

Title 16. BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS

NOTICE IS HEREBY GIVEN that the Board for Professional Engineers, Land Surveyors, and Geologists (Board) is proposing to take the action described in the Informative Digest. The Board does not intend to hold a hearing in this matter. If an interested party wishes that a hearing be held, he or she must make the request in writing to the Board no later than 5 p.m. on July 15, 2013. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text.

With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in the Notice as the contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office no later than 5:00 p.m. on July 29, 2013.

Authority and Reference: Pursuant to the authority vested in Sections 6716, 7818, and 8710 of the Business and Professions Code and Section 11400.20 of the Government Code, and to implement, interpret or make specific Sections 125.3, 475, 480, 481, 482, 490, 493, 494, 6775, 6776, 7860, 7861, 7862, 7863, 7872, 8780, 8781 of the Business and Professions Code, and Sections 11400.20, 11415.60, 11425.50 and 11519 of the Government Code, the Board is considering changes to Division 5 and Division 29 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST

California Business and Professions (B&P) Code sections 6716, 7818, and 8710 authorize the Board to adopt, amend, and repeal regulations as may be reasonably necessary to enable the Board to implement laws relating to the practices of engineering, land surveying, geology, and geophysics.

Pursuant to B&P Code sections 6710.1, 7810.1, and 8710.1, the Board's highest priority is the protection of the public through the administration of its licensing, regulatory, and disciplinary functions. The intent of the proposed amendments is to strengthen the Board's enforcement regulations by standardizing the Board's regulations (among the professions that the Board regulates), clarify language that is unclear or vague, and make the language easily accessible to the public, in an overall effort to strengthen public safety.

The Board's intent is to also ensure that all regulations are clear, relevant, unambiguous, and functional and to implement regulatory actions that provide consistency among all of the Board's regulated professions, in accordance with the Board's 2011-2014 Strategic Plan. Since the implementation of ABX4 20 (Strickland and Huber, Chapter 18, Statutes of 2009-2010 Fourth Extraordinary Session), which eliminated the Board for Geologists and Geophysicists and transferred the jurisdiction to regulate the practices of geology and geophysics to the Board for Professional Engineers and Land Surveyors (now the Board for Professional Engineers, Land

Surveyors and Geologists), the Board has made an ongoing effort to standardize regulations where necessary and applicable.

The proposed regulatory action provides consistency and standardization among the enforcement regulations of Division 29 of Title 16 of the California Code of Regulations (Regulations Relating to the Practices of Geology and Geophysics), and Division 5 of Title 16 of the California Code of Regulations (Board Rules and Regulations Relating to the Practices of Professional Engineering and Professional Land Surveying). The standardization eliminates confusion for licensees and the public, and makes it easier to follow the law, strengthens the regulations by making amendments where information is lacking, updates outdated language, and promotes consistency among the application of the law for Professional Engineers, Land Surveyors, Geologists and Geophysicists.

The proposed changes are as follows:

- 16 CCR 3060 -Substantial Relationship Criteria

The proposed amendments would specify that aiding and abetting any person in a violation of the Geologist and Geophysicist Act and a conviction of a crime arising from or in connection with the practice of professional geology or geophysics are grounds for denial, suspension, or revocation of a license.

Terminology was also updated throughout the regulation in order to reflect the current terminology used for a licensee. For example, the word “registration” has been changed to “license.” Also, “professional” and “specialty” have been added in order to reflect the current license titles that are specified in statute. Effective January 1, 2005, with the passage of SB 1914 (Committee on Business and Professions, Chapter 865, Statutes of 2004), the title for a licensed geologist in the State of California changed from Registered Geologist (RG) to Professional Geologist (PG).

- 16 CCR 3061 -Criteria for Rehabilitation

The proposed amendments would (1) add the total criminal record and evidence of expungement as factors of consideration when denying an applicant for licensure; (2) include any act(s) committed prior to or subsequent to the act(s) or offense(s) under consideration as grounds for suspension or revocation under B&P Code section 490; and (3) include the criteria to be taken into account when considering a petition for reinstatement, such as educational courses taken; work done under the responsible charge of a licensee or a person legally authorized to practice; payment of restitution to the consumer; the potential harm that could be caused by the reinstatement; disciplinary history, other than criminal actions, after the revocation; the recognition by the petitioner of his or her actions/behavior that led to the revocation; and correction of the actions/behavior that led to the revocation.

- 16 CCR 3064 and 419 -Disciplinary Orders

Sections 3064 and 419 outline what the Board can order as disciplinary action against a licensee. Existing law indicates that the Board shall consider the Board’s “Disciplinary Guidelines” for deciding how to carry out disciplinary action against a licensee. Section

3064 does not elaborate regarding how to carry out disciplinary action, except to refer to the “Disciplinary Guidelines” and indicate that deviation from the guidelines can occur at the Board’s discretion based on the facts of a case. Currently, in order for a consumer or licensee to read information regarding Professional Geologists and Professional Geophysicist disciplinary orders, they have to seek out the “Disciplinary Guidelines” document on the Board’s website or request a copy from the Board. The disciplinary orders regarding Professional Engineers and Professional Land Surveyors are easily accessible because they are outlined in 16 CCR 419. It is a benefit to the consumers and licensees to have the disciplinary orders outlined within the code section, as opposed to in a separate document, so that the information is easier to find and the information is readily available in several locations (such as in law books and law websites).

The proposed amendments to 16 CCR 3064 would include the following information regarding disciplinary orders: minimum and maximum disciplinary orders; probationary conditions if the action is stayed; and probationary conditions for stayed orders.

16 CCR 419 has been amended to change the terminology from “supervising” to “reviewing” professional and from “supervision” to “review” when describing the terms of probation for a licensee that displays signs of incompetency. The purpose of this change is to update incorrect terms to better clarify the intent of the Board. The intent is for the licensee on probation to still be in responsible charge of work, but for another licensee to act as a mentor or peer reviewer, not as a supervisor to the probationer.

POLICY STATEMENT OVERVIEW / ANTICIPATED BENEFITS OF PROPOSAL

The better clarity and accessibility of the Board’s enforcement regulations promotes the Board’s mission to safeguard the life, health, property, and welfare of the public. It is anticipated that the conformity of the enforcement regulations will make it easier for consumers, the Board’s applicants, licensees, and certificate holders to understand and follow the regulations. Further the amendments put the current enforcement practices of the Professional Engineers and Professional Land Surveyors into effect for Professional Geologist and Professional Geophysicists, which allows for equal application of the enforcement law in regards to all of the professions that the Board regulates. In addition, the proposed amendments put regulations into effect for the geology and geophysicist side, which have already proven to be effective on the engineering and land surveying side.

Consistency and Compatibility with Existing State Regulations

The Board has evaluated this regulatory proposal and it is neither inconsistent nor incompatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None. The proposed changes do not affect the current practice in regards to fiscal matters; therefore, there is no additional fiscal cost or savings to the state as a result of the proposed changes.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500-17630 Require Reimbursement: None

Business Impact:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses:

The Board has determined that this proposed regulatory action will not have an impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. There will be an economic impact on the small number of licensees that have disciplinary action taken against them because they would have to pay cost recovery (recovery of the Board's investigative and enforcement costs) to the Board in accordance with B&P Code section 125.3; however, collecting cost recovery is current practice, therefore, there would be no change.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. The amendments to 16 CCR sections 3060, 3061, 3064 and 419 update the enforcement language regarding the licensees of the Board. The Board does not license businesses; the Board licenses individuals.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact of Jobs/Businesses:

The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of the Regulations:

The Board has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents, worker safety, and the State government:

The better clarity and accessibility of the Board's enforcement regulations promotes the Board's mission to safeguard the life, health, property, and welfare of the public. It is anticipated that the conformity of the enforcement regulations will make it easier for consumers, the Board's applicants, licensees, and certificate holders to understand and follow the regulations. Further, the amendments put the current enforcement practices of the Professional Engineers and Professional Land Surveyors into effect for Professional Geologists and Professional Geophysicists, which allows for equal application of the enforcement law in regards to all of the professions that the Board regulates.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative is considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed, would be as effective as less burdensome to affected private persons that the proposed described in this Notice, or would be more effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an Initial Statement of Reasons for the proposed action and has available all of the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board at 2535 Capitol Oaks Drive, Suite 300, Sacramento, CA 95833.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the Final Statement of Reasons, once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquires or comments concerning the proposed rulemaking action may be addressed to:

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|-----------------|--|
| Name: | Erin LaPerle |
| Address: | 2535 Capitol Oaks Drive, Suite 300 Sacramento, CA 95833 |
| Telephone No.: | (916) 263-1848 |
| Fax No.: | (916) 263-2246 |
| E-Mail Address: | Erin.LaPerle@dca.ca.gov |

The backup contact person is:

Name: Larry Kereszt
Address: 2535 Capitol Oaks Drive, Suite 300
Sacramento, CA 95833
Telephone No: (916) 263-2240
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E-mail Address: Larry.Kereszt@dca.ca.gov

WEBSITE ACCESS

The Board's website is: <http://www.bpelsg.ca.gov/>. Materials regarding this proposal can be found at: http://www.bpelsg.ca.gov/about_us/rulemaking.shtml