

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

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Friday, December 7, 2012, beginning at 10:00 a.m.

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

Board Members Absent: Kathy Jones Irish; Philip Quartararo; and Hong Beom Rhee

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

I. Roll Call to Establish a Quorum – The meeting was called to order by President Paul Wilburn at 10:05 a.m. Roll call was taken, and a quorum was established.

II. Public Comment

Craig Copelan, representing PECG, presented two items to the Board. The first item was raised by a member of PECG regarding experience requirements for traffic engineering license. This person attained her license through work experience and had a degree in a related technical engineering area, not necessarily from an ABET accredited university. She earned her work experience and sat for the exam. It has now been a couple of years since she earned her license and is interested in obtaining an additional title act license in the area of traffic engineering and discovered that because she does not have a degree from an ABET accredited institution it is necessary for her to go through the work years of experience again. PECG is concerned and would like to see people advance in their area by obtaining their licenses. PECG is preparing correspondence recommending changes to Board Rule 424.

The second issue relates to employees within the Air Resources Board (ARB) who are interested in obtaining the necessary experience for licensure within the area of civil engineering but are being denied the opportunity to sit for the exam.

Mr. Copelan introduced Mr. Earl Withycombe and Jeremy Herbert who provided information about the academic institutions in California that have courses within the area of air resources and air quality.

Mr. Withycombe distributed a handout in reference to qualifying ARB engineers for admission to the California Civil examination. He indicated the applicants were denied admission to the civil engineering exam because work experience was not deemed to be civil engineering as it was not related to fixed works as specified in Business and Professions Code 6731.

Mr. Withycombe provided some history of Business and Professions Code 6731 adoption and air pollution control and recommend clarification of Business and Professions Code 6731.

He asked that the Board consider an interpretation for use by civil engineering graduates who work for the ARB, who want to know what types of qualifying experience they can gain with the ARB that would be credible and would be acceptable for admission to the examination. Another option would be to adopt regulation or change statute.

Mr. Withycombe stated that 48 states have adopted credentialing processes and registered environmental engineers with the exception of California and Hawaii. He recommends appointment of a task force to review the ARB civil examination decisions and recommend policies for interpreting 6731. Secondly, the task force should review the range of ARB engineer job duties and recommend a list of duties that qualify as acceptable work experience. In addition, he would like to have the task force review the definition of Civil Engineering adopted by other states and recommend changes to the 1931 definition.

Jeremy Herbert spoke with regards to his denial into the examination. He is a recent graduate from California State University, Sacramento. In his curriculum, he was provided with air pollution education. Once he discovered that there was evidence that civil engineering students being denied access to the PE exam with ARB experience, he began to research several universities for air quality classes in civil engineering.

He indicated that air quality does not fit in chemical engineering but that is what is being offered for licensure in lieu of the civil examination.

Mr. Stockton asked to confirm what Mr. Herbert said, that in order to further advance in the ARB you are required to obtain licensure. Mr. Herbert responded that in state service there are ranges A, B, C, and D. Depending on the experience one has in state service will determine the range you are in. One can promote as high as range C without licensure.

Mr. Herbert is currently finishing an analysis for assisting the Air Quality District with long-range planning. He is involved in the Transportation Conformity and General Conformity to make long range decisions.

President Wilburn directed the Civil TAC to review this issue and determine what actions, if any, the Board may want to consider.

Rick Keene representing the Geotechnical Engineers Association of California indicated that they are preparing legislative concepts which have been discussed with staff. There is an issue with the automatic referral cases to the Board. If someone has a settlement in a case that exceeds \$50,000.00, they are automatically referred to the Board for a disciplinary review. The issue is that \$50,000.00 is the deductible limit on most insurance policies. The insurance companies can settle those without permission of the engineer and, therefore, those cases are automatically referred to the Board for discipline. They would like to work out a solution and possibly moving the limit so that it is more than \$50,000.00. He understands the Board is concerned about consumer protection. One idea is to drop the limit in some cases, perhaps an adjudication of liability in exchange for an adjustment.

Rob McMillan commended the Board staff for online renewals.

V. Executive Officer's Report

A. Legislation

1. Discussion of Legislation for 2013
Currently, there is no new legislation.
2. Legislative Proposals
 - a. Update on Amendments to Business and Professions Code Section 27 Regarding Address of Record Available Via the Website.

Mr. Moore stated that at this time the Board has researched other boards within DCA and also discussed it with DCA's Policy Review Unit. They have indicated that they would not be in support of an amendment to Section 27. They believe that the way the current language reads is supporting the consumers and provides licensees an option to use an alternate address other than a home address. It was also discussed with GV Ayers, consultant for the Senate Business, Professions and Economic Development Committee. He provided some insight and indicated that it would not go much further. At this point, a sponsor is still needed. Mr. Duke added that the Department of Consumer Affairs is for transparency and added that there is a provision in the law that allows people to use an alternate address of record. Mr. Tami pointed out that the safety and wellbeing of the licensees should take precedence over transparency. Mr. Moore indicated that research with other boards could be done to gain joint interest. Ms. Arnold said that it will be next to impossible to obtain as

author considering DCA and the Senate Business and Professions committee have indicated they likely would oppose it.

Mr. Moore introduced Jeff Alameida, Larry Kereszt, and Erin LaPerle as the Board's legislative committee.

b. Update on Certificates of Authorization for Engineering, Land Surveying, Geological, and Geophysical Businesses

Mr. Alameida pointed out that Certificates of Authorization or Organizational Records are required from businesses that identify the principle in charge. For this purpose, staff can seek out someone to pinpoint in regards to the services provided. The direction from the Board was to research and possibly modify the form. The term used nationally is Certificate of Authorization. Geology has no statutory authority for a Certificate of Authorization. Mr. Alameida researched other states to determine who has certificates of authorization. He discovered that of 56 states and territories, 41 required a type of certificate of authorization. Twelve states do not require them and he is still awaiting information from the three remaining states. Other research included fees, renewals, etc. Suggested seeking out a more defined responsible charge definition as this may open the door to possible licensing businesses.

Mr. Moore conferred with G.V. Ayers and they agreed that it is not a candidate for omnibus legislation, because it is possibly too controversial. It would require more research. BreZE may help. They also reached out to various professional societies which indicated that it appeared to be another business tax and possibly taking the focus off of the licensed individual. Mr. Moore added that workload increase must be considered, as well as an examination of responsible charge criteria, he recommends more research. Mr. Tami wondered why staff workload would be affected since the workload for the current Organization Record would just be replaced by this workload.

d. Update on Recommendation to Establish a Retired License Status for Professional Geologists and Geophysicists

Ms. LaPerle recalled from the August 2012 Board meeting that the Board approved staff to pursue the rulemaking process for the purpose of establishing a retired status for Geologists and Geophysicists. At that time, there was discussion about making the change through the rulemaking process. However, after further review and discussion, staff determined that legislation needs to be pursued and not a regulatory change to establish retired status. At this time a new motion is needed to amend and clarify the previous motion made at the August 2012 Board meeting.

MOTION: Mr. Tami and Mr. Stockton moved to pursue legislation to create the retired license for Geologists and Geophysicists.

VOTE: 9-0, Motion Carried

- c. Update on Temporary Authorization Repeal for Engineering, Geology, and Geophysics (Business and Professions Code Sections 6760, 7848, and 7848.1)

Ms. Arnold indicated that this will be included on the omnibus bill and language prepared to repeal the current temporary authorization for engineers will be prepared.

- e. Update on Recommendation to Establish Written Contracts for Professional Geologists and Geophysicists

Ms. Arnold indicated that they will be seeking an author. Mr. Moore added that CalGEO is in support and offered assistance in seeking a sponsor. They feel that it would be beneficial. Ms. Arnold pointed out that AEG is no longer in opposition.

B. Strategic Plan Update

- 1. Action Plan Summary for FY 2012- 2013

Mr. Moore provided a status update for the Board's goals for 2012-2013. Mr. Alameida indicated that the Geology BCP that was proposed for the Senior Registrar position was approved and will be incorporated into the Governor's 2013-2014 budget proposal. Negotiations took place and the Board's savings were used to support the position. Mr. Moore added that they are in the process of reviewing the classification for the Senior Registrar position. Currently they are working with DCA's Personnel office to help expedite process. Mr. Moore stated that the Board is half-way through the Strategic Plan and suggested that Board members review the Strategic Plan and provide suggestions and comments to him prior to the January Board meeting.

C. Personnel

Joyce Hirano, Senior Registrar, will be retiring at the end of the year; temporary staff has been hired to assist in the examination unit due to staff member on maternity leave; and effective Monday December 10, the office will have a new receptionist as Venessa Martinez left the Board.

D. Administrative Task Force

Mr. Moore indicated that Gregg Brandow and Jim Foley will assist with the Task Force. He has also reached out to several geology and land surveying experts for the application audit.

Mr. Moore and Ms. Eissler have been working to gather as much information before involving Mr. Brandow and Mr. Foley on the enforcement audit. The enforcement goal will be to ensure that the process is operating effectively, efficiently, and in a fair and impartial manner.

Mr. Moore was reminded that Mr. Josephson offered to assist as liaison with the Board in the legislative effort. Mr. Stockton has provided contacts as well, to help in the search for a sponsor.

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

The Board took action on four stipulations, one default decision, and two proposed decisions.

VI. Enforcement

A. Enforcement Statistical Reports

Ms. Eissler provided several charts that provided information on various areas within enforcement.

The first chart referenced sources of complaints, such as complaints from the public, Government agency or law enforcement, profession, internal or other or from reporting of legal actions program (RLAP).

The category of alleged violations at the opening of the complaint investigation case chart includes competence/negligence, contract, fraud, failure to file, unlicensed activity, delinquents, exam subversion, code of professional conduct, and other.

The area of practice/licensure of subject is broken down into the following categories: unlicensed activity relating to the practice of professional engineering and unlicensed activity relating to the practice of land surveying, allegations relating to the practice of land surveying by a PLS, Pre-82 RCE-S allegations relating to the practice of land surveying by a Pre-82 Civil Engineer, allegations relating to the practice of civil, electrical, mechanical engineering, and other which entails allegations relating to the practice of any other discipline of engineering by a licensee in the specific discipline such as Title Act disciplines.

Mr. Modugno would like to see this type of information in the Board bulletin to inform the public.

Ms. Eissler recalled that at the last Board meeting, there was a question in reference to the fines collected through Franchise Tax Board (FTB). When a citation becomes final and the person has not paid the fine, they are referred to FTB where they will attach tax refunds or lottery winnings. This occurs mostly with unlicensed people. With licensees, if they fail to pay the fine they

cannot renew their license. A report recently released by FTB stated that beginning around April or May of 2012 and through the middle of November, 2012, 49 citations were referred to FTB for a total amount of \$209,000.00. This is dependent on filing of their taxes and being owed a refund, or lottery winnings. To participate in this program we must be able to identify the person with a Social Security number. Ms. Eissler can provide this information on a periodic basis and if any funds are collected from the program.

B. Presentation on Probation Monitoring

Ms. Eissler explained that Probation Monitoring is what occurs after a formal disciplinary decision becomes effective. If it orders outright revocation or voluntary surrender of a license, on the effective date, the license status is updated in the database and the subject is notified to return the wall certificate and pocket identification card.

If the decision orders any kind of terms and conditions of compliance it goes into the probation monitoring program. The probation monitor communicates the terms and conditions and how to comply. Ms. Eissler included a sample letter that outlines the terms and conditions specified in the decision and consequences if they fail to comply. The decision is the legal document that the subject must comply with even in the event they do not receive a letter that outlines procedures. The probationer is in contact with Ms. Eissler, as the probation monitor, to send her information on courses or if they have questions. If they have not complied by the deadline, she sends a letter that provides an opportunity to comply before further action is taken against the license. If they do not comply, action is taken to impose the stayed revocation. It then goes through the formal disciplinary process for further action. If the probationer complies with all the terms and conditions and has successfully completed it within the time period allotted, their license is unconditionally restored.

VII. Exams/Licensing

A. Examination Update

Mr. Mathe reported that the traffic exam was administered October 25, the geotechnical exam was administered October 24, the engineering surveying and seismic principles exams were administered over a three-week period from October 17 through November 7, provided through Computer Based Testing which was offered nationwide. There were three candidates that were affected by Hurricane Sandy but were rescheduled.

The National PE and surveying exams were administered October 26 and the FE and FS were administered October 27 and the 16-hour Structural exam was administered October 26 and 27 with a portion of the results coming in and data is being reviewed. Mr. Mathe is optimistic that results will be released by the end of December. Mr. Josephson indicated that structural grading was going to take place over the weekend in Clemson, NC in which a significant number of California licensees are participating.

December 17 through February 21, 2013 will be the window to register for the NCEES examinations. The final filing date for the PE and PLS refile applications will be January 22, 2013. October 2013 will be the last pencil to paper examination for the Fundamentals of Engineering and Fundamentals of Surveying. Computer based testing will commence in 2014.

There was conflicting information on the NCEES website that indicated that the professional surveyor examination for April 2013 will be open book when in fact it is closed book. Mr. Tami noted that closed book does not mean closed reference. There may be supplied reference provided by NCEES similar to the fundamentals exams.

B. Audit of National Professional Geologist Written Examinations Outline

Mr. Moore discussed that the vendor for the geology based exams, OPES is working on an occupational analysis for state exams and also an audit of the ASBOG national exam. They have reached out to ASBOG to acquire information and requested assistance from the Board in contacting them to negotiate more information to help make the audit more effective in terms of sharing information.

VIII. Approval of Delinquent Reinstatements

MOTION: Mr. Josephson and Mr. Satorre move to approve

VOTE: 9-0, Motion Carried

IX. Administration

A. FY 2012/13 Budget Overview

Mr. Alameida provided an overview of the budget process and breakdowns. He explained that expenditure authority is broken down into two categories, non-discretionary and discretionary. Non-discretionary includes salaries and wages, staff benefits, and pro-rata. Discretionary includes general day-to-day operating expense, travel, training, and enforcement.

Mr. Alameida introduced the various Revenue and Revenue codes. Application/License Fees revenue code are categorized under 125700, Renewal fees are categorized under 12580, and delinquency fees are categorized under 125900. These are coded as part of the CalStars accounting and reporting system.

He explained that appropriation is the annual expenditure authority approved by the Governor. The Governor is proposing the next budget for 2013-14 by January 10, 2013. The table provided is a snapshot of how it appears on the Department of Finance's website specifically for our program and that funds are exchanged through what is referred to as Fund Codes.

In his presentation he provided pie charts that identified projected expenditures and projected revenue for both PELS and Geology.

Items that may impact future funding include the budget change proposals (BCP's) for Senior Registrar, General fund loans, and the Pilot Performance Based Budgeting program (DCA)

The 2012-13 Budget overview indicates expenditures have been reduced by \$4.0 million versus last Fiscal Year as a result of no longer administering national exams. Applications have decreased as a result of no longer requiring EIT and LSIT applications prior to sitting for examination. The Board projects applications to increase after the first exam cycle.

For the Geology Fund, expenditures have increased as a result of multiple exam development and occupational analysis contracts with OPES. Overall expenditures and revenue at year-end should remain consistent with historical averages.

X. Technical Advisory Committees (TACs)

A. Board Assignments to TACs – There may be future assignments as both Mr. Stockton and Mr. Josephson have expressed interest in starting TAC's and staff is currently working on recruitment. Mr. Tami reported a vacancy on the Land Surveying TAC.

B. Appointment of TAC Members - No Report given

C. Reports from the TACs

1. Reports from the Geology and Geophysics TAC

Mr. Zinn provided a report and indicated that they would like to make a language change to the qualifications for registration for geologists. They completed a draft work plan that they would like Board approval for at the January meeting and would like TAC member, William Owen, geophysicist, to provide a presentation on subsurface utility locating guidelines to get guidance from the Board as there are professional issues that are confusing to the consumer, geophysicists, and surveyors. Mr. Moore indicated that it would be helpful.

2. Report from the Land Surveying TAC

Mr. Mathe provided a report from the October 19, 2012 LS TAC meeting. As Mr. Tami noted, one member resigned and the Board is currently taking applications for members. They discussed Board Rule 425, which is the regulation that revolves around the qualifications for the LS examination. A revision in language may need to take place to keep up with changing technology.

XI. Liaison Reports

A. ASBOG – Mr. Moore indicated that the Board is currently reaching out to them to gain information on how they did their recent occupational analysis for the national examination as to not reinvent the wheel.

- B. ABET - Mr. Phayer provided a report on the ABET visits that took place. Mr. Tami pointed out that per ABET, the names of the schools visited are not to be disclosed. Mr. Phayer continued by indicating that the level of communication can be greater between schools and ABET; however, the schools were satisfied with the level of participation from the Board. Mr. Modugno added that a school administrator requested a Fundamentals of Engineering exam presentation. Possibly assemble a package presentation for all schools.

President Wilburn also expressed that he received a request to participate in a lecture in an engineering professionalism course.

C. NCEES

Mr. Moore reported that NCEES is seeking nominations for secretary and treasurer for Western Zone and also nominations for Distinguished Service awards. He also indicated that the 2013 Western Zone budget was approved, and we are finalizing speakers. The Board President Assembly will take place February 8 and 9, 2013. Board Presidents are encouraged to attend.

Mr. Tami reported that the Mobility Task Force is trying to make mobility between states easier for someone who is already licensed.

Mr. Josephson indicated that NCEES will be hosting a structural item writing session in Sacramento in January 2013.

D. Technical and Professional Societies

Mr. Moore reported that staff is attending exam preparation seminars in Sacramento and the East Bay CLSA to discuss CBT. He has been requested to sit on a panel for the Fresno State Geomatics conference in January regarding the benefits and importance of licensure. He will also be speaking at the California/Nevada Civil Engineering Land Surveying Association's Annual Meeting January 24, 2013. The Board is also receiving requests for speaking engagements at professional practices committees for ACEC chapters.

Mr. Hanlin, representing CLSA, expressed his appreciation for Board staff attending chapter meetings and participating in forums.

XII. President's Report/Board Member Activities - No report given

XIII. Other Items Not Requiring Board Action

Mr. Moore indicated that FE/FS results will be released soon. Email sent to all California candidates who took exam regarding certification process. Mr. Silva thanked Mr. Moore and Staff for all their hard work.

XIV. 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 October 11-12, 2012 Board Meeting

Correct the spelling of Ms. Eissler's name and correct location of meeting.

MOTION: Mr. Silva and President Wilburn moved to approve minutes as corrected.

VOTE: 9-0, Motion Carried

XV. Adjourn

PUBLIC PRESENT

Craig Copelan

Annette Lockhart

Earl Withycombe

Jeremy Herbert

Bob DeWitt

Roger Hanlin

Bob Lokteff

Rick Keene

Steve Hao

