

**RESPONSE TO THE
BACKGROUND PAPER FOR THE
BOARD FOR PROFESSIONAL ENGINEERS,
LAND SURVEYORS, AND GEOLOGISTS**

Joint Oversight Hearing, March 18, 2015

**Senate Committee on Business, Professions and Economic Development
and
Assembly Committee on Business and Professions**

For more detailed information regarding the responsibilities, operation and functions of the Board for Professional Engineers, Land Surveyors, and Geologists (BPELSG or Board), please refer to the Board's "Sunset Review Report 2014." This report is available on its website at http://www.bpelsg.ca.gov/pubs/2014_sunset_review_report.pdf.

CURRENT SUNSET REVIEW ISSUES FOR THE BOARD

The following are unresolved issues pertaining to the Board; those which were not previously addressed; and other areas of concern for the Committees to consider along with background information concerning the particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. The Board and other interested parties, including the professions, have been provided with this Background Paper and can respond to the issues presented and the recommendations of staff.

ADMINISTRATIVE ISSUES

ISSUE #1: POSTING OF LICENSEES' ADDRESSES ON THE WEBSITE. *Is the licensee's city and county of record sufficient to post on the on-line License Lookup database?*

Background: In 2013, the Board sponsored legislation to amend BPC § 27 due its privacy concerns with including its licensees' addresses of record in the License Lookup database available through the Board's and DCA's websites. SB 207 (Canella) was introduced on February 8, 2013 and proposed to amend BPC § 27 so that the Board would not have to disclose a licensee's address of record online. Currently, BPC § 27 allows licensees to provide the Board with an alternate address which will be available to the public in lieu of the licensee's residence address. According to the Board's legal counsel, BPC § 27 does not apply to the BPELSG

because it does not require a home address to be provided but can use any address at which mail can be received.

The Board still believes it should not include any licensees' addresses of record in the License Lookup database, although it would be acceptable and appropriate to include the city and county. One of the main concerns is that online public disclosure of the licensee's address poses privacy and safety issues. However, the Board would disclose the complete address of record upon direct request.

Through discussion with stakeholders, it is also apparent that licensees may be unaware that providing an alternate address is an option to protect his or her residential address from disclosure to the public.

Staff Recommendation: *The Board should explain why the current option for providing an alternate address is unfeasible and undesirable. The Board should discuss why it believes that this code section does not apply. It seems that if the Board would still release the address of record upon request, the privacy protection concerns raised the Board are not necessarily solved. The Board should also discuss what efforts have been made to educate its licensees about this alternate address option.*

BOARD RESPONSE:

The Board disagrees with the statement in the Background Paper that “according to the Board's legal counsel, BPC §27 does not apply to the BPELSG...” The Board, and its Legal Counsel, fully agree that BPC §27 applies to the Board. In actuality, what the Board's Legal Counsel has indicated is that the specific provision in BPC §27 quoted below does not apply to the Board.

“Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or her address of record, to provide a physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee address of record or disclosure on the internet.”

The Board has always allowed (even before BPC §27 was enacted) our licensees to provide any address they wish as their address of record. We also do not require them to identify whether it is a home, business, or alternate address. We do not require them “to provide a physical business address or residence address” if they provide “a post office box number or alternative mailing address.” The Board's Legal Counsel has advised us that since we do not require our licensees to identify their address of record or to provide a physical address in addition to a P. O. Box or alternate address, the above-quoted provision in BPC §27 does not apply to the Board.

The Board does not consider that it “unfeasible and undesirable” to allow its licensees to use an address other than a home address as their address of record. When the Board presented the use of another address as an option during discussions of the issue at Board meetings, a few licensees

in attendance indicated that they did not want to use their business address and did not want to incur the time and expense of renting a postal mail box.

As noted, several years ago, the Board had proposed legislative changes; however, that legislation died because it could not make it past the scrutiny of the Senate Business, Professions and Economic Development (BP&ED) Committee staff. The former Consultant to the Senate BP&ED Committee had concerns with BPC §27 in that not all of the DCA boards, bureaus, commissions, committees, and programs (“boards and bureaus”) are included in it; that the ones that are listed do not require the same information to be provided on the internet; and that not everyone listed was in compliance with the requirements of BPC §27. The former Consultant believed that this was a DCA-wide issue and should not be addressed in a singular manner by individual boards. The Board agreed with this and ended its pursuit of the legislative changes.

Since the issue of what information is disclosed on the internet appears to be a DCA-wide issue affecting all of the boards and bureaus, rather than a board-specific issue, the Board no longer considers this to be an issue for it to address on its own. The Board welcomes the opportunity to work with DCA and other boards and bureaus to address this issue should the opportunity arise.

To assist in educating its applicants and licensees regarding the “address of record,” the Board will include an article in an upcoming newsletter and on its website explaining the meaning of “address of record” and advising applicants and licensees that they are allowed to use an address other than their home address as their address of record.

ISSUE #2: CONSUMER PROTECTION ENFORCEMENT ISSUES. What efforts has the Board made to implement the DCA recommendations to apply the policy changes outlined in the initiative?

Background: Following the failed passage of SB 1111 (McLeod) in 2010, the DCA recommended that the boards consider adopting regulations to implement some of the provisions proposed in the legislation as a way to implement the Consumer Protection Enforcement Initiative (CPEI).

The Board reviewed the recommendations and determined that the vast majority of them applied only to the professions regulated by the healing arts boards. The Board discussed the recommendation that the authority to adopt default decisions and stipulations that involve the surrender or revocation of the license be delegated to the Executive Officer. However, at its November 2010 meeting, the Board declined to delegate that authority.

Staff Recommendation: *The Board should explain how it reached its determination that many of the CPEI issues did not apply. Further, the Board should justify its decision to not delegate the authority to handle stipulated and default licensure surrender or revocation to the Executive Officer.*

BOARD RESPONSE:

The following is the list of the items DCA prepared as its “CPEI SB 1111 (4/12/10 version) Proposed Changes through Regulations,” along with the recommendation from DCA as to what action could be taken to accomplish the item. As indicated in the Board’s Sunset Report, the majority of these items applied to the healing arts boards since those boards were the focus of the CPEI and SB 1111. Following the list of items is the action taken by the Board or the reason that no action was taken.

DCA LIST

Board delegation to Executive Officer regarding stipulated settlements to revoke or surrender license

Permit the Board to delegate to the Executive Officer the authority to adopt a “stipulated settlement” if an action to revoke a license has been filed and the licensee agrees to surrender the license, without requiring the Board to vote to adopt the settlement.

Recommend: Amend regulations.

Revocation for sexual misconduct

Require an Administrative Law Judge (ALJ) who has issued a decision finding that a licensee engaged in any act of sexual contact with a patient or who has committed or been convicted of sexual misconduct to order revocation which may not be stayed.

Recommend: Amend regulations/disciplinary guidelines.

Denial of application for registered sex offender

Require the Board to deny a license to an applicant or revoke the license of a licensee who is registered as a sex offender.

Recommend: Amend the regulations pertaining to applicant requirements and disciplinary guidelines.

Confidentiality agreements regarding settlements

Confidentiality agreements regarding settlements can cause delay and thwart a Board’s effort to investigate possible cases of misconduct, thereby preventing the Board from performing its most basic function – protection of the public.

Recommend: Define in regulation that participating in confidentiality agreements regarding settlements is unprofessional conduct.

Failure to provide documents and Failure to comply with court order

Require a licensee to comply with a request for medical records or a court order issued in enforcement of a subpoena for medical records.

Recommend: Define in regulation that failure to provide documents and noncompliance with a court order is unprofessional conduct.

Psychological or medical evaluation of applicant

Authorize the Board to order an applicant for licensure to be examined by a physician or psychologist if it appears that the applicant may be unable to safely practice the licensed profession due to a physical or mental illness; authorize the Board to deny the application if

the applicant refuses to comply with the order; and prohibit the Board from issuing a license until it receives evidence of the applicant's ability to safely practice.

Recommend: Amend regulations pertaining to applicant requirements that a psychological or medical evaluation may be required.

Sexual misconduct

Currently defined in B&P Code §726.

Recommend: Define in regulation that sexual misconduct is unprofessional conduct.

Failure to provide information or cooperate in an investigation

Make it unprofessional conduct for a licensee to fail to furnish information in a timely manner or cooperate in a disciplinary investigation.

Recommend: Define in regulation that failure to provide information or cooperate in an investigation is unprofessional conduct.

Failure to report an arrest, conviction, etc.

Require a licensee to report to the Board any felony indictment or charge or any felony or misdemeanor conviction.

Recommend: Define in regulation that failure to report an arrest, conviction, etc. is unprofessional conduct.

BOARD ACTION OR REASON FOR NO ACTION

Revocation for sexual misconduct

Denial of application for registered sex offender

Sexual misconduct

The Board does not believe there is a sufficient nexus to the Board's regulated professions, as there would be to the healing arts professions, to require the automatic denial or revocation of a license if the person had been convicted of a sexually-based offense, as was proposed by several of the items. The Board already has the statutory authority to deny or revoke a license based on a conviction of a crime that is substantially related to the regulated practice and regulations that define the substantial relationship and that address the rehabilitation evidence that the Board must consider prior to denying or revoking the license. The Board believes these laws are sufficient to ensure public protection in the event that an applicant or licensee is convicted of a sexually-based offense, especially with the added statutory authority that the Board now has to obtain fingerprints and criminal histories of its applicants.

Psychological or medical evaluation of applicant

The Board also did not believe there was a sufficient nexus to its regulated professions, as there was for the healing arts professions, to support requiring applicants to submit to psychological or medical evaluations as a condition for licensure.

Confidentiality agreements regarding settlements

Legislation was passed to add a provision to the Business and Professions Code (Section 143.5) to prohibit licensees from including conditions in civil settlements that would

prevent a consumer from filing a complaint or cooperating with the licensing boards during an investigation. As such, there is no need for the Board to adopt a regulation addressing that issue.

Failure to provide information or cooperate in an investigation

Failure to provide documents and Failure to comply with court order

The Board has been advised by its attorneys that it does not have the statutory authority to adopt regulations to require a licensee to cooperate with the Board and its staff or other representatives (such as DOI or the AG's Office) during the course of an investigation. As such, the Board cannot pursue regulations to address this and is seeking the Committees' assistance to enact a statutory requirement similar to that already in place for the Contractors State License Board (Business and Professions Code section 7111.1).

Failure to report an arrest, conviction, etc.

The Board's statutes already require its licensees to report convictions; therefore, there is no need for the Board to enact regulations for such a requirement.

Board delegation to Executive Officer regarding stipulated settlements to revoke or surrender license

The Board is the final decision maker in matters relating to formal disciplinary actions taken against licensees. The Board did not believe it was appropriate to abrogate its responsibility to make these decisions, especially in cases that involve taking away a licensee's right to practice. Furthermore, allowing the person who has the ultimate authority to negotiate a settlement to be the one to adopt the settlement as a final decision gives the appearance of a conflict of interest, bias, and lack of oversight by the Board. Additionally, the Board's statutes indicate that a person must wait three years to petition the Board for reinstatement of a revoked license, unless the Board specifies a shorter period of time in its order of adoption of the final decision; when considering whether to adopt a default decision that orders the revocation of a license, the Board always considers whether it should reduce that time period, and sometimes chooses to do so. This is a decision that must be made by the Board. Finally, the Board does not believe that allowing the Executive Officer to adopt default decisions and stipulations for surrender or revocation would have much impact on the aging of the Board's cases, which was the stated reason for DCA's recommendation of such delegation. The Board meets often enough to take action without delay and can also vote on formal disciplinary actions via mail ballot. As such, the Board voted to decline to amend its regulations to delegate the authority to adopt default decisions and stipulations for surrender or revocation to its Executive Officer.

BUDGET ISSUES

ISSUE #3: MERGER OF THE G&G ACCOUNT INTO THE PELS FUND. *Considering that operational aspects after the merger of the two Boards in 2009 have been consolidated, should the two funds be combined?*

Background: Legislation enacted during the 4th Extraordinary Session of 2009, ABx4 20 (Strickland, Chapter 18, Statutes of 2009) eliminated the Board for Geologists and Geophysicists (BGG) and transferred all of the duties, powers, purposes, responsibilities, and jurisdiction to regulate the practices of geology and geophysics to this Board effective October 23, 2009. At the time, the former BGG's Geology and Geophysics (G&G) Fund was not merged into the Professional Engineer's and Land Surveyor's (PELS) Fund.

Initially, the BPELSG maintained two parallel programs – the G&G Program and the PELS Program – with operations and funds remaining exclusive to each program.

During the Board's 2011 Sunset Review, there was discussion about merging the two separate funds. However, since this Board had only recently assumed the responsibilities of the G&G Program and had not had the opportunity to fully analyze the impact such a merger would have on the Board's overall operations and budget as well as on the fees charged to applicants and licensees, the determination was made to instead change the G&G Fund into the G&G Account within the PELS Fund and to still maintain the monies separately.

Since that time, the Board reorganized to further integrate the necessary operational functions of all licensing and enforcement programs for all its licensees. The newly formed Licensing Unit, for example, consists of application review, examination development, and licensing processes for all license types under the Board's authority. The Enforcement Unit, in a similar manner, has been cross training its analysts to handle all cases rather than having a specific analyst assigned to work on only those cases regarding the practices of geology and geophysics. The division of funds is the only remaining remnant of the merger in 2009.

With the integration of the staff and functions of the G&G Program into the overall operations of the Board, it now appears to be the appropriate time to merge the G&G Account into the PELS Fund so that there will be one single funding source for the Board. Once the merger is completed, the Board will undertake an overall review of the fees charged to all of its licensees and applicants in order to ensure that the fees are standardized and appropriate for the services provided.

Staff Recommendation: *The Committees should amend BPC § 7886 to remove the reference to the Geology and Geophysics Account and to mirror the language in BPC §§ 6797 and 8800 to allow for the merging of the two funds. The legislative language should specifically address continued oversight of fees charged to all its licensees and applicants to assure fairness across all fields.*

BOARD RESPONSE:

The Board fully supports the Committees' staff recommendation to merge the Geologist and Geophysicist Account into the Profession Engineer's and Land Surveyor's Fund to create one funding source for the Board. Once the funds are merged, the Board will conduct a comprehensive review and evaluation of all fees charged and amend, as necessary, its regulations that indicate the specific fees to ensure a fair and equitable distribution across the board based on the services provided to all.

Recommended language to amend the affected sections of the Business and Professions Code to accomplish the merger of the two funds has been provided to the Committees' staff.

ISSUE #4: OUT-OF-STATE TRAVEL AND OTHER TRAVEL RESTRICTION ISSUES.
Should travel to professional conferences that directly affect licensure of California licensees and enforcement of licensing laws be deemed "mission critical" and receive automatic budgetary approval for this type of travel?

Background: Over the last several years, the Board has been severely impacted in its ability to appropriately protect the health, safety, welfare, and property of the public due to restrictions on travel. The Board has been unable to travel to out-of-state meetings with the national organizations that develop, administer, and score the examinations California uses to ensure that applicants for licensure are qualified to practice in California. In addition, the Board has been unable to attend conferences held within California where its members and staff could meet with various licensee and consumer groups to discuss the laws and regulations and the services the Board offers.

The national examinations used by the Board for licensure of engineers and land surveyors are developed, administered, and scored by the National Council of Examiners for Engineering and Surveying (NCEES). The examinations used by the Board for licensure of geologists are developed and scored by the National Association of State Boards of Geology (ASBOG) and administered by the Board. The Board's participation is critical to ensure California's interests are expressed and that we are given consideration in decisions that affect California stakeholders. Since these are national organizations, the majority of the meetings are held outside of California.

NCEES regularly schedules two primary member meetings on an annual basis, an Interim Zone meeting for each zone and the Annual Meeting. Each member board of NCEES is allowed one vote during the Interim Zone meeting and the Annual Meeting for actions associated with changes to the established policies or procedures related to exam development, exam administration, fees charged, model licensing criteria, and overall NCEES organizational goals. Fifteen of the Board's twenty-two licenses and certifications require passage of the national engineering and land surveying examinations that are developed, scored, and administered by NCEES. Often, the actions will result in changes to the criteria that are considered acceptable for licensure and to the content of the exams.

The Board is also an active voting member of the ASBOG. ASBOG is a national non-profit organization comprised of 30 member licensing boards from across the nation. ASBOG is dedicated to advancing professional licensure for geologists. As discussed, it develops, administers, and scores the national examinations predominately used to license geologists in the United States. ASBOG regularly schedules Council of Examiner Workshops twice a year and an Annual Meeting usually held in the fall concurrent with the fall workshop. These meetings are generally held to evaluate examination content and determine exam policy and fees.

As such, in-person attendance by California Board representatives at these meetings is critical towards ensuring that these actions are not discriminatory for California applicants and licensees and that the content of the exams are appropriate for licensure in California with due regard to protecting the public health, safety, welfare, and property.

Overall, California represents one-third of all applicants for engineering, land surveying, and geology licenses nationwide (rather than one-fiftieth). Nevertheless, all requests for approval for travel to meetings held out of state are historically denied as being an “unnecessary” expenditure of state funds. These denials severely curtailed the Board’s involvement in the discussion and decision-making on issues that impact the licensees and consumers in our state.

Fortunately, this trend is changing, but the Board has still faced challenges for these out-of-state requests. Since the Board’s last Sunset Report, representatives from the Board were granted approval to attend the spring 2013 NCEES Western Zone Interim Meeting since the meeting was held in San Francisco, and the Board was chosen by Zone representatives as being responsible as the Host Board. More recently, the Board received approval to attend the 2014 NCEES Annual Meeting which was held in Seattle, Washington in August. However, the Board’s request to attend the 2014 NCEES Western Zone Interim Meeting was denied as not being “mission critical,” even though important issues regarding examinations and licensure were discussed and decided upon at that meeting. The Board was also granted approval for our Geologist Board Member to attend an ASBOG Exam Workshop in New York during June 2014 and the upcoming ASBOG Annual Meeting in November 2014 in Indianapolis, Indiana. Attendance at these events has provided the BPELSG with a stronger platform to participate in policy changes that impact its applicants, licensees, and consumers.

Restrictions on non-essential travel within the State have hampered the Board’s opportunities to attend consumer fairs, trade shows, and conferences where staff and Board members could provide outreach to consumers, licensees, local agencies, and other regulatory agencies. To fulfill one of its critical objectives, the Board needs to travel to these and similar venues to educate and inform consumers about the Board and its regulated professions. Licensees need information about issues impacting consumers and the professions. Local agencies require updates regarding issues related to the standard of practice and unlicensed activity and how they can assist the Board in ensuring compliance with the laws to protect the public. Other regulatory agencies, such as the Division of Investigation, District Attorneys’ Offices, Office of the Attorney General, Office of Administrative Hearings, and other consumer protection agencies, should likewise be targets for Board outreach to discuss their impact on our processes.

Staff Recommendation: *The Board should explain to the Committees further regarding the necessity of attendance at these conferences. The Committees should consider whether "mission critical" travel be deemed any meetings at which licensing examinations are discussed, voted upon, developed, scored, or administered and such travel shall be approved in order to ensure that the licensing examinations are appropriate for the protection of the public of California. The Committees would need to amend BPC §139 to provide for "mission critical" travel approval.*

BOARD RESPONSE:

The Board is continually seeking out-of-state travel approval to attend national examination meetings in order to affect policy and influence positive change on behalf of our applicants and licensees. Voting is the key component to attendance and this requires Board members and staff to be physically present. Actions associated with changes to the established policies or procedures related to exam development, exam administration, fees charged, model licensing criteria, and overall organizational goals are put to vote. As such, in-person attendance by California Board representatives at these meetings is critical towards ensuring that these actions are not discriminatory towards California applicants and licensees and that the content of the exams are appropriate for licensure in California with due regard to protecting the public health, safety, welfare, and property. Overall, California represents one-third of all applicants for engineering, land surveying, and geology licenses nationwide (rather than one-fiftieth). Our attendance in force to participate in the issues should be equal to our population size.

Last year, representatives from the Board were approved to attend the August 2014 NCEES Annual Meeting in Seattle, Washington. One of the main topics for discussion and vote at that meeting was a proposal to increase the required education criteria for professional engineers from a bachelor's degree to the equivalent of a master's degree as a minimum qualification to become licensed. California representatives recognized the negative impact this could potentially have on both California applicants and licensees, and, together with licensing boards from neighboring states, voiced concerns sufficient to successfully and narrowly defeat the measure. If California was not represented in person at this meeting, it is likely that this change in national model licensing standards would have passed, to the detriment of the California licensee.

More recently, it has come to the Board's attention that measures will be discussed at the May 2015 NCEES Interim Zone Meetings and at the August 2015 NCEES Annual Meeting in Williamsburg, Virginia, scheduled for August, that would implement changes to the national model licensing standards to change the requirement so that a Structural Engineer would no longer have to be licensed as a Professional (Civil) Engineer as a prerequisite for licensing as a Structural Engineer. This change could severely impact the licensing of Structural Engineers in California, especially in terms of comity.

In addition, the longtime executive director for ASBOG recently retired, and ASBOG is now being governed by an interim manager and their board without definite plans for employing a replacement. It is imperative that California ensures that its interests relative to national

examinations and licensing standards are secure by adequate representation at examination development meetings and the Annual Meeting.

Recommended legislative language has been provided to amend BPC §139 to make it clear that travel, whether in state, out of state, or out of country, relating to examination matters is critical to the mission of the Department of Consumer Affairs and its constituent boards and programs.

However, attendance at meetings within the state relating to issues other than examination matters is still problematic due to the restriction on attendance at any type of meeting event that is viewed or billed as a "conference." Changes in engineering, land surveying, and geology educational curriculums have exhibited dramatic changes over the last several years due to the 2007-2012 recession and the effect that had on enrollment and program funding. As a result, many students and newer professors are not as educated in the licensing processes and requirements. It is imperative that the California Board increase its outreach in support of future licensees by attending career fairs and educational conferences within the state.

ISSUE #5: Pro Rata. What services does BPELSG receive for its share of pro rata?

Background: Through its various divisions, the DCA provides centralized administrative services to all boards and bureaus. Most of these services are funded through a pro rata calculation that is based on "position counts" and charged to each board or bureau for services provided by personnel, including budget, contract, legislative analysis, cashiering, training, legal, information technology, and complaint mediation. The DCA reports that it calculates the pro rata share based on position allocation, licensing and enforcement record counts, call center volume, complaints and correspondence, interagency agreement, and other distributions. In 2014, the DCA provided information to the Assembly Business, Professions and Consumer Protection Committee, in which the Director of the DCA reported that "the majority of the DCA's costs are paid for by the programs based upon their specific usage of these services." The DCA does not break out the cost of their individual services (cashiering, facility management, call center volume, etc.). The BPELSG utilizes the DCA for a number of administrative functions, including legal services, legislative and regulatory review, public affairs, and some information technology services. Whereas some other boards rely solely on the DCA for IT, the BPELSG does not. In addition, the DCA assists with cashiering, budgets, personnel, training, contracts, and travel reimbursement processing for the BPELSG. Although the DCA provides assistance to the BPELSG, and a definition of costs is provided annually, it is unclear how the rates are charged to the BPELSG and if any of those services could be handled by the BPELSG instead of the DCA for a cost savings.

For FY 2013/14, BPELSG spent approximately 23% of its budget from the PE Fund on the DCA Pro Rata costs. The DCA Pro Rata costs continue to trend upward. In FY 2012/13, the BPELSG spent 19% on Pro Rata costs and in FY 2010/11, where BPELSG spent approximately 14% of its budget on Pro Rata. From the G&G account, a similar trend is noted. For FY 2013/14, BPELSG spent approximately 14% of its budget from the G&G account on the DCA Pro Rata costs. In

FY 2012/13, the BPELSG spent 12% on Pro Rata costs and in FY 2010/11, where BPELSG spent approximately 10% of its budget on Pro Rata.

Staff Recommendation: *The BPELSG should advise the Committees about the basis upon which pro rata is calculated, and the methodology for determining what services to utilize from the DCA. In addition, the BPELSG should also discuss whether it could achieve cost savings by dealing with more of its services in-house.*

BOARD RESPONSE:

Through its various divisions, DCA provides centralized administrative services to all boards and bureaus. Most of these services are funded through a pro rata calculation that is based on "authorized position counts" and charged to each board or bureau for services provided by DCA personnel, including budget, contract, legislative analysis, human resources, cashiering, training, legal, information technology, and complaint mediation. While DCA reports that it calculates the pro rata share based on position allocation, service center usage, client's past year workload, actual workload, and licensing and enforcement record counts, it remains unclear to the Board how those services are divided and what the actual costs per service are on an annual basis and from a historical perspective. The Board utilizes DCA for a number of administrative functions, including legal services, legislative and regulatory review, human resources, cashiering, budgets, training, contracts, travel reimbursement processing, some public affairs (e.g., editing newsletters and responding to some media inquiries), and some information technology services. Whereas some other boards rely solely on DCA for IT and examinations services, the Board does not.

The Board believes in partnering with DCA for those backbone services that are critical to the Board's operations and appropriately normalized through standard procedures employed across all boards and bureaus (i.e., budgets, personnel, contracts, etc.). However, there are specific, Board-level responsibilities that, due to the Board's unique licensing requirements, lend themselves to better overall processing by the Board in lieu of DCA (i.e., applications, examinations, client-side IT needs, etc.).

The Board is closely monitoring Senate Bill 1243 (Chapter 395, 2014) which requires DCA to report to the Legislature on its pro rata calculations by July 1, 2015. The Board understands that this report will address whether the current pro rata model is productive, efficient, and cost effective for all the boards and bureaus or if an alternate model would serve the needs of the boards and bureaus more efficiently, such as whether the boards and bureaus should be individually allowed to choose which administrative services it would like DCA to provide. The Board believes it would be premature at this point to discuss cost savings related to this issue and intends to reassess this further upon an evaluation of DCA report to the Legislature. At that time, the Board would be willing to report further to the Committees if requested.

LICENSING ISSUES

ISSUE #6: THE NEED FOR CONTINUED LICENSURE OF GEOPHYSICISTS IN THE STATE OF CALIFORNIA. *Should the licensing of Geophysicists continue in this State and should the Board still have to provide a State-specific Professional Geophysicist (PGp) Examination to potential applicants for licensure?*

Background: The 2011 Sunset Review noted several concerns the Board had with the development and administration of the geophysicist examination. Some concerns, at the time, included the difficulty in the recruitment of in-state experts to assist with developing and constructing the examination, the cost of developing the examination, and the level of protection of the public that licensure actually provides.

During the last review, the Committee instructed the Board to conduct a public hearing in an effort to receive input regarding the continued regulation of the practice of geophysics and the continued licensure of geophysicists in California. The Board also created a subcommittee for closer analysis. A hearing was held on May 12, 2011. Based on the testimony received at the hearing, the Board’s initial recommendation was to continue to license geophysicists but to closely monitor the long term trends associated with the geophysics profession and how it related to licensing protection for the general public. Since the Board knew little of the profession, more time was needed to make an educated and appropriate decision before making any recommendations regarding the continued licensure of geophysicists and the continue regulation of the practice of geophysics in California. Since that time, the Board has monitored the applicant and licensee populations, as well as the interest in the profession to assist in exam development for future licensure examinations. The chart below lists the application and examination totals for the last four years.

Professional Geophysicist Applicant Population				
Examination Cycle	Number of New Examinees	Number of Refile Examinees	Number of Examinees Passed	Pass Rate
2010	1	1	1	50%
2011	4	2	3	50%
2012	1	3	3	75%
2013	7	1	5	63%

Note: This table was taken from the BPELSG 2014 Sunset Review Report.

Below is a list of the total population of the Professional Geophysicists (PGp) in California as of the end of FY 2013/14.

Licensee Population					
		FY 2010/11	FY 2011/12	FY 2012/13	FY 2013/14
Professional Geophysicist License	Active	157	160	163	168
	Out-of-State	60	61	64	66
	Out-of-Country	5	5	5	5
	Delinquent	51	51	51	51

Note: This table was taken from the BPELSG 2014 Sunset Review Report.

A significant issue relating to the licensure of geophysicists is the inability to retain a sufficient number of subject matter experts for developing licensing examination content and validation. Despite the Board's open and active efforts to recruit licensees for examination development, it has encountered significant difficulty in obtaining the services of the minimum number of subject matter experts required to properly support examination efforts since there appears to be little interest from the licensed population to serve as experts.

The Board's psychometric vendors normally require a minimum number of licensed subject matter experts to participate in the necessary exam development workshops for the production of a legally defensible exam appropriately designed to measure the competence of licensing candidates. The PGp examination development normally requires three meetings per year to properly develop an examination and determine a recommended passing score. Under preferable conditions, this would require 15 to 18 licensed subject matter experts on an annual basis to support adequate exam development efforts. Over the last four years, the Board has been able to secure a total attendance of only 6 to 8 subject matter experts on an annual basis, and typically 3 to 4 the same experts attend each meeting. As a result, the statistical validity of the examination could be questionable. The examination may not be legally defensible and may not provide the level of public protection assured through examinations in other specialties.

Another obstacle to recruitment is that the Board can only contract with licensees who reside within the state. As noted in the Licensee Population chart above, a significant portion of the licensee base resides outside of California. While the trend appears to show an increase in licensees, it is primarily in those licensees who reside out-of-state. The Board believes this increase is more reflective of out-of-state individuals seeking to comply with a law that is unique to California than an indication that the geophysicist profession is becoming more popular or necessary within the state. *It is important to note that California is one of only two states that regulate the practice of geophysics and licenses individuals as geophysicists.*

In addition to the technical component of the examination development, the examination expenses are significant. The cost for the Board to develop, administer, and score the PGp examination averages \$10,000 to \$13,000 a year. In FY 2013/14, the Board incurred costs totaling about \$18,000 (about a 50% increase) as a result of having to postpone several workshops at which the examination passing score would have been developed due to a lack of subject matter experts willing and available to participate in the workshops. Due to this delay, candidates who had taken the October 2013 PGp examination had to wait over three months longer than normal to receive notice of their results, which in turn delayed licensure for the individuals who had passed the examination. In addition, the Board's policies require a new Occupational Analysis and Test Plan every five to seven years in accordance with normal licensing exam development standards. The Board incurred additional costs of approximately \$40,000 distributed between FY 2012/13 and FY 2013/14 to accomplish this.

Based on the Applicant Population chart shown above and an average of five geophysicist applicants annually, the Board incurs a net line item loss of \$8,250 to \$11,250 annually (based on the required application or exam fees of \$350 each, which accounts for \$1,750 total revenue each year). Factoring in the requirement for producing a new Occupational Analysis and Test Plan

every five years, the Board incurs a net line item loss of \$16,250 to \$19,250 on an average annual basis to produce the PGp examination.

Most geophysicist reports are utilized by other scientists, geologists, or engineers. Geophysicists rarely interact directly with the public. Additionally, the majority of the complaints the Board receives relating to the practice of geophysics are from PGps against unlicensed individuals who appear to be offering geophysical services through websites or other advertisements. The cases rarely involve evidence that the unlicensed individuals have actually performed work for consumers in California or that they performed work in a manner that poses a threat to the health, safety, welfare, and property of the public. Many of the firms advertising these services are located outside of California. As mentioned previously, the practice of geophysics is regulated in only two states. Many of these unlicensed individuals are not aware that the services they are offering nationwide are regulated in California. Based on the information obtained from the complaint history, there does not appear to be a threat to public safety.

Staff Recommendation: *The Board should explain to the Committees if abolishing this license category would place the public at risk. Further, the Board should inform the Committees exactly how many complaints are directed towards licensed geophysicists and the outcome of these complaints. The Board seems to have sufficient reasoning for discontinuing this licensure. As such, the Committees should hear from the Board whether eliminating this type of licensure is prudent and the impact it would have on the Board and its stakeholders.*

BOARD RESPONSE:

This issue is a carryover topic from the Board's 2010-2011 Sunset Review which at that time resulted in the Board reporting to the Senate Business, Professions, & Economic Development Committee that the Board would closely monitor both industry trends and exam development efforts and report on the results during its next Sunset Review.

As stated during the Board's hearing before the Committees on March 18, 2015, in the years since the merger with the former Geology Board, the Board has grown to understand and appreciate the value of the services that geophysicists provide to the public. However, given the lack of conscious involvement from the licensed geophysicist community, especially during the last four years after they were put on notice that the regulation of the profession might be eliminated, particularly in regards to concerns associated with ensuring that the examination process is measuring competency appropriately, and the fact that most geophysicists are hired by more-informed consumers (i.e. other licensed professionals, gas/oil industries, governmental agencies, etc.), there is still concern that licensure of geophysicists cannot be sustained as a viable State-regulated profession.

The Board believes there would not be a significant increase in the risk to the public if the practice of geophysics is deregulated in California. While geophysical work certainly does provide value in the protection of the public health, safety, welfare, and property, there seems to be little need to provide the level of protection to the public that is obtained through regulation and licensure by the State.

As indicated, geophysicists are generally hired by other licensed professionals, typically geologists, civil engineers, and licensed architects as a part of the overall design and development team; they are hired by the petroleum, oil, and gas industries to work on projects specific to those companies; and they work for governmental agencies. As an example of this, while licensed professional geologists are authorized to provide geophysical services as long as those geophysical services are in connection with the geological services being provided, many professional geologists abstain from performing geophysical work themselves, choosing instead to contract those tasks out to a licensed professional geophysicist. While these more-informed consumers most likely do not have the expertise to perform the geophysical work themselves, they have a higher level of understanding of the work needed and are better able to judge the quality of the work than the typical consumer. These more-informed consumers do not require the added protection of State regulation in the same way that individual consumers do, and they usually will seek alternative methods to resolve their issues with the geophysicists they hire, such as pursuing the matter through the civil courts or by not rehiring the same geophysicists in the future; they usually do not seek the assistance of the licensing board in that same way that an individual consumer does.

Eliminating the geophysicist license category would have a minimal negative impact on the Board's operations in that we receive few inquiries regarding the licensure process. Although we receive very few applications each year, we do need to contract with an independent expert geophysicist to review any of those applications for licensure that we receive in order to determine if the applicant meets the qualifying experience requirements since we do not have a professional geophysicist on staff. However, since the number of applications is usually less than 10 each year, it is a minimal expense to contract with an expert.

Furthermore, it would have a positive impact on the Board's workload for exam development in that we would no longer have to expend the resources necessary to develop an examination that must be administered once a year when we have an average of five candidates each year taking the exam. In preparation for each exam development meeting, Board staff sends letters to all of the licensed geophysicists with addresses of record in California (approximately 100) seeking their assistance in participating in the exam development process. Few responses are received, so staff then attempts to make personal contact via direct phone calls to recruit individuals to serve as experts. Even when a sufficient number have agreed to serve as experts, many times they will cancel at the last minute or simply not show up for the meeting with no prior notice. When this happens, the exam development meeting often has to be rescheduled, creating a drain on resources, both staff time and financially. Additionally, any delays in exam development and scoring process can cause delays in our ability to issue licenses to the individuals who may have passed the exam. This happened with the 2013 exam administration; we were delayed by nearly six months in releasing the results of the examination because we could not secure commitments from a sufficient number of experts to develop a legally-defensible passing score.

In last four fiscal years (FY10/11 through FY13/14), there has been one (1) complaint against a licensed geophysicist. This is out of a total of 16 complaints relating to geophysics, which represents 19% of the complaints relating to geology and geophysics filed during that time frame. The other 15 cases relate to allegations of unlicensed activity: 2 were against professional geologists; one was against a civil engineer; and the remaining 12 were against unlicensed

individuals. Many of those are complaints were submitted by licensed geophysicists and related to companies offering, through websites or other advertisements, services that in California constitute the practice of geophysics. The complaint against the license geophysicist was opened as a result of evidence obtained during investigation of an unlicensed person for signing a geophysical report; the complaint against the unlicensed person had been filed by a licensed geophysicist. The licensee was cited for negligence (based on errors in report), failing to sign the report initially, and failing to exercise proper oversight and direction over the unlicensed subordinate.

The Board discussed this issue at its meeting on April 15, 2015. At that meeting, many individuals from the geophysicist and geologist community presented testimony as to their belief that the geophysicist license should be continued. After much discussion and consideration of the testimony, the Board voted to recommend to the Committees that no changes be made at this time on the issue of the Professional Geophysicist license even though the Board recognizes that the current situation is not sustainable. The Board agreed to closely review and consider suggestions from the affected parties related to reforms, including but not be limited to:

- Reduction for the frequency of exam administration (i.e., every other year)
- Eliminating the authorization for Professional Geologists to practice geophysics
- Realign all examination development processes to reflect private practitioner workload
- Implement mandatory participation requiring licensees to assist with exam development

The Board further agreed that it would provide a report to the Committees within one year regarding this issue. However, in agreeing to continue discussion of this matter rather than recommending elimination of the geophysicist license at this time, the Board reminded the affected parties that they had been put on notice four years ago of the questionable sustainability of the license and there had been little input or assistance from them in the intervening years; the Board cautioned them that if they again did not participate and simply assumed they were “safe,” as one Professional Geophysicist stated at the meeting, the license would not be able to be sustained and would be eliminated.

ISSUE #7: DELINQUENT REINSTATEMENTS AND INACTIVE STATUS. Should the Board adopt an "inactive" license status and standardize the requirements to reinstate delinquent licenses across all professions?

Background: Over the last few years, the Board has become increasingly concerned with the process outlined by the laws and regulations for the reinstatement of professional engineers’ and land surveyors’ licenses that have been expired or delinquent for more than three years and professional geologists’ and geophysicists’ licenses that have been expired or delinquent for more than five years. Under the current laws, if an engineer’s or surveyor’s license has been expired for more than three years, he or she may apply for reinstatement of that license. If the applicant is able to demonstrate to the Board that he or she is currently competent to practice through descriptions of the work they have performed during the period of delinquency, then the license is reinstated without further examination. Geologists and geophysicists are required to take the licensing examinations and be issued new licenses, however, they are not required to

provide any evidence of recent work experience in the professions. The Board is concerned with the disparity in the requirements between the professions, as well as whether a person should be allowed to reinstate a delinquent license without examination or be issued a new license without demonstrating recent work experience. Additionally, the Board believes that many licensees allow their licenses to become delinquent when they are working in an industry that is exempt from licensure or if they are working out of state. When they seek work where a license is required or return to California, they must then go through the process to reinstate the delinquent license. The Board believes that if it had the authority to allow licensees to place their license in an “inactive status,” such as is allowed for Physician and Surgeon licensees would choose to do that rather than simply allowing their licenses to become delinquent.

Staff Recommendation: *The Board should continue to research these matters more fully in order to determine the feasibility of enacting an inactive status and to determine the appropriate requirements for reinstating a delinquent license. Depending on the outcome of this review, the Board may need to seek legislative authority in the future to enact changes.*

BOARD RESPONSE:

The Board appreciates the Committees’ support of its interests in determining the feasibility of enacting an inactive status and in determining the appropriate requirements for reinstating a delinquent license. We will continue to research these issues and present a legislative proposal to the Committees in the future. If it is determined that no such action is required, we will report on this during our next Sunset Review or at any time as the Legislature may request.

ISSUE #8: REVIEW OF EXPERIENCE REQUIREMENTS TO QUALIFY FOR LICENSURE. *Are the current experience and education requirements sufficient to ensure adequate competency standards to protect public health, safety, welfare, and property?*

Background: In recent years, the Board has become more concerned that the experience requirements to qualify for licensure in all of the professions it regulates may not be sufficient or appropriate to ensure that individuals have received the proper training in order to practice on their own with due regard to the public health, safety, welfare, and property.

In addition to experience concerns, the requirement that a geologist must have an undergraduate degree in geological sciences has been problematic in that an applicant for licensure does not have a clear expectation of what coursework under the broad umbrella of geological sciences is sufficient for licensure. Typically, it is not until after an applicant has graduated that he or she is advised that the requirements for licensure are not met because after review of the coursework, his or her degree is deemed inadequate.

In its 2015-1018 Strategic Plan, the Board included an objective to examine the appropriateness of current education and experience requirements for licensure across all fields. However, it is unclear what steps are being taken at this point to assure public safety and to address the needs of applicants and licensees.

Staff Recommendation: *The Board should inform the Committees the origins of these concerns and why more immediate action is not necessary. Along these lines, the Board should advise the Committees regarding the low passage rates for licensing examinations across all fields and whether this is a reflection of the perceived inadequate experience and education. It would be helpful to compare the passage rates for national examinations to other states. While the Board would like to continue to research this issue before taking any action, the Committees should be reassured that current requirements are sufficient for public safety and welfare. Additionally, the Board should advise the Committees on what steps are being taken to address the education requirements for geologist licensure.*

BOARD RESPONSE:

The Board's concerns related to experience and education requirements involve both general aspects related to how California compares to other state licensing jurisdictions and more specific aspects related to how the required education is described in statute for geologist licensing applicants.

Education Requirements for Geologist Licensure

The statutes that describe the education requirements for qualifying for licensure, Business and Professions Code, section 7841(b), states that an applicant for licensure as a Professional Geologist shall have graduated "...with a major in geological sciences from college or university." This language is vague and causes confusion amongst applicants, professional references, and Board staff as to which degrees meet the minimum requirements. After consultation with the Board's legal counsel, it was determined that the Board has the authority to further clarify the education requirements in its regulations. The Board's staff has been researching the matter to determine what courses would constitute the appropriate core curricula to include in the recommendation. It is anticipated that this information will be presented to the Board for final review and approval to begin the rulemaking process in the next few months.

Qualifying for Licensure as an Engineer or Land Surveyor under the Business and Professions Code

The statutes that describe the education and experience requirements for qualifying for licensure as either an engineer or land surveyor are confusing to the applicants and professional references. Because of how the language currently reads, many applicants and professional references believe that they are simply applying to take an examination as if the examination is the sole determiner towards qualifying for licensure. Because of this misinformed belief, professional references do not always provide completely honest evaluations of the applicant as they sometimes believe the "exam will weed them out." The Board believes that education, experience, and examination are equal requirements towards licensure but does recognize the confusion caused by the current language. It would be beneficial for the laws to be amended to make it clear that an applicant is applying for licensure, and regardless of the order in which the criteria is achieved, successfully passing an examination is just one of the components necessary for licensure. Recommended language to make this clarifying change to the statutes has been provided to the Committees' staff.

California Licensure Requirements vs. National Model Standards

California's statutory requirements for licensure as a Professional Geologist are sufficiently similar to the national model standard. However, the national model standards for licensure as a Professional Engineer or Professional Land Surveyor require a bachelor's degree in the respective discipline, a minimum of four years of work experience, and passage of a standardized national examination. California requires a minimum of six years of experience, four of which could be substituted by a bachelor's degree in the respective discipline, and passage of a standardized national examination, and in some cases, passage of additional state specific examinations on practice-related situations unique to California. Historically, California candidates perform 1% to 15% lower on the national examinations than candidates from other states whose laws match the national model standards. However, it is believed that the nature of the California state-specific examinations for some of the licenses offset this deficiency primarily due to three reasons:

1. Approximately 95% of the engineering applicants in California possess a bachelor's degree considered equivalent to California education requirements and national model standards.
2. Due to the unique practice-related situations encountered in California and the requirement for state-specific examinations, the average engineering or land surveying candidate takes 2.7 attempts to pass all required examinations required for licensure, which means that by the time the average candidate satisfies all requirements for licensure, the average California candidate has met or exceeded the minimum experience requirements as stated in the national model standards above.
3. Other state licensing jurisdictions are beginning to allow their own applicants to take the required examinations prior to obtaining the required work experience, providing evidence or recognition that the required criteria for licensure – education, experience, and examination – can be obtained in any order.

The Board does recognize that the difference in statutory requirements can pose a hurdle for California licensees seeking licensure in other states by comity; however, this hurdle can be mitigated simply by the California licensee acquiring additional years of experience.

The Board currently monitors these conditions on a regular basis through analysis of the annual examinee results and, more importantly, by having Board Members and Board staff actively involved in national examination activities as evidenced by the Board's continued need to travel out of state for meetings that could impact licensure in California.

ISSUE #9: EXAMINATION OF CALIFORNIA LAWS AND REGULATIONS. *Should the Board institute a required take-home examination relating to California laws and regulations as part of the licensee's renewal application?*

Background: The Board has recently researched common violations committed by licensees discovered during complaint investigations that are not necessarily standard of practice issues. The laws and regulations of the Board are readily available to its licensees on the Board's

website. While it is expected that licensees will familiarize themselves of the laws governing their practice, it is apparent that many licensees do not review them on a regular basis or even when significant changes are made.

For instance, for many years following the requirement of written contracts for licensees, AB 2696 (Cox, Chapter 976, Statutes of 2000), numerous complaints were received alleging that a written contract was not executed. In several cases, it became apparent during the Board's investigation that compliance with the written contract statute was not fulfilled. The response from many licensees was that they were unaware of the new law, even though the Board had publicized it several times in its newsletter, on its website, and through in-person outreach opportunities.

Over a three-year period, of the cases against licensees in which violations were found which did not rise to the level of warranting formal disciplinary action, approximately 45% involved violations relating to non-practice related laws, such as failing to include all of the required elements in a written contract, failing to execute a written contract, failing to sign and seal professional documents in the manner required by law, failing to submit reports of civil judgments or settlements, and failing to file Organization Record forms.

To ensure adequate public protection and curtail unnecessary complaint investigations, the Board believes licensees should be required to periodically demonstrate their knowledge of the state laws and the Board's rules regulating their areas of practice. The most effective way to accomplish this would be to require licensees, at the time of renewal, to pass a short, multiple-choice open-book examination, which they would complete at home, that would include questions regarding state laws and the Board's rules and regulations regulating their practices. This examination would be modeled after the examination currently required for professional engineers and land surveyors at the time of initial licensure. If licensees were required to demonstrate their knowledge of the laws at the time of renewal, they would have an incentive to ensure they stay current on those laws and changes to them.

Additionally, the Board believes that applicants for licensure as a professional geologist or geophysicist (provided this field continues licensure) should be required to demonstrate their understanding of the state laws and the Board's rules and regulations regulating their practices, just as applicants for licensure as a professional engineer or land surveyor are already required to do (BPC §§ 6755.1 and 8741.1). This will ensure that, prior to obtaining licensure, the applicant is aware of the laws and regulations of the profession. This will benefit consumers since the licensees will be demonstrating competency of the laws through successful completion of the required examination. This requirement in addition to the proposed renewal examination will further harmonize the licensure standards between the G&G and PELS sections of the Board.

Based on the Board's experience, licensees fail to adequately and independently stay abreast of critical legal and regulatory updates. The Board proposes this renewal examination requirement in an effort to curb unnecessary practice violations and to assure the public that its licensees are well versed in current applicable law.

Staff Recommendation: *The Board should inform the Committees on the process; the cost; and the feasibility of operationalizing this requirement. The Board should discuss whether this process involves hand-scoring or whether a computer-based technology is a more efficient approach. As a more efficient alternative, the Board should consider whether requiring renewal licensees to sign an attestation as part of the renewal application that he or she has reviewed the current legislation and regulations relating to the particular license.*

BOARD RESPONSE:

For quite some time, the Board has observed that a large percentage of licensees fail to maintain knowledge and compliance with the laws and regulations that guide the application of their respective discipline when providing professional services to the public. These observations have occurred during outreach discussions with professional groups, responses to Board inquiries, and most importantly during the investigative/enforcement process. In addition, it has been noted that when revisions to laws or regulations occur, it can take quite a few years for an adequate number of practicing licensees to recognize and implement the changes. This is very reflective in the results of the Board's enforcement investigations. During preparations for the 2014 Sunset Report, it became apparent that over a three-year period, of the cases against licensees in which violations were found which did not rise to the level of warranting formal disciplinary action, approximately 45% involved violations relating to non-practice related laws, such as failing to include all required elements in a written contract, failing to execute a written contract, failing to sign and seal professional documents in the manner required by law, failing to submit reports of civil judgments or settlements, and failing to file Organization Record forms.

The Board implemented a transition to computer-based technology several years ago for state-specific practice-based examinations. Included within the current phase of that transition is the evaluation/implementation of an internet-based solution for the delivery of the current laws and regulations examinations for engineering and land surveying applicants, which will also be used for geologist and geophysicist applicants when the requirement to pass such an examination is enacted for them. Given that the Board is already moving forward with implementing this technology and has developed content, providing those same exams upon regular license renewal cycles for the approximate 50,000 licensees who renew on an annual basis would be easily adoptable.

After due consideration of the Committees' staff alternative recommendation that licensees be required to sign an attestation as part of the renewal application that he or she has reviewed the current legislation and regulations relating to the particular license, the Board still believes that the best and most appropriate course of action is to require licensees to take and pass an examination on the laws and regulations at the time of renewal. It is believed that the alternative approach would produce negligible impact at best in terms of realizing that licensees are becoming more aware of any changes to the laws and regulations that govern their practice(s) and thereby ensuring that the public is receiving professional services in the manner in which the laws and regulations are meant to protect them.

It is anticipated that these legislative changes will allow the renewal candidate to renew their license in much the same manner as it is currently processed with the additional requirement that

the laws and regulations examination must be completed and passed within a reasonable timeframe of the licensee's scheduled renewal date. Additionally, the examination would be implemented using internet-based technology such that the renewal candidate can take the examination wherever and whenever internet access is available with an instantaneous result so that if the renewal candidate fails to achieve a passing score, another attempt can be initiated as soon as the candidate is ready. The primary intent behind this requirement is to provide an environment in which the Board can efficiently increase awareness of the laws and regulations directly affecting the licensee's practice while providing an effective and more instantaneous communication model for educating the licensees in addition to typical outreach efforts.

Recommended legislative language has been provided to the Committees' staff to amend the laws to require licensees to complete and pass an examination on the laws and regulations at the time of renewal of their license.

ENFORCEMENT ISSUES

ISSUE #10: COMPLAINT TIMELINES OVER TWO YEARS TO REACH RESOLUTION. *Is the Enforcement Program as it currently operates able to reduce its timeline for average complaint resolution to meet DCA's goal into the twelve to eighteen month range?*

Background: As previously discussed, the Enforcement Unit struggles with several obstacles that impair its ability to effectively and efficiently process complaints. One of the greatest hurdles is overcoming the impact on the Board's enforcement processing timelines created by the workload of the Office of the Attorney General (AG), Office of Administrative Hearings (OAH), and Division of Investigation (DOI). Despite the Board's aggressive efforts to reduce the internal backlog and aging of its complaint investigations, including the informal (citation) and formal disciplinary actions phases, significantly protracted processing times remain a challenge, specifically for cases that are referred to the AG and OAH that involve citation appeals and formal disciplinary action cases. The AG handles cases for all of the boards and bureaus within the DCA, and they are heavily inundated with cases. The OAH hears matters for multiple agencies in addition to DCA.

In its 2015-2018 Strategic Plan, the Board identified these concerns. The Board would like to see a reduction in the overall processing time for formal disciplinary cases, including the investigation time and the time to pursue the action, to an average of 540 days. However, the Board has no control over the processing times for the AG and OAH.

The Board is also heavily impacted by DOI's delays in processing cases. Because DOI also investigates cases on behalf of other boards and bureaus within DCA, it must set priorities for its investigations. Those cases that present evidence of an immediate threat to the public health, safety, and welfare receive the highest priority. Since there is rarely the same level of "immediate threat" relating to the practices of professional engineering, land surveying, geology,

and geophysics as there might be with cases involving healing arts professions, DOI does not give this Board's cases the highest priority. The inability of DOI to timely investigate its cases contributes to the overall aging of the Board's complaint investigation cases and, on occasion, causes statutes of limitations to expire on cases that could potentially be prosecuted in criminal court.

Staff Recommendation: *As the process currently stands, it does not appear that the Board will be able to meet the goal of reducing the timeline for handling its disciplinary cases. While the Enforcement Unit has the ability to investigate complaints, more serious complaints often require enlisting outside investigation and enforcement departments. The Board believes a more collaborative effort is needed to explore how the Board and its staff, as well as DCA and the Legislature, can assist the AG and the OAH in reducing their processing times as well which will positively affect the disposition of cases. Further, the Board suggests that it would be beneficial to all boards and bureaus if DOI were able to increase the number of investigators it employs and to also create specific units within DOI to handle specific types of cases or to work with specific boards, such as with the new unit of investigators that focuses on cases from the Medical Board of California. The Board should also explain to the Committees about where it believes the bottlenecks are in its internal investigation processes and disciplinary actions.*

BOARD RESPONSE:

The Board and its staff recognize that it is not yet meeting the goals it has set for itself relating to the aging of its complaint investigation cases or the goal set by DCA for the aging of formal disciplinary cases. There are many factors that affect the Board's ability to meet these goals, some of which are within the Board's direct control and others which are not because they involve outside sources, whether those sources are other State entities or the individuals involved with the investigation.

As noted in our Sunset Report and the Committee Background Paper, over the last several years, the Board has taken steps to reduce the time it takes to conduct the investigations by addressing issues within its control, such as the length of time people are given to submit information and the independent experts are given to review the cases, as well as the time frames in which staff performs its tasks, such as reviewing the information received and determining the next appropriate step.

One of the external factors affecting the aging of investigations is the length of time it takes the Division of Investigation (DOI) to conduct an investigation. The Board refers approximately 10% of its complaint cases to DOI to assist with the investigations. These cases usually involve allegations of unlicensed activity, along with some related cases against licensees who may be aiding and abetting the unlicensed people. A few cases involve licensees who are the subjects of the investigation who do not respond to the Board's written requests for documents and information. Over the last four fiscal years, the Board referred nearly 200 cases to DOI; the average time it took DOI to investigate was 270 days, with 55 taking over a year. As of February 28, 2015, there are 31 cases at DOI for investigation, with the average age of those investigations at 201 days as calculated from when the Board submitted the case to DOI to the

current date. The Board includes DOI investigation time within its own investigation timeframes when its aging statistics are calculated and reported because it is all part of the investigative phase. Therefore, a reduction in DOI's investigative timeframe would have tremendous impact on reducing the Board's own investigation time for those cases that involve DOI assistance.

Our current goal for reducing our internal investigations is to have no cases over 365 days old, and to reduce our average age of the internal investigation to 180 days. As of February 28, 2015, the average case age is 170 days; and, there are 17 cases over 365 days old, approximately 9% of our total caseload. Nearly half (eight) of those older cases are currently being investigated by DOI.

Board staff recently met with the Deputy Chief of DOI to discuss our concerns with the length of time it is taking DOI and how that impacts the overall aging of the Board's investigations. The Deputy Chief advised that while it is often reported that DOI now has a staff of almost 300, the vast majority of those positions are part of the new unit dedicated to the Medical Board investigations and cannot be used for other boards' investigations. He indicated that there are approximately 30 investigator positions state-wide to handle the investigations for all of the other boards and bureaus; however, at any given time, some of those positions are vacant, either due to temporary leaves of absence or while new investigators are hired and trained.

The main factor that negatively affects the Board's ability to meet DCA's goal of 540 days to take formal disciplinary action against a license, as calculated from the initiation of the complaint investigation to the date the decision becomes final, is an external factor that is entirely outside of the Board's control or influence, and that is the Office of Administrative Hearing (OAH). Once the Enforcement Unit completes its investigation and believes formal disciplinary action is warranted, the matter is referred to the Office of the Attorney General (AG's Office). The AG's Office prepares the Accusation, and once signed by the Board's Executive Officer, serves it on the subject. Once the subject responds to the Accusation, the AG's Office requests that OAH schedule a hearing on the matter. In Fiscal Year 2010/11, the average time from the date the hearing was requested to the scheduled hearing date was seven months; during the first six months of this Fiscal Year, that average has increased to 12 months. This means that 365 days of the 540-day goal set by DCA are simply dead time spent waiting for the hearing to be held. This leaves only 175 days for the Board, possibly with assistance from DOI, to conduct an investigation and refer the matter to the AG's Office, and for the AG's Office to review the evidence gathered and prepare and serve the Accusation.

OAH and its Administrative Law Judges (ALJs) do a very good job hearing the Board's cases and understanding all of the technical engineering, land surveying, and geological issues. However, it is simply unfair to all parties involved for there to be such lengthy delays in cases being heard. The ALJs who hear cases on behalf of this Board, as well as all of the boards and bureaus within DCA with the exception of the Medical Board that has its own dedicated panel of ALJs within OAH, also hear cases on behalf of many other state agencies, including hearings for the Department of Development Services and teacher tenure/layoff cases. The Board believes that the other boards and bureaus under DCA should have their own panel of dedicated ALJs, just as the Medical Board has. We also believe that OAH should be given additional resources so that it can reduce the time delays in hearing cases.

ISSUE #11: LICENSEE RESPONSE REQUIREMENT. *Should the Board have the authority to require a licensee to respond to the Board's requests for information relating to a complaint?*

Background: Coupled with the issues explained above, another major issue with expeditious processing of a complaint is the lack of authority to require its licensees to respond to the Board or to provide documents related to a project which the Enforcement Unit may request during the course of a complaint investigation. One of the reasons for delays in the processing of investigations has been that staff gives the subject of the investigation ample time and opportunities to respond and provide documents during the investigation. Obviously, it is important to obtain as much relevant information from the subject of the investigation as possible. However, what typically transpires is that the licensed subjects often think that if they do not respond, the complaint will simply be closed. While some cases are closed due to lack of substantive information in the complaint, this is unusual. In most cases, the Board must either proceed based on the information on file or must expend additional time and resources (such as referring the case to DOI) to obtain the information. Often, if the Board had received this information in a timely fashion, the complaint could have been resolved without any formal action being pursued against the licensee.

Staff Recommendation: *Since this issue could directly impact the aging of cases, the Board should advise the Committees what actions would be necessary to create a legal requirement for its licensees to respond to investigative inquiries and provide requested documents within a specified period of time.*

BOARD RESPONSE:

As indicated, one of the factors that contributes to the aging of the complaint investigations is the lack of cooperation from the subject of the investigation in providing requested information and documentation to the Enforcement Unit. Currently, there is no law that requires licensees to cooperate with the Board during an investigation; as such, this is an external factor over which the Board has little control. However, as mentioned in the Background Paper, the Board would have more control if licensees were required to cooperate by providing the requested information in a timely manner or face the possibility of action against their license. The Board's laws do require licensees to cooperate with matters relating to reporting of civil or criminal actions; however, this requirement does not extend to all investigations. The Board believes it would benefit from the enactment of statutes to require licensees who are the subjects of investigations to cooperate with the Board or be subject to disciplinary action. This would help to speed up the investigation time frames, which would be to the benefit of both the subject of the investigation as well as the consumers. The Contractors State License Board already has such a law, and we could use that as the basis for a similar law for our licensees.

Recommended legislative language has been provided to the Committees' staff to accomplish this. The language is modeled after the statute already in CSLB's laws (BPC §7111.1).

ISSUE #12: UNLICENSED ACTIVITY – ONLINE ADVERTISING AND CELLULAR TELEPHONES. *Should the Board have the ability to request the shut-down of websites and cellular phones for persons engaged in the unlicensed practice of the professions?*

Background: The issue of enforcement of unlicensed activity continues to be problematic for the Board. While issuing an administrative citation is an effective means of disclosing unlicensed activity to the public and in emphasizing the severity and gravity of such violations, it is not always effective in motivating violators to cease and desist. Many choose to pay the fines and continue to offer and practice, and others choose to ignore the administrative citation altogether. Therefore, the Enforcement Unit would like to research additional means of effectively inhibiting solicitation of illegal activities. For instance, current law provides the Board, through the issuance of an administrative citation, authority to order individuals advertising professional services in telephone directories to disconnect telephone services regulated by the Public Utilities Commission (PUC). Recent legislation, SB 1243 (Lieu, Chapter 395, Statutes of 2014) broadens this to include any advertising, not just a listing in a telephone directory. However, many unlicensed individuals operate through cellular telephone services, which are not regulated by the PUC. In addition, there is currently no authority to require violators to shut down websites illegally advertising professional services.

Staff Recommendation: *The Committees should consider legislation for disconnecting cellular phone services and shutting down websites of persons engaging in unlicensed practice. The Board would be supportive of any legislation mandating this type of action as an effective means of controlling unlicensed practice.*

BOARD RESPONSE:

The Board appreciates the Committees' recognition of the difficulties enforcing against the use of cellular phone service and websites by persons engaging in unlicensed practice. As noted by the Committees' staff, the Board would be supportive of legislation authorizing the disconnection of cellular phone service and the shutdown of websites used by unlicensed individuals in their illegal activities. We believe this is a global issue from which all of the licensing boards, bureaus, and programs under DCA would benefit.

ISSUE #13: CITATION AND FINE RECOVERY OPTIONS. *Should the Board have other options for recovering fines from unlicensed persons?*

Background: As part of its regulatory authority, the Board may issue administrative citations to both licensed and unlicensed individuals. The citations may contain an order of abatement, an order to pay an administrative fine to the Board in the maximum amount of \$5,000 per violation, or both. This mechanism is an effective enforcement tool for licensees. If a licensee fails to comply with the citation order, the Board has the authority to prevent renewal of a license for failure to pay the administrative fine or to pursue formal disciplinary action against the licensee.

When the offender is unlicensed, there is little authority for the Board to recover fines issued to unlicensed individuals who fail to pay. The Board currently utilizes the services of the Franchise Tax Board refund intercept program to assist in collecting fines from individuals who receive state tax refunds, lottery winnings, and have unclaimed property. This rarely results in recovery of fines. Seeking recovery through the civil courts or a collection agency is not cost effective.

Staff Recommendation: *The Committees should consider whether empowering the DCA to pursue fine collection through contracting with a collection agency on behalf of all boards and bureaus would be an effective means for recovering fines from unlicensed persons. The Board would be very interested in participating in this type of program.*

BOARD RESPONSE:

The Board believes that collection agencies could play a valuable role in recovering funds from citation penalties. Currently, the Board does not use a collection agency, as previous research performed indicated that contracting with a collection agency would not have been cost effective. However, the Board is interested in collaborating with other boards and bureaus to research the feasibility of participating in the use of a collection agency together, or empowering DCA to pursue fine collections on their behalf through a collection agency contracted with DCA.

The Board is also interested in collaborating with other related boards (such as, Contractors State License Board, California Architects Board, and Bureau of Real Estate) to develop a system in which an unpaid citation issued by one board could preclude the renewal of a license from another board. Individuals who are not licensed by this Board are often licensed by these other boards/bureaus.

It is noted that the Architects Board has expressed an interest in pursuing the aforementioned possibilities for ensuring the collection of unpaid citation fines, and we look forward to working collaboratively with them to determine the most efficient and cost effective way of doing so. The Board appreciates the Committees encouraging the leverage of these relationships.

ISSUE #14: REGULATION OF THE BUSINESS ENTITY REQUIREMENTS. *How can the Board monitor compliance, oversight, and enforcement of the requirement that business entities be properly structured under BPC § 6738 and BPC § 8729?*

Background: The Board has been researching ways in which it can ensure that civil, electrical, or mechanical engineering and land surveying businesses are in compliance with BPC §§ 6738 and 8729, which govern the manner in which these businesses must be structured. A business offering civil, electrical, or mechanical engineering or land surveying services must have an appropriately licensed individual as an owner, partner, or corporate officer in responsible charge of the respective engineering and land surveying services it offers. The business is currently required to provide the Board with an Organization Record (OR) form, which lists pertinent information about the business, including the identity of the licensees who are owners, partners, or corporate officers, as well as those individuals who are in responsible charge of services

conducted by that business. There is no fee to file the form. The Board's current authority allows administrative or disciplinary action to be taken against a licensee for failing to comply with this requirement. In certain cases, particularly those that involve practice-related violations, it would be the individual licensee on the project that the Board would hold accountable. However, there are certain cases in which the authority to investigate a business as a whole would be helpful, such as contractual or financial issues or cases where the business as an entity was involved in a civil settlement, judgment, or arbitration award.

Another serious, and ever-increasing, problem regarding unlicensed activity is unlicensed individuals operating businesses without having an appropriately licensed individual as an owner, partner, or officer in responsible charge of the professional services offered. Typically when a consumer engages with a business that provides professional services, the consumer interacts with several representatives of that business. Initial consultation to ascertain the consumer's needs, negotiation of the anticipated costs, and the actual scope of services are examples of the tasks where interaction between the consumer and the licensed individual normally does and should occur, due to importance associated with client communication and expectations. In situations where unlicensed individuals are operating businesses without the legally-required licensee, the consumer is typically not receiving the same standard of care and attention that is required to protect their interests, and many times they do not even realize that a licensee should be involved.

The Board has begun to research the feasibility of implementing a structured system of issuing licenses to businesses, which would allow the Board to manage oversight of businesses more effectively. For instance, there is currently no authority to pursue administrative action against businesses or revoke permission to practice. The licensing of businesses would provide the Board the opportunity to exercise more authority over companies not operating in compliance with the law.

In 2012, the Board directed staff to research how other states regulate engineering and land surveying businesses. Research indicated that of the 56 United States/Territories, 41 require some type of business license, commonly referred to as a Certificate of Authorization (COA). Many of the states require a COA on file; mandate fees for submitting the application for the COA and renewals with associated fees; and enforce violations of those requirements.

Additionally, the Board would also like to enact the same requirements for geological and geophysical companies as may be enacted for engineering and land surveying companies. Currently, there is no requirement for geological and geophysical companies to file an OR form.

Staff Recommendation: *The Board should continue to research the feasibility of implementing the issuance of some type of license or authorization to businesses that offer and provide the professional services that the Board regulates. At such time, the Board should advise the Committees what additional statutory language would be necessary to increase the Board's authority to enforce compliance with licensing requirements and to provide for the addition of related fees to cover the costs of the increased workload.*

BOARD RESPONSE:

The Board appreciates the Committees' support of its interests in determining the feasibility of implementing the issuance of some type of license or authorization to businesses that offer and provide the professional services that the Board regulates. We will continue to research this issue and present a legislative proposal to the Committees in the future, which would include information regarding the costs of such a program. If it is determined that no such action should be pursued, we will report on this during our next Sunset Review or at any time as the Legislature may request.

TECHNOLOGY ISSUES

ISSUE #15: BreEZe ROLLOUT. *What is the status of BreEZe implementation by the Board?*

Background: The "BreEZe Project" was designed to provide the DCA boards, bureaus, and committees with a new enterprise-wide enforcement and licensing system. The updated BreEZe system was engineered to replace the existing outdated legacy systems and multiple "work around" systems with an integrated solution based on updated technology.

According to the DCA, BreEZe is intended to provide applicant tracking, licensing, renewals, enforcement, monitoring, cashiering, and data management capabilities. In addition, BreEZe is web-enabled and designed to allow licensees to complete and submit applications, renewals, and the necessary fees through the internet when fully operational. The public also will be able to file complaints, access complaint status, and check licensee information, when the program is fully operational.

According to the original project plan, BreEZe was to be implemented in three releases. The budget change proposal that initially funded BreEZe indicated the first release was scheduled for FY 2012/13, and the final release was projected to be complete in FY 2013/14.

In October 2013, after a one-year implementation delay, the first ten regulatory entities were transitioned to the BreEZe system. Release Two is scheduled to go live in March 2016, three years past the initial planned release date. The BPELSG is one of the programs scheduled to be in Release Three; as such, it is still awaiting implementation of and transition to the BreEZe system. As a result of significant cost and implementation concerns, among others, the DCA reported in late 2014, that the current vendor contract is no longer in place, and those regulatory entities, which includes the BPELSG that were scheduled for Release Three, will not transition to the current BreEZe system.

A recent audit conducted by the California State Auditor titled *California Department of Consumer Affairs' BreEZe System*, reported that "the future implementation of BreEZe is uncertain at best and, as it relates to the regulatory entities originally included in the final release [Release Three], likely unfeasible." The auditor's report also noted that "Consumer Affairs is not responsible for funding the project costs; rather, the total costs of the project are funded by

regulatory entities' special funds, and the amount each regulatory entity pays is based on the total number of licenses it processes in proportion to the total number of licenses that all regulatory entities process."

While the Board has been proactive in the program implementation, even though it is part of Release Three, many of the goals and objectives remaining from the Board's 2010-14 Strategic Plan were not able to be completed primarily due to the delay in transitioning to the BreEZe system and the inability to add new services to the legacy systems. The Board's ability to successfully achieve goals and objectives within the new 2015-18 Strategic Plan will be severely impacted by continuing delays with the implementation of BreEZe or its successor system. Any further delays in implementing BreEZe, or its successor, carry with it an increased risk of having to delay plans for the Board to improve the manner in which services are provided to stakeholders.

The Board currently depends upon the DCA's legacy systems, the Applicant Tracking System (ATS) and the Consumer Affairs System (CAS), for the day-to-day operations of processing applications, licensure, and enforcement efforts. The delays associated with implementing BreEZe, coupled with the DCA's lack of additional resources to simultaneously support the BreEZe and the legacy systems, has caused the Board to handle improvements in our processing practices using manual methods more often than is customary in today's world. The Board is constantly evaluating critical services and moving forward with process improvements that, if designed correctly, will positively impact the timeframes for, among other things, processing applications and investigating complaints.

Staff Recommendation: *The BPELSG should update the Committees about the current status of its implementation of BreEZe. What have been the challenges to implementing this new system? Is the cost of BreEZe consistent with what BPELSG was told the project would cost?*

BOARD RESPONSE:

As mentioned in the Board's 2014 Sunset Report, the Board is one of the Release 3 orphans with an unknown future in respect to the BreEZe project. Due to this position, this response will attempt to address how the Board foresees difficulties with having to remain on the unsustainable legacy systems (ATS/CAS) beyond the timeline originally proposed, and the effect that additional stop-gap measures implemented by the Board over the last four years have had on both existing operations and long term goals.

The Board believes that for it to be prudent in proactively serving its stakeholders, the Board needs to begin evaluating an individual backup plan as recognition that the BreEZe system may never become reality for the Board, and, even if it does, the limitations inherent to a system designed for all boards and bureaus may not adequately allow the Board to achieve its systematic computing goals once it could be implemented.

The Board is faced with a very dynamic set of goals in its current operations and Strategic Plan, especially in terms of outreach to our stakeholders, while continually striving to improve the responsiveness of its application/examination/licensing services. The demographics of the

Board's stakeholder base encompasses several generational groups and greatly extends beyond the jurisdictional boundaries of California, all of which necessitates the implementation of a variety of solutions to achieve effective communication. The historical and passive manner in which boards and bureaus maintain web sites, process applications, handle fee transactions, and distribute consumer publications will no longer suffice. Simply stated, the Board needs to deliver information and access to its customers in several different media (i.e., online applications, CBT/OBT examination administration, online license maintenance, online access to license lookup/discipline history, mobile accessibility, etc.) to maintain relevancy. Otherwise, the consumers of California will look elsewhere for satisfactory results.

While the BreEZe project is progressing for the Release 1 and 2 boards and bureaus, the original need for implementing BreEZe for everyone in the first place does not remain static. It is highly likely that the needs of the former Release 3 boards and bureaus have grown beyond the functionality currently being implemented in BreEZe, which would reasonably entail that if a later form of BreEZe is subsequently implemented for the remaining boards and bureaus, functionality will be limited to that which is currently in place. This is akin to performing a study for a freeway as requiring 4 lanes to handle traffic needs at peak times, taking 10 years to perform the design and construction all the while expecting traffic needs will not exponentially grow during that 10-year period, and upon opening the freeway realizing that new traffic patterns would require 8 lanes.

In addition, maintenance for the legacy systems (ATS/CAS) is suffering due to low allocation of resources and, as a simple fact, the systems are not sustainable as yesterday's standards let alone currently and in the future. It is observed that DCA recognizes the effect that the continued delay has on Release 3 boards and bureaus and would like to be able to assist those with intermediate needs, but without the proper allocation of manpower and resources, neither the legacy systems nor BreEZe will adequately resolve our needs, even if implemented.

The table below illustrates the Pro-Rata portion of the Board's two funds (PELS and G&G) that are directly associated with the BreEZe project as reported to the Board by DCA:

FY	PELS			G&G		
	Budget	Expense	Difference	Budget	Expense	Difference
2009-10	\$ 97,173	\$ 17,773	\$ 79,400	\$ 6,325	\$ 1,033	\$ 5,292
2010-11	\$ 97,173	\$ 57,139	\$ 40,034	\$ 6,325	\$ -	\$ 6,325
2011-12	\$ 193,235	\$ 167,655	\$ 25,580	\$ 12,974	\$ 11,212	\$ 1,762
2012-13	\$ 161,173	\$ 6,695	\$ 154,478	\$ 10,325	\$ 2,581	\$ 7,744
2013-14	\$ 333,173	\$ 333,173	\$ -	\$ 22,325	\$ 22,325	\$ -
Subtotal	\$ 881,927	\$ 582,435	\$ 299,492	\$ 58,274	\$ 37,151	\$ 21,123
<i>Proposed</i>						
2014-15e	\$ 195,065	\$ 195,065	\$ -	\$ 13,903	\$ 13,903	\$ -
2015-16	\$ 478,297	\$ 478,297	\$ -	\$ 35,828	\$ 35,828	\$ -
2016-17	\$ 425,817	\$ 425,817	\$ -	\$ 31,766	\$ 31,766	\$ -
Total	\$ 1,981,106	\$ 1,681,614	\$ 299,492	\$ 139,771	\$ 118,648	\$ 21,123

ISSUE #16: WEBCASTING. *Should the Board be required to webcast its meetings?*

Background: An important function of all the boards and bureaus under the DCA is to assure that the public has access to meetings. While the posting of the minutes memorializes the information from the meeting, the delay in posting minutes is not ideal compared to real-time access. Additionally, attendance at the meetings is not always feasible or practical for the public. The technology is readily available and is currently being used by several governmental entities and will undeniably improve public outreach, comment, and availability.

Staff Recommendation: *The Board should explain to the Committees why its meetings are not being webcast and what, if any, barriers exist to implementing a webcasting system?*

BOARD RESPONSE:

As the Board indicated in its Sunset Report, the Board has considered webcasting its meetings in the past. However, the Board believes that providing opportunities for the public to participate in the discussions at Board meetings is of prime importance, and webcasting does not allow for public participation. A webcast is simply a static video recording; it is not a video conference that allows for interaction between the individuals physically present at the meeting location and those viewing it remotely. As stated in the Background Paper regarding the Department of Consumer Affairs that was prepared by Senate staff, “Even more important than webcasting may be the ability for the public to participate in meetings remotely.”

The Board has conducted meetings via teleconference (telephone call-in) in the past, and members of the public have attended at the remote locations and been able to participate in the discussions at the Board meeting. Until video conferencing that allows for the public to participate from remote locations is logistically available, the Board is not inclined to webcast its meetings because doing so does not enhance the public’s opportunities to interact with the Board.

With regard to the comment that the delay in posting the minutes from the meetings is “not ideal” in providing the public with information regarding what occurred at the meeting, the Board provides copies of the audio recording of the meeting upon request. This audio recording provides the same information as would a video recording (webcast) of the meeting. The Board typically receives one or two requests after each meeting for a copy of the audio recording.

OTHER ISSUES

ISSUE #17: TECHNICAL, CLEAN-UP LEGISLATION. *What BPC sections need non-substantive updates and what language is needed to standardize the Professional Engineers Act, the Land Surveyor's Act, and the Geologists & Geophysicists Act?*

Background: Since the Board assumed the responsibility for administering and enforcing the Geologist and Geophysicist Act [G&G Act], and its associated regulations, staff has been

conducting a comprehensive review of the three Acts (Professional Engineers Act [PE Act], Professional Land Surveyors' Act [PLS Act], and G&G Act) under the Board's jurisdiction to determine what laws need to be changed to provide standardization across the Acts. In addition, staff continuously reviews the laws to determine if any non-substantive, clean-up changes need to be made. The following are the sections of the BPC that have been identified as needing amendments. The Board has specific language ready to provide to the Legislature to accomplish these changes.

- Section 6704.1 – This section relates to the review of the engineering branch titles to determine whether certain title acts should be eliminated, retained, or converted to practice acts (the so-called “Title Act Study”). The law required the Title Act Study report to be submitted to the Legislature in 2002. The report was submitted as required. As such, this section is now obsolete and should be repealed.
- Sections 6738 and 8729 – Amendments need to be made to these sections to correct minor grammatical errors to ensure clarity.
- Sections 6799 and 8805 – Amendments need to be made to standardize the language in these sections with the language in Section 7887 so that the amount of the fees to renew the professional engineers' and land surveyors' licensees are not tied to the licensure application fee in effect at the time of renewal and are simply established in regulation with a not-to-exceed maximum listed in statute, as is the case for the renewal fees for professional geologists' and geophysicists' licensees. The application fee, which is established in regulation with a not-to-exceed maximum listed in statute, is based on the costs incurred by the Board solely for the review and processing of applications for licensure and certification. The renewal fees support all of the other operations of the Board, including enforcement. Tying the renewal fee to the application fee could result in the Board having to reduce the renewal fee to an amount that would no longer generate sufficient revenue to appropriately continue its operations at the level necessary to provide mission critical functions for the protection of the public health, safety, welfare, and property.
- Sections 7835 and 7835.1 – Amendments need to be made to these sections to require professional geologists and professional geophysicists to both sign and seal (or stamp) their professional geological and geophysical documents. Currently, the laws require that the documents be either signed or sealed. However, the laws relating to professional engineering and land surveying documents require both the signature and the seal of the licensee in responsible charge of the preparation of the documents. Requiring both the signature and the seal provides for better assurance to the public that the documents reflect the final professional opinion of the licensee, rather than a preliminary opinion.
- Section 7844 – Amendments need to be made to this section so that it will match Sections 6754 and 8745 so that the Board has the authority to make arrangements with public or private organizations for materials or services related to the examinations for geologists and geophysicists, just as the Board already has the authority to do for the examinations relating to professional engineering and land surveying.
- Section 8771 – This section was amended by SB 1467 (Committee on Business, Professions and Economic Development, Chapter 400, Statutes of 2014), which was the Senate BP&ED Committee's Omnibus Bill. Although the Board was supportive of the

amendments, there were concerns that the actual language proposed did not clearly articulate the requirements and responsibilities for the preservation of land surveying monuments and could result in confusion which could limit the Board's ability to enforce the provisions of this section. However, there was not sufficient time remaining in the legislative session for the Board to fully develop alternate language. Such language has now been developed and is ready to be presented for inclusion in legislation during the 2015-2016 Legislative Session.

Staff Recommendation: *The Board should recommend cleanup amendments for the above cited Business & Professions Code sections to the Committees.*

BOARD RESPONSE:

Recommended legislative language has been provided to the Committees' staff to accomplish the noted clean-up amendments.

ISSUE #18: DEFINITION OF SIGNIFICANT STRUCTURES AND REQUIREMENT THAT LIMITS THEIR DESIGN TO STRUCTURAL ENGINEERS. *Should "significant structures" language be added to BPC § 6735 that limits the design of these designated structures to licensed structural engineers?*

Background: The Board has been made aware a proposal by the Structural Engineers Association of California (SEAOC) to amend the Professional Engineers Act to require licensure as a structural engineer, rather than solely a civil engineer, for the design of "significant structures" in California. Some examples of "significant structures" include hazardous material facilities, fire and police stations, water storage facilities, aviation towers and hangars, and other critical buildings and structures that would be necessary for emergency operations or could result in a large number of injuries or deaths in the event of major earthquake.

The origins of this proposal are rooted in the concept that current and future buildings and other structures in California, and with them, the people of California, are at risk for injury and death due to the probability of moderate and major earthquakes occurring in populated areas. The training of structural engineers may be better suited to address the unique design considerations when dealing in seismically-active regions.

Currently, California law requires that public schools and hospitals be designed by licensed structural engineers. There has been a significant trend nationwide, especially in seismically-active states, expanding the requirement that designated "significant structures" be under the auspices of structural engineers. Washington, Oregon, Utah, and Nevada have this requirement. Illinois and Hawaii also have this requirement with limited exceptions.

The proposed change in the licensing law entails determining which "significant structures" require design exclusively by licensed structural engineers. SEAOC is currently working with the Board on specific language defining these structures. SEAOC plans to propose that currently

licensed civil engineers would continue to be able to design structures in this category and that this legislation would only apply prospectively to newly licensed civil engineers.

Staff Recommendation: *The Board and the engineering profession should engage in further discussion with the Committees regarding the appropriateness of this change.*

BOARD RESPONSE:

As requested by the Committees at the Board's Sunset hearing on March 18, 2015, the Board will help to facilitate discussions between the professional associations regarding SEAOC's proposal and will provide a status report to the Committees in 2016.

CONTINUED REGULATION OF THE PROFESSIONS BY THE BOARD

ISSUE #19: CONTINUED REGULATION BY THE BOARD. *Should the licensing and regulation of engineers, land surveyors, and geologists be continued and regulated by the current Board membership?*

Background: The health, safety and welfare of consumers are protected by the presence of a strong licensing and regulatory Board with oversight over Professional Engineers, Land Surveyors, and Geologists. The BPELSG has shown over the years a strong commitment to improve the Board's overall efficacy and effectiveness and has worked cooperatively with the DCA, the Legislature, and these Committees to bring about necessary changes.

Staff Recommendation: *Recommend that the licensing and regulation of the engineering, land surveying, and geology professions continue to be regulated by the current Board members in order to protect the interests of the public and be reviewed once again in four years to review whether the issues and recommendations in this Background Paper have been addressed.*

BOARD RESPONSE:

The Board greatly appreciates the Committees' recognition of its efforts to improve its operations and the continued support for our future endeavors. We look forward to working with the Committees and their staff over the next four years to accomplish the recommendations outlined in the Background Paper.