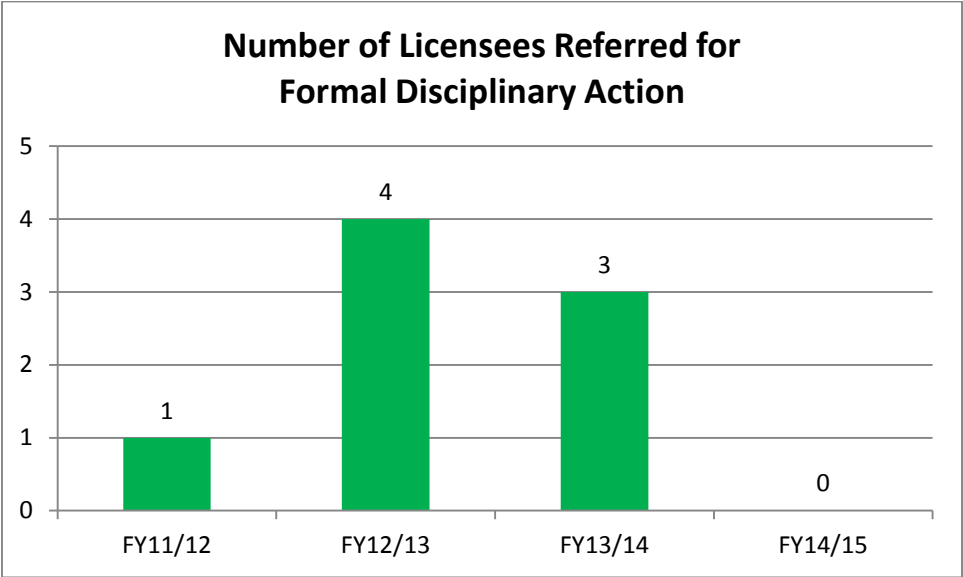
Average Days from Opening of Complaint Investigation to Date Citation Becomes Final



NOTE: FY14/15 statistics are through October 31, 2014

G&G ENFORCEMENT PROGRAM

Formal Disciplinary Actions against Licensees



NOTE: FY14/15 statistics are through October 31, 2014


BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS

2535 Capitol Oaks Drive, Suite 300, Sacramento, California, 95833-2944

Telephone: (916) 263-2222 – Toll Free: 1-866-780-5370

Facsimile: (916) 263-2246

www.bpelsg.ca.gov


**POLICY OF THE BOARD FOR PROFESSIONAL
ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS
ON DISCLOSURE OF COMPLAINTS AND ENFORCEMENT ACTIONS**

It is the policy of the Board for Professional Engineers, Land Surveyors, and Geologists to provide information to all interested parties regarding complaints and enforcement actions resulting from violations of the Professional Engineers Act (Business and Professions Code section 6700, et seq.), the Geologist & Geophysicist Act (Business and Professions Code section 7800, et seq.), the Professional Land Surveyors' Act (Business and Professions Code section 8700, et seq.), the Board Rules and Regulations Relating to the Practices of Engineering and Land Surveying (Division 5 of Title 16 of the California Code of Regulations), and/or the Regulations Relating to the Practices of Geology and Geophysics (Division 29 of Title 16 of the California Code of Regulations).

COMPLAINTS

The Board keeps records for five years of complaints against licensees and non-licensees that do not result in enforcement action (see below) involving violations of the Professional Engineers Act, the Geologist & Geophysicist Act, the Professional Land Surveyors' Act, and the Board Rules and Regulations Relating to the Practices of Engineering, Land Surveying, Geology, and Geophysics.

During the investigation, no information concerning the complaint will be disclosed.

If investigation reveals that there has been no violation of the law, no information concerning the complaint will be disclosed.

If investigation reveals that there has been a probable violation of the law, upon written or oral request, information concerning the complaint shall be disclosed as follows:

1. The number of complaints against a specific Board licensee or non-licensee.
2. The date the complaint was received and the date on which final disposition of the complaint was reached.
3. The disposition of the complaint, as follows:
 - a. Compliance obtained.
 - b. Complaint mediated/resolved.
 - c. Complaint referred for legal and/or disciplinary action (i.e., criminal action, citation issuance, and/or accusation filing).
 - d. Any other action taken, formal or informal.

ENFORCEMENT ACTIONS (CRIMINAL ACTIONS, CITATIONS, ACCUSATIONS, AND FINAL ORDERS)

The Board shall keep records of enforcement actions taken, including criminal convictions, citations, accusations, and final orders, as required by law.

Upon written or oral request, information regarding citations issued and accusations filed shall be disclosed as follows:

Citations: A citation shall be disclosed once it is issued along with its procedural status.

Accusations: An accusation shall be disclosed once it is filed along with its procedural status.

Upon written or oral request, information regarding final orders (final citation orders or final disciplinary decisions/orders on accusations) shall be disclosed as follows:

Final Orders: Final orders shall be disclosed once they become final and effective. Additionally, information shall be provided regarding compliance with the order, as applicable at the time of the request.

In addition to providing the information described above regarding final orders upon request, the Board will publicize such final orders in any manner, consistent with the provisions of the Information Practices Act (Civil Code section 1798, et seq.), the Public Records Act (Government Code section 6250, et seq.), and other applicable laws, that the Board deems appropriate, including, but not limited to, issuing press releases, publishing articles in Board publications and on the Board's Internet site, and providing information to the regulatory agencies for engineering, land surveying, geology, and/or geophysics in other states.

Upon written or oral request, information regarding criminal actions resulting from Board investigations shall be disclosed as follows:

Criminal Actions: The name and address of the appropriate court which has instituted the criminal proceedings regarding criminal actions resulting from Board investigations, along with the pertinent docket or case number, shall be provided once the Board has received such information from the Division of Investigation, the appropriate District or City Attorney's Office, or the appropriate court.

In addition to providing the information described above regarding criminal actions upon request, the Board will publicize criminal actions in any manner, consistent with the provisions of the Information Practices Act (Civil Code section 1798, et seq.), the Public Records Act (Government Code section 6250, et seq.), and other applicable laws, that the Board deems appropriate, including, but not limited to, issuing press releases, publishing articles in Board publications and on the Board's Internet site, and providing information to the regulatory agencies for engineering, land surveying, geology, and/or geophysics in other states.

VII. Executive Officer's Report

- A. Strategic Plan
- B. Sunset Report
- C. Personnel
- D. BreEZe Update

VIII. Exams/Licensing

A. Fall 2014 Examination Update

IX. Approval of Delinquent Reinstatements

X. Technical Advisory Committees (TACs)

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

XI. Liaison Reports

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

XII. President's Report/Board Member Activities

XIII. Approval of Consent Items

DRAFT

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

Judge Joseph Rattigan Building
50 D Street, Conference Room 405
Santa Rosa, CA 95040

September 25-26, 2014

Thursday, September 25 beginning at 10:00 a.m. and continuing on Friday, September 26, beginning at 9:00 a.m., if necessary.

Thursday, September 25, 2014

Board Members Present:	Kathy Jones Irish, President; Robert Stockton, Vice President; Natalie Alavi; Asha Brooks; Diane Hamwi; Eric Johnson; Coby King; Mohammad Qureshi; Karen Roberts; Ray Satorre; Patrick Tami and Erik Zinn
Board Members Absent:	Philip Quartararo; Hong Beom Rhee, and Jerry Silva;
Board Staff Present:	Ric Moore (Executive Officer); Nancy Eissler (Enforcement Manager); Celina Calderone (Board Liaison); Jeff Alameida (Administrative Manager); Kara Williams (Budget and Legislative Analyst); and Gary Duke (Legal Counsel).

I. Roll Call to Establish a Quorum

President Jones Irish called the meeting to order; roll call was taken; and a quorum was established.

Ray Satorre arrived at 10:14 a.m.

II. Public Comment

No Public Comment.

III. Hearing on the Petition for Reduction/Modification of Penalty of Scott S. Bennett

The Board heard the Petition for Reduction/Modification of Penalty as presented by Mr. Scott S. Bennett.

IV. Closed Session – Administrative Adjudication [Pursuant to Government Code section 11126(c)(3)]

XVII. 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. Civil Litigation

1. Dennis William McCreary vs. Board for Professional Engineers, Land Surveyors, and Geologists, Sierra County Superior Court Case No. 7361
2. Thomas Lutge v. Board for Professional Engineers, Land Surveyors, and Geologists, Department of Consumer Affairs, Court of Appeal, Third Appellate District, Case No. C075779 (Sacramento Superior Court Case No. 34-2012-80001329-CU-WM-GDS)
3. Ruvn Grutman v. Board for Professional Engineers, Land Surveyors, and Geologists, Los Angeles Superior Court Case No. BS145675
4. Ruvn Grutman v. Board for Professional Engineers, Land Surveyors, and Geologists, Los Angeles Superior Court Case No. BS145796
5. Sassan Salehipour v. Board for Professional Engineers, Land Surveyors, and Geologists, Los Angeles County Superior Court Case No. BS146185

XVIII. Open Session to Announce the Results of Closed Session

Ms. Eissler reported that the Board met with the Administrative Law Judge following the hearing and directed the Judge to prepare the written decision. Civil litigation was discussed as noticed, the Board took action on two stipulations, and discussed exam procedures, administration, and results.

V. Legislation

Jeff Alameida introduced Kara Williams as the new Budget and Legislative Analyst. Ms. Williams provided her educational and occupational background.

A. Discussion of Legislation for 2014

AB 2396 This bill would prohibit boards within the Department of Consumer Affairs from denying a professional license based solely on a criminal conviction that has been withdrawn, set aside, or dismissed by the court.

INTRODUCED: 2/21/2014
STATUS: Enrolled and Presented to the Governor 9/8/2014
LOCATION: Assembly Enrollment 8/26/2014
BOARD POSITION: Oppose

AB 186 This Bill requires the Board to issue a 12-month temporary license to an applicant who is a spouse or domestic partner of an active duty member of the Armed Forces and holds a current, active, and unrestricted license in another state, district, or territory of the U.S. Additionally, applicants seeking a temporary license must pass the appropriate California specific examinations.

INTRODUCED: 1/28/2013
STATUS: Enrolled and presented to the Governor 9/5/2014
LOCATION: Assembly Enrolled 9/5/2014
BOARD POSITION: Watch

AB 1702 This bill would provide that an individual who has satisfied the requirements needed to obtain a license while incarcerated, who upon release from incarceration, shall not be subject to a delay in processing the application or a denial of the license solely based on the prior incarceration, except when the incarceration was for a crime substantially related to the qualifications, functions, or duties of the business or profession.

INTRODUCED: 2/13/2014

STATUS: Presented to the Governor 8/19/2014 and Chaptered 9/18/14

LOCATION: Assembly Enrolled 8/19/2014

BOARD POSITION: Watch

SB 1467 This bill removes reference to title “Petroleum Geologist” and adds petition for reinstatement language to the Geology and Geophysicist Act to mirror Professional Engineers (PE) Act and Professional Land Surveyors (PLS) Act. Cross-references existing authority to the Education Code and Health and Safety Code sections. Modifies language to clarify monument preservation requirements in the PLS Act. Requires an authorized land surveyor be designated as the person in responsible charge of professional land surveying work practiced in any public agency.

INTRODUCED: 3/25/2014

STATUS: Enrolled and presented to the Governor 8/28/2014 and Chaptered 9/17/14

LOCATION: Senate Enrolled 8/28/2014

BOARD POSITION: Support

VI. Consideration of Rulemaking Proposals

- A. Request from CalGeo to Amend Title 16, California Code of Regulations Section 461 (Testing Laboratory Reports)

Bob Lokteff, representing CalGeo, provided information on their society, reporting they represent geotechnical engineering firms throughout California. Many of their firms provide materials testing inspection during construction, and they believe it is part of their engineering service. CalGeo’s membership has identified an issue with an increase in the number of firms offering material testing and inspections without being overseen by a licensed civil engineer with appropriate experience. The current language in the Code of Regulations can be interpreted in different ways.

They are requesting that Title 16, California Code of Regulations, Section 461 be amended for clarification. Mr. Moore recommended presenting this to the CETAC and GGTAC to review the existing language and make recommendations to the Board to address any ambiguities related to this concern. Ms. Roberts mentioned that there may be issues related to the California Building Code and requested that the SETAC be involved in the joint TAC meeting as well. The Board agreed on that action.

VII. Administration

A. FY 2013/14 Budget Summary

Mr. Alameida reviewed the PELS fund condition and identified the expenditures for Fiscal Year 2013-14 and what was approved by the Governor for the current 2014-15 Fiscal Year.

He noted there is now \$4.5 million outstanding in the General Fund Loan, down from \$7 million, and added that in Fiscal Year 2013-14, \$2.5 million was paid back.

There is revenue of \$8.7 million versus expenditures of \$7.8 million bringing in approximately \$1 million more in revenue, which leads to a fund balance of \$5 million and 6.4 months in reserve.

The Geology and Geophysics Account received over \$900,000 in revenue for the 2013-14 Fiscal Year while accruing \$1.1 million in expenditures. There remains a continued pattern of expenditures exceeding revenue on an annual basis for the G&G Account. Two ideas on how to properly address this issue includes the merging of the PELS fund with the G&G account and establishing new regulatory fees.

Mr. Moore would like to bring this topic up for discussion at an early 2015 Board meeting as it coincides with a new Board issue in the upcoming Sunset Report.

B. FY 2014/15 Budget Introduction

Ms. Williams introduced the budget appropriation from the Governor for both the PELS fund and G&G account.

C. Multi-Unit Operational Support Budget Change Proposal (BCP) Update

Mr. Alameida reported on the proposed BCP for multiple units within the PELS fund. The idea was to seek three new positions for the program. One for licensing for an additional evaluator, one for examinations for an additional position for exam development, and one for administrative services. The BCP, along with 26 others of the 41 submitted by DCA, was denied. Mr. Alameida indicated that there is a contingency plan in place.

D. Outreach Calendar

Mr. Alameida reviewed the Board's Outreach Calendar for events taking place through the end of 2014. President Jones Irish expressed interest in attending the Society of Fire Protection Engineers Expo, Mr. Zinn indicated he was interested in attending the American Geophysical Union Expo, and Mr. Stockton would like to attend the North San Diego County Civil Engineer

and Land Surveyor Association meeting. Mr. Moore indicated that he would be in touch with those interested for evaluation of travel approval.

VIII. Enforcement

A. Enforcement Statistical Reports

Ms. Eissler requested input from the Board members regarding which statistics they wanted included in the meeting materials. She recommended that the first Board meeting after the end of the fiscal year include the full report, but the other meetings include only the most pertinent statistics. The Board requested recommendations be presented at the next meeting.

IX. Executive Officer's Report

A. Strategic Plan

Mr. Moore reported that the entire Board staff met and the various units within the Board have been directed to provide what they believe should be the priorities for the first year at a yet-to-be-scheduled staff meeting. He added that he expects to present the staff's recommendations for first year priorities at the first meeting in January for the Board to consider, and he requested Board members' suggestions as well.

B. Sunset Report

Mr. Moore indicated that management is reviewing the Sunset Report draft and developing new items. Mr. Tami expressed the importance of the Sunset Report and the huge undertaking and effort from Board staff to complete this task.

C. Personnel

Mr. Moore announced that Ms. Nancy Eissler was selected as the new Assistant Executive Officer, beginning October 1, 2014, and they are actively looking to fill the Enforcement Manager position.

As for the Senior Registrar Position for Geology, Mr. Moore has been in contact with CalHR to provide a timeline. Currently, it is in the last stage of analysis before it is reviewed by the State Personnel Board and PEGG.

D. Audit of BreEZe System

Mr. Moore reported that there will be an audit of the BreEZe system and its progression. The audit should be completed by February 2015. Mr. Moore is on the DCA Change Control Board along with other board administrators. He explained that when there are changes in the current legacy systems or in BreEZe requested by boards, these changes go before the Change Control Board for recommendation, evaluation, and approval.

XIII. Liaison Reports

A. ASBOG

Mr. Moore reported that the Board received approval for Erik Zinn to attend the ASBOG Annual Meeting mid-November. In addition, the contract with OPES is being finalized to audit the ASBOG examination.

B. ABET

Dr. Qureshi took part in an ABET visit. He reported that civil and mechanical students are getting exposure to licensure and believes it is attributable to faculty who recognize the importance of and encourage licensure. Both groups were planning to take the Fundamentals of Engineering examinations. Mr. Moore indicated that Michael Donelson will attend another ABET visit specifically for electrical and mechanical programs, and Mr. Johnson is also scheduled to take part in an ABET visit.

C. NCEES

Mr. Moore reported that several Board Members and staff attended the NCEES Annual Meeting in Seattle, WA. Several items that were voted on by the member boards were favorable to the Board's previously-approved positions.

Ms. Eissler reported that Mr. Tami was installed as Western Zone Vice-President.

D. Technical and Professional Societies

Bill Owen, member of the Geology and Geophysicist TAC, arranged to speak at the Bay Area Geophysical Society (BAGS) in Oakland and invited Mr. Moore to attend with him.

XV. Approval of Delinquent Reinstatements

MOTION: Mr. King and Ms. Brooks moved to approve the reinstatement.

VOTE: 10-0, motion passed (President Jones Irish was not present for the vote)

X. Exams/Licensing

A. Fall 2014 Examination Update

A flowchart was generated and will be posted soon on the Board's website to help with applicant questions for State specific and National exams.

B. Changes to Test Administration for Geotechnical Engineering Licensure

Mr. Moore reported that the Board had previously approved providing year-round testing for the geotechnical engineering examination. For the applicants approved to sit for the fall geotechnical examination, a letter was sent that explained why the Board chose move in this direction.

XII. Technical Advisory Committees (TACs)

A. Board Assignments to TACs
No report given.

B. Appointment of TAC Members
No report given.

C. Reports from the TACs
Mr. Moore reported that there will be a joint meeting with the civil, geology, and structural TACs on October 29 in San Bernardino.

XIV. President's Report/Board Member Activities

No report given.

XV. Approval of Consent Items

(These items are before the Board for consent and will be approved with a single motion. 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 31-August 1, 2014, Board Meeting

MOTION: Mr. King and Ms. Brooks moved to approve the minutes.

VOTE: 10-0, motion passed (President Jones Irish was not present for the vote)

XVI. Other Items Not Requiring Board Action

Ms. Calderone noted that the next Board meeting is scheduled for November 13-14, 2014 in Riverside.

XIX. Adjourn

The meeting adjourned at 5:00 p.m.

PUBLIC PRESENT

Roger Hanlin, CLSA

Talia Cortese, CPIL

Bob Lokteff, CalGeo

Martin McIlnoy, CalGeo

XIV. Other Items Not Requiring Board Action

A. 2015 Board Meeting Schedule

2015 Board for Professional Engineers, Land Surveyors, and Geologists

Board Meetings

January 2015

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

February 2015

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28

March 2015

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

Holidays

1/1	New Year's
1/19	M. L. King, Jr. Day
2/16	President's Day
3/31	Cesar Chavez Day
5/25	Memorial Day
9/7	Labor Day
11/11	Veteran's Day
11/26-11/27	Thanksgiving Break
12/25	Christmas

April 2015

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

May 2015

S	M	T	W	T	F	S
31					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

June 2015

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

Board Meeting Dates

- February 5-6
- March 26-27
- May 28-29
- July 16-17
- September 10-11
- November 5-6

July 2015

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

August 2015

S	M	T	W	T	F	S
30	31					1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

September 2015

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

Key

BOARD MEETINGS	HOLIDAYS	MBA MTG
NCEES S/WZ	NCEES ANNUAL MTG	

October 2015

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

November 2015

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

December 2015

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

XV. 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. Civil Litigation

1. Dennis William McCreary vs. Board for Professional Engineers, Land Surveyors, and Geologists, Sierra County Superior Court Case No. 7361
2. Thomas Lutge v. Board for Professional Engineers, Land Surveyors, and Geologists, Department of Consumer Affairs, Court of Appeal, Third Appellate District, Case No. C075779 (Sacramento Superior Court Case No. 34-2012-80001329-CU-WM-GDS)
3. Ruvn Grutman v. Board for Professional Engineers, Land Surveyors, and Geologists, Los Angeles Superior Court Case No. BS145675
4. Ruvn Grutman v. Board for Professional Engineers, Land Surveyors, and Geologists, Los Angeles Superior Court Case No. BS145796
5. Sassan Salehipour v. Board for Professional Engineers, Land Surveyors, and Geologists, Los Angeles County Superior Court Case No. BS146185
6. Paul Christopher Ehe v. Board for Professional Engineers, Land Surveyors, and Geologists (San Bernardino Superior Court, Case No. CIVDS1413253)

XVI. Open Session to Announce the Results of Closed Session

XVII. Adjourn
