



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

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

February 9-10, 2015

Monday, February 9, beginning at 9:00
a.m. and continuing on
Tuesday, February 10, beginning at 9:00
a.m., if necessary

Board for Professional Engineers, Land
Surveyors, and Geologists
2535 Capitol Oaks Drive
Third Floor Conference Room
Sacramento, CA 95833

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

BOARD MEETING LOCATION

FEBRUARY 9-10, 2015

BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS
2535 CAPITOL OAKS DRIVE, SUITE 300
SACRAMENTO, CA 95833

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

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I. Roll Call to Establish a Quorum

II. Public Comment

III. Legislation

- A. Legislative Calendar
- B. Discussion of Legislation for 2015: AB 177 (Possible Action)
- C. Proposal from SEAOC regarding Significant Structures (Possible Action)

Legislative Calendar 2015-16

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

Feb. 16 Presidents' Day observed.

Feb. 27 Last day for bills to be **introduced** (J.R. 61(a)(1), J.R. 54(a)).

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

Mar. 26 Spring Recess begins upon adjournment (J.R. 51(a)(2)).

Mar. 31 Cesar Chavez Day observed.

APRIL							
	S	M	T	W	TH	F	S
Spring Recess				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		

Apr. 6 Legislature reconvenes from Spring Recess (J.R. 51(a)(2)).

Legislative Update

Assembly Bill 177 (Committee on Business and Professions)

Professions and vocations: engineers.

Introduced: 01/26/15

Status: From printer. May be heard in committee February 26.

Current Location: A-PRINT

Laws: Amend Sections 6710 and 6714 of the Business and Professions Code.

Bill Summary: The Professional Engineers Act provides for the licensure and regulation of engineers by the Board for Professional Engineers, Land surveyors, and Geologists, in the Department of Consumer Affairs. This bill would extend the operation of these provisions until January 1, 2020.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1/27/15											
1st House				2nd House							

Staff Analysis: AB 177

As written, AB 177 would extend the board’s capacity to operate until January 1, 2020. Every four years the Board participates in a Sunset Review Hearing. During the Sunset Review Hearing the Board substantiates its existence.



STRUCTURAL ENGINEERS ASSOCIATION OF CALIFORNIA

1400 K ST., STE, 212
SACRAMENTO, CA 95814
916.447.1198 • 916.444.1501 FAX
info@seaoc.org • www.seaoc.org

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RYAN KERSTING*

Jan. 30, 2014

PRESIDENT-ELECT
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MICHAEL COCHRAN *

EXECUTIVE DIRECTOR
DON SCHINSKE*

(*EXECUTIVE COMMITTEE)

Kathy Jones Irish, President
Board for Professional Engineers, Land Surveyors and Geologists
2535 Capitol Oaks Dr., Ste. 300
Sacramento, CA 95833

RE: SEAOC Significant Structures Proposal

Dear President Jones Irish,

The Structural Engineers Association of California (SEAOC) respectfully requests that BPELSG consider supporting our proposal to require that the design of vital and/or complex structures, in addition to schools and hospitals, be done by Structural Engineers. We have been in discussions with the legislative staff for the Senate and Assembly Business & Professions committees, and with BPELSG's support, we hope to pursue this through the Board's sunset review process this spring.

Our current proposal includes most of the elements we have presented to BPELSG and its SE Technical Advisory Committee in the past. These include:

- Confirmation that the SE authority in California will continue to be a post-PE credential rather than a separate credential.
- Consolidation of existing SE authority to design K-12 public schools and acute care hospitals.
- Definition of additional "significant structures" that include various vital or complex structures that deserve the added expertise and experience of a Structural Engineer.
- Assurance that civil engineers who now perform structural engineering as part of their practice could continue to do so. Only new licensees, as of a certain date, would be bound by the new restrictions.

We have made a couple of modest changes:

- We propose setting the height threshold for significant structures at 45 feet, in keeping with similar criteria in other seismically active Western states. (See attached document

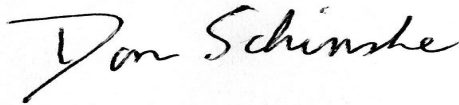
- comparing SEAOC's proposal with significant structures requirements elsewhere)
- Bridges are not included in the definition.
 - We propose to separate and consolidate SE authority into its own section of the B&P Code, new Section 6735.2. In doing so, we propose to restore Section 6735 to how it read prior to the amendments of SB 1467 of last year.

Thank you and your colleagues for your consideration of our proposal, which you will find in the attached document. We look forward to attending the Board meeting on Feb. 9-10 to present and discuss our proposal, at the Board's convenience.

Kind regards,



Ryan Kersting
Board President
SEAOC



Don Schinske
Executive Director
SEAOC

DRAFT SE Significant Structures Amendment (Section 6735 B&P Code)
SEAOC Proposed Definitions of Significant Structures

States requiring Structural Engineers to design certain classes of buildings:

- California - Schools and Hospitals
- Oregon - Significant Structures
- Washington - Significant Structures
- Nevada - Structures defined
- Utah - Significant Structures
- Hawaii - All Structures
- Illinois - All Structures

Pending changes in legislation or regulation:

- Alaska - Significant Structures
- Florida - Significant Structures

DRAFT SE Significant Structures Amendment

Business and Professions Code section 6735 is amended to read:

(a) All civil, ~~(including structural and geotechnical and structural, except as provided for in Section 6735.2,)~~ engineering plans, calculations, specifications, and reports (hereinafter referred to as "documents") shall be prepared by, or under the responsible charge of, a licensed civil engineer and shall include his or her name and license number. Interim documents shall include a notation as to the intended purpose of the document, such as "preliminary," "not for construction," "for plan check only," or "for review only." All civil engineering plans and specifications that are permitted or that are to be released for construction shall bear the signature and seal or stamp of the licensee and the date of signing and sealing or stamping. All final civil engineering calculations and reports shall bear the signature and seal or stamp of the licensee, and the date of signing and sealing or stamping. If civil engineering plans are required to be signed and sealed or stamped and have multiple sheets, the signature, seal or stamp, and date of signing and sealing or stamping, shall appear on each sheet of the plans. If civil engineering specifications, calculations, and reports are required to be signed and sealed or stamped and have multiple pages, the signature, seal or stamp, and date of signing and sealing or stamping shall appear at a minimum on the title sheet, cover sheet, or signature sheet.

~~(b) (1) All civil engineering plans, calculations, specifications, and reports for the construction of structures described in paragraph (2) shall be prepared by, or under the responsible charge of, a licensed architect holding a valid certificate under Chapter 3 (commencing with Section 5500) or a licensed civil engineer who is also licensed as a structural engineer in accordance with Section 6736.~~

~~(2) All public school structures, as provided under Chapter 3 (commencing with Section 17251) of Part 10.5 of Division 1 of Title 1 of the Education Code.~~

~~(c) (1) All civil engineering plans, calculations, specifications, and reports for the construction of the structures described in paragraph (2) shall be prepared by, or under the responsible charge of, a licensed civil engineer who is also licensed as a structural engineer in accordance with Section 6736.~~

~~(2) Hospitals and other medical facilities having surgery and emergency treatment areas, as provided under Part 7 (commencing with Section 129675) of Division 107 of the Health and Safety Code.~~

~~(d) Notwithstanding subdivision (a) or (b), a licensed civil engineer who signs civil engineering documents shall not be responsible for damage caused by subsequent changes to or uses of those documents, if the subsequent changes or uses, including changes or uses made by state or local governmental agencies, are not authorized or approved by the licensed civil engineer who originally signed the documents, provided that the engineering service rendered by the civil engineer who signed the documents was not also a proximate cause of the damage.~~

Business and Professions Code section 6735.2 is added to read:

(a) (1) All structural engineering plans, calculations, specifications, and reports (hereinafter referred to as "structural engineering documents") for the construction of significant structures described in paragraph (2) shall be prepared by, or under the responsible charge of, a person licensed as a structural engineer in accordance with Section 6736.

(2) Significant structures shall be defined as:

(A) All public school structures, as provided under Chapter 3 (commencing with Section 17251) of Part 10.5 of Division 1 of Title 1 of the Education Code;

(B) Hazardous facilities, defined as: structures housing, supporting, or containing sufficient quantities of hazardous materials or explosive substances to be of danger to the safety of the public if released;

(C) Essential facilities, defined as:

(i) Fire and police stations;

(ii) Jails and detention facilities;

(iii) Buildings or ancillary structures (including but not limited to communication towers, electrical substation structures, fire water storage tanks or other structures housing or supporting water or fire suppression material or equipment) required for the operation of essential or hazardous facilities or special occupancy structures;

(iv) Water storage facilities and pump structures required to maintain water pressure for fire suppression;

(v) Emergency vehicle shelters and garages;

(vi) Buildings and other structures housing or supporting emergency preparedness centers;

(vii) Power-generating stations and other public utility facilities required in an emergency;

(viii) Buildings and other structures housing or supporting communication centers and other facilities required for emergency response;

(ix) Aviation control towers, air traffic control centers, and emergency aircraft hangars; and,

(x) Buildings and other structures having critical national defense functions;

(xi) Hospitals and other medical facilities having surgery and emergency treatment areas, as provided under Part 7 (commencing with Section 129675) of Division 107 of the Health and Safety Code;

(D) Structures exceeding one hundred feet in height above average ground level;

(E) Buildings that are customarily occupied by human beings and are forty-five feet or more above lowest ground level and;

(F) Buildings and other structures where more than three hundred people congregate in one area.

(b) All structural engineering documents for the construction of significant structures as defined in subdivision (a) shall include the name and license number of the structural engineer in responsible charge of the preparation of the documents. Interim documents shall include a notation as to the intended purpose of the document, such as "preliminary," "not for construction," "for plan check only," or "for review only." All final structural engineering documents shall bear the signature and seal or stamp of the licensee and the date of signing and sealing or stamping. If the final structural engineering plans described above have multiple sheets, then the signature, seal or stamp, and date of signing and sealing or stamping shall appear on each sheet of the plans. If the structural engineering specifications, calculations, and reports described above have multiple pages, then the signature, seal or stamp, and date of signing and sealing or stamping shall appear at a minimum on the title sheet, cover sheet, or signature sheet.

(c) Notwithstanding subdivision (a), all structural engineering documents for the construction of significant structures as defined in subdivision (a), except for those structures described in subsections (a)(2)(A) and (a)(2)(C)(xi), may be prepared by, or under the responsible charge of civil engineers who were licensed prior to January 1, 20XX.

(d) Notwithstanding subdivision (a), a licensed structural engineer who signs structural engineering documents as described in subdivision(a) shall not be responsible for damage caused by subsequent changes to or uses of those documents, if the subsequent changes or uses, including changes or uses made by state or local governmental agencies, are not authorized or approved by the licensed structural engineer who originally signed the documents, provided that the engineering service rendered by the structural engineer who signed the documents was not also a proximate cause of the damage.

(e) Nothing in subsection (a)(2)(A) shall be construed to prohibit a licensed architect holding a valid certificate under Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code from performing work as authorized under Chapter 3 (commencing with Section 17251) of Part 10.5 of Division 1 of Title 1 of the Education Code.

SEAOC Proposed Definition

Significant structures shall be defined as:

- (A) All public school structures, as provided under Chapter 3 (commencing with Section 17251) of Part 10.5 of Division 1 of Title 1 of the Education Code;
- (B) Hazardous facilities, defined as: structures housing, supporting, or containing sufficient quantities of hazardous materials or explosive substances to be of danger to the safety of the public if released;
- (C) Essential facilities, defined as:
 - (i) Fire and police stations;
 - (ii) Jails and detention facilities;
 - (iii) Buildings or ancillary structures (including but not limited to communication towers, electrical substation structures, fire water storage tanks or other structures housing or supporting water or fire suppression material or equipment) required for the operation of essential or hazardous facilities or special occupancy structures;
 - (iv) Water storage facilities and pump structures required to maintain water pressure for fire suppression;
 - (v) Emergency vehicle shelters and garages;
 - (vi) Buildings and other structures housing or supporting emergency preparedness centers;
 - (vii) Power-generating stations and other public utility facilities required in an emergency;
 - (viii) Buildings and other structures housing or supporting communication centers and other facilities required for emergency response;
 - (ix) Aviation control towers, air traffic control centers, and emergency aircraft hangars; and,
 - (x) Buildings and other structures having critical national defense functions;
 - (xi) Hospitals and other medical facilities having surgery and emergency treatment areas, as provided under Part 7 (commencing with Section 129675) of Division 107 of the Health and Safety Code;
- (D) Structures exceeding one hundred feet in height above average ground level;
- (E) Buildings that are customarily occupied by human beings and are forty-five feet or more above lowest ground level and;
- (F) Buildings and other structures where more than three hundred people congregate in one area.

OREGON - § 672.107

(a) "Significant structure" means:

(A) Hazardous facilities and special occupancy structures, as defined in ORS 455.447;

[ORS 455.447:

"Hazardous facility" means structures housing, supporting or containing sufficient quantities of toxic or explosive substances to be of danger to the safety of the public if released."

"Special occupancy structure" means:

(A) Covered structures whose primary occupancy is public assembly with a capacity greater than 300 persons;

(B) Buildings with a capacity greater than 250 individuals for every public, private or parochial school through secondary level or child care centers;

(C) Buildings for colleges or adult education schools with a capacity greater than 500 persons;

(D) Medical facilities with 50 or more resident, incapacitated patients not included in subparagraphs (A) to (C) of this paragraph;

(E) Jails and detention facilities; and

(F) All structures and occupancies with a capacity greater than 5,000 persons.]

(B) Essential facilities, as defined in ORS 455.447, that have a ground area of more than 4,000 square feet or are more than 20 feet in height;

[ORS 445.447: "Essential facility" means:

(A) Hospitals and other medical facilities having surgery and emergency treatment areas;

(B) Fire and police stations;

(C) Tanks or other structures containing, housing or supporting water or fire-suppression materials or equipment required for the protection of essential or hazardous facilities or special occupancy structures;

(D) Emergency vehicle shelters and garages;

(E) Structures and equipment in emergency-preparedness centers;

(F) Standby power generating equipment for essential facilities; and

(G) Structures and equipment in government communication centers and other facilities required for emergency response.]

(C) Structures that the Director of the Department of Consumer and Business Services determines to have irregular features; and

(D) Buildings that are customarily occupied by human beings and are more than four stories or 45 feet above average ground level.

(b) "Significant structure" does not mean:

(A) One-family and two-family dwellings and accompanying accessory structures;

(B) Agricultural buildings or equine facilities, both as defined in ORS 455.315; or

(C) Buildings located on lands exempt from Department of Consumer and Business Services enforcement of building code regulations.

WASHINGTON

(11) "Significant structures" include:

- (a) Hazardous facilities, defined as: Structures housing, supporting, or containing sufficient quantities of explosive substances to be of danger to the safety of the public if released;
- (b) Essential facilities that have a ground area of more than five thousand square feet and are more than twenty feet in mean roof height above average ground level. Essential facilities are defined as:
 - (i) Hospitals and other medical facilities having surgery and emergency treatment areas;
 - (ii) Fire and police stations;
 - (iii) Tanks or other structures containing, housing, or supporting water or fire suppression material or equipment required for the protection of essential or hazardous facilities or special occupancy structures;
 - (iv) Emergency vehicle shelters and garages;
 - (v) Structures and equipment in emergency preparedness centers;
 - (vi) Standby power-generating equipment for essential facilities;
 - (vii) Structures and equipment in government communication centers and other facilities requiring emergency response;
 - (viii) Aviation control towers, air traffic control centers, and emergency aircraft hangars; and
 - (ix) Buildings and other structures having critical national defense functions;
- (c) Structures exceeding one hundred feet in height above average ground level;
- (d) Buildings that are customarily occupied by human beings and are five stories or more above average ground level;
- (e) Bridges having a total span of more than two hundred feet and piers having a surface area greater than ten thousand square feet; and
- (f) Buildings and other structures where more than three hundred people congregate in one area.

NEVADA

1. A structure requiring special expertise, including, but not limited to, a radio tower and a sign over 100 feet. Dynamic machinery and related equipment within the scope of mechanical engineering are not included.
2. A building more than three stories in height.
3. A building more than 45 feet in height, using the bottom of the lowest footing as the point of reference.

UTAH - 58-22-102(14)

(14) "Professional structural engineering or the practice of structural engineering" means a service or creative work in the following areas, and may be further defined by rule by the division in collaboration with the board:

(a) providing structural engineering services for significant structures including:

(i) buildings and other structures representing a substantial hazard to human life, which include:

(A) buildings and other structures whose primary occupancy is public assembly with an occupant load greater than 300;

(B) buildings and other structures with elementary school, secondary school, or day care facilities with an occupant load greater than 250;

(C) buildings and other structures with an occupant load greater than 500 for colleges or adult education facilities;

(D) health care facilities with an occupant load of 50 or more resident patients, but not having surgery or emergency treatment facilities;

(E) jails and detention facilities with a gross area greater than 3,000 square feet;

or

(F) an occupancy with an occupant load greater than 5,000;

(ii) buildings and other structures designated as essential facilities, including:

(A) hospitals and other health care facilities having surgery or emergency treatment facilities with a gross area greater than 3,000 square feet;

(B) fire, rescue, and police stations and emergency vehicle garages with a mean height greater than 24 feet or a gross area greater than 5,000 square feet;

(C) designated earthquake, hurricane, or other emergency shelters with a gross area greater than 3,000 square feet;

(D) designated emergency preparedness, communication, and operation centers and other buildings required for emergency response with a mean height more than 24 feet or a gross area greater than 5,000 square feet;

(E) power-generating stations and other public utility facilities required as emergency backup facilities with a gross area greater than 3,000 square feet;

(F) structures with a mean height more than 24 feet or a gross area greater than 5,000 square feet containing highly toxic materials as defined by the division by rule, where the quantity of the material exceeds the maximum allowable quantities set by the division by rule; and

(G) aviation control towers, air traffic control centers, and emergency aircraft hangars at commercial service and cargo air services airports as defined by the Federal Aviation Administration with a mean height greater than 35 feet or a gross area greater than 20,000 square feet; and

(iii) buildings and other structures requiring special consideration, including:

(A) structures or buildings that are:

(I) normally occupied by human beings; and

(II) five stories or more in height; or

(III) that have an average roof height more than 60 feet above the average ground level measured at the perimeter of the structure; or

(B) all buildings over 200,000 aggregate gross square feet in area; and

(b) includes the definition of professional engineering or the practice of professional engineering as provided in Subsection (9).

HAWAII

All structures except as follows:

§464-13 - Structures exempted from provisions of chapter.

(a) The provisions of this chapter shall not apply to work in respect to any privately owned or privately controlled one- storied building, dwelling, or structure, the estimated cost of which does not exceed \$40,000, nor to any privately controlled two-storied building, dwelling, or structure, the estimated cost of which does not exceed \$35,000. However, no structure, dwelling, or building in which the principal structural members consist of reinforced concrete or structural steel having riveted, bolted, or welded connections shall be exempted from this chapter.

(b) The provisions of this chapter shall not apply to work in respect to any privately owned or privately controlled one- storied structure, which is used primarily as a residence, the estimated cost of which does not exceed \$50,000, nor to any privately owned or privately controlled two-storied structure, which is used primarily as a residence, the cost of which does not exceed \$45,000.

(c) Whenever the exemption provided for in subsection (b) is applied to the construction of a new building, it shall be noted and recorded with the bureau of conveyances.

ILLINOIS - 225 ILCS 340

Sec. 1. The practice of Structural Engineering in the State of Illinois is hereby declared to affect the public health, safety and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of Structural Engineering as defined in this Act, merit and receive the confidence of the public, that only qualified persons be authorized to practice Structural Engineering in the State of Illinois. This Act shall be liberally construed to best carry out these subjects and purposes.

[...]

Sec. 5. A person shall be regarded as practicing structural engineering within the meaning of this Act who is engaged in the design, analysis, or supervision of the construction, enlargement or alteration of structures, or any part thereof, for others, to be constructed by persons other than himself. Structures within the meaning of this Act are all structures having as essential features foundations, columns, girders, trusses, arches or beams, with or without other parts, and in which safe design and construction require that loads and stresses must be computed and the size and strength of parts determined by mathematical calculations based upon scientific principles and engineering data. A person shall also be regarded as practicing structural engineering within the meaning of this Act who is engaged as a principal in the design, analysis, or supervision of the construction of structures or of the structural part of edifices designed solely for the generation of electricity; or for the hoisting, cleaning, sizing or storing of coal, cement, sand, grain, gravel or similar materials; elevators; manufacturing plants; docks; bridges; blast furnaces; rolling mills; gas producers and reservoirs; smelters; dams; reservoirs; waterworks; sanitary works as applied to the purification of water; plants for waste and sewage disposal; round houses for locomotives; railroad shops; pumping or power stations for drainage districts; or power houses, even though such structures may come within the definition of "buildings" as defined in any Act in force in this State relating to the regulation of the practice of architecture.

ALASKA - Proposed Regulation Changes

12 AAC 36.185 is amended by adding a new subsection to read:

(g) Drawings or reports regarding the structural systems of a significant structure, as defined in 12 AAC 36.990, must be sealed by a registered structural engineer.

2 AAC 36.990(a) is amended by adding a new paragraph to read:

(43) "Significant structure" means:

(A) hazardous facilities, defined as: structure housing, supporting, or containing sufficient quantities of explosive substances to be of danger to the safety of the public if released;

(B) special occupancy structures, defined as:

(i) building and other structures whose primary occupancy is public assembly with an occupant load greater than 300;

(ii) buildings and other structures containing elementary school, secondary school, or day care facility with an occupant load greater than 250;

(iii) buildings and other structures containing adult education facilities, such as colleges and universities, with an occupant load greater than 500;

(iv) medical facilities with 50 or more resident, incapacitated patients;

(v) jails and detention facilities; and

(vi) all buildings or structures with an occupant load greater than 5,000;

(C) essential facilities that have a ground area of more than four thousand square feet and are more than twenty feet in mean roof height above average ground level; essential facilities are defined as:

(i) hospitals and other medical facilities having surgery and emergency treatment areas;

(ii) fire and police stations;

(iii) tanks or other structures containing, housing, or supporting water or fire suppression material or equipment required for the protection of essential or hazardous facilities or special occupancy structures;

(iv) emergency vehicle shelters and garages;

(v) structures and equipment in emergency preparedness centers;

(vi) standby power-generating equipment for essential facilities;

(vii) structures and equipment in government communication centers and other facilities requiring emergency response;

(viii) aviation control towers, air traffic control centers, and emergency aircraft hangars;

and

(ix) buildings and other structures having critical national defense functions;

(D) structures exceeding one hundred feet in height above average ground level;

(E) buildings that are customarily occupied by human beings and are four stories or 45 feet or more above average ground level;

(F) bridges having a total span of more than two hundred feet and piers having a surface area greater than ten thousand square feet; and

(G) off-shore structures exceeding fifty feet in height above the average sea bed or ground level.

FLORIDA (HB 217)

(14) "Licensed structural engineer," "professional structural engineer," "registered structural engineer," or "structural engineer" means a person who is licensed to engage in the practice of structural engineering under this chapter.

(15) "Structural engineering" means a service or creative work that includes the analysis and design of significant structures as defined by the board. The term includes "engineering" as defined in subsection (8) and may be further defined by the board by rule.

IV. Consideration of Rulemaking Proposals

- A. Request from CalGeo to Amend Title 16, California Code of Regulations section 461 (Testing Laboratory Reports)
- B. Adoption of Proposed Amendments to Title 16, California Code of Regulations sections 416 and 3060 (Substantial Relationship Criteria)
- C. Proposal to Amend Title 16, California Code of Regulations section 438 (Waiver of Fundamentals Examination)
- D. Update on Title 16, California Code of Regulations section 3003(b) and (e) (Definitions of Engineering Geology and Professional Geophysical Work)

APPROVAL AND ADOPTION OF RULEMAKING PROPOSAL

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 (DCA) 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 and the proposed text were publically noticed on May 23, 2014. During the 45-day public comment period, six (6) 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 six (6) public comments and proposed modified text were reviewed at the November 13, 2014 Board Meeting. The Board approved the modified text and directed staff to move forward with the 15-day comment period (Notice of Availability of Modified Text).

The 15-day Notice (Notice of Availability of Modified Text) was publically noticed on December 15, 2014. Seven (7) public comments were received during the comment period. The comments received are included in the Board Meeting materials. The following is a summary of comments received, as well as a response to the comments:

Comment (1)

David E. Woolley, PLS, D. Woolley & Associates, Inc.: Mr. Woolley believes that Title 16, CCR Section 416 and 3060 are sufficient as currently written in law; therefore, he believes that there is no need for the proposed changes. He believes that the proposed language is misleading, does not clarify the statute, does not use the same language as existing statutes as previously stated by Board staff and legal counsel, and he believes that the proposed language is flawed. He does not agree with the Board's handling of enforcement cases, believes that licensees have property interest in their professional licenses, and he believes that the proposed language denies the accused licensee their constitutional rights to a fair trial.

Response to Comment (1)

The Board rejects this comment. The comment does not address the changes that were subject to the 15-day notice; however, the comment was considered by the Board because this comment expresses the same or similar concerns that were already presented by commenters during the initial 45-day comment period. As such, the response to this type of comment was already addressed in the November 13, 2014 Board Meeting packet. Also, the comments that Mr. Woolley previously submitted during the 45-day comment period were addressed in the November 13, 2014 Board Meeting packet.

Comment (2)

Charles O. Greenlaw, SE: Mr. Greenlaw believes that the modifications made to Title 16, CCR Section 416 in the proposed modified text do not remedy any of the comments that he brought forth in the initial 45-day comment period and he feels that the modified text does not meet the necessity, clarity or consistency issues that he previously brought forth during the 45-day comment period. He feels that the implementation of the proposed language will led to discrimination, profiling and unfair accusations against licensees and applicants. Mr. Greenlaw agrees with the change of subsection (c) back to the original language (the way that the law currently reads).

Response to Comment (2)

The Board rejects but partially accepts this comment. The comment regarding Title 16, CCR Section 416 (c) does pertain to the subject 15-day notice, and the Board does accept this comment. The remaining comments do not address the changes that were subject to the 15-day notice; however, the comments were considered by the Board, as these comments express the same or similar concerns that were already presented by commenters during the initial 45-day comment period. As such, the response to these comments were already addressed in the November 13, 2014 Board Meeting packet. Also, the comments that Mr. Greenlaw previously submitted during the 45-day comment period were addressed in the November 13, 2014 Board Meeting packet.

Comment (3)

Keith W. Spencer, PLS: Mr. Spencer indicated that he did not have any further comment regarding the modified text. Mr. Spencer also commented on the length/dates of the public comment period being from December 15, 2014 to January 5, 2015.

Response to Comment (3)

The Board accepts this comment; however, the Board would like to note that the length of the public comment period was within the requirements of the Administrative Procedures Act. The “15-day” public comment period was actually twenty-two (22) calendar days in length (from December 15, 2014 to January 5, 2015) to ensure that those interested in making a comment had sufficient time to do so. The comments that Mr. Spencer previously submitted during the 45-day comment period were addressed in the November 13, 2014 Board Meeting packet.

Comment (4)

Scott Partridge, Civil PE: Mr. Partridge disagrees with the proposed language of subsections (d), (e) and (f) of Title 16, CCR Section 416. He believes that it will lead to discriminatory and accusatory action towards professionals.

Response to Comment (4)

The Board rejects this comment. The comment does not address the changes that were subject to the 15-day notice; however, the comment was considered by the Board because this comment expresses the same or similar concerns that were already presented by commenters during the initial 45-day comment period. As such, the response to this type of comment was already addressed in the November 13, 2014 Board Meeting packet.

Comment (5)

Roger K. Hanlin, PLS, California Land Surveyors Association (CLSA): Mr. Hanlin provided comment on the behalf of CLSA. His comment indicates that CLSA’s Board of Directors reviewed the language and they agree with the proposed language amendment to Title 16, CCR Section 416 (c) wherein the language “crimes or acts” was changed back to “a conviction of a crime” (as the law currently reads); however, CLSA is still concerned about the proposed language “crimes or acts” in subsections (d), (e) and (f). They are opposed to the approval and adoption of the proposed modified text as currently written.

Response to Comment (5)

The Board rejects but partially accepts this comment. The comment regarding Title 16, CCR Section 416 (c) does pertain to the subject 15-day notice, and the Board does accept this comment. The remaining comments do not address the changes that were subject to the 15-day notice; however, the comments were considered by the Board, as these comments express the same or similar concerns that were already presented by commenters during the initial 45-day comment period. As such, the response to these comments were already addressed in the November 13, 2014 Board Meeting packet. Also, the comments that Mr. Hanlin previously submitted on the behalf of CLSA during the 45-day comment period, were addressed in the November 13, 2014 Board Meeting packet.

Comment (6)

Douglas Matteson, Civil PE: Mr. Matteson thinks that Title 16, CCR Section 416 is sufficient without the additions of proposed subsections (d), (e) and (f). He thinks that the proposed language in subsections (d), (e) and (f) need to be omitted or reworded because he thinks that the language is prejudicial, and gives the Board too much power. He believes that the language “conviction of a crime” in subsection (c) is acceptable (the way that the law currently reads).

Response to Comment (6)

The Board rejects but partially accepts this comment. The comment regarding Title 16, CCR Section 416 (c) does pertain to the subject 15-day notice, and the Board does accept this comment. The remaining comments do not address the changes that were subject to the 15-day notice; however, the comments were considered by the Board because these comments express the same or similar concerns that were already presented by commenters during the initial 45-day comment period. As such, the response to these comments were already addressed in the November 13, 2014 Board Meeting packet.

Comment (7)

Ronald Rene Roberds, Civil PE: Mr. Roberds believes that the proposed language of subsections (d), (e), and (f) of Title 16, CCR Section 416 and subsections (c), (d) and (e) of Title 16, CCR Section 3060 should read as “a convictions of a crime” instead of “crimes or acts”.

Response to Comment (7)

The Board rejects this comment. The comment does not address the changes that were subject to the 15-day notice; however, the comment was considered by the Board because this comment expresses the same or similar concerns that were already presented by commenters during the initial 45-day comment period. As such, the response to this type of comment was already addressed in the November 13, 2014 Board Meeting packet.

CONCLUSION:

The proposed modified text was not changed as a result of the 15-day public comment period. Commenters did not express a concern regarding the change of Title 16, CCR Section 416 (c) back to the way that it is currently written into law (changing “crimes or acts” back to “a conviction of a crime”). Also, commenters did not express a concern with changing Title 16, CCR Section 3060 (b) from the proposed text of “crimes or acts” to the modified text of “a conviction of a crime”. Commenters expressed concerns that were outside of the subject 15-day notice; however, these concerns were still considered and addressed at the November 13, 2014 Board Meeting.

RECOMMENDED MOTION:

Adopt the proposed changes to Title 16, CCR Sections 416 and 3060 and direct staff to finalize the rulemaking file for submittal to the Department of Consumer Affairs (DCA) and the Office of Administrative Law (OAL) for review and approval.

**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 professional geologist, specialty geologist, professional geophysicist, or specialty geophysicists~~ to perform the functions authorized by his or her registration license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, 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: Friday, January 02, 2015 4:06 PM
To: LaPerle, Erin@DCA; Kereszt, Larry@DCA
Subject: RE: Title 16, CCR sections 416 and 3060-Update
Attachments: 20140102 Second Objection to Board Reg 416 Final wExhibits.pdf

Erin and Larry,

I understand we are in the 15 day comment period, ending January 5th, for the modified language for the proposed amendments to CCR 216 and 3060. Please find my written objections attached.

Please call or email with any questions.

Happy New Year.

Best,

Dave

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]

From: LaPerle, Erin@DCA [<mailto:Erin.LaPerle@dca.ca.gov>]
Sent: Friday, September 19, 2014 9:51 AM
To: Dave Woolley
Subject: RE: Title 16, CCR sections 416 and 3060-Update

Dave,

Board staff and legal counsel are still working on the language. If there are modifications to the language it will be available in the November 2014 Board meeting packet and there will be a discussion at the November Board meeting.

Erin LaPerle
Examination Analyst
Board for Professional Engineers,
Land Surveyors, and Geologists
2535 Capitol Oaks Drive, #300
Sacramento, CA 95833
Phone # 916-263-1848
Fax # 916-263-2221

From: Dave Woolley [REDACTED]
Sent: Friday, September 19, 2014 9:42 AM
To: LaPerle, Erin@DCA
Subject: RE: Title 16, CCR sections 416 and 3060-Update

Erin,

Thank you. Has there been any modifications to the language? If so, is a copy available?

Best,

Dave

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]

From: LaPerle, Erin@DCA [<mailto:Erin.LaPerle@dca.ca.gov>]
Sent: Friday, September 19, 2014 9:39 AM
To: Dave Woolley
Subject: RE: Title 16, CCR sections 416 and 3060-Update

Dave,

The update will be a discussion on how the Board will move forward with the regulations changes. The e-mail below is just a notification that there will be no discussion of the regulation at the September Board meeting, but there will be at the November Board meeting.

Erin LaPerle
Examination Analyst
Board for Professional Engineers,
Land Surveyors, and Geologists
2535 Capitol Oaks Drive, #300
Sacramento, CA 95833
Phone # 916-263-1848
Fax # 916-263-2221

From: Dave Woolley [REDACTED]
Sent: Friday, September 19, 2014 9:14 AM
To: LaPerle, Erin@DCA
Subject: RE: Title 16, CCR sections 416 and 3060-Update

Ms. LaPerle:

Thank you for the email. It is unclear to me- what is the update?

Best,

Dave

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]

From: LaPerle, Erin@DCA [mailto:Erin.LaPerle@dca.ca.gov]
Sent: Thursday, September 18, 2014 4:02 PM
To: [REDACTED]
Subject: Title 16, CCR sections 416 and 3060-Update

Dear Mr. Woolley,

The purpose of this e-mail is to update you regarding the Board for Professional Engineers, Land Surveyors and Geologists proposed changes to California Code of Regulations sections 416 and 3060 (Substantial Relationship Criteria), for which you supplied public comment.

Please be advised that this regulation change will not be discussed at the upcoming September 25-26, 2014 Board meeting as Board staff and legal counsel are currently working together to review the proposed language changes. An update will be available at the November 13-14, 2014 Board meeting.

If you have any questions, please contact me at Erin.LaPerle@dca.ca.gov, or at the telephone number below.

Thank you,

Erin LaPerle
Examination Analyst
Board for Professional Engineers,
Land Surveyors, and Geologists
2535 Capitol Oaks Drive, #300
Sacramento, CA 95833
Phone # 916-263-1848
Fax # 916-263-2221

January 2, 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: Second Set of Unique 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:

I am submitting this second set of unique objections to the Proposed Amendment of Section 416 of Division 5 of Title 15 of the California Code of Regulations ("CCR") and the Proposed Amendment to Section 3060 of Division 29 of Title 16 of the California Code of Regulations. There is no need for the proposed language because the existing regulations, as written, are sufficient. A regulation is supposed to implement and clarify a statute. The proposed regulations do not do this and, in fact, are misleading because they lump *license applicants*¹ in with existing *licensees*² by including the word "denial" together with suspension or revocation (of a license) in the same regulation. In reality, denial of a license application may be able to utilize lesser criteria, such as dishonesty in the application process, while suspension and revocation require conviction of a crime pursuant to statute.

As stated by the Board staff and its counsel Gary Duke at the November 14, 2104 meeting-the modifications use the same language as existing statutes. This is not true in the context of the proposed regulation. California Business & Professions Code ("Bus. & Prof.") § 480 deals with the denial of an applicant to sit for a licensing exam-a prospective licensee. Section 480(1) states "been convicted of a

¹ Governed by Bus. & Prof. § 480

² Governed by Bus. & Prof. § 490

crime” and Section 480(2) states “done any act involving dishonesty, fraud or deceit.” This section of law is written for new applicants exclusively and does not pertain to existing licensees in any capacity.

However, Section 490 deals with the authority to suspend or revoke (not denial) the license of an existing licensee. Section 490 (a) and (b) both require “conviction of a crime” and not acts of dishonesty as stated in the proposed amendment. Furthermore, Section 490(c) defines what a conviction involves. Simply stated, the Board staff cannot mix and match the language from two different statutes that pertain to two different classifications i.e. applicants and licensees. The distinction in the law is clear and is there for a reason. See **Section 2** below. Although Proposed Section 416(c) correctly reverts back to the language stating a “conviction of a crime” instead of “crimes or acts”, the remaining Sections 416(d), (e) and (f) continue to use the phrase “crimes and acts”, reserved for license applicants and is in contradiction to California Business & Professions Code § 490. The same holds true for Section 3060 (c), (d) and (e). All of these sections must state “conviction of a crime” and must follow the definition of “conviction” set forth in California Business & Professions Code § 490(c) for suspension and revocation of existing licensees.

If legal counsel for the Board, Gary Duke, disagrees with these points of law or my argument as set forth in this letter, I request that he set forth his own arguments in writing so that we, the Board, the OAL and the public, can review and critique them before moving this flawed language forward. It has been my past experience that Mr. Duke may acknowledge an “interesting point” but stay with his original position without publishing any substantiation or legal argument supported by citation to authority. The Board, when considering such language, should have an expectation of that written legal opinion. This has been unacceptable to me in the past and I would consider it a disservice to the public with regard to this proposed regulation.

1. Board Staff Actions Are Inconsistent and Arbitrary:

Board staff actions over the years have proven to be inconsistent, arbitrary and certainly not timely, often holding a licensee’s fate in their hands for many years before coming to a decision on a licensee’s fate. Cases are dismissed without giving specific reasons, with particularity, which is contrary to law. In fact, the BPELSG staff has the worst track record in all 37 boards and bureaus of the Department of Consumer Affairs. “Many of their reviews run way past deadlines for completing enforcement actions, led by the Board of Professional Engineers and Land Surveyors, which averaged 988 days late in 2012-2013.” See **Exhibit B**, copy of AllGov California (July 3, 2014).³ This is well past the legal limit allowed of 18 months for administrative hearings. This is relevant to the proposed language in that the Board staff have presented no plan or jurisdiction to prosecute that which amounts to criminal acts i.e. fraud, deceit.

More importantly, this extended processing time is simply not sufficient due process protection, particularly for a current licensee when talking about determination of crimes (without the requisite court conviction). The Board staff is simply not qualified to make a determination if a crime has been

³ Available at www.allgov.com/usa/ca/news/appointments-and-resignations/director-of-californias-d.

committed. The Board is not a court of law with its due process protections and heightened standard of proof. A licensee is not afforded counsel if they cannot afford to pay for a private attorney. Board Representatives are not lawyers or judges, yet they want to have the ability to deprive an existing licensee, by suspension or revocation, of the ability to make a living without training, procedures or protections of the court system and without an actual court conviction. In one unpublished case, a licensed engineer was left to defend his license for 17 years after the complaint was filed before being exonerated. *Ladislav Peter Petrovsky v. Department of Consumer Affairs* (2002) 2002 WL 31112441. One of the key elements of the case was the Board did not accept the Administrative Law Judge's ("ALJ") ruling and denied the licensee an opportunity to be heard-the decision was made in closed session. The law allows the Board to accept or reject an ALJ ruling, but there are protections afforded a licensee in rejecting an ALJ ruling. The Board did not follow the simplest of protocols which caused the licensee to be tied up in the court system for 17 years in total. Now, this same body wants to make determinations as to "dishonesty" as it pertains to licensees?

2. A Current Licensee Has A Type of Property Interest In Their Professional License:

Section 480 deals with the denial of a license to a first time licensee who has less of a vested interest in his/her license than does an existing licensee already earning a living in that profession. Conversely, Section 490 of the 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. The reason for this higher level of protection is that the current licensee has a property interest in their professional license.

All professional license holders including doctors, lawyers, barbers, contractors, pest control licensees, surveyors and geologists to name a few are required to be licensed by the State of California in order to protect the public welfare. Cal. Bus. & Prof. Code §§ 8708, 8725, et seq. Surveyors are required to take standardized exams prior to obtaining their surveying license in California. Cal. Bus. & Prof. Code § 8740 et seq. The purpose of the licensing law is to protect the public from incompetency and dishonesty in those who provide building and construction services. *Hydrotech Systems, Ltd. V. Oasis Waterpark* (1991) 52 Cal. 3d 988, 995.

That being said, generally "a license is not property in the ordinary sense of the word and is also not a contract." 11 Cal. Jur. 3d (2014) Business & Occupational Licenses § 3. Nevertheless, a license is considered a **right protected by due process** in most circumstances. *Id.* (See also 7 Witkin, Summary 10th (2005) Const. Law § 629, p. 1027 stating that cases that give this proposition are mainly concerned with arbitrary proceedings that deny **procedural due process**). The right to practice a licensed profession is sufficiently valuable to give it many legal protections. *Id.* Statutes and proceedings related to the revocation or suspension of a license or similar privilege must comport with **due process requirements**. 16D C.J.S. Constitutional Law (2014) Suspension or Revocation § 2088.

In order to give due process to a current licensee, they must have been convicted of a crime in a court of law before their license can be tampered with – suspended or revoked. This principle is consistent with California Business & Professions Code § 490 requiring a conviction (not a Board determination).

Page 3 of 5

Pursuant to California Business & Professions Code § 480, a license applicant without a prior vested right in their license may be afforded less protection. The proposed amendments before us today remove this important distinction and must not be allowed.

3. The Proposed Language Denys a Licensee's the Constitutional Rights to a Fair Trial:

A Board Hearing is not the same as a court of law. Board hearings do not afford the requisite protections to an individual that are afforded in a court – a timely trial, an unbiased judge, a jury, evidentiary rules, procedural rules and/or a public defender if needed. Only a court of law can convict a person of a crime – not a licensing Board acting as judge and jury. By extending this power to the Board, we would be allowing the Board to adjudicate whether a crime had been committed and then set out punishment (revocation or suspension of license) without any Constitutional protections. By using the phrase “crimes and acts”, the Board is extending the judicial privilege to itself. This is an unconstitutional denial of rights to a licensee. If challenged, this language would most certainly be stricken by a court of law-this is precisely what happened in *Petrosky supra*. At issue is the time and cost a licensee must bare to exonerate himself. Another issue, there is no recourse for the licensee once exonerated as the Board staff enjoys absolute or qualified privilege protections.

It is Black Letter Law that constitutionally required due process “requires the prosecution to prove every element charged in a criminal offense **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 beyond a reasonable doubt standard is certainly not used in Board Hearings-which customarily hear cases with the preponderance or clear and convincing standard of proof. I believe the consideration of a criminal act by Board staff would be a constitutional violation.

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) [emphasis added]. This is also why California Business & Professions Code § 490 requires the conviction of a crime in order to consider criminal acts to be grounds for discipline, suspension or expulsion of a licensee. This section is consistent with our constitutional protections. The new proposed regulation language is **inconsistent** with these protections.

I refer you to my letter (with attachments) dated June 9, 2014 for a complete record of my prior objections which are incorporated and renewed in this letter of objection. For your convenience, I am

Page 4 of 5

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

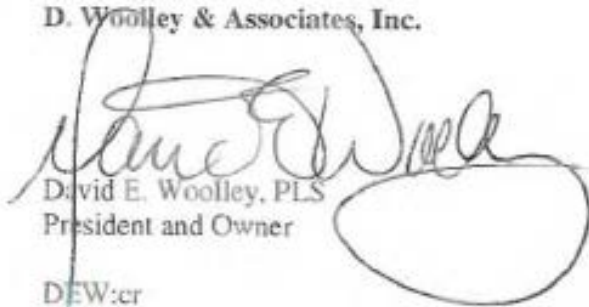
attaching a copy of this June 9, 2014 letter as Exhibit A. Once again, I am also requesting a formal hearing on these amendments to discuss my objections and the objections of other citizens to these proposed amendments. I caution all concerned that the Board staff is on a reckless path to broaden its authority in this way without affording licensees the same constitutional protections given to all Americans. The fact that the Board staff has proposed and then, continued on their path, even after being provided a legal basis for discontinuance, is a error in judgment. These actions of the Board staff alone should be cause for concern for the Board members responsible for their supervision. The idea this regulation, as proposed, was a consideration and put forth by Board staff is cause for alarm.

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.



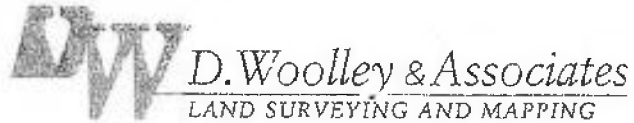

David E. Woolley, PLS
President and Owner

DEW:cr

Enclosures

cc: Ric Moore
Kathy Jones Irish
Gary Duke

Exhibit A



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:

1. **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

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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 Fourteenth 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

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

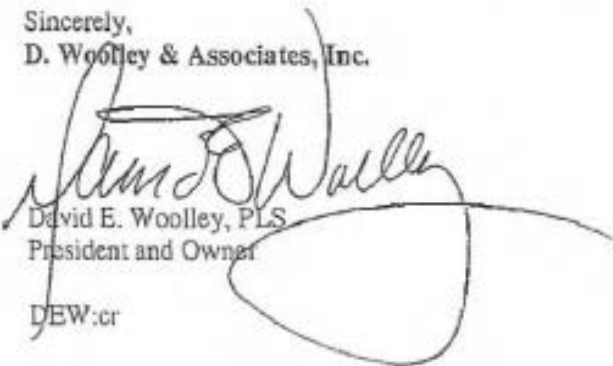
There is sure to be unfortunate examples when a licensee is involved in physical violence completely unrelated to his profession/practice and he will be required to defend his license at great expense. No conviction against this licensee may never be obtained in a court of law yet he will additionally 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

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Exhibit B

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Director of California's Department of Consumer Affairs: Who Is Awet Kidane?

Thursday, July 03, 2014

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Director Awet Kidane

Governor Jerry Brown's new director of the Department of Consumer Affairs (DCA), Awet Kidane, cannot match his predecessor's long history at the department, but does bring extensive connections to the legislative branch where he worked for a decade.

Kidane, who was appointed director in May, officially takes over for Denise Brown today. Brown retired after more than 30 years with DCA, holding numerous positions on various boards before being appointed director in January 2012.

Kidane, a Democrat, served as an associate consultant to the state Assembly in 2002 and 2003 and a legislative consultant from 2003 to 2009. During the last two years of that tenure, he was senior advisor to then-Assembly Speaker Karen Bass (D-47th District). Kidane was chief of staff for Assemblyman Steven Bradford

(D-62nd District) from 2009 to 2012 before Governor Brown tapped him to be chief deputy director at the Consumer Affairs department.

The 38-year-old director takes over a department (pdf) that has a lot of trouble getting its work done on time, according to the independent Legislative Analyst's Office. A report in March said the DCA, which supervises around 37 boards and bureaus, fails at one of its primary responsibilities, disciplining licensees.

Many of their reviews run way past deadlines for completing enforcement actions, led by the Board of Professional Engineers and Land Surveyors, which were an average 988 days late in 2012-13. That's almost three years longer than the year and a half they are allotted.

The Board of Vocational Nursing and Psychiatric Technicians averaged 693 days late, followed by the Veterinary Medical Board (592), the Acupuncture Board (448), the California Board of Podiatric Medicine (404) and the Board of Psychology (388).

The analyst said he lacked data to pinpoint just where the problem lay, but pointed at the usual suspect: not enough staff. But he also said many of the boards/bureaus suffered from difficulties in obtaining critical information, such as personnel and medical records, especially for the "healing arts" boards like the Board of Registered Nursing.

The department recently underwent a reorganization, as did much of the executive branch of government, that placed it under a newly-created umbrella, the Business, Consumer Services and Housing Agency. The DCA oversees boards that certify or license about 2.5 million practitioners in over 240 occupations, including accountants, general contractors, landscapers, embalmers and cemetery workers, engineers, auto mechanics, veterinarians, doctors, dentists, optometrists and pharmacists.

Kidane came to the department just as the reorganization was being put in place, and just before a new electronic licensing and enforcement system was rolled out with a thud.

BreEZe is "a one-stop shop for consumers, licensees and applicants! BreEZe enables consumers to verify the professional license and file a consumer complaint (with or without registering). Licensees and applicants can submit license applications, renew a license and change their address among other services."

The system was launched in Fall 2013 with nearly a dozen boards participating in the first stage. In February, the *Los Angeles Times* reported that the Board of Registered Nursing had a backlog—because of BreEZe—of 4,000 nursing graduates who desperately needed certification to start their new jobs.

Finger-pointing ensued. Lawmakers called for an audit of the department. Department spokesman Russ Heimerich told the *Sacramento Bee* employees were slow to adapt to the new system: It's like "changing your golf swing. It's like muscle memory," he said. While employees toned up their grey matter, the department added personnel to assist in processing the applications.

The entire BreEZe rollout is expected to take two years.

-Ken Broder

To Learn More:

[Governor Brown Announces Appointments \(Office of the Governor\)](#)

[Written Testimony of Denise Brown \(Little Hoover Commission\) \(pdf\)](#)

[Briefing Report: Department of Consumer Affairs' New BreEZe System—Easy or Inefficient? \(Republican Caucus California State Senate\)](#)

[State Computer Problems Strand Nursing Graduates without Licenses \(by Ken Broder, AllGov California\)](#)

[Governor's Reorganization Plan No. 2 of 2012 \(pdf\)](#)

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LaPerle, Erin@DCA

From: Charles Greenlaw [REDACTED]
Sent: Monday, January 05, 2015 4:07 PM
To: LaPerle, Erin@DCA
Subject: My Public Comment re 15 day Notice for Rule 416 Modified Text.
Attachments: PE Board —my Rule 416 Modified Text Comments of 1-5-2015.doc

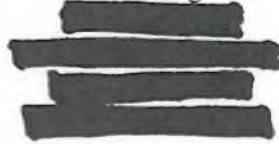
Dear Ms LaPerle,

Attached is my one-page Word doc which constitutes my comments pursuant to the subject matter on this date, the close of the comment period.

Appreciation for your diligent handling of these submittals

Charles O. Greenlaw, SE

Charles O. Greenlaw
Structural Engineer



January 5, 2015

Board for Professional Engineers, Land Surveyors and Geologists

2535 Capitol Oaks Drive, Suite 300, Sacramento CA 95833 (submitted by email)

Attn: Erin LaPerle, Associate Governmental Program Analyst

Subject: My Comments pursuant to 15-day noticed regulation revisions concerning **Substantial Relationship Criteria** provisions in Title 16, CCR, Sections 416 and 3060.

Greetings,

I submitted nine pages of Public Comment at the July 17, 2014 Hearing. I also orally presented comments during that hearing, some of which were in reply to your legal counsel Gary Duke's questions to me.

Since then, one inconsequential but statute conformity-regaining revision has been made, which modifies the text of the proposed regs; this change caused the subject 15-day Notice.

This modification fails to remedy a single one of my many objections leveled on July 17 and fails to alleviate any of the many Necessity, Clarity, and Consistency issues I identified at that time.

While the deletion of "acts" from Sec 416 (c) is a proper thing to have done, it fails to assure me, as a board licensee since 1972, that I am not vulnerable to an accusation which seeks suspension or revocation of my PE license. *Staff use of Sec 416 in its entirety and relied on in naive good faith as gospel, could easily support me facing an accusation under the as-proposed sec 416 (e) (an act involving physical violence) should I find myself in the same position of "white Hispanic" George Zimmerman, who acted in self-defense with a pistol while having his head beaten onto concrete pavement by accoster Trayvon Martin.*

Now, I personally know that I have a defense in P&P Code sec 6775 which makes me, as a PE, immune to discipline for a mere violent "act" and that 49-state self-defense statutes mean that my hypothetical act is not a crime, *but would your staff know that? Would the average PE or PLS know that? Accusations are very expensive to defend in an ALJ proceeding. (The punishment is in having to pay for a successful defense!)*

For that matter, where's the Necessity to exclude civilian George Zimmerman, retired police officers, and untold thousands of surviving veterans of combat in the Iraq and Afghanistan wars from seeking licensure by this board because of their prior *acts involving physical violence*? Is this Board proud to be *profiling* applicants for licensure, discriminating against them because of the rough conditions their volunteer work on behalf of the public had placed them into?

Sincerely Yours,

/s/

Charles O. Greenlaw, Structural Engineer No. 1956

LaPerle, Erin@DCA

From: Moore, Ric@DCA
Sent: Tuesday, January 06, 2015 2:34 PM
To: LaPerle, Erin@DCA; Duke, Gary@DCA
Subject: FW: BR 416

Ric Moore

From: Keith W. Spencer [mailto: [REDACTED]]
Sent: Monday, December 15, 2014 3:44 PM
To: Moore, Ric@DCA
Subject: BR 416

Ric

Comment period from 12-15 to 1-5.
That's one way to reduce the number of comments. ☺

I have no further comments with the current revisions.

Keith

Keith W. Spencer
LS 6406, CFedS 1454
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] office
[REDACTED] cell

LaPerle, Erin@DCA

From: Partridge, Scott [REDACTED]
Sent: Tuesday, December 16, 2014 12:25 PM
To: LaPerle, Erin@DCA
Subject: 416. Substantial Relationship Criteria.

I disagree with the entire parts D, E, F as they pertain to Section 416 of Division 5 of Title 16. It opens the door to any type of discriminatory and accusatory practice for professionals. It is evil and wrong!!

Scott Partridge, P.E.

[REDACTED]
[REDACTED]

Ph [REDACTED]

Fax [REDACTED]

LaPerle, Erin@DCA

From: Roger Hanlin [REDACTED]
Sent: Monday, January 05, 2015 1:55 PM
To: LaPerle, Erin@DCA
Cc: Moore, Ric@DCA
Subject: RE: Section 416 Division 5 Title 16 Comments CLSA

Thank you.

Roger K. Hanlin, PLS

[REDACTED]
[REDACTED]
[REDACTED]
Voice Phone: [REDACTED]
Fax: [REDACTED]

From: LaPerle, Erin@DCA [<mailto:Erin.LaPerle@dca.ca.gov>]
Sent: Monday, January 05, 2015 1:55 PM
To: Roger Hanlin
Cc: Moore, Ric@DCA
Subject: RE: Section 416 Division 5 Title 16 Comments CLSA

Hi Roger,

The emailed letter is sufficient. You don't have to send a hard copy.

Thank you,

Erin LaPerle
Examination Analyst
Board for Professional Engineers,
Land Surveyors, and Geologists
2535 Capitol Oaks Drive, #300
Sacramento, CA 95833
Phone # 916-263-1848
Fax # 916-263-2221

From: Roger Hanlin [REDACTED]
Sent: Monday, January 05, 2015 1:51 PM
To: LaPerle, Erin@DCA
Cc: Moore, Ric@DCA
Subject: Section 416 Division 5 Title 16 Comments CLSA

Ms. LaPerle:

Attached is a letter on behalf of the California Land Surveyors Association Board of Directors expressing their concerns to the proposed amendment to Section 416, Division 5 of Title 16 of the California Code of Regulations.

Please contact me if the hardcopy of this letter needs to be delivered to you today, if you have questions or would like to make contact with the CLSA Legislative Committee to discuss our concerns.

Thank you for the opportunity to comment on this matter.

*Roger Hanlin, PLS
CLSA Liaison to BPELSG*

Roger K. Hanlin, PLS

Voice Phone:

Fax:



CALIFORNIA LAND SURVEYORS ASSOCIATION

CENTRAL OFFICE: 526 SOUTH E STREET • SANTA ROSA, CA 95404
PHONE: (707) 578-6016 FAX: (707) 578-4406
clsa@californiasurveyors.org

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Jay K. Seymour, PLS
President-Elect

Roger K. Hanlin, PLS
Secretary

Ian Wilson, PLS
Treasurer

Michael S. Butcher, PLS
Immediate Past President

Dorothy C. Calegari
Executive Director

January 2, 2015

VIA EMAIL AND USPS

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

RE: *Proposed Amendment of Section 416 of Division 5 of Title 16 of the California Code of Regulations*

CHAPTERS

Bakersfield
Cascade
Central Coast
Central Valley
Channel Islands
Desert
East Bay
Gold Country
Humboldt
Lake/Mendocino
Los Angeles
Marin
Monterey Bay
Mother Lode
Northern Counties
Orange County
Riverside/San Bernardino
Sacramento
San Diego
San Joaquin Valley
Santa Clara/San Mateo
Sonoma County

STUDENT CHAPTERS

Cal Poly Pomona
CSU Fresno
East Los Angeles College
Santiago Canyon College

Dear Ms. LaPerle:

This letter is written to reiterate public comments made at the November 13, 2014 meeting of the Board of Registration for Professional Engineers, Land Surveyors and Geologists on behalf of the California Land Surveyors Association (CLSA).

The CLSA Board of Directors reviewed the previous language at their last regularly scheduled Board meeting in November 2014 and concurs with the language amendment to Section 416 (c) that replaces the language "crimes or acts" with "A conviction of a crime".

However, the CLSA Board of Directors is concerned the language "crimes or acts" remains unchanged in Section 416 (d), (e) and (f) and is opposed to the approval and adoption of the proposed amendment of Section 416, Division 5 of Title 16 of the California Code of Regulations as written.

CLSA would like the opportunity to discuss further amendments to the language in Section 416 (d), (e) and (f) through our legislative committee in order to address the concerns of the CLSA Board of Directors.

We can be reached through the CLSA central office using the above contact information and thank you for the opportunity to express our concerns on this matter.

Respectfully,

Roger K. Hanlin, PLS
CLSA Liaison

LaPerle, Erin@DCA

From: Douglas Matteson [REDACTED]
Sent: Thursday, December 18, 2014 11:09 AM
To: LaPerle, Erin@DCA
Subject: RE: Proposed amendments to title 16

Erin It is my sole response, thank you.
 Regards,
 Doug

I'll believe corporations are people when one comes home from Afghanistan in a body bag.

From: LaPerle, Erin@DCA [<mailto:Erin.LaPerle@dca.ca.gov>]
Sent: Wednesday, December 17, 2014 3:47 PM
To: Douglas Matteson
Subject: RE: Proposed amendments to title 16

Hi Douglas,

Just to clarify, are you making this comment on the behalf of the Marin Chapter of CLSA, or is this a personal comment? I am asking so that I can correctly label the comment in the regulation record.

Thank you,

Erin LaPerle
 Examination Analyst
 Board for Professional Engineers,
 Land Surveyors, and Geologists
 2535 Capitol Oaks Drive, #300
 Sacramento, CA 95833
 Phone # 916-263-1848
 Fax # 916-263-2221

From: Douglas Matteson [REDACTED]
Sent: Tuesday, December 16, 2014 3:28 PM
To: LaPerle, Erin@DCA
Subject: Proposed amendments to title 16

Erin LaPerle;
 BORPELS
 Re: Proposed amendments to title 16 Section 416

I'm sure that this amendment will have similar responses and opinions by many of my fellow Professionals although there may be few responses since many if not most will not reply because of their day to day work load limits them to making a living and running a business in today's economy. I feel certain they will tend to agree that current law is sufficient in general without the addition of clauses 416 [d, e & f] that give the examiner latitude to make its own interpretation beyond the court's finding.

The proposed changes to the law are superfluous with the exception of Section 416 [C] where the added wording 'Conviction of a crime' actually narrows the latitude of an examiners' ability to prosecute.

The other proposed additions 416 [d, e & f], especially need to be omitted. They give the examiner arbitrary and exploitative rights and are thus not legal. One can envision prejudicial circumstances where the examiner decides what an 'act' consists of and make decisions about matters that no court has reviewed:

Additions d, e & f need to be eliminated or reworded in a manner so as to eliminate prejudicial exploitation by the examiner.

Regards,
Douglas Matteson
Civil Engineer,
Sect'y-Treasurer
Marin Chapter,
California Land Surveyors Assn.

LaPerle, Erin@DCA

From: [REDACTED]
Sent: Monday, January 05, 2015 2:24 PM
To: LaPerle, Erin@DCA
Subject: Fwd: Proposed Amendments to Calif. Code of Regulations, Board for P.E.,L.S. & GEOL.

From: [REDACTED]
To: "Erin LaPerle" <Erin.LaPerle@dca.ca.gov>
Sent: Sunday, January 4, 2015 9:22:45 PM
Subject: Proposed Amendments to Calif. Code of Regulations, Board for P.E.,L.S. & GEOL.

Dear Ms. LaPerle;

I believe Sections 416(d), (e), (f) and 3060(c), (d), (e) should be "A conviction of a crime" instead of "Crimes or acts". Legally, people are presumed innocent until proven guilty.

In addition, a crime is defined by law, but an act is not, which makes an act arbitrary and capricious allowing many varied opinions as to whether or not a serious problem exists. Also, unfortunately, false accusations are all too common in society these days.

Sincerely yours,

Ronald Rene Roberds, C32113

Definitions of Engineering Geology and Professional Geophysical Work [Title 16, California Code of Regulations Section 3003 (b) and (e)]

The rulemaking proposal to amend Section 3003, Subsections (b) and (e), of Title 16 of the California Code of Regulations relating to the definitions of Engineering Geology and Professional Geophysical Work was approved by the Office of Administrative Law and endorsed by the Secretary of State's Office on November 13, 2014. The following changes became effective on January 1, 2015:

Subsections (b) and (e) of Section 3003 of Article 1, Division 29, Title 16 of the California Code of Regulations, were amended to read as follows:

3003. Definitions.

For the purposes of the rules and regulations contained in this chapter, the term:

* * *

(b) "Engineering Geology" means the application of geologic data, principles and interpretation so that geologic factors and processes affecting planning, design, construction, ~~and~~ maintenance, and vulnerability of civil engineering works are properly recognized and utilized.

* * *

(e) "Professional geophysical work" is work performed at a professional level rather than at a subprofessional or apprentice level and requires the application of scientific knowledge, principles and methods to geophysical problems through the exercise of individual initiative and judgment in investigating, measuring, interpreting and reporting on the physical phenomena of the earth. The term includes the practice of geophysics for the evaluation and mitigation of earthquake hazards, and environmental and groundwater resource assessment. Implicit in this definition is the recognition of professional responsibility and integrity and the acknowledgment of minimal supervision.

"Professional geophysical work" specifically does not include activities wherein the analysis or interpretation of geophysical or geological information is lacking. Such nonprofessional work could encompass party or crew chief and would encompass lesser forms of employment in field parties, the manufacture, assembly or maintenance and repair of geophysical instruments and equipment, computer programming, data processing or retrieval and routine activities normally performed by a technician in acquiring and reporting on geophysical information where the elements of initiative, scientific judgment and decision making are absent. It also does not include those engineering disciplines and other physical sciences wherein geophysical or geological investigation, analysis and interpretation are minimal or lacking.

* * *

Note: Authority cited: Section 7818, Business and Professions Code. Reference: Sections 7800, 7801, 7802, 7802.1, 7803, 7803.1, 7804, 7804.1, 7822, 7841 and 7841.1, Business and Professions Code.

Amendment of Board Rules 438 ("Eight-Hour" Examinations)

The Board seeks to amend Board Rules section 438 to remove language identifying "eight-hour" from the regulation related to waiver of the fundamental examinations for Professional Engineers and Land Surveyors in California. The examinee is tested based on the content within the exam, not the timeframe. Board staff is proposing to remove the "eight-hour" indication from Section 438 since it is an arbitrary, dated term and is not an accurate reflection of the examination utilized by either the Board or the NCEES.

In addition, staff is requesting to repeal section 438(b)(2). Effective January 1, 2013, Business and Professions Code section 8741(a) was amended to remove the right for a certified EIT to waive the LSIT examination (Senate Bill 1576; amended by Stats. 2012, Ch. 661, Sec. 12). In order for the Board to comply with this legislative change, section 438(b)(2) must be repealed. The composition of the EIT examination has changed since 1982, when civil engineers were no longer authorized to practice land surveying. The EIT examination is now focused on engineering-related matters as opposed to having some land surveying-related questions included. As such, the EIT is no longer an appropriate or adequate alternative to waive the LSIT.

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

The recommended amendment to Board Rule 438 are included in this agenda. Additions are shown in underlined text and deletions are identified as ~~striketrough~~ text. At this time, staff recommends that the Board approve these adoptions and direct staff to begin the formal rulemaking process to amend these regulations.

RECOMMENDED MOTION:

Approve the proposed amendment to Board Rule 438, as shown and direct staff to begin the formal rulemaking process to adopt the regulations.

V. Administration

A. FY 2014/15 Budget Summary

B. Governor's Proposed FY 2015/16 State Budget

Budget Overview

- Introduction
- FY 2014/15 Update
- FY 2015/16 Gov. Budget

Introduction

Expenditure Authority

- Non-Discretionary
 - Salaries and Wages
 - Staff Benefits
 - Pro-Rata (DCA, DGS, SCSA, DOF, SCO)
- Discretionary
 - General Operating Expense
 - Travel
 - Training
 - Enforcement

Introduction Cont.

- **Appropriation**

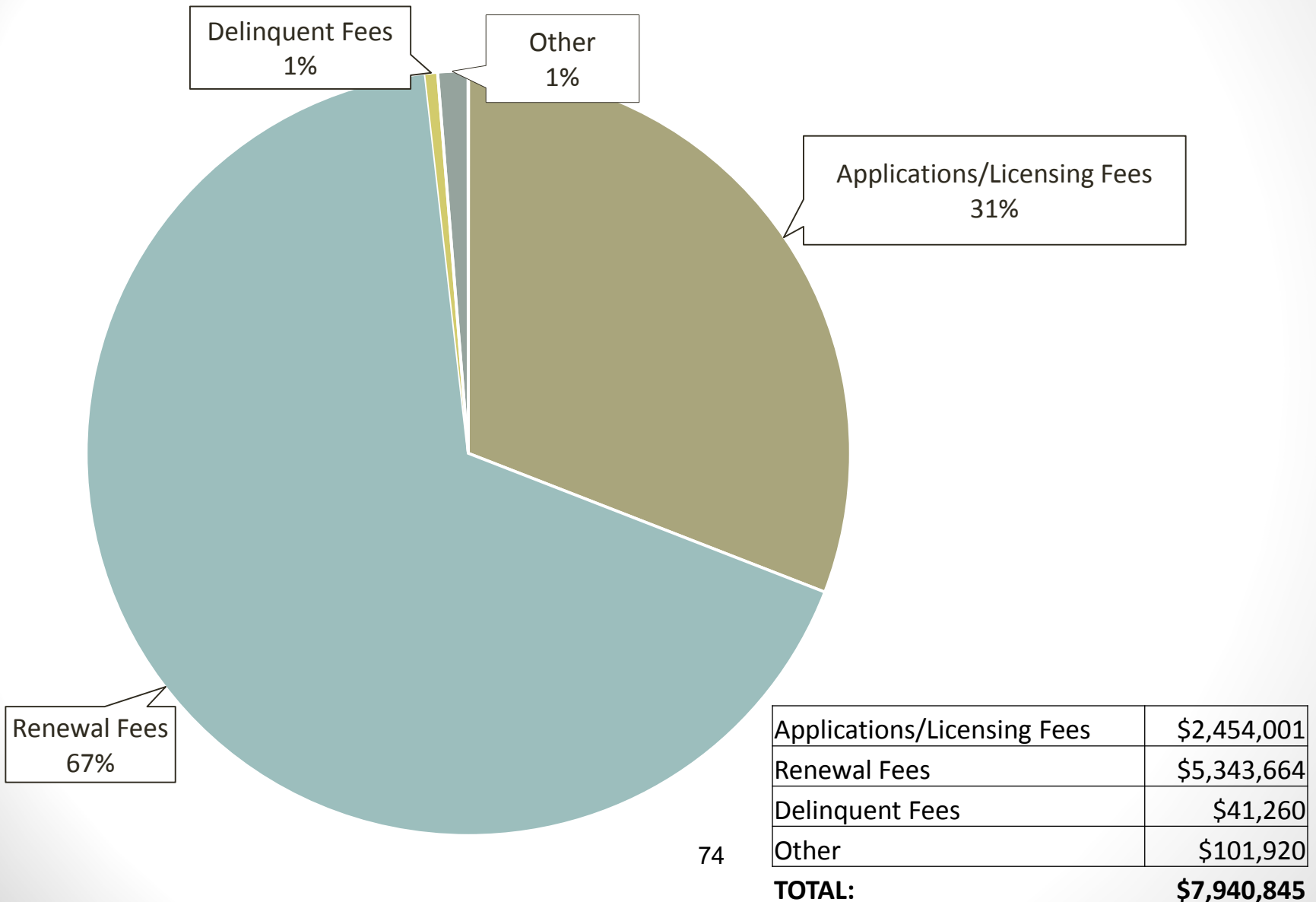
- A program's annual expenditure authority approved by Governor

Fund Code	Fund	Actual 2013-14	Actual 2014-15	Proposed 2015-16*
0770	Professional Engineer's and Land Surveyor's Fund	\$7,751	\$9,858	\$9,587
0205	Geology and Geophysics Account, Professional Engineer's and Land Surveyor's Fund	\$1,136	\$1,418	\$1,431
0995	Reimbursements Expended	\$93	\$16	\$16
Total State Operations	* Dollars in thousands	\$8,980	\$11,293	\$11,034

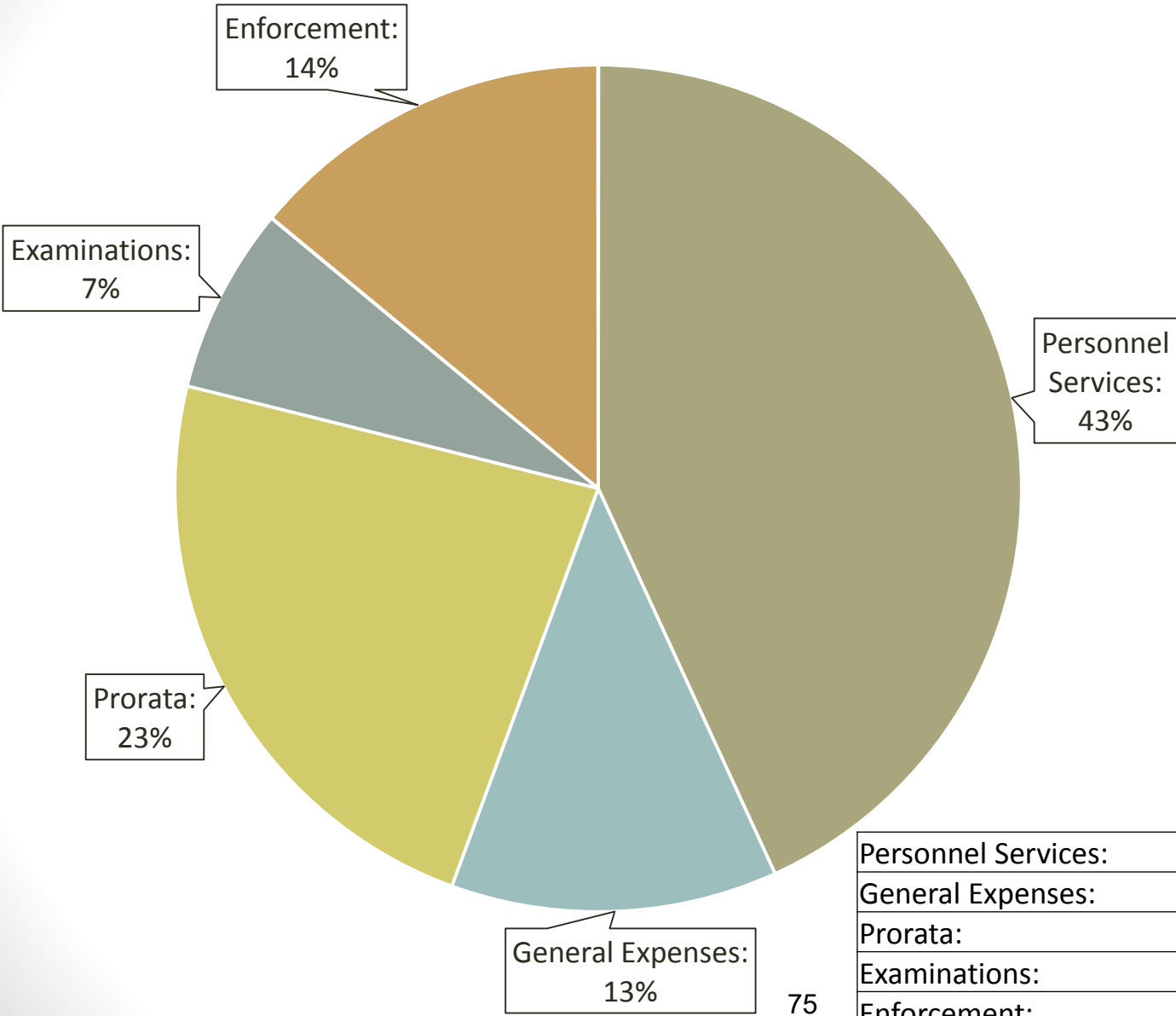
- **Fund**

- A program's account where expenditures are paid and revenue is deposited
- 0770 - Engineers, 0205 – Geology
- 0995 – Investigative Cost Recovery, OIS Public Sales

FY 2014/15 – PELS Projected Revenue



FY 2014/15 – PELS Projected Expenditures



Personnel Services:	\$3,371,873
General Expenses:	\$973,932
Prorata:	\$1,819,352
Examinations:	\$555,620
Enforcement:	\$1,093,961
Total:	\$7,814,737

0770- Professional Engineers and Land Surveyors Financial Statement

	FY 2013-14 Month 6 (7/13-12/13)	FY 2014-15 Month 6 (7/14-12/14)	%	FY 2014-15 Annual Governor's Budget	FY 2014-15 Annual Projections	%
			Change			Change
Revenue						
Applications/Licensing Fees (125700)	1,169,369	1,109,533	-5%	2,604,088	2,454,001	-6%
Renewal fees (125800)	4,612,800	4,160,146	-10%	5,031,365	5,343,664	6%
Delinquent fees (125900)	27,325	25,448	-7%	50,375	41,260	-18%
Interest	1,358	3,446	154%	0	3,181	N/A
Other	61,814	47,619	-46%	81,900	98,739	-41%
Total Revenue:	5,872,666	5,346,192	-9%	7,767,728	7,940,845	2%
Expense						
Personnel Services:						
Civil Service-Perm	1,014,200	1,004,790	-1%	2,202,444	2,083,862	
Temp Help	7,638	9,567	25%	101,908	116,118	
Exam Proctor	0	0	N/A	116,780	0	
Allocated Proctor Cost	5,359	6,354	19%	0	14,300	
Statutory Exempt - EO	55,404	56,514	2%	110,807	113,028	
Board/Commission	800	2,900	263%	16,100	8,969	
Comm Member	400	1,800	350%	6,429	1,900	
Overtime	346	462	34%	14,100	1,890	
Total Salaries and Wages	1,084,147	1,082,387	0%	2,568,568	2,340,067	-9%
Health Benefits	111,242	116,852	5%	312,416	233,704	
Retirement Benefits	213,528	256,744	20%	434,117	513,488	
Other Benefits	151,649	154,245	2%	316,997	284,614	
Total Benefits	476,419	527,841	11%	1,063,530	1,031,806	-3%
Total Personnel Services	1,560,566	1,610,228	3%	3,632,098	3,371,873	-7%
Operating Expense and Equipment:						
Fingerprints	0	287	N/A	0	287	
General Expense	28,067	28,412	1%	72,019	54,278	
Printing	14,410	15,629	8%	24,312	42,883	
Communication	8,591	7,120	-17%	12,849	26,169	
Postage	27,913	25,520	-9%	35,140	67,821	
Travel Out-of-State	0	356	N/A	0	160	
Travel In State	26,444	39,328	49%	88,993	76,954	
Training	0	930	N/A	13,853	1,350	
Facilities Operations	347,420	340,784	-2%	369,619	344,640	
C & P Services - Interdept.	12,500	0	N/A	23,958	0	
C & P Services - External	349,113	185,985	-47%	5,012	322,992	
Minor Equipment	31,453	0	N/A	0	36,398	
Prorata	966,336	917,534	-5%	1,886,821	1,819,352	
Total General Expenses:	1,812,247	1,561,885	-14%	2,532,576	2,793,284	10%
Examinations:						
Exam Rent - Non State	0	0	N/A	363,457	0	
Administrative External Svcs	663,918	555,620	-16%	2,230,830	555,620	
C/P Svcs - Ext Expert Examiners	0	0	N/A	145,322	0	
Other Expense	0	0	N/A	3,301	0	
Total Examinations:	663,918	555,620	-16%	2,742,910	555,620	-80%
Enforcement:						
Attorney General	229,795	172,748	-25%	608,188	562,201	
Office Admin. Hearing	29,572	11,434	-61%	162,611	131,457	
Evidence / Witness Fees	88,810	71,963	-19%	77,077	202,850	
Court Reporters	1,935	1,663	-14%	0	10,904	
DOI - Investigation	129,052	93,274	-28%	186,549	186,549	
Total Enforcement:	479,164	351,082	-27%	1,034,425	1,093,961	6%
Total OE&E	2,955,329	2,468,587	-16%	6,309,911	4,442,865	-30%
Total Expense:	4,515,895	4,078,815	-10%	9,942,009	7,814,737	-21%
Total Revenue:	5,872,666	5,346,192	-9%	7,767,728	7,940,845	2%
Total Expense:	4,515,895	4,078,815	-10%	9,942,009	7,814,737	-21%
Difference:	1,356,771	1,267,377		-2,174,282	126,108	

0770 - Board for Prof. Engineers and Land Surveyors

Analysis of Fund Condition

Prepared 1/29/15

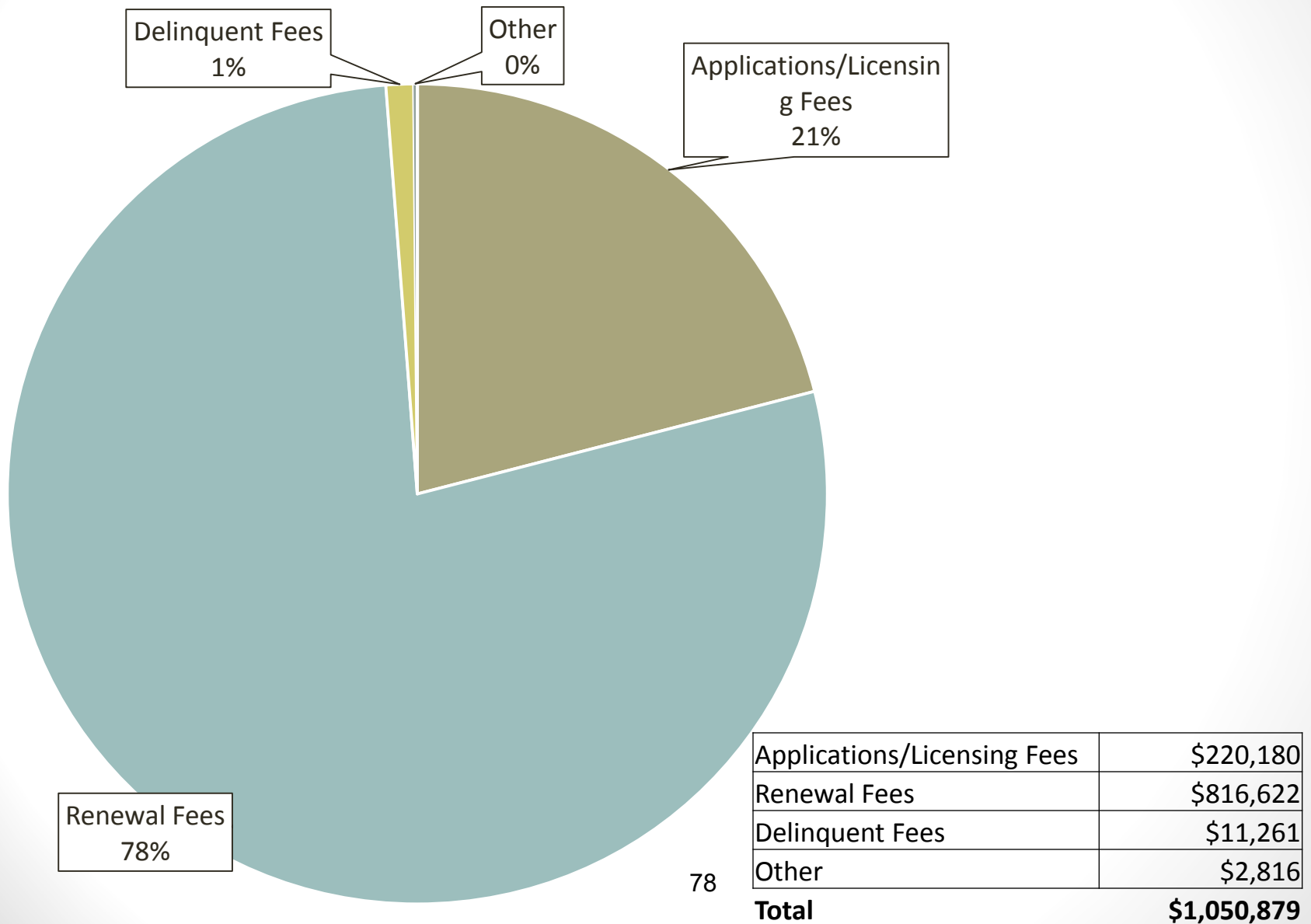
(Dollars in Thousands)

Budget Act and GF Loan Repayments

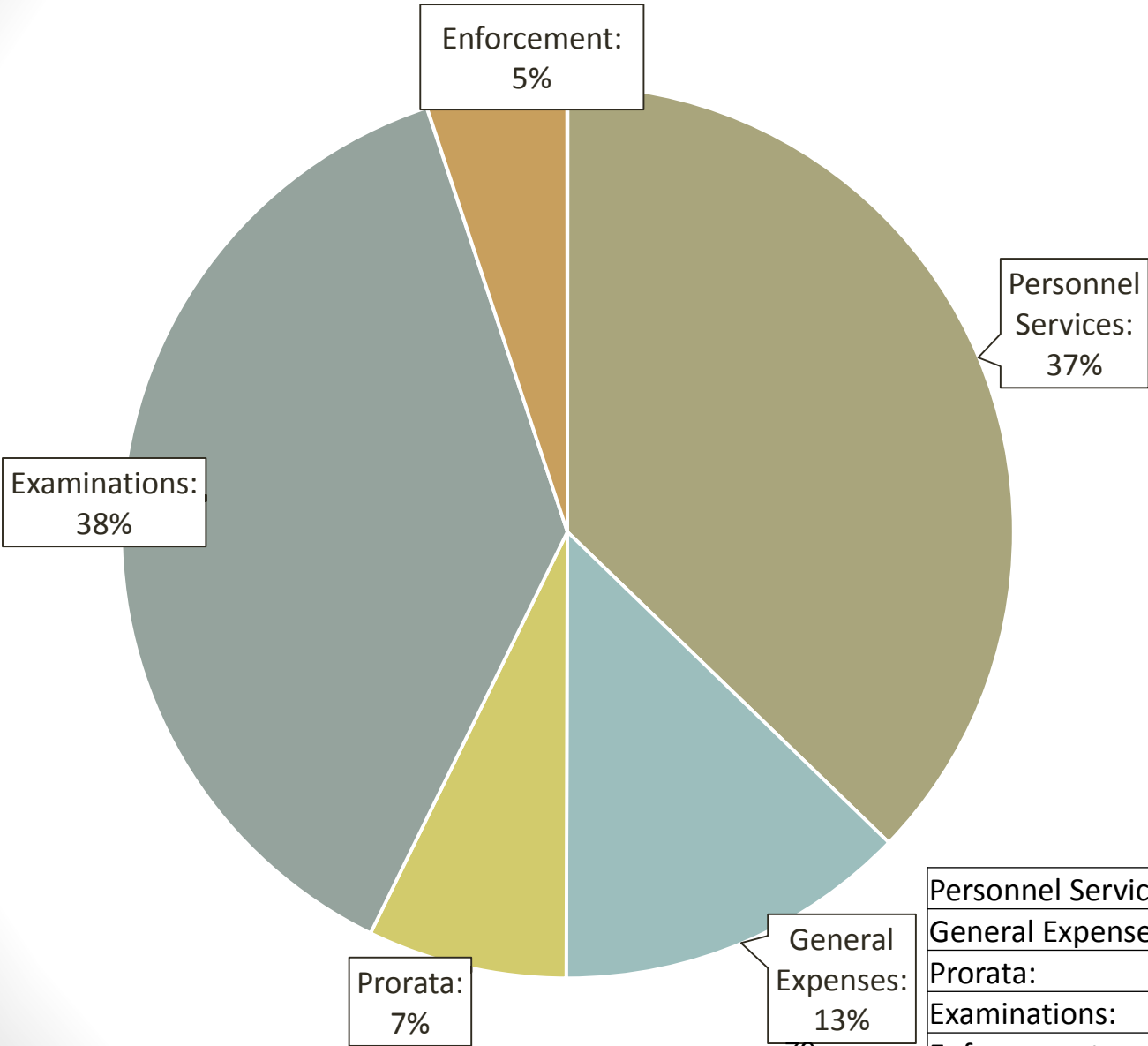
NOTE: \$4.5 M GF Loan Outstanding

	CY 2014-15	Budget Act BY 2015-16	BY+1 2016-17
BEGINNING BALANCE	\$ 5,830	\$ 3,032	\$ 2,287
Prior Year Adjustment	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 5,830	\$ 3,032	\$ 2,287
REVENUES AND TRANSFERS			
Revenues:			
125600 Other regulatory fees	\$ 93	\$ 104	\$ 104
125700 Other regulatory licenses and permits	\$ 2,454	\$ 2,607	\$ 2,607
125800 Renewal fees	\$ 5,344	\$ 6,071	\$ 6,071
125900 Delinquent fees	\$ 41	\$ 61	\$ 61
141200 Sales of documents	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 4	\$ 7	\$ 1
150500 Interest Income from interfund loans	\$ -	\$ -	\$ -
160400 Sale of fixed assets	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ 4	\$ 9	\$ 9
161400 Miscellaneous revenues	\$ 1	\$ 1	\$ 1
Totals, Revenues	\$ 7,941	\$ 8,860	\$ 8,854
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		\$ 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	\$ 6,640	\$ 8,860	\$ 9,654
Totals, Resources	\$ 12,470	\$ 11,892	\$ 11,941
EXPENDITURES			
Disbursements:			
1110 Program Expenditures (State Operations)	\$ 9,942	\$ 9,587	\$ 9,779
8840 SCO (State Operations)	\$ -	\$ -	\$ -
8880 Financial Information System for CA (State Operations)	\$ 8	\$ 18	\$ -
SURPLUS/(DEFICIT):	\$ (2,059)	\$ -	\$ -
Total Disbursements	\$ 7,891	\$ 9,605	\$ 9,779
FUND BALANCE			
Reserve for economic uncertainties	77 \$ 3,032	\$ 2,287	\$ 2,162
Months in Reserve	3.8	2.8	2.6

FY 2014/15 – GEO Projected Revenue



FY 2014/15 – GEO Projected Expenditures



Personnel Services:	\$390,557
General Expenses:	\$134,291
Prorata:	\$75,718
Examinations:	\$394,914
Enforcement:	\$53,430
Total:	\$1,048,910

0205 - Geology Financial Statement

	FY 2013-14 Month 6 (7/13-12/13)	FY 2014-15 Month 6 (7/14-12/14)	% Change	FY 2014-15 Annual Governor's Budget	FY 2014-15 Annual Projections	% Change
Revenue						
Applications/Licensing Fees (125700)	92,343	136,149	47%	225,998	220,180	-3%
Renewal fees (125800)	453,043	484,141	7%	814,658	816,622	0%
Delinquent fees (125900)	7,391	6,312	-15%	14,884	11,261	-24%
Interest	812	766	-6%	0	1,532	N/A
Other	560	692	-46%	2,180	1,284	-41%
Total Revenue:	554,149	628,060	13%	1,057,719	1,050,879	-1%
Expense						
Personnel Services:						
Civil Service-Perm	122,480	123,469	1%	359,904	246,869	
Temp Help	0	0	N/A	5,000	0	
Allocated Proctor Cost	9,778	6,794	-31%	8,282	21,695	
Committee Member	400	200	-50%	0	1,200	
Overtime	378	0	N/A	0	1,084	
Total Salaries and Wages	133,036	130,463	-2%	373,186	270,847	-27%
Health Benefits	25,845	20,414	-21%	57,787	40,828	
Retirement Benefits	25,969	25,996	0%	61,445	51,992	
Other Benefits	13,511	12,620	-7%	21,703	26,890	
Total Benefits	65,325	59,030	-10%	140,935	119,710	-15%
Total Personnel Services	198,361	189,493	-4%	514,121	390,557	-24%
Operating Expense and Equipment:						
General Expense	2,485	2,258	-9%	9,517	4,821	
Printing	0	0	N/A	731	2,558	
Communication	344	386	12%	1,215	1,022	
Postage	2,828	2,960	5%	731	7,573	
Travel In State	3,093	3,558	15%	1,427	11,518	
Training	0	0	N/A	231	1,242	
Facilities Operations	3,400	3,400	0%	7,006	6,800	
C & P Services - Interdept.	0	0	N/A	24,093	0	
C & P Services - External	16,000	4,646	-71%	1,011	0	
DP Billing (OIS)	16,418	16,302	-1%	33,196	32,603	
Indirect Distributed Cost (OAS & ISO)	25,230	33,078	31%	68,585	66,154	
Interagency Services	0	0	N/A	25,761	0	
Interagency Agreement (OER)	150,888	98,154	-35%	0	0	
Prorata	29,830	36,180	21%	80,743	75,718	
Total General Expenses:	250,516	200,922	-20%	254,247	210,009	-17%
Examinations:						
Exam Supplies/Materials	0	0	N/A	142	0	
Exam Rent - Non State	1,320	0	N/A	5,153	1,050	
Administrative External Svcs	218,569	187,576	-14%	359,935	257,576	
C/P Svcs - Ext Expert Examiners	55,186	36,592	-34%	110,319	136,288	
Total Examinations:	275,075	224,168	-19%	475,549	394,914	-17%
Enforcement:						
Attorney General	10,510	19,758	88%	155,125	22,950	
Office Admin. Hearing	80	191	139%	7,783	2,097	
Evidence / Witness Fees	5,400	11,062	105%	11,667	28,383	
Total Enforcement:	15,990	31,011	94%	174,575	53,430	-69%
Total OE&E	541,581	456,101	-16%	904,371	658,353	-27%
Total Expense:	739,942	645,594	-13%	1,418,492	1,048,910	-26%
Total Revenue:	554,149	628,060	13%	1,057,719	1,050,879	-1%
Total Expense:	739,942	645,594	-13%	1,418,492	1,048,910	-26%
Difference:	-185,793	-17,534		-360,773	1,969	

0205 - Geology

Analysis of Fund Condition

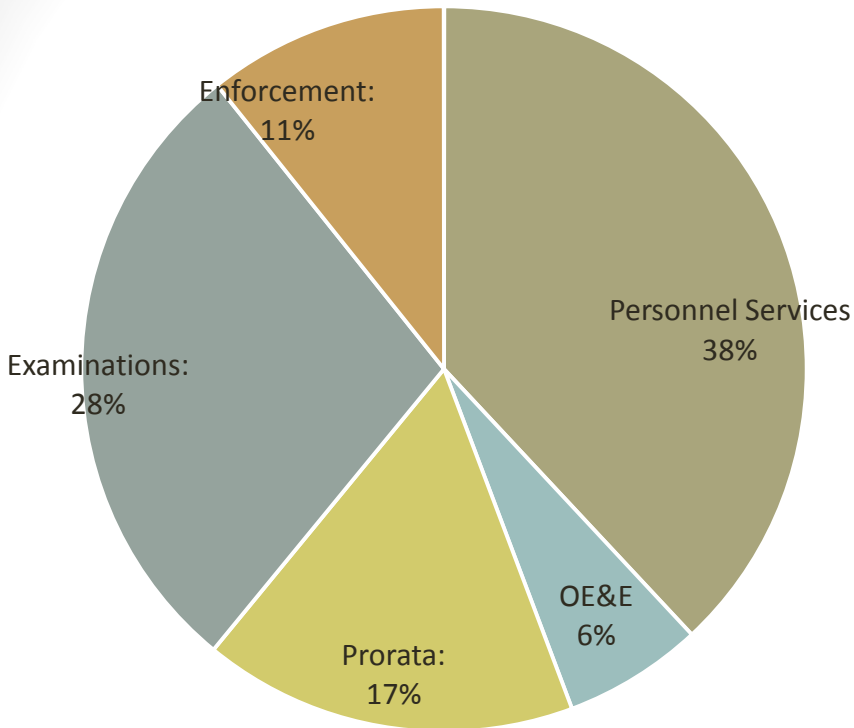
Prepared 1/29/15

(Dollars in Thousands)

Governor's Budget	BUDGET		
	CY 2014-15	ACT BY 2015-16	BY + 1 2016-17
BEGINNING BALANCE	\$ 989	\$ 990	\$ 580
Prior Year Adjustment	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 989	\$ 990	\$ 580
REVENUES AND TRANSFERS			
Revenues:			
125600 Other regulatory fees	\$ 1	\$ 1	\$ 1
125700 Other regulatory licenses and permits	\$ 220	\$ 240	\$ 240
125800 Renewal fees	\$ 817	\$ 768	\$ 768
125900 Delinquent fees	\$ 11	\$ 11	\$ 11
141200 Sales of documents	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 1	\$ 3	\$ -
160400 Sale of fixed assets	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ 1	\$ 1	\$ 1
161400 Miscellaneous revenues	\$ -	\$ -	\$ -
Totals, Revenues	\$ 1,051	\$ 1,024	\$ 1,021
Totals, Revenues and Transfers	\$ 1,051	\$ 1,024	\$ 1,021
Totals, Resources	\$ 2,040	\$ 2,014	\$ 1,601
EXPENDITURES			
Disbursements:			
1110 Program Expenditures (State Operations)	\$ 1,418	\$ 1,431	\$ 1,460
8840 FSCU (State Operations)	\$ -	\$ -	\$ -
8880 Financial Information System for CA (State Operations)	\$ 1	\$ 3	\$ -
SURPLUS/(DEFICIT):	\$ (369)		
Total Disbursements	\$ 1,050	\$ 1,434	\$ 1,460
FUND BALANCE			
Reserve for economic uncertainties	\$ 990	\$ 580	\$ 141
Months in Reserve	81	8.3	4.8
			1.1

FY 2015-16 Introduction

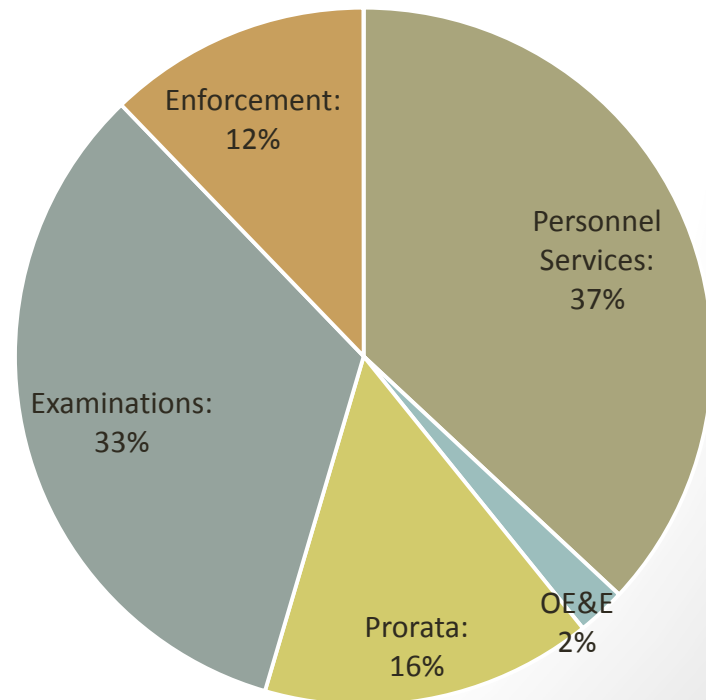
PELS



PELS Gov. Budget 2015-16

Personnel Services:	\$3,679,552
Operating Expense And Equipment:	\$601,969
Prorata:	\$1,612,144
Examinations:	\$2,739,609
Enforcement:	\$1,037,726
Total:	\$9,671,000

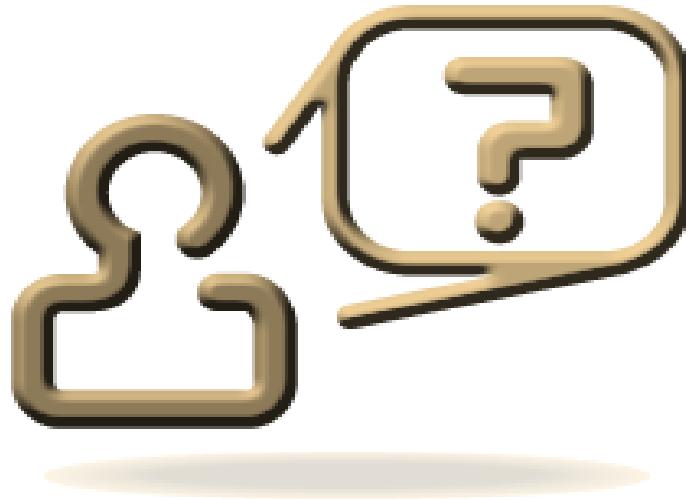
Geology



Geology Gov. Budget 2015-16

Personnel Services:	\$528,756
Operating Expense And Equipment:	\$32,078
Prorata:	\$220,042
Examinations:	\$475,549
Enforcement:	\$174,575
Total:	\$1,431,000

Questions?

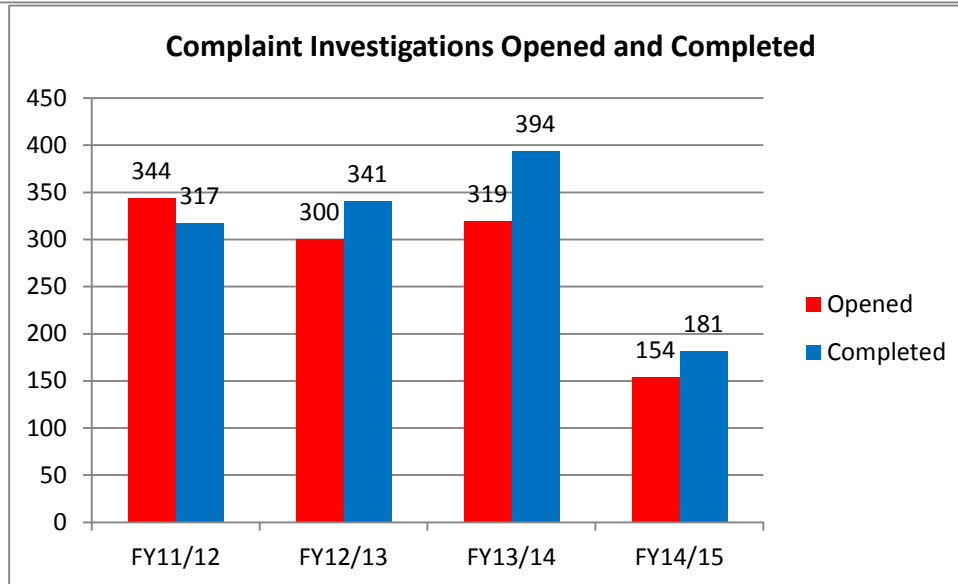
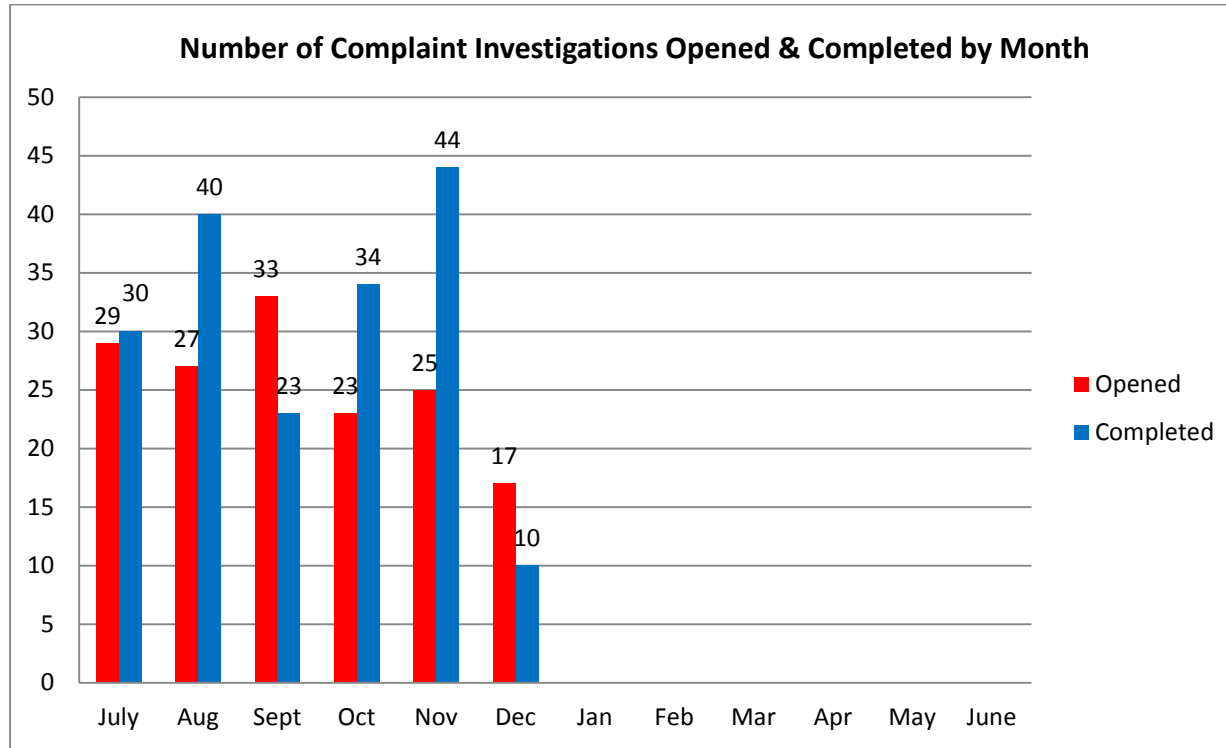


VI. Enforcement

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

PELS ENFORCEMENT PROGRAM

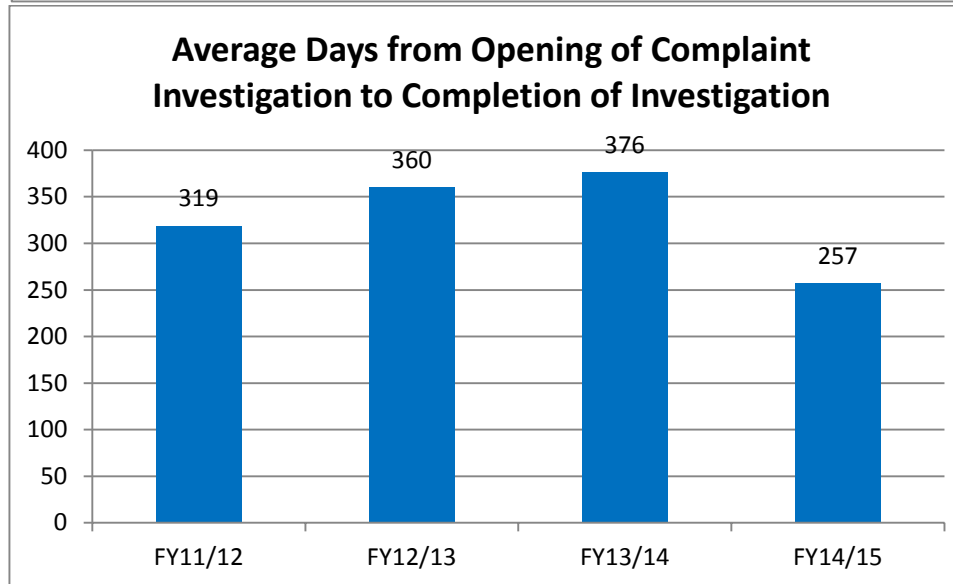
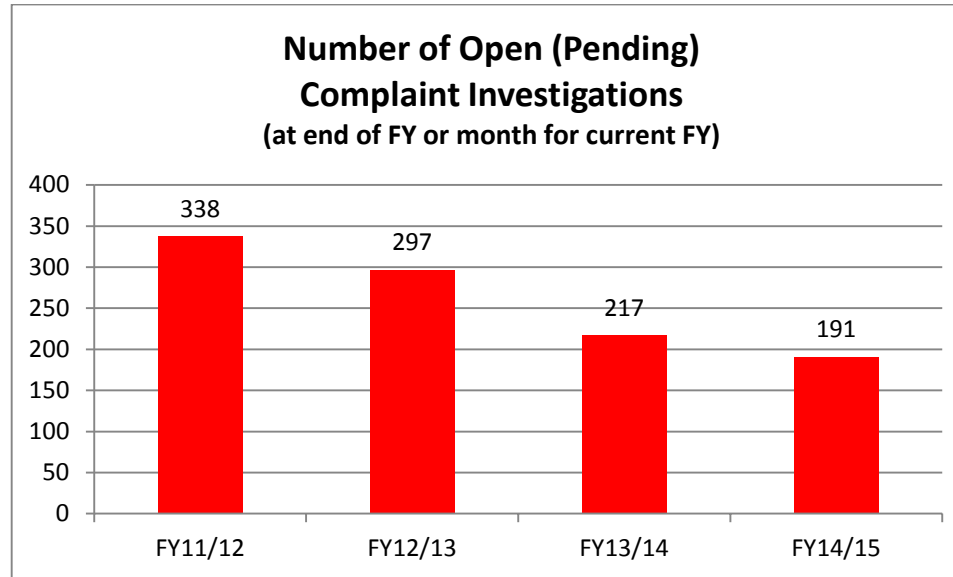
Complaint Investigation Phase



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

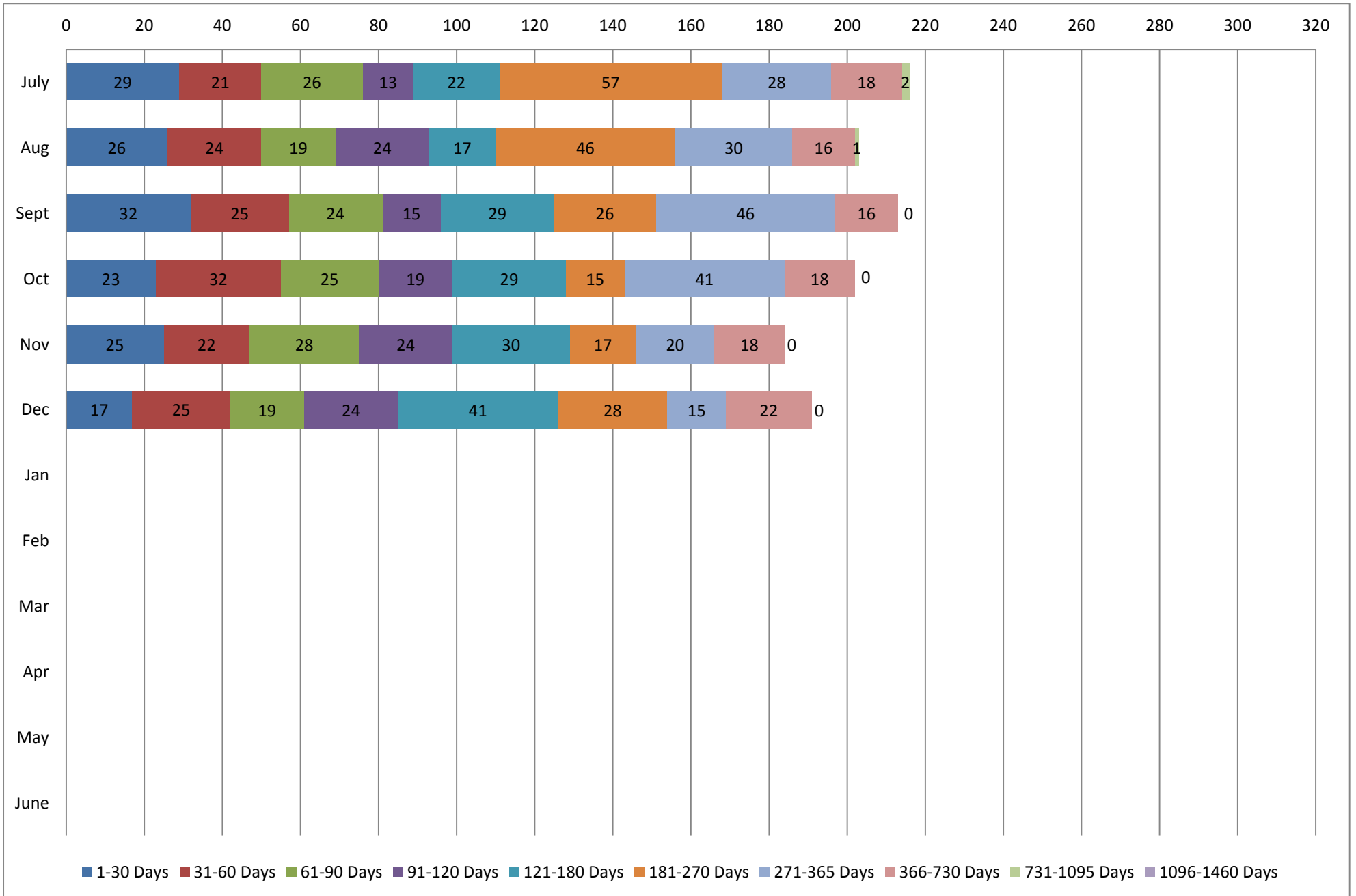
PELS ENFORCEMENT PROGRAM

Complaint Investigation Phase



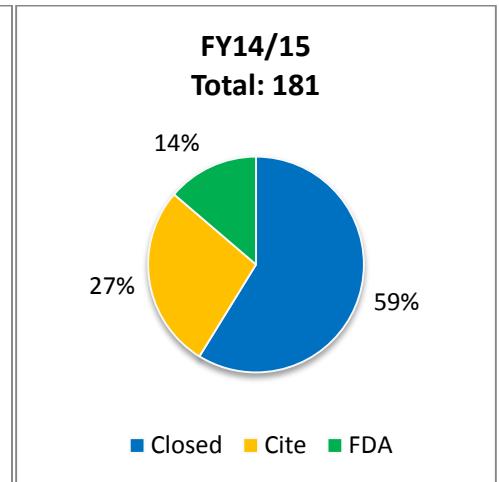
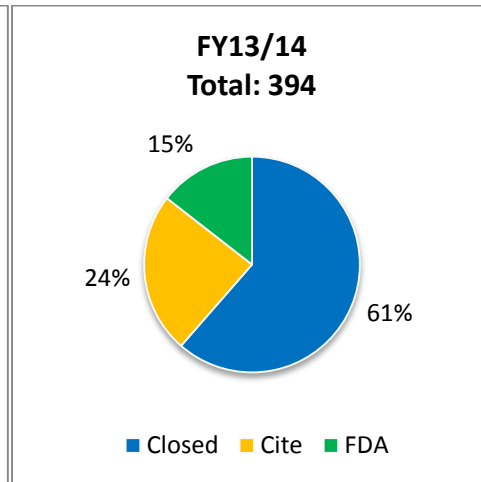
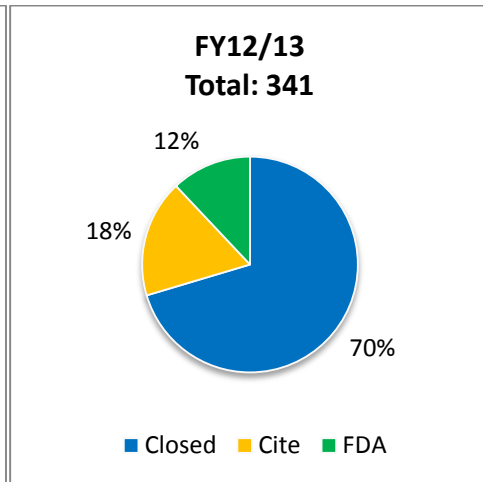
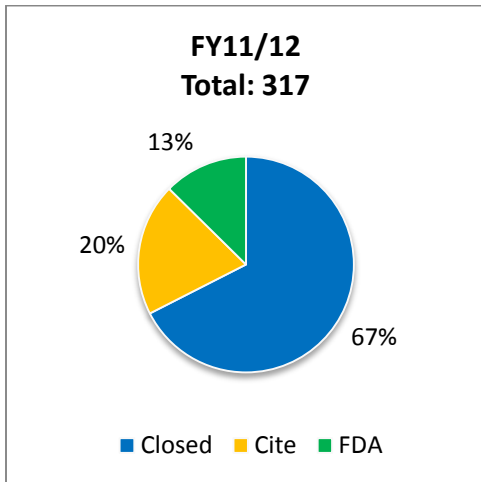
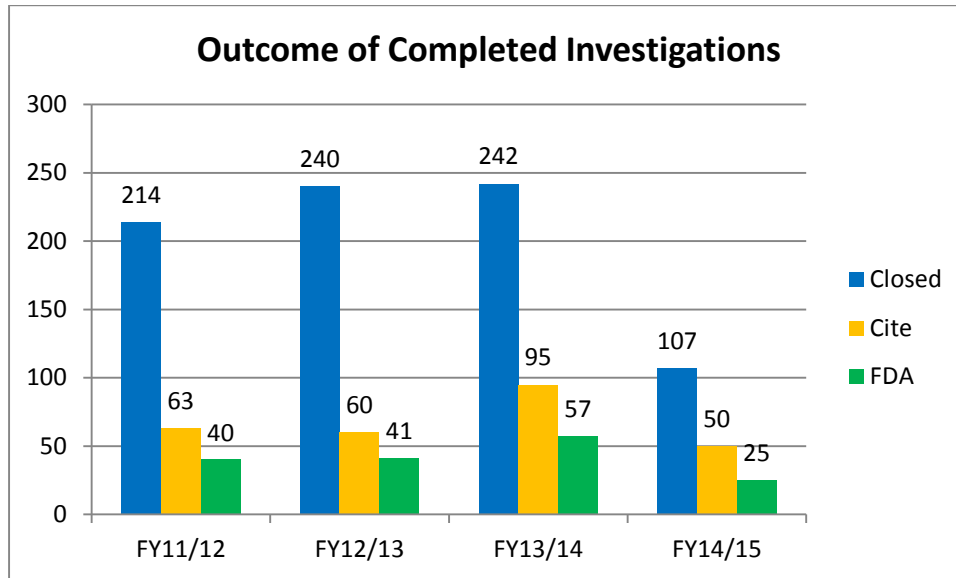
NOTE: FY14/15 statistics are through December 31, 2014

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



PELS ENFORCEMENT PROGRAM

Outcome of Completed Investigations



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

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

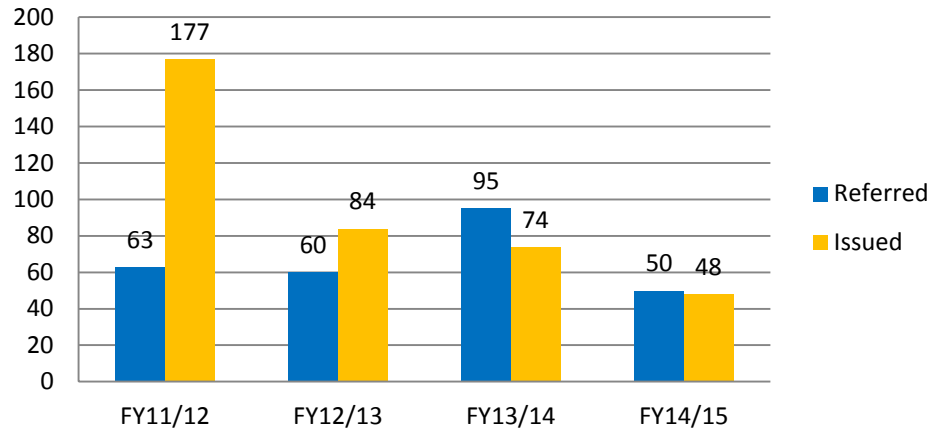
Cite = Referred for Issuance of Citation

FDA = Referred for Formal Disciplinary Action

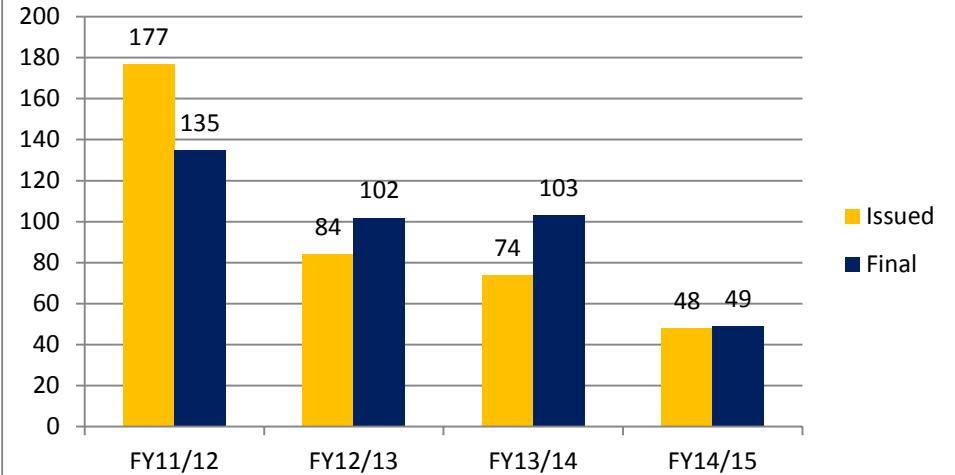
PELS ENFORCEMENT PROGRAM

Citations (Informal Enforcement Actions)

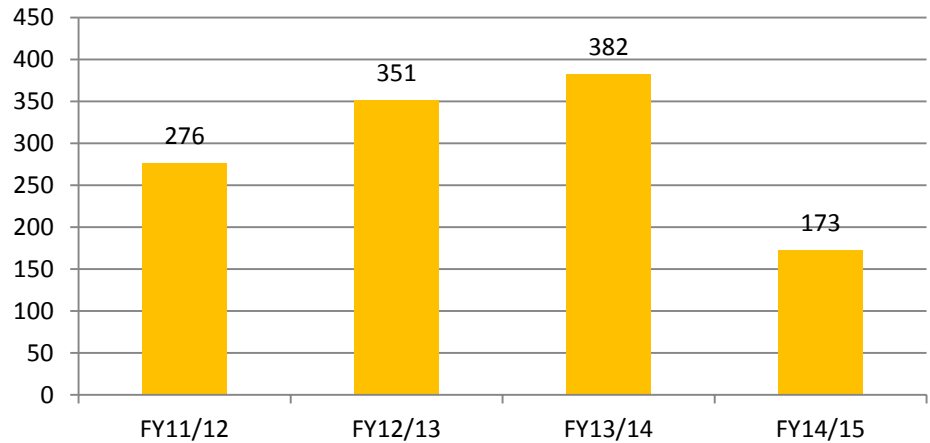
Number of Complaint Investigations Referred and Number of Citations Issued



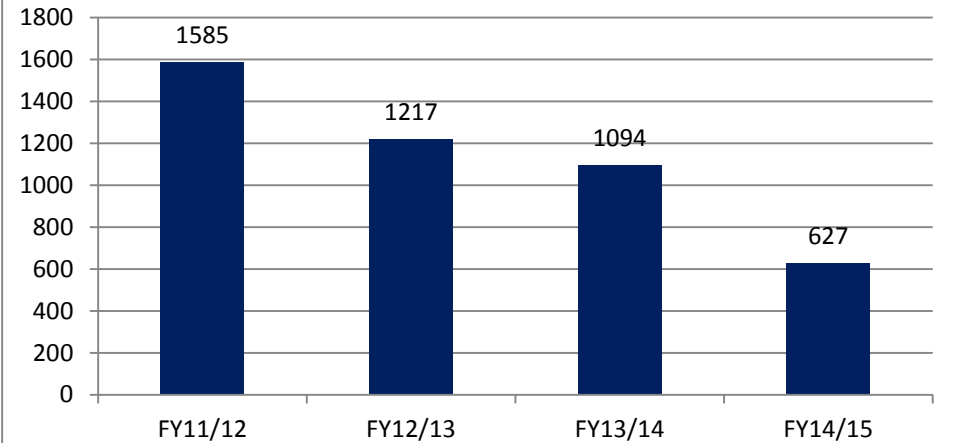
Number of Citations Issued and Final



Average Days Between Date of Issuance of Citation and Date Citation Becomes Final



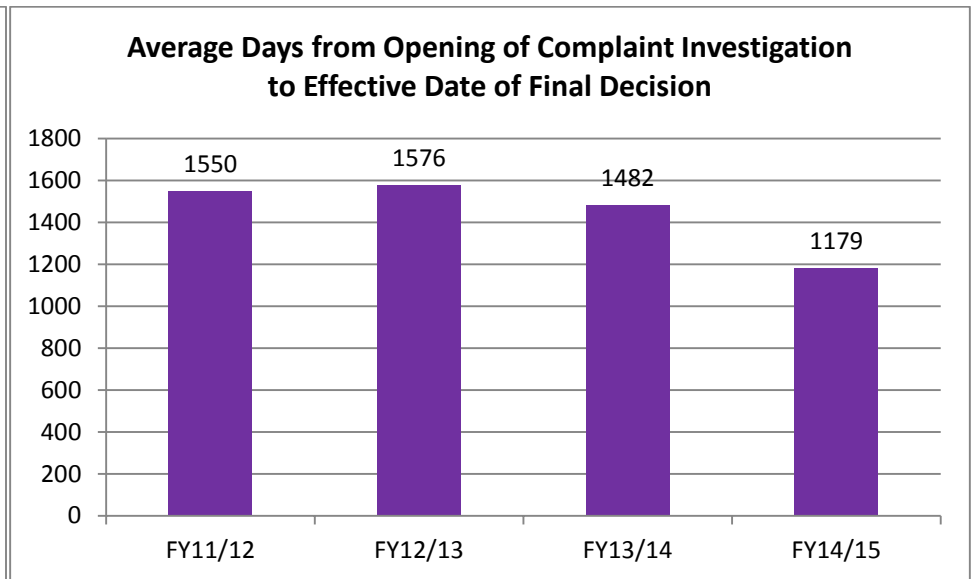
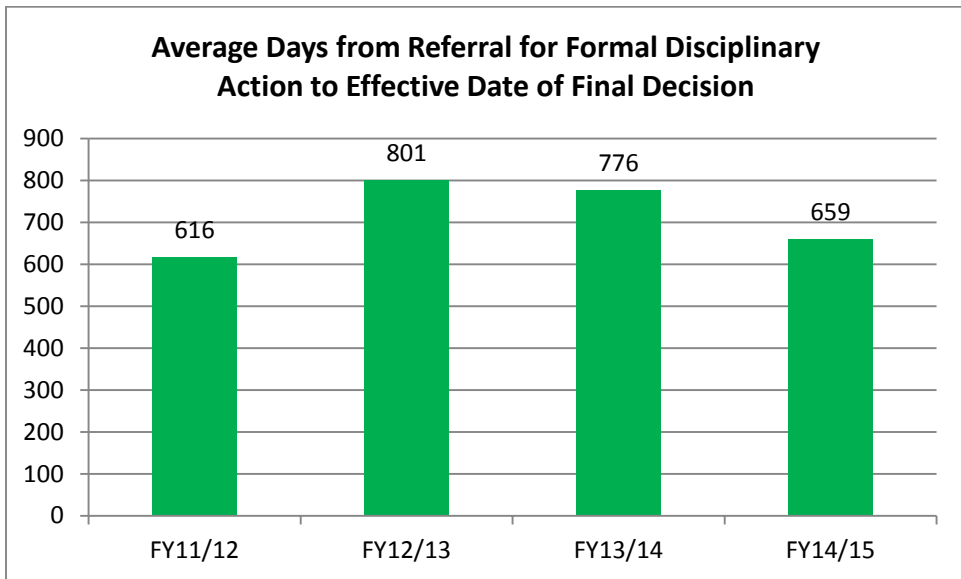
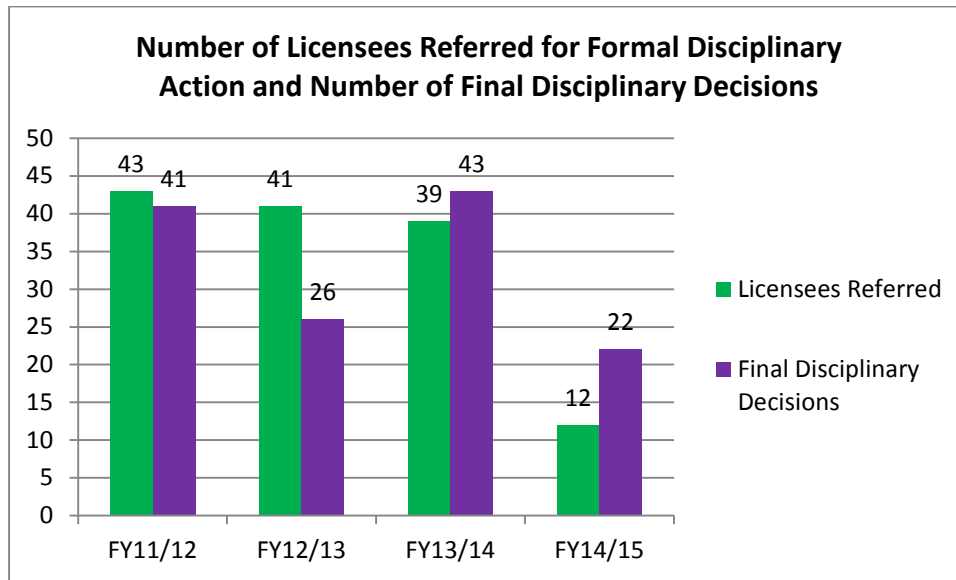
Average Days from Opening of Complaint Investigation to Date Citation Becomes Final



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

PELS ENFORCEMENT PROGRAM

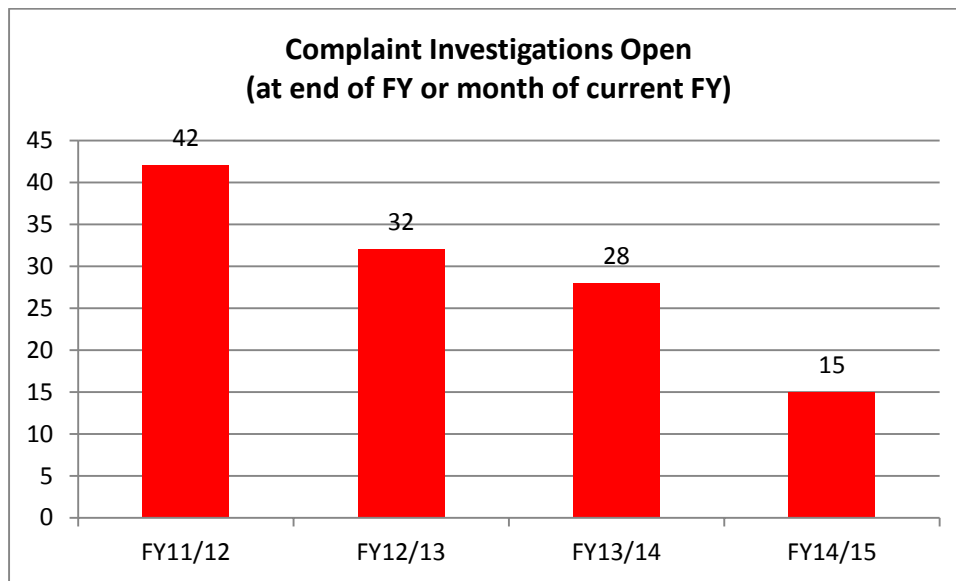
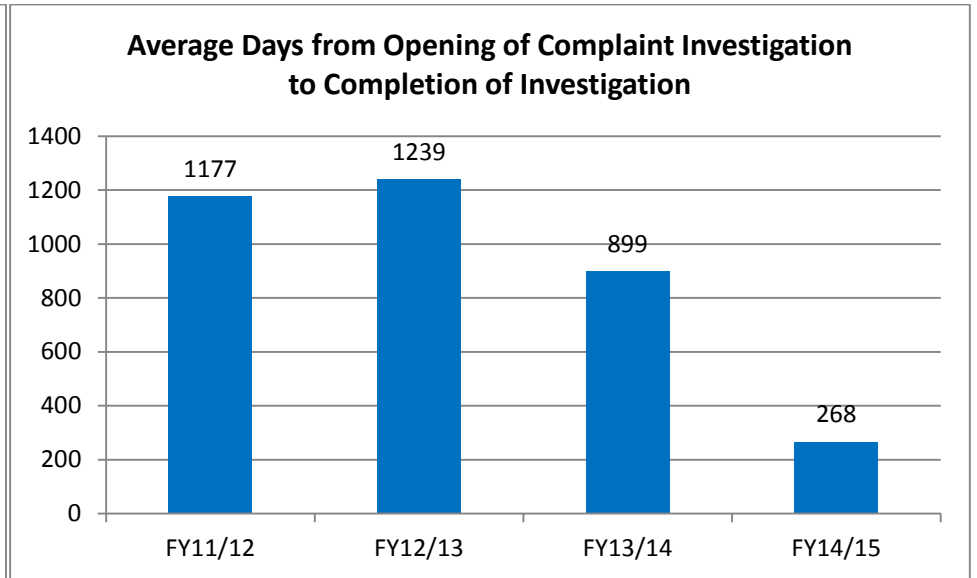
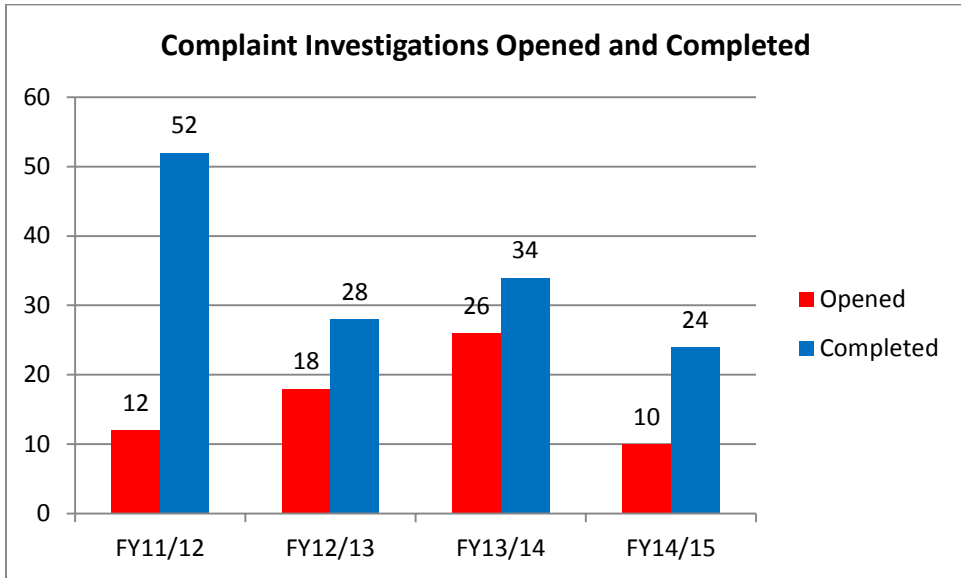
Formal Disciplinary Actions Against Licensees



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

G&G ENFORCEMENT PROGRAM

Complaint Investigation Phase

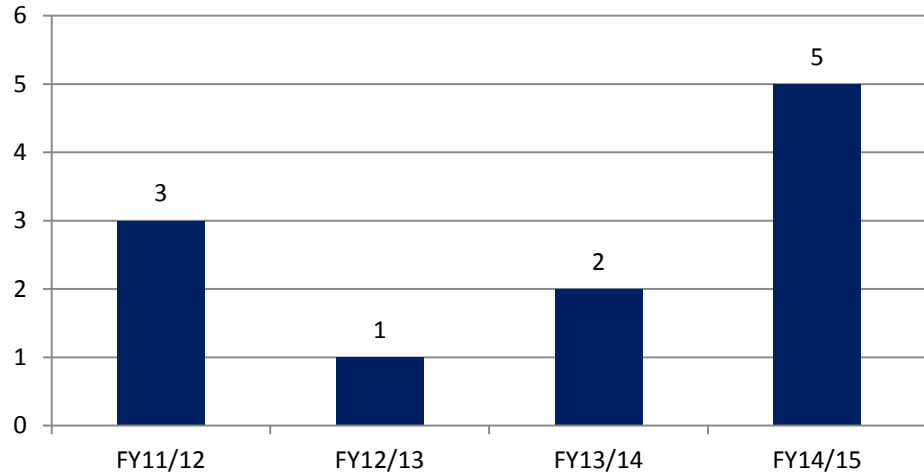


NOTE: FY14/15 statistics are through December 31, 2014

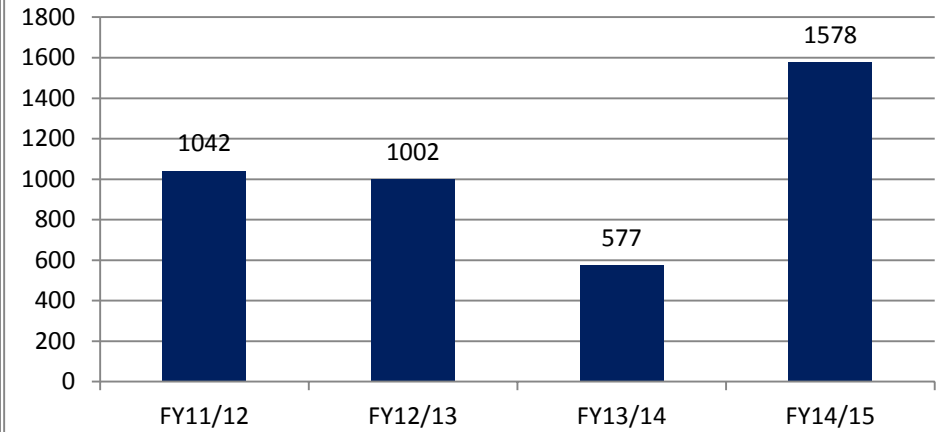
G&G ENFORCEMENT PROGRAM

Citations (Informal Enforcement Actions)

Number of Final Citations



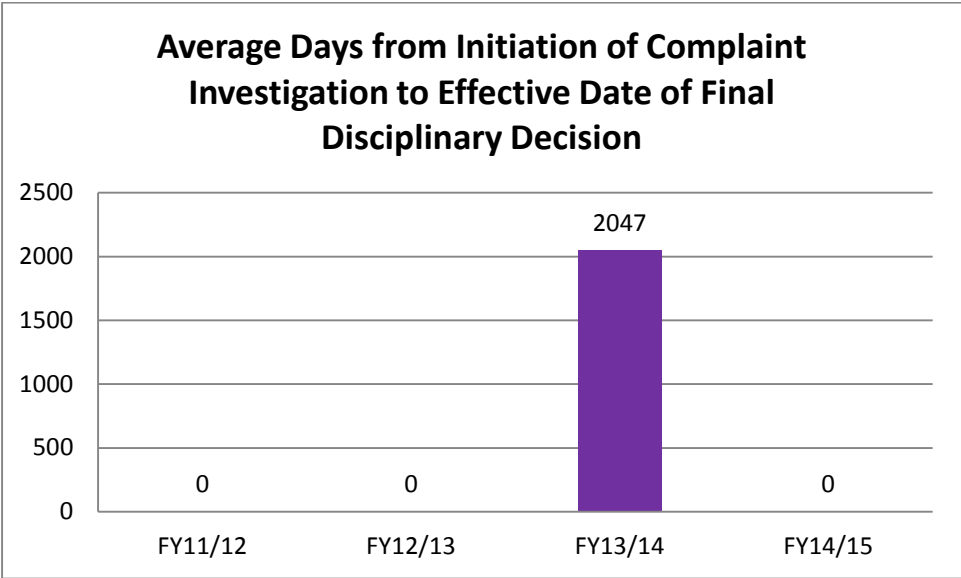
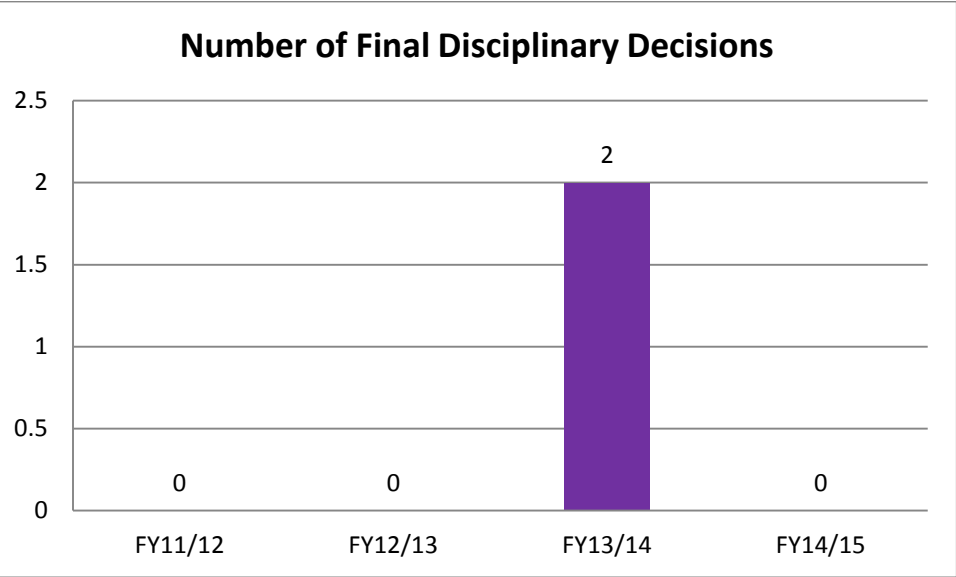
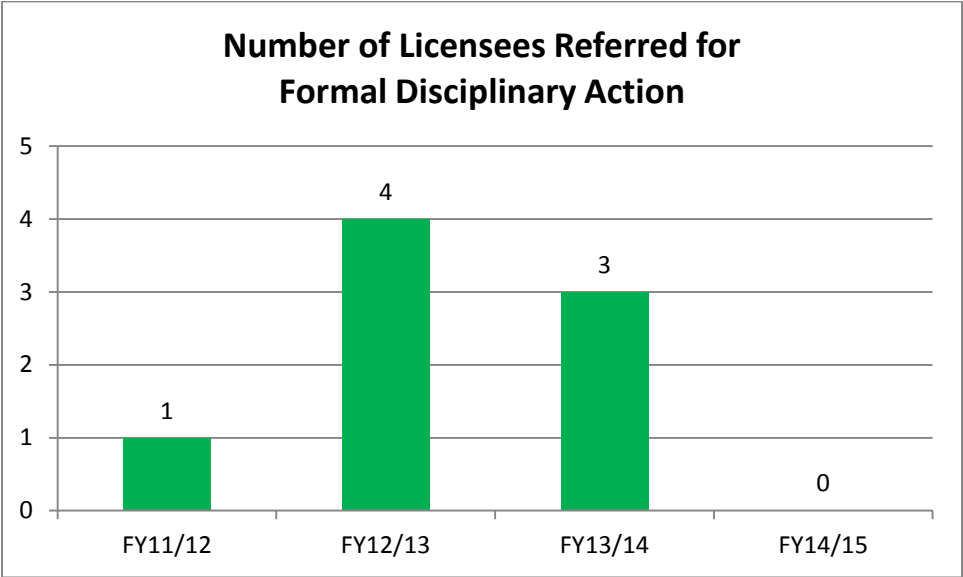
Average Days from Opening of Complaint Investigation to Date Citation Becomes Final



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

G&G ENFORCEMENT PROGRAM

Formal Disciplinary Actions against Licensees



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

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

At the November 2014 meeting, Board Member Patrick Tami requested that an item be included for discussion at the next meeting regarding the disclosure of complaints and enforcement actions, including citations and formal disciplinary actions.

The Board currently has a Policy on Disclosure of Complaints and Disciplinary Actions (hereinafter referred to as the Disclosure Policy”) which was formally adopted by the Board in July 1994, and revised by the Board in May 1997, December 1997, April 1999, September 2002, and March 2011. Prior to formally adopting this Disclosure Policy, the Board had an informal policy that followed the same guidelines and principles expressed in the formal policy adopted in 1994. In developing and revising its Disclosure Policy over the years, the Board has reviewed policies and guidelines put forth by DCA and sought the advice of its attorneys.

The Board’s Disclosure Policy not only addresses when and what information will be disclosed regarding complaints, citations, accusations, final orders/decisions, and criminal actions, but it also indicates that the Board will publish and distribute the information regarding final orders/decisions and criminal actions via its newsletters and website. Whenever a complaint case is closed, a copy of the Disclosure Policy is sent to both the complainant and the subject with the letter advising them that the case has been closed and the reasons for the closure. By sending a copy of the Disclosure Policy with the closing letters, the Board is providing notice to the involved parties about what and when information will be disclosed. Information about the Disclosure Policy is also included in the *Consumer Guide* and on the website.

The last major revisions to the Disclosure Policy were done in 1999. The 2002 modifications simply clarified that the Disclosure Policy is intended to address inquiries from all interested parties and not just consumers, as well as providing more specific information regarding what information is released regarding criminal actions that result from investigations by the Board. The 2011 modifications added references to geology and geophysics and updated the terminology used for enforcement actions and final orders, based on recommendations from Legal Counsel.

The current (March 2011) Disclosure Policy is included for reference.


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. Legislation and Regulation Workgroup Summary
- C. Sunset Report
- D. Personnel
- E. BreEZe Update

STRATEGIC PLAN

Staff Proposals for Year One Goals	Completed	In Progress	Remaining
Goal 1: Licensing: The Board provides applicants and licensees a method for providing services in California in order to protect consumers.			✓
<i>Objective 1.1 – Identify the minimum curriculum required for a qualifying geological sciences degree.</i>			
Goal 2: Applications/Examinations: The Board promotes appropriate standards so that qualified individuals may obtain licensure in order to protect the public.			✓
<i>Objective 2.4 - Evaluate and identify ways to reduce the application process timeframes.</i>			
Goal 3: Laws and Regulations			
<i>Objective 3.1 - Establish a legislative and regulatory work group of two Board members and staff and provide a written report at Board meetings.</i>	11/2014		
<i>Objective 3.4 - Seek legislation to merge the Geology fund with Engineers/Land Surveyors fund.</i>		✓	
Goal 4: Enforcement			✓
<i>Objective 4.2 - Analyze and determine reasonable time frames and develop a benchmark/expectation for each step in the investigation.</i>			
<i>Objective 4.4 - Research the feasibility of adding a legal requirement that licensees respond to Board investigative inquiries within a specified period of time.</i>			
<i>Objective 4.6 - Improve the technical expert consultant selection process, training, and compensation to enhance quality and quantity.</i>			
Goal 5: Outreach			✓
<i>Objective 5.1 - Develop a multi-phase stakeholder outreach plan. (Dependent on Objectives 5.2-5.6)</i>			
<i>Objective 5.2 - Communicate enforcement actions on an ongoing basis on the website as soon as feasible.</i>			
<i>Objective 5.3 - Produce a newsletter on a quarterly basis that includes enforcement actions.</i>			
<i>Objective 5.4 - Encourage DCA and Agency to approve speaking and/or participating in conferences and other public and/or licensee outreach events.</i>			
<i>Objective 5.5 - Increase the Board's social media presence.</i>			
<i>Objective 5.6 - Proactively educate stakeholders to prevent violations.</i>			
Goal 6: Customer Service			✓
<i>Objective 6.3 - Implement a plan to improve internal collaboration. (Dependent on Objective 6.2)</i>			
<i>Objective 6.2 - Enhance customer service by providing training for staff.</i>			
<i>Objective 6.4 - Issue licenses on environmentally friendly wallet-sized cards in addition to current paper license.</i>			

Legislative and Regulatory Committee

Board Members: Coby King and Bob Stockton

Board Staff: Kara Williams, Tralee Morris, and Billie Baldo

The committee is tasked with tracking legislation and analyzing regulations. Currently, Board staff meets weekly to discuss legislation and regulations and the ongoing work load relative to these subjects. The committee was formed to tackle this workload and the formation coincides with one of our Strategic Plan objectives as referenced below:

Strategic Plan, adapted July 31, 2104

Goal 3-Laws and Regulations-The Board ensures that statutes, regulations, policies, and procedures strengthen and support their mandate and mission.

- 3.1 Establish a legislative and regulatory work group of two Board members and staff and provide a written report at Board meetings.

Current Assignments and Workload:

Legislation-

AB 177 An act to amend Sections 6710 and 6714 of the Business and Professions Code extending our Sunset date from January 1, 2016 until January 1, 2020.

Regulations-

- Citations (472-473.4/3062-3063.4)
- PG/PGp postpone/appeal (3024)
- Exam Appeals Repeal (443, 444, 3063.1, 3037.1)
- Waiver of Fundamentals Exam (438(a)(2), (b)(2), & (b)(7))
- SE, GE qualifications/experience (426.10/426.14/426.50)
- Corner Record (464(g))
- Substantial Relationship Criteria (416/3060)

VIII. Exams/Licensing

- A. Fall 2014 Examination Update
- B. FE/FS 2014 Examination Results
- C. Fingerprinting Update
- D. Approval of Washington State Specific Engineering Geology and Hydrogeology Examinations for Comity Licensure

Fall 2014 Professional Engineer, Land Surveyors, and Geology Examination Statistics

Civil Engineering Examinations

	Pass	Fail	Total	Pass Rate
Principles & Practices (National)	625	810	1435	44%
Seismic Principles	675	969	1644	41%
Engineering Surveying	849	942	1791	47%

Land Surveying Examinations

Principles & Practices (National)	42	21	63	67%
Surveying (State Specific)	53	154	207	26%

Other Engineering Discipline Exams

Chemical	19	15	34	56%
Electrical	123	161	284	43%
Control Systems	20	6	26	77%
Electrical	123	161	284	43%
Fire Protection	19	18	37	51%
Mechanical	181	136	317	57%
Metallurgical	4	3	7	57%
Nuclear	2	0	2	100%
Petroleum	3	5	8	37.5%
Traffic	63	32	95	66%

Structural

Lateral Forces	57	86	143	40%
Vertical Forces	59	103	162	36%

2014 Fundamentals of Engineering Examinations

	Pass	Fail	Total	Pass Rate
January-February	200	106	306	65%
April-May	791	406	1197	66%
July-August	603	325	928	65%
October-November	655	452	1107	59%

2014 Fundamentals of Surveying Examinations

	Pass	Fail	Total	Pass Rate
January-February	3	11	14	21%
April-May	10	21	31	32%
July-August	10	21	31	32%
October-November	6	27	33	18%

Geology

	Pass	Fail	Total	Pass Rate
Geologist-In-Training Candidates**	37	16	53	70%
ASBOG® Fundamentals of Geology**	30	18	48	62.5%
ASBOG® Practice of Geology	47	19	66	71%
California Specific Examination	54	53	107	50.5
**ASBOG® Fundamentals of Geology Including Geologist-In-Training	67	34	101	66%

Specialty Certifications and Professional Geophysicist

Certified Engineering Geologist	12	41	53	23%
Certified Hydrogeologist	15	16	31	48%
Professional Geophysicist	1	5	6	17%

Previous Examination Cycle Statistics for Professional Engineers, Land Surveyors, and Geologists

Civil Engineering Examinations

	Fall 2013				Spring 2014			
	Pass	Fail	Total	Pass Rate	Pass	Fail	Total	Pass Rate
Principles & Practices (National)	582	814	1396	42%	751	669	1420	53%
Seismic Principles	690	856	1546	45%	751	812	1563	48%
Engineering Surveying	781	801	1582	49%	662	907	1569	42%

Land Surveying Examinations

Principles & Practices (National)	34	35	69	49%	45	38	83	54%
Surveying (State Specific)	46	138	184	25%	48	172	220	22%

Other Engineering Discipline Exams

Agricultural	0	2	2	0%	-	-	-	-
Chemical	26	19	45	58%	20	13	33	61%
Control Systems	11	6	17	65%	-	-	-	-
Electrical	107	191	298	36%	115	168	283	41%
Fire Protection	16	12	28	57%	-	-	-	-
Geotechnical	45	50	95	47%	-	-	-	-
Industrial	-	-	-	-	1	3	4	25%
Mechanical	184	136	320	58%	177	124	301	59%
Metallurgical	3	5	8	38%	-	-	-	-
Nuclear	0	2	2	0%	-	-	-	-
Petroleum	2	3	5	40%	-	-	-	-
Traffic	32	42	74	43%	-	-	-	-

Structural

Lateral Forces	71	77	148	48%	43	76	119	36%
Vertical Forces	67	77	144	47%	39	82	121	32%

Professional Geologist

	Fall 2013				Spring 2014			
	Pass	Fail	Total	Pass Rate	Pass	Fail	Total	Pass Rate
Geologist-In-Training	38	18	56	68%	37	10	47	79%
ASBOG Fundamentals of Geology	43	19	62	69%	29	14	43	67%
ASBOG Practice of Geology	61	20	81	75%	49	13	62	79%
California Specific Examination	62	49	111	56%	38	55	93	41%
ASBOG Fundamentals of Geology Including Geologist-In-Training	81	37	118	69%	66	24	90	73%

Specialty Certifications and Professional Geophysicist

Professional Geophysicist	5	3	8	63%	-	-	-	-
Certified Engineering Geologist	10	27	37	27%	-	-	-	-
Certified Hydrogeologist	10	12	22	45%	-	-	-	-

This notice and the following FAQ has been posted on the Board's website regarding the new fingerprint requirement:

Legislation has been passed requiring the Board to verify all applicants' fingerprints for criminal history prior to approval. Effective July 1, 2015, all applicants will be required to submit fingerprints prior to certification/licensure. This applies to all new and refile applicants.

What this means for you:

- Applicants for engineering licenses (not including SE & GE applicants) who have not taken and passed all necessary examinations to qualify for licensure by July 1, 2015, will be required to supply the Board with a full set of fingerprints prior to licensure. This applies to both new and refile applicants.
- Licensed Civil Engineers who are applying to take the Fall 2015 examination for their Structural Engineer license or will be taking the Geotechnical Engineer examination after July 1, 2015, must supply the Board with a full set of fingerprints prior to licensure. This applies to both new and refile applicants.
- Applicants for Professional Land Surveyor licenses who have not taken and passed all necessary examinations to qualify for licensure by July 1, 2015, will be required to supply the Board with a full set of fingerprints prior to licensure. This applies to both new and refile applicants.
- Applicants for Professional Geologist and Professional Geophysicist licenses who have not taken and passed all necessary examinations to qualify for licensure by July 1, 2015, will be required to supply the Board with a full set of fingerprints prior to licensure. This applies to both new and refile applicants.
- Licensed Professional Geologists who are applying to take the Fall 2015 examination for their Certified Engineering Geologist or Certified Hydrogeologist license must supply the Board with a full set of fingerprints prior to licensure. This applies to both new and refile applicants.
- EIT and LSIT applicants who have taken and passed the national examinations but have not applied for certification prior to July 1, 2015, will be required to provide the Board with a full set of fingerprints prior to certification.

Applicants in California **must** complete the fingerprint process through the Live Scan process. The Live Scan process is only available in California. Outside of California, applicants would need to submit fingerprint cards. Fingerprint cards can be obtained by contacting the Board at 1-866-780-5370 or requesting one here: bpelsg.fingerprint.questions@dca.ca.gov. **Please note:** The fingerprint process through the hardcopy fingerprint cards can take 3-4 months to complete. If you do not reside in California, you may choose to come to California in order to use the Live Scan process.

For more detailed information regarding fingerprinting, please visit the Board's Frequently Asked Questions (FAQ) at www.bpelsg.ca.gov. Questions regarding fingerprinting can also be emailed to our fingerprint coordinator, Jennifer Mueller, at our dedicated fingerprint email address, bpelsg.fingerprint.questions@dca.ca.gov.

Please continue to monitor the Board's website for additional updates: www.bpelsg.ca.gov. You may also choose to be added to the Board's subscriber list to be sent updates on all of the Board's activities, www.dca.ca.gov/webapps/bpelsg/subscribe.php

Questions Regarding Fingerprints

Why is the Board requiring applicants to be fingerprinted?

The mission of the Board for Professional Engineers, Land Surveyors, and Geologists (Board) is to diligently protect the life, health, property, and welfare of the public. By conducting a background check for licensees, the Board ensures standards for licensure and actively enforces laws and regulations while educating licensees and consumers.

Title 16, California Code of Regulations (CCR) Sections 420.1 and 3021.1 read, in part, “Pursuant to Section 144 of the Business and Professions Code (B&P Code), the Board has authority to obtain and review criminal offender record information.” Please refer to 16 CCR §420.1 and 16 CCR §3021.1 for further information.

Who must be fingerprinted?

16 CCR §420.1(g) states that “This section shall apply to all applicants, including those applicants who submit applications pursuant to Sections 6750, 6758, 6759, 6760, 6763, 6796.3, 8740, 8746, 8748, and 8803 of the Business and Professions Code and Section 424.5 of Division 5 of Title 16 of the California Code of Regulations.”

16 CCR §3021.1(g) states that “This section shall apply to all applicants, including those applicants who submit applications pursuant to Sections 7840, 7841, 7841.1, 7841.2, 7842, 7842.1, 7843, 7846, 7847, 7848, 7848.1, and 7884 of the Business and Professions Code.”

What if I don't want to be fingerprinted?

16 CCR §420.1(e) and 16 CCR §3021.1(e) state, “Failure to comply with the requirements of this section renders the application for license incomplete, and the application shall not be considered until the applicant demonstrates compliance with all requirements of this section.”

I am applying for an EIT, LSIT, or GIT certificate, which is not a license. Do I still have to be fingerprinted?

Yes. 16 CCR §420.1(h) and CCR §3021.1(h) read, in part, “As used in this section, “license” includes certification as ...” an engineer-in-training or a land surveyor-in-training or a geologist-in-training.

Once I am fingerprinted for EIT/LSIT/GIT will I have to get fingerprinted again when I apply for my PE/PS/PG license?

No. Once you have submitted fingerprints to the Board and they have been verified as valid, you do not need to submit fingerprints again with subsequent applications.

How do I get fingerprinted?

In California, the process is completed using Live Scan, which is an electronic fingerprinting process. Your prints will be sent to both the California Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) to search for any criminal history. Out-of-state applicants may submit the traditional paper fingerprint cards approved to be used in California (see question below) or come to California to use Live Scan.

- [<Live Scan form link to be entered here>](#)
- [Live Scan Locations](#)

I don't live in California; how can I get paper fingerprint cards?

If you live out-of-state, you may request fingerprint cards by email at bpelsg.fingerprint.questions@dca.ca.gov or by calling the Board at (866) 780-5370 to request that they be mailed to you. You will receive two (2) traditional paper fingerprint cards approved to be used in California. Please allow up to 10 business days to receive the fingerprint cards in the mail.

You will take the fingerprint cards to your local law enforcement agency to have your fingerprints rolled (a rolling fee may be required). **Both** fingerprint cards **must be** returned to the Board along with your application.

Do I have to pay for the fingerprint process?

Yes. 16 CCR 420.1(c) and 16 CCR 3021.1(c) state, "The applicant shall pay any costs for furnishing the fingerprints and conducting the searches." If you live in California, you are required to pay the Live Scan operator the \$49 processing fees (\$32 DOJ and \$17 FBI), as well as the Live Scan "rolling" fee. The rolling fees vary because each Live Scan location sets its own fee. The listing of [Live Scan Locations](#) includes information about the rolling fee for each location.

If you live out-of-state and are using fingerprint cards, you would pay the rolling fee to the law enforcement agency that is rolling your prints. Send both cards back to the Board with a check or money order for \$49 to cover the processing fees (\$32 DOJ and \$17 FBI) along with your application.

Do I send separate checks for fingerprints and the application, or can I write one check for the total amount owed?

One check is preferred.

I have already been fingerprinted previously from another agency/entity; can the Board for Professional Engineers, Land Surveyors, and Geologists access those prints?

No. Federal law allows a Criminal Records Report to be released only to the requesting agency. You will need to undergo the fingerprinting and criminal history check process again specifically for the Board for Professional Engineers, Land Surveyors, and Geologists.

Do I have to get fingerprinted if I am renewing my license?

No. At this time the law only provides that any "New" applicants for licensure furnish a full set of fingerprints.

What do I do if my fingerprints get rejected?

You will be contacted by our office with instructions for you to follow based on the reason for rejection.

Questions about Criminal Convictions

Must I disclose all criminal convictions, even minor offenses in college?

You must disclose all convictions as well as all cases in which you pled guilty or nolo contendere, even if they have been dismissed or expunged pursuant to Section 1203.4 of the Penal Code. Please refer to 16 CCR §416 and §3060 for more information regarding criminal convictions.

Applicants should be aware that the Board receives information regarding actions that have been dismissed or expunged, and the application forms advise applicants to disclose all prior convictions including those that have been dismissed or expunged. **If in doubt as to whether a conviction should be disclosed, it is best to disclose the conviction on the application.** Please be aware, the Board will be notified of all future criminal actions through subsequent reports from the DOJ and/or FBI.

What happens if I fail to disclose information on a criminal conviction?

As an applicant, you are personally responsible for all information disclosed on your application. Failure to disclose a conviction is considered to be a violation of the law. Failure to disclose a conviction may subject you to disciplinary action up to and including denial of licensure/certification or revocation of the license/certificate if the failure to disclose is discovered after the license/certificate is issued.

What information/records should I provide with my application if I have a criminal conviction and how should I provide it?

You must respond “Yes” when asked if you have committed of a crime in Section 4 of the application even if it was expunged or dismissed (see answer above). You are required to attach a written statement disclosing all pleas/convictions and thoroughly explain in your own words the acts or circumstances which resulted in the plea/conviction.

Applicants **must** also provide **certified copies** of the court records, including the complaint, complete docket, judgment and sentence and probation reports, if any, for all convictions. You may also be asked to provide copies of police and/or other investigating agency reports, as well as certified copies of decisions from other state or federal agencies, if applicable. Providing these documents will assist the Board in processing the application as quickly as possible.

I was arrested but not convicted of a crime. How should I respond to the criminal Record question?

You are not required to disclose an arrest which did not result in a conviction.

How might a criminal conviction affect my application for licensure or certification?

The Board is unable to provide legal advice to applicants or their representatives. Every situation is unique and is addressed on an individual basis at the time the application is reviewed. The Board reviews each conviction based not only on the conviction itself in relation to the statutes, but also on the underlying issues that led to the conviction.

A conviction that does not, at first glance, appear to be substantially related to the qualifications, functions or duties of an engineer, land surveyor, or geologist may, under closer scrutiny, be revealed otherwise. All information related to an applicant's criminal history is considered. The specific conviction; when it occurred; the circumstances surrounding the conviction; the number of convictions; compliance with the court's terms and conditions; and rehabilitation are all factors considered when determining an applicant's eligibility for licensure.

Further information can be found in the regulations relating to Substantial Relationship Criteria, 16 CCR §416 and 16 CCR §3060, and Criteria for Rehabilitation, 16 CCR §418 and 16 CCR §3061.

How can I demonstrate rehabilitation?

Applicants are given the opportunity to explain any criminal conviction. You may be asked to do this in writing. In addition to providing an explanation, you may provide evidence of rehabilitation such as counseling, gainful employment, completion of an appropriate rehabilitation program, etc.

Further information can be found in the regulations relating to Criteria for Rehabilitation, 16 CCR §418 and 16 CCR §3061.

What if I get denied licensure?

If your application has been denied, you have the right to appeal the denial by requesting a Statement of Issues hearing, pursuant to the California Administrative Procedure Act (Government Code section 11370, et seq.). Engineering and land surveying applicants must submit a written request for a hearing within 60 days of the date of denial, pursuant to 16 CCR §429 (e). Geologist and geophysicist applicants must submit a written request for a hearing within 30 days of the date of denial, pursuant to B&P Code §7855.

What can I do to ensure that my application will not experience any unnecessary delays?

Please be aware that the number one reason that an application may be denied is the applicant's failure to accurately disclose his/her conviction record. Therefore, checking the "Yes" box when appropriate and providing the required information regarding each conviction are the most important things that an applicant can do to avoid unnecessary delays. In addition, responding promptly if contacted by staff will help.

APPROVAL OF WASHINGTON STATE SPECIFIC ENGINEERING GEOLOGY AND HYDROGEOLOGY EXAMINATIONS FOR COMITY LICENSURE (POSSIBLE ACTION)

As originally presented at the June 2012 Board meeting, the Board received a proposal from the Washington State Geologist Licensing Board to formalize a comity agreement between the two states for Certified Engineering Geologist (CEG) and Certified Hydrogeologist (CHG) licensing authority. The Washington State Board previously discussed this topic with the predecessor Board for Geologists and Geophysicists (BGG), however this agreement was never officially formalized by California. The Board directed staff and TAC to review and provide a report.

The Geologists/Geophysicists TAC met in January 2014 and again in May 2014 to discuss the Washington proposal and formed a subcommittee to review test plan specifications and experience/education requirements towards confirming adequate commonality and standards.

Professional Geologist Analysis

Since both states require a foundation Professional Geologist (PG) license as a prerequisite to the additional CEG or CHG authority, a comparison of the licensing requirements was required to be performed first. The subcommittee arrived at the conclusion that the initial licensing requirements for PG were substantially consistent with one exception; California requires passage of a state California Specific Examination (CSE) as a supplement to the ASBOG FG and PG examinations while Washington relies upon the ASBOG FG and PG exams only and does not require a supplemental state exam for PG licensure.

Engineering Geologist / Hydrogeologist Examinations and Experience Analysis

Additionally, it was observed by the subcommittee that:

- a. The current test plan specifications for each states' CEG and CHG exams are substantially equivalent in terms of the engineering geology specialty and that some of the uniqueness observed in the Washington specifications may cross over into California's CSE specifications.
- b. California required substantially more experience than Washington did to qualify for the CEG/CHG authority.

Recommendation

It is recommended that the Board accept the Washington State Specific Engineering Geology and Hydrogeology examinations as equivalent to the California examinations for the purposes of licensure by comity.

It should be noted that the applicant would still have to meet all other requirements for licensure, including being licensed as a PG in California (which would include passing the CSE exam) and meeting all of the education and experience requirements for licensure as a CEG or CHG in California.

It is recognized that a re-evaluation of this waiver would be required each time either state makes changes to the test plan specifications, laws and/or regulations, and licensing requirements.

IX. Approval of Delinquent Reinstatements

APPROVAL OF DELINQUENT REINSTATEMENTS

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

CIVIL

Donald Clark

Reinstate applicant's civil license once he/she takes and passes the California Seismic Principles and Engineering Surveying examinations, and pays all delinquent and renewal fees.

MECHANICAL

Thomas Van Le

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

ELECTRICAL

Steve L. Verdugt

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

AGRICULTURAL

Michael B. Lambert

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

X. Technical Advisory Committees (TACs)

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

Reports from Technical Advisory Committees (TACs) (Possible Action)

Neal Colwell (Civil Engineering TAC) and Hugh Robertson (Geology and Geophysicist TAC) volunteered to serve on a TAC sub-committee that will monitor and work with the California Department of Water Resources (DWR) committee formed to update the Urban Water Management Plan (UWMP) Guidebook. Susan Christ, Senior Registrar is liaison to the TAC sub-committee.

The DWR UWMP committee has been meeting on a monthly basis to update the 2010 Guidebook for 2015. The DWR committee will continue working on the development with a planned publication date of June 2015. 2015 UWMP's are due in 2016 as the reports include 2015 water use data which is collected at years end.

Neal Colwell attended the January 21, 2015 DWR committee meeting in Sacramento and reports that it was a working meeting in which chapters 5 (water supply) and 6 (water reliability) of the new guidebook were discussed.

Hugh Robertson will attend the next DWR committee meeting on February 11, 2015, at the Metropolitan Water District of Southern California office. The February meeting will discuss Chapter 7 of the guidebook, but meeting materials are not released prior to the meeting date. Materials from past meetings are on the DWR website at <http://www.water.ca.gov/urbanwatermanagement/uwmp2015.cfm>. It is important to note that that these are draft, working documents and do not represent any final determinations. Initially the guidebook was delineated into "sections", now the sections are designated as "chapters".

Susan Christ has contacted DWR staff to request DWR to include a statement in the new guidebook that clarifies that all engineering and geology work must be performed by or under the responsible charge of an appropriately-licensed individual. DWR has indicated they will review and consider this request. Here is an example of the suggested statements:

"All civil, electrical, and mechanical engineering work shall be performed by a California licensed professional in compliance with the requirements of the Professional Engineers Act, Business and Professions Code sections 6700-6799."

"All geology work shall be performed by a California licensed professional in compliance with the requirements of the Geologist and Geophysicist Act (Business and Professions Code sections 7800 – 7887."

XI. Liaison Reports

- A. ASBOG
- B. ABET
- C. NCEES
 - 1. Liaison Report for: 2015 Western Zone Interim Meeting
 - 2. Board President Assembly Report
- D. Technical and Professional Societies

XII. President's Report/Board Member Activities

XIII. Approval of Consent Items

- A. Approval of the Minutes of the November 13, 2014 Board Meeting

DRAFT

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

Department of General Services
3737 Main Street, Highgrove Room
Riverside, CA 95404

November 13, 2014

Thursday, November 13, 2014, beginning at 10:00 a.m.

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

II. Public Comment

Mark Norton, representing the American Society of Civil Engineers, (ASCE) Region 9 indicated they are lending support for the Board's efforts to continue to maintain a high standard of engineering education. He also informed the Board of a policy passed by ASCE known as the Body of Knowledge. Mr. Norton noted they also produce a newsletter that may serve as a voice for the Board. Ms. Jones Irish appreciated his outreach efforts.

Ms. Brooks arrived at 10:08 a.m.

Roger Hanlin, P.L.S. representing CLSA indicated they are in opposition of the Proposed Amendments to Title 16, California Code of Regulations Sections 416 and 3060 (Substantial Relationship Criteria) as brought forward in the agenda.

Mr. Duke explained the 15-day notice process if the Board should decide to accept the new language. This would be the formal time to comment on the new language. The comments would be directed towards the amendments to the language.

III. Legislation

A. Legislative Calendar

Mr. Alameida presented the legislative calendar and introduced important dates for January 2015 when statutes take effect, when the legislature reconvenes, and when the budget bill is submitted to the Governor.

B. Chaptered Legislation:

AB 186 Professions and vocations: military spouses: temporary licenses

STATUS: Changed position to watch. The Board will look into this in the future.

AB 1702 Professions and vocations: incarceration

STATUS: Introduced in February; Chaptered effective January 1.

AB 2396 Convictions: expungement: licenses

STATUS: Chaptered by Secretary of State

SB 1467 Professions and vocations

STATUS: Chaptered. Effective January 1

IV. Consideration of Rulemaking Proposals

Mr. Moore provided an update regarding the proposal to amend Title 16, California Code of Regulations Section 3005, which consisted of establishing a fee for retired status for geologists and geophysicists to mimic those of the engineers and surveyors. It was approved and will become effective January 1, 2015.

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

Mr. Moore reported that at the Board's direction, a joint TAC meeting was held October 29, 2014 in San Bernardino. He reported that it was a group consensus that the biggest aspect was education and outreach. Several TAC members agreed to prepare an article for inclusion in the next Board Bulletin to address this in more detail. CalGeo offered assistance.

B. Proposed Amendments to Title 16, California Code of Regulations Sections 416 and 3060 (Substantial Relationship Criteria)

Ms. Eissler reported that this proposal is to amend the substantial relationship criteria that the Board will use to determine if an act or crime is substantially related to the qualifications, functions, and duties of the profession when considering whether to deny issuing a license or to seek

disciplinary action against a license based on the crime or act. The Board discussed this issue in detail at prior meetings and directed staff to develop language to amend the regulations to include more items to give applicants and licensees a better understanding of what would be considered. The language, as previously approved by the Board, was noticed for public comment as required by the rulemaking process. Based on the comments received during the noticed public comment period, staff is recommending a change to the language as originally noticed.

Ms. Eissler noted the change would be to remove the phrase *Crimes and acts* and replace it with *A conviction of a crime* in one of the subdivisions. She further explained that staff recommends that no other changes be made.

Mr. Duke added that if the Board were to make this change, the changes would be noticed for an official 15-day comment period, and any comments directed at the specific changes that are received during that official comment period would be considered as well. He advised that the final language would be presented to the Board, along with any additional comments received. He also explained that the Office of Administrative Law reviews all comments and the Board's official response as part of the overall rulemaking file review process.

MOTION: Mr. Tami and Ms. Alavi moved to approve the modified text on pages 23-24 and direct staff to move forward with the 15-day public comment period.

During public comment, David Woolley expressed his concerns with the overall amendments proposed to be made.

Mr. Satorre moved to amend the motion.

Mr. Satorre withdrew his motion to amend the original motion.

VOTE: 9-0, Motion passed.

Mr. Duke noted that, based on changes to the Bagley-Keene Open Meeting Act that will become effective January 1, 2015, voting will need to be established with a roll call vote.

V. Administration

A. FY 2014/15 Budget Summary

Mr. Alameida reported on the 2014/15 Budget Overview. He indicated that expenditures within the PELS fund have decreased by \$20,000 as a result of decreased contracts for civil exam development. Revenue is down as a result of applications and renewals.

Contract expenditures have increased with the national exam within the Geology fund. Revenue has increased as a result of the applications and renewals. The budget allotment is \$1.39 million. Surplus deficit is \$327,000 and revenue to year-end \$1.06 million.

He noted that the proposal in the Sunset Report to potentially merge the two funds will be discussed at the legislative hearings.

Mr. Alameida summarized that there would be an insolvency in Fiscal Year 2016-17 as a result of changes to revenue with the Geology fund.

He reported that regulatory fee changes were discussed at the last meeting to have them become effective in Fiscal Year 2016-17 to prevent any insolvency issues.

VI. Enforcement

A. Enforcement Statistical Reports

Ms. Eissler reported that at the last several meetings, the Board discussed reducing the number of statistical charts that are included in the meeting materials, possibly having the full report once or twice per year and having a reduced amount at the rest of the meetings. For this meeting, she included the charts that she determined were the most pertinent including the number of investigations that are opened and completed each month, the number of open pending cases at the end of the fiscal year and month, the average aging days of open to completion of the investigation, the breakdown of aging of open cases, and the overview of the outcome of the completed investigations.

She removed the statistics that describe the alleged violations when the complaint is opened, the area of practice of the subject, the source of the complaint, and the more specific breakdown of the completed investigations that are closed without referral. She recommended the full report be provided at the first Board meeting after the end of the fiscal year.

Ms. Eissler advised that all of the statistics would continue to be maintained since they are used for other purposes, such as reports to DCA and the Legislature and for internal workload monitoring. She indicated that the reports would be available throughout the year upon request.

The Board agreed with these changes to the reporting of enforcement statistics at Board meetings.

B. Disclosure of Complaints and Enforcement Actions

Ms. Eissler reviewed the Board's disclosure policy and discussed what would be an appropriate time to publicize citations and accusations. She

clarified that in consideration of this item, changes in the disclosure policy relating to how long information is maintained on the Board's website be brought about on the next agenda. Mr. Tami volunteered to work with staff. Mr. Duke would like to be involved as well.

VII. Executive Officer's Report

A. Strategic Plan

Mr. Moore reported that the individual staff units have met to review the new Strategic Plan and have brought forth recommendations. An all-staff meeting is being organized to discuss these recommendations with the plan to present them at the next Board meeting for consideration as priorities for the first year's implementation.

B. Sunset Report

Mr. Moore reported that Board Staff worked very hard on the Sunset Report. He added that they were hand delivered to the legislative committees by Mr. Alameida. He advised that there had been some general concerns expressed by DCA as to whether the boards had specifically approved the reports that were submitted. He reminded the Board that the report covers historical information regarding the Board's operations as well as addressing new issues; the Board discussed and approved the new issues to be included at its July meeting. He also noted that the Board had appointed President Jones Irish and Vice President Stockton to work with staff to review and approve the reports. However, for clarity, he recommended that the Board take formal action to approve the 2014 Sunset Review Report.

MOTION: Mr. Tami and Ms. Brooks moved to approve the 2014 Sunset Review Report.

During public comment, Bob DeWitt, representing ACEC, asked for notification of when the hearing would take place.

Ms. Eissler indicated that the report is available on the Board's website.

VOTE: 9-0, motion passed.

C. Personnel

Mr. Moore reported that the Board is currently interviewing for additional staff to assist in both examinations and licensing. Both Mr. Alameida and Candace Cummins, the Board's Personnel Liaison Analyst, have been working with DCA to hire Permanent Intermittent (PI) employees.

Interviews will take place in the next few weeks to fill the vacant Enforcement Manager position.

Ray Mathe is no longer working for the Board. He is currently working with the Coachella Valley Water District. Mr. Satorre directed staff to compose a letter of commendation for Mr. Mathe.

D. BreEZe Update

Mr. Moore reported that DCA's efforts on BreEZe are focused on the design and implementation dates for Release II boards. There is also an audit currently underway to be completed by February 2015.

VIII. Exams/Licensing

A. Fall 2014 Examination Update

Mr. Moore reported that the national examinations were conducted without incident. The state examinations were also completed, and we are starting to receive preliminary analyses of candidate performance. Comments from candidates are currently being reviewed.

IX. Approval of Delinquent Reinstatements

No report given.

XIII. Approval of Consent Items

A. Approval of the Minutes of the September 25, 2014, Board Meeting

MOTION: Mr. Satorre and Mr. Silva moved to approve minutes.

VOTE: 9-0, motion passed

X. 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 on the Joint TAC meeting that took place October 29 in San Bernardino. Topics included the CalGEO request and the Department of Water Resources guidelines on preparation of underground water management plans. These items were reviewed by the TACs. Dr. Qureshi indicated that it was suggested that the Board prepare a letter to send to the State agency that prepares the guidelines recommending that, while the overall document may not be an engineering document, there were portions of it that relied on engineering work and that the guidelines should clarify which sections should be supported by engineering work and should be properly signed and sealed.

Mr. Moore also added that they discussed traffic engineering and how it relates to civil engineering. Dr. Qureshi explained that during the discussion, a consensus was reached by the end that there are elements that are

currently considered traffic engineering experience and work that do overlap with the definition of civil engineering work. Dr. Qureshi indicated that it was suggested by Mr. Moore to prepare regulations similar to land surveying and civil engineering where it is defined where the overlap boundary occurs.

XI. Liaison Reports

A. ASBOG

Mr. Moore reported that Mr. Zinn is currently at the ASBOG meeting. A report will be provided at the next Board meeting.

B. ABET

Mr. Donelson attended a visit as a Board observer for an institution that was recently awarded ABET status for electrical and mechanical courses.

Mr. Silva is concerned with the Board's outreach. He believes there are better methods and more opportunities for outreach efforts. President Jones Irish indicated that she and Mr. Silva will collaborate and come up with new ideas. Ms. Brooks added that she would like to participate.

C. NCEES

Mr. Moore reported that the Board Presidents Assembly is scheduled for February 6-7, 2015 in Atlanta, GA. Both President Jones Irish and Mr. Moore will attend. Mr. Tami added that the Board of Directors may be in attendance. He reported that there has been a decline in the number of individuals taking the Fundamentals of Engineering examination since the change to CBT with four exam windows during the calendar year. NCEES may go to one big window from January 1 through December 31. They believe that most of the closed times are during breaks when students may be more inclined to take the exams. Their motivation is to remove any impediments. He added that exam subversion has dropped dramatically since the examinations have gone computer based.

D. Technical and Professional Societies

Mr. Moore reported that past Board member, Carl Josephson, is still doing outreach. Ms. Roberts also attended and presented to a group of immigrant engineers in San Diego led by an individual who conducts a course to prepare them for the Fundamentals of Engineering examination.

Mr. Moore and Ms. Eissler attended the North County Civil Engineers and Land Surveyors Association in Escondido, CA.

During public comment, Mr. Woolley commended staff for their continued outreach efforts. Mr. Hanlin reported that the Riverside/San Bernardino CLSA Chapter meeting will take place November 13, 2014.

Mr. Woolley added that he wanted to make the Board aware of the Millennium Project in Los Angeles.

XIV. 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. Ruvyn Grutman v. Board for Professional Engineers, Land Surveyors, and Geologists, Los Angeles Superior Court Case No. BS145675
4. Ruvyn 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

Ms. Criswell reported that during Closed Session the Board took action on three stipulations, one default decision, and two proposed decisions. In addition, they discussed pending litigation as noticed.

XII. President's Report/Board Member Activities

President Jones Irish reported that she was involved in a DCA teleconference meeting regarding the BreEZe system and the anticipated rollout. There are a number of issues still being resolved. There is much work that needs to be done.

Mr. Moore reported that in addition to BreEZe, travel requests, BCP's, and legislation that would affect DCA were discussed during the meeting. They also discussed legal issues, the Bagley-Keene Open Meeting Act, and subpoena training. They also announced that the Form 700 will be available electronically.

XIV. Other Items Not Requiring Board Action

A. 2015 Board Meeting Schedule

Ms. Calderone presented the 2015 Board meeting calendar. The Board discussed the proposed Board meeting dates and due to a scheduling conflict, the only amendment was to move up the February 5-6 meeting to January 26-27, 2015.

XV. Adjourn

The meeting adjourned at 3:08

PUBLIC PRESENT

Roger Hanlin, P.L.S., CLSA

Mark Norton, P.E.

Kurt Hogan

Jay Seymour, CLSA

Talia Cortese, CPIL-USD

Bob DeWitt, ACEC

XIV. Other Items Not Requiring Board Action

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)]

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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
