

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

2535 Capitol Oaks Drive, Third Floor Conference Room
Sacramento, California 95833
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August 30, 2012

Board Members Present: Paul Wilburn, President; Erik Zinn, Vice President; Kathy Jones Irish; Carl Josephson; Mike Modugno; Philip Quartararo; Hong Beom Rhee; Jerry Silva; Robert Stockton; and Patrick Tami.

Board Members Absent: Ray Satorre and Michael Trujillo

Board Staff Present: Ric Moore (Executive Officer); Joanne Arnold (Assistant Executive Officer); Nancy Eissler (Enforcement Manager); Celina Calderone (Board Liaison); Ray Mathe (Staff Land Surveyor); Susan Christ (Staff Civil Engineer); Patty Smith (Analyst, Geology Program); Larry Kereszt (Enforcement Analyst); Tiffany Criswell (Enforcement Analyst); Linda Brown (Certification Manager); Jeff Alameida (Budget Analyst), Brooke Phayer, (Public Information Analyst) ErinLaPerle, (Analyst Geology Program) and Gary Duke (Legal Counsel).

- I. **Roll Call to Establish a Quorum** Roll call was taken, and a quorum was established.
- II. **Public Comment**

Mr. Copeland, representing PECG, alerted the Board to a concern raised by their membership regarding experience requirements for traffic engineering licensure and those individuals who hold a civil engineering license. He shared a case in which a candidate for the traffic engineering license does not have a civil engineering degree. The experience requirement for a civil engineering degree holder who has a PE license is less than those for individuals who hold a related degree and apply for the traffic engineering license. Mr. Copeland believes the areas are somewhat related and there should be some consideration for the civil engineering license that is held by this particular candidate. His request is that he would like the Board to investigate this further and identify the areas of the Business and Professions Code that would need to be amended in order to

rectify this issue and requests assistance from Board staff identifying the proper sections to be changed. Mr. Moore suggested contacting the Board's Civil Engineer Registrar Susan Christ, and Mr. Copeland thanked the Board for considering his request.

V. **Certificates of Authorization for Engineering, Land Surveying, Geological, and Geophysical Businesses**

Mr. Tami explained that, most states require companies that perform engineering and surveying work in their state to obtain a certificate of authorization which allows them to state who their licensee is and who is in responsible charge. Mr. Tami would like to investigate the possibility of amending the law to mandate that an Organization Record be completed. Currently, if someone does not have an Organization Record the Board simply requests one to be filed.

Ms. Eissler advised that would be beneficial if the Board had more authority over businesses where the business is required to obtain authorization from the Board that indicates that they are authorized and meet our legal requirements to offer their services here, whether they are a California business or out-of-state business. There are often inquiries, especially from companies based in other states asking if they need to obtain a certificate of authorization or once they have submitted an Organization Record form asking when they will get their certificate to practice; Board staff advises them that the Board does not issue certificates of authorization. The forms are geared so if the public were to contact the Board and ask about the business, the Board would have the information indicating that they were in compliance. Mr. Tami pointed out that the Disassociation Form is also beneficial in enforcement cases where an individual leaves a firm and the firm continues to use their license without their knowledge.

Mr. Tami is requesting that the Board direct staff to look into regulations for certificates of authorization. Mr. Duke indicated that currently, the Board does not have jurisdiction over firms themselves, just the individuals and would require statutory authority for it to be accomplished. Ms. Eissler added that there is no requirement in the Geologist and Geophysicist Act or regulations requiring the submission of any forms. Mr. Tami added that NCEES has model language that the Board can review.

President Wilburn directed staff to begin researching this issue and present recommendations at a future meeting.

VI. **Temporary Authorization Applications**

No report given.

VII. **Executive Officer's Report**

A. Legislation

1. Discussion of Legislation for 2011-2012

a. Pending Legislation:

Ms. Arnold provided an update regarding the legislation the Board is following.

AB 1588 Atkins. Professions and vocations: reservist licensees: fees and

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

BOARD POSITION: Support

STATUS: To Enrollment

AB 1750 Solorio. Rainwater Capture Act of 2012. This bill was amended August 24, 2012 and would authorize residential, commercial, and governmental land owners to install, maintain, and operate rain barrel systems and rainwater capture systems, as defined provided that the systems comply with specified requirements.

BOARD POSITION: Watch

STATUS: To Enrollment

AB 1904 Block. Professions and vocations: military spouses: expedited licensure. This bill would require a board within DCA to expedite the license process for an applicant who, holds a license in another jurisdiction, and is married to, or in a legal union with, an active duty member of the Armed Forces of the United States assigned to duty in California.

BOARD POSITION: Watch

STATUS: To Enrollment

AB 2570 Hill. Licensees: settlement agreements. This bill would prohibit a licensee who is regulated by DCA, from including or permitting to be included a provision in an agreement to settle a civil dispute that prohibits the other party in that dispute from contacting, filing a complaint with, or cooperating with the department, board, bureau or program, or that requires the other party to withdraw a complaint from the department, board, bureau, or program, except as specified.

BOARD POSITION: Support

STATUS: To Enrollment

SB 975 Wright. Professions and vocations: regulatory authority. This bill would provide that the California Architects Board and the Board for Professional Engineers, Land Surveyors, and Geologists have sole and exclusive authority to license and regulate the practice of the professions they regulate. No licensing requirements, as specified, shall be imposed upon a person licensed to practice one of those professions by code or by regulation promulgated except by the applicable board.

Ms. Arnold distributed the most recent version of the bill which was dated, August 22, 2012. Ms. Arnold stated that this bill has been amended to require the Board to hold hearing if anyone requested the Board make changes to its laws. She believes that this bill creates an unknown workload and burden for the Board and staff.

Mr. DeWitt, representing ACEC, stated that their organization is sponsoring the bill and are asking the Board for support. He indicated that the problem arose when the Water Resources Board imposed additional licensing requirements, and ACEC felt they were exceeding their authority. ACEC believes it is important that the Board control engineering practice and not diffuse it to other agencies. Mr. Tami believes it is important and the reason the Board exists. Mr. Duke indicated once people have that tool, the Board may become very busy and that it remains to be tested.
RECOMMENDED POSITION (8/30/12): Oppose
BOARD POSITION: Watch

MOTION: Mr. Zinn/Mr. Stockton moved to support.

VOTE: 6-4, motion carried. President Wilburn, Mr. Josephson, Ms. Irish, and Mr. Silva voted nay

SB 1061 Walters. Professional Engineers. This bill (which is identical to last year's SB 692) would change the disciplines currently licensed as "title act" engineers to "practice act" engineers. This bill also would authorize any licensed engineer to practice engineering work in any of those fields in which he or she is competent and proficient – but not necessarily licensed. This bill is dead.
BOARD POSITION: Oppose

SB 1576 Committee on Business, Professions and Economic Development. Professions and vocations. This is one of the Committee's omnibus bills. (Amends section 6795 of the Professional Engineer's Act and sections 8741, 8762 and 8773 of the LS Act.) This bill, among other things, revises the exemption from the taking of the LSIT to civil engineers licensed prior to January 1, 1982, expands the definition of "establish" when filing a record of survey to include "location, relocation, reestablishment or retracement," and corrects section 6795 to read that renewals are done every two years on a staggered quarterly basis rather than a monthly basis.
STATUS: Amended 8/23/12. Passed SEN and ASM Committees – to be heard on Assembly Floor.
BOARD POSITION: Support

B. Strategic Plan Update

Mr. Alameida provided a synopsis of what was completed in Fiscal Year 2011/2012. A multitude of tasks were completed such as increase in staff, submission of a BCP for a Geologist Registrar, received fingerprinting authority via legislation, approved fee structure, and elimination of the appeals of national examinations. Out of state travel is still outstanding, and the Board will continue to seek approval.

Mr. Alameida added there are items that Board staff is proposing to complete this fiscal year including seeking regulatory approval of

fingerprinting authority, expanding licensure outreach, and developing Board publications. He believes we can surpass the goals set. He will include more specific tasks next time.

C. Personnel

Mr. Moore announced that due to the new state budget requirements the Board was required to lay-off two student assistants and several retired annuitants. However, due to medical leaves, the Board was allowed to retain two of the retired annuitants until March. Joyce Hirano, Senior Civil Engineer Registrar, will be retiring by the end of the year. The Board has filled the fingerprinting position with a start date of September 4th and hopes to fill the examination analyst position soon.

D. Administrative Task Force

Mr. Moore will have recommendations for presentation at the next meeting.

VIII. Enforcement

B. Presentation on the Complaint Investigation Process

Mr. Moore provided information pertaining to the complaint investigation process. Mr. Moore explained that the focus is on our workload and what we have control over in process. The investigation phase is almost all within staff's control for the time frames to process. He advised that staff is reviewing the process and the time frames in order to set goals and shorten the timeframes. He explained that the complaint process is not a linear flow. When a complaint is received, an analyst is assigned to the case to investigate whether or not violations occurred. The analyst is then in contact with multiple individuals, such as the complainant and the subject, as needed. Analysts consult with the Board's various senior registrars during the investigation, as well as sending it to an independent expert. These are some examples of who the staff will contact. The Division of Investigation is also brought in to assist in getting in contact with a subject because of non-responsiveness. The analyst will interact with these various parties as necessary. Not all parties will be involved in all cases. It is dependent on the specifics of the complaint.

Ms. Eissler explained that there are approximately 50 cases per analyst; however, two have half a case load as they work on other duties that are not related to investigating the complaints.

Mr. Moore continued that once the analyst has compiled, documented, and made determinations necessary for the investigation, they then work with an independent expert to prepare a draft recommendation to submit to the enforcement manager for review and make the final recommendations which usually results in one of three scenarios: close with no action, refer for citation (informal enforcement action), or refer for formal disciplinary action. Mr. Duke expanded by saying the legal effect of the citation that is paid is that it is not an admission of guilt or violation. It is considered an enforcement action and not a disciplinary action; however, there are consequences as it is public record. Ms. Eissler added that if the

case is closed without action, it could be that there was a violation but it was not something where enforcement action needed to be taken. For example, if a land surveyor failed to file a record of survey and during the investigation, one was filed, enforcement action might not be taken and the subject would be considered to be in compliance, and the case would be closed. Under the Board's disclosure policy, if complaints were filed against this person within the last five years, it would be disclosed that there was a complaint, but that the issue was taken care of and no action was taken. Another category is if through the investigation it is determined that the subject did not violate the law, then the case is closed and not disclosed to the public as there was no violation.

When a case is referred for citation, the complainant and the subject are notified. The subject has an opportunity to contest the citation. The majority of the time they are aware of the issues as they have been involved during the investigative process. They will have an opportunity to request an informal conference and/or an administrative hearing. The informal conference is scheduled and consists of staff and the subject. These informal conferences are conducted either by phone or in person. The subject can choose to accept the citation or proceed with the administrative hearing. The administrative hearing involves the Deputy Attorney General and is held before the Office of Administrative Hearings. Ms. Eissler explained that following the informal conference, the citation can be dismissed in which case there would be no need for the formal appeal hearing; it can also be affirmed or modified where the fine could be reduced or have some of the violations removed.

Mr. Duke explained that this is not a revenue making process. Even when the Board receives cost recovery, the administrative law judge makes the determination based upon the reasonableness of the cost.

Ms. Eissler is hoping that at the next board meeting, a similar process can be done for the formal disciplinary action and get into working with the attorney general's office.

A. Enforcement Statistical Reports

Mr. Moore presented the new statistics for the Board agenda in hopes it will more effective in communicating enforcement statistics. He explained the complaint investigation phase statistics, including cases opened and completed, the average days from opening of a complaint investigation to completion of investigation, and open complaint investigations. Ms. Eissler indicated that at the previous Board meeting, staff was directed to change how the statistics are presented.

Mr. Moore reviewed the outcome of completed investigations and pointed out the number of complaint investigations closed without further action versus those referred. He also reviewed the number of citations issued, the number of citation made final, the average days between date of issuance of a citation and the date the citation became final, and the average days from the opening of the complaint to the investigation the date the citation becomes final.

Mr. Moore also presented graphs representing the formal disciplinary action against licensees, which show the number of licensees included that revealed the number of licensees referred for formal disciplinary action and the number of final disciplinary decisions, the average days for referral for formal disciplinary action to effective date of final decision and the average days from opening of complaints investigation to effective date of final decision.

Mr. Moore advised that staff is reviewing the internal processed and time frames to determine why the age of the investigation phases has been increasing. Ms. Eissler explained that staff has almost completely reduced the backlog of cases awaiting issuance of a citation or referral for formal disciplinary action and is now focusing on the investigation phase. Mr. Wilburn questioned whether the issue was the process or the resources. Mr. Moore advised that it is likely some of both, but staff is still reviewing to be able to better answer that. Mr. Tami asked if internal time frames, such as the time from receipt to opening the case, were tracked. Ms. Eissler advised that internal time frames have not been tracked in the past, but they will be now so that they can be reported on in the future and used to determine the areas needing improvement.

Ms. Eissler advised the Board that she believes some of the delays in processing formal disciplinary cases is caused by the office of Administrative Hearings (OAH), not because they do not do a good job, but because they do not have sufficient resources to hear cases for all of the state agencies in a timely manner. She asked the Board to consider sending a letter to the Agency Secretary expressing these concerns and recommending additional resources for OAH. President Wilburn asked for additional statistics regarding the delays before sending such a letter.

President Wilburn thanked staff for hard work in assembling statistics and graphs.

III. **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)]

IV. **Open Session to Announce the Results of Closed Session**

During Closed Session the Board took action on three stipulations, two default decisions, and two proposed decisions

IX. **Exams/Licensing**

A. October 2012 Examination Update

Mr. Mathe provided an update on the fall examinations. National examination scheduling should be completed by September 6th and State examination scheduling should be completed by September 14th.

Registration for the EIT and LSIT examinations goes directly to NCEES. Preliminary projections may exceed prior numbers as the window to

register is longer. Applicants self-certify and once they pass the examination they would apply with the Board. Mr. Moore indicated that five other states have changed their process as well. It has been well received. It is helping the cashiers as well as staff in the licensing unit.

X. Outreach

- A. Request for Articles for the Summer Bulletin
- B. Outreach efforts – Status on Social Media and College/University Programs

Mr. Phayer, provided information regarding the status of the Board's social media program, such as Facebook and Twitter, that conform with state guidelines. The intention of these types of social media will help educate and reach out to the public he hopes these programs will be running by the next board meeting.

He also discussed ABET visits and is developing a database of contact information for every college and university in California that has programs that pertain to engineering, surveying, and geology. He is also compiling information for the various observers that will be conducting ABET visits so that they are well informed of their responsibilities as an observer.

XI. Approval of Delinquent Reinstatements

MOTION: Mr. Tami/Mr. Zinn moved to approve.

VOTE: 10-0, motion carried.

XII. Consideration of Rulemaking Proposals

- A. Request for Reconsideration of Denial of Request for Regulatory Action pursuant to Government Code section 11340.6 – Request to Amend Title 16, California Code of Regulations (CCR) section 424 (Experience Requirements – Professional Engineers)

Ms. Eissler stated that at the last Board meeting, the Board considered a request from Mr. William Johns asking the Board to pursue regulatory action to amend its regulations relating to experience requirements for licensure; however, the Board denied his request. Mr. Johns sent correspondence asking the Board to reconsider the denial. Ms. Eissler indicated that the board can choose to grant his request for reconsideration and direct Board staff to begin the rulemaking process to amend Board Rule 424 as Mr. Johns has requested or deny his request for reconsideration.

Dr. Rhee expressed his belief that education should be the foundation for the experience.

MOTION: Dr. Rhee/Mr. Tami moved to deny request.

VOTE: 10-0, motion carried.

- B. Geologists and Geophysicists TAC recommendation to amend 16 CCR

3003 (b) and (e) (definitions)

Ms. LaPerle, indicated that the Geology TAC has been working on proposed language for amendments to 16 CCR 3003(b) and (e). 16 CCR 3003(b) has to do with the definition of engineering geology and Section 3003(e) deals with the definition of professional geophysical work. The reason for the proposed changes is to clarify vague language. The TAC is seeking Board approval of proposed language to move forward with the rulemaking process.

MOTION: Mr. Zinn/Mr. Modugno moved to approve.

VOTE: 10-0, motion carried.

XIII. **Information Technology Updates**

A. Request for Change/Online Renewals

Mr. Donelson provided an update on the legacy hard-freeze exemption request to allow all engineering license types to renew online with a credit card. Currently, there are only four license types that can. They have provided us with the first week in October to bring it online to incorporate the additional nineteen license types; however, it will not include the Geology program licenses.

XIV. **Administration**

A. FY 2011/12 Budget Overview

Mr. Alameida provided an overview of the fiscal year 2011/12. The budget allotment was \$10.47 million and expenditures were \$10.46 million with a surplus of \$11,525. The revenue generated was \$10.1 million with applications about the same level as last year and a slight increase in renewals.

B. FY 2012/13 Budget Introduction

Budget appropriation for the PELS fund is \$9.32 million. The decrease is due to doing away with the examination administration contracts.

Geologist and Geophysicist Account was \$1.34 million and expenditures totaled \$1 million with a \$328,679 surplus which has been the normal amount for the past couple of years since the consolidation of the Boards.

Applications and renewals have slightly decreased versus last year's figures. Although there is a decrease, revenue should remain consistent for the Geologist and Geophysicist Account.

Budget appropriation for the Geology Program is \$1.37 million.

C. Application Statistics

Based on the new procedures that have been implemented with the EIT/LSIT application process, it was thought that there would be a more streamlined application submittal process. However, there has not been a significant amount of applications to see if there has been an impact. A report at the next Board meeting will be provided once six months of data has been collected.

XV. **Technical Advisory Committees (TACs)**

A. Board Assignments to TACs

Mr. Moore provided an update on the various TACs by indicating that there is an active Geology TAC and Land Surveying TAC. He suggested since there is now a civil engineer on Board, another committee may be something to consider.

B. Appointment of TAC Members

No action taken.

C. Reports from the TACs

1. Recommendation to Establish a Retired License Status for Geologists and Geophysicists

MOTION: Mr. Zinn/Mr. Josephson moved to authorize staff to pursue rulemaking process.

VOTE: 10-0, motion carried.

Mr. Mathe reported that the LS TAC met on July 6th and they worked on assembling a workplan that better explains the function of the TAC. This workplan will be presented at the next October Board meeting.

XVI. **Liaison Reports**

A. ASBOG

Mr. Moore stated that there will be a national annual meeting this fall in Nebraska for which we will not be able to acquire the Out of State Travel approval to attend. He reiterated that, unfortunately, the Board does not have a voice in decision making.

B. ABET

Mr. Phayer will be in touch with various Board members to be observers.

C. NCEES

Mr. Josephson indicated that there have been three administrations of the National Structural examination. The pass rate for the last structural examination for California was the mid-40's which is traditionally higher. Other states on the west coast are concerned as the pass rate has increased greatly and wonder if this is an appropriate examination for testing high seismic design. They are going to continue to utilize the national examination; however, the other west coast state are going to monitor it carefully over the next several administrations and believes California should follow suit. He foresees the pass rate will increase because the structural examination fee is going from \$275 to over \$1,100 and may filter out those who are not serious and have not studied sufficiently.

Mr. Tami added that the April 2013 Western Zone meeting will take place in San Francisco. Mr. Moore indicated that the Board staff is trying to work on a budget with NCEES. He asked the Board to contribute input on activities and speakers.

D. Technical and Professional Societies

No report given.

XVII. **President's Report/Board Member Activities**

President Wilburn welcomed new Board Members Kathy Jones Irish and Bob Stockton.

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

Mr. Moore noted that the next Board meeting will take place October 11-12, 2012 in Southern California.

XIX. **Approval of Consent Items**

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

A. Approval of the Minutes of the June 28, 2012 Board Meeting with amendment.

MOTION: Mr. Tami/Mr. Quartararo moved to approve minutes with correction in item XIII B. to reflect the change from Jahns to Johns.

VOTE: 7-0-2, motion carried.

Two abstentions Bob Stockton and Kathy Jones

XX. **Adjourn**

PUBLIC PRESENT

Roger Hanlin, CLSA
Erin Grisby, USD, CPIL
Craig Copelan, PECG
Bob DeWitt, ACEC