

**BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND
GEOLOGISTS**

FINAL STATEMENT OF REASONS

Hearing Date: January 14, 2020

Subject Matter of Proposed Regulations: Fees and Certificates

Section(s) Affected: California Code of Regulations, Title 16, Divisions 5 and 29, amend sections 407, 410, and 3005 and adopt section 3010.

Updated Information

The Initial Statement of Reasons is included in the file and is incorporated here by reference. The information contained therein is updated as follows:

The initial comment period for this rulemaking was from November 29, 2019, to January 14, 2020, during which two (2) comments were received. Two (2) additional comments were received after the conclusion of the initial 45-day comment period.

A hearing was held on this rulemaking on January 14, 2020. Board staff remained at the hearing location for the time listed on the original notice. There were no public attendees and no comments were made at that time.

On January 16, 2020, the Board issued an Extension of Public Comment Period from the notice to extend the public comment from January 16, 2020, to February 2, 2020. The Notice of Modified Text was mailed on January 16, 2020, for public comments. One (1) comment was received during the public comment period.

On June 4, 2020, the Board issued an Extension of Public Comment Period from the notice to extend the public comment from June 4, 2020, to June 19, 2020. The Notice of Modified Text was mailed on June 4, 2020, for public comments. Six (6) comments were received during the public comment period.

All comments are described below and discussed in the “Objections or Recommendations/Responses” section.

The comments submitted do not require revision of the proposed language. However, the proposed language was amended to update the effective date of an expiring license and the renewal fee. Originally proposed language included a proposed date to renew a license that expires on or after January 1, 2020. The first modified version of the text updated this date to July 1, 2020. A second modified version of the text updated this date to January 1, 2021. The necessity for this change provides for enough

transparency for the Board's licensee population. As a result of both changes, the Board issued 15-day Notices of Modified Text.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Small Business Impact

This action will not have a significant adverse economic impact on small businesses.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the board would be more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons than the adopted regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Additionally, no other alternatives considered adequately solved the Board's budget issues.

Anticipated Benefits

The Board anticipates the standardized fee structure proposed will foster an affordable path to licensure, align fees with the full cost of operational services, and set fees to facilitate the effective administration of the Board while meeting the needs of the public, applicants, and licensees. The fees will apply to the renewal of licenses that expire after the effective date of the amendments to the regulations. Other specified fees will be charged as of the effective date of the amendments to the regulations.

Objections or Recommendations/Responses

There were no objections or recommendations regarding the proposed action.

The following comments were made regarding the modified proposal:

Original 45-Day Comment Period:

The Board received two (2) comments during the 45-day comment period.

Comment 1(Chris Tracy, PG, CEG):

I have a comment on the "Notice of Proposed Regulatory Action for 16 CCR 407, 410, 3005, & 3010" posted on the Boards website at https://www.bpelsg.ca.gov/about_us/rulemaking.shtml

The document, "Notice of Proposed Regulatory Action for 16 CCR 407, 410, 3005, & 3010" (https://www.bpelsg.ca.gov/about_us/407_notice.pdf) refers to Table III which

“identifies the current cost impact to California state agencies and proposed impact”. Looking at Table III, I take the heading License Type and the number below it to represent the number of licensed individuals in that Department. If my assumption is correct, the table significantly underestimates the fiscal impact to the State. DWR, Cal Trans, Conservation, Parks and Rec, DTSC and I suspect the other Departments listed employ Geologist and Certified Engineering Geologist. For instance my Division here at DWR employs 5 licensed Geologist/Engineering Geologist and over 50 licensed engineers. As such the number of engineers also seem way low based on my knowledge of DWR and other Departments. Perhaps the Board could get a better understanding of the numbers from Cal HR as the Engineer and Engineering Geologist classification Rank D requires the individual to have a current license. However, it will be difficult to capture those with dual licenses through Cal HR.

I also noticed the Current Fee is based solely on the renewal fee for engineers. Geologist currently have a different fee schedule.

Feel free to contact me if I need to explain my concern better.

Response:

In order to determine the fiscal impact to public agencies the Board contacted the California Department of Human Resources (CalHR) to request the number of authorized positions by Department that represents the number of licensed individuals throughout public agencies. CalHR could not provide this data to the Board. The Board determined, through publicly accessible data at the Department of Finance California Budget website (<http://www.ebudget.ca.gov/>) the top Departments that may employ licensed professional engineers, land surveyors, and geologists in order to estimate a fiscal impact for public agencies. The Board does not keep employment information for its licensees, therefore, the estimates on Attachment III are generated from the stated publicly accessible data. The Current Fee table excluded the Geologist renewal fee impact for four (4) geologists. The renewal fee for geologists is being reduced by \$90 dollars, from \$270 dollars to \$180 dollars, and provides a net savings of \$360 dollars for the four (4) geologists identified on the Current Fee table. No changes to the text are required due to this response.

Comment 2 (Pat Tami, PLS):

Just wondering where the number of licenses came from on Attachment III?

Response:

The Board determined, through publicly accessible data at the Department of Finance California Budget website (<http://www.ebudget.ca.gov/>) the top Departments that may employ licensed professional engineers, land surveyors, and geologists in order to estimate a fiscal impact for public agencies. The Board does not keep employment information for its licensees, therefore, the estimates on Attachment III are generated from the stated publicly accessible data. No changes to the text are required due to this response.

Received After the 45-Day Comment Period:

The Board received two (2) comments after the 45-day comment period.

Comment 1 (Ronald Sorensen, PG, CHG, PGP):

I noticed the fees for the specialty geologist were removed and as stated in section 3005 (l) the term “License” covers the specialty certification. Two questions:

- 1) Does this now mean that the former “Certified Hydrogeologist” is now a “Licensed Hydrogeologist? and other sections of the regulations need to be amended to reflect this (and new report stamps made)?
- 2) If not, how can a almost 200% increase in the annual fee (making it on par with a license) be justified for a “Certification”?

Response:

1) No. The proposed amendments that include the new paragraph (i) at the end of sections 407 and 3005 would remove the definition of the word “license” from a singular subdivision and place it in its own paragraph and apply it to the use of the word in the entire section. This change does not affect the titles of the certifications or licenses issued by the Board, but rather clarifies for the purposes of section 407 and 3005 that the term ‘license’ as it relates to the setting of fees in those sections refers to both ‘licenses’ and ‘certifications.’

Additionally, as discussed in the Initial Statement of Reasons, it was realized that two license types had been left out in the current version of the regulations; therefore, they are being included now (specifically, “photogrammetric surveyor” in 407 and “specialty geophysicist” in 3005) to list all license types. This will provide clarity as to the meaning of the word through the section and eliminate the need to reference each type of license or certificate in individual subdivisions.

2) The processes for approving applicants for licensure and enforcing the licensing laws are generally the same for all professions regulated by the Board, and the costs incurred to perform those services are the same for all regulated professions. However, under the current fee structure, there is disparity amongst the Board’s regulated professions. The Board believes that eliminating such disparity, to the extent feasible, would make its fee structure more equitable. Since the same services are provided to all of the Board’s regulated professions, the same renewal fee should be charged. This proposal would standardize the renewal fee so that it is the same for all license types issued and regulated by the Board. To the extent that the comment proposed lessening the certification fee, that suggestion is rejected by the Board.

Comment 2 (Craig A. Copelan):

I was wondering how delinquency renewals will be handled under the new regs, for example if a license is delinquent by two years or more would the applicant have to pay

for the renewal fees they would have during that time when they apply to renew their license or just the 50 % of the renewal charge on the date that they apply?

Response:

Business and Professions Code sections 6796, 6796.1, 6796.2, 6796.3, 6796.5, 7880, 7881, 7881.5, 7882, 7883, 7884, 8801, 8802, 8802.1, 8803, and 8803.1 identify renewal of expired, suspended, or revoked certificate including failure to renew and effect of renewal of expired or delinquent certificates. In this case, the individual seeking renewal would pay all accrued and unpaid renewal fees including the delinquency fees in effect for those time periods in order to renew their license. No changes to the text are required due to this comment.

Modified 15-Day Re-Notice:

The Board received one (1) comment during the 15-day comment period.

Comment 1 (Mark List):

Call received from Mark List, Supervising Engineering Geologist at the Department of Water Resources (DWR). He asked how the Board generated the list on the Notice - attachment III identifying the fiscal impact to public agencies and indicated that there are numerous licensed Geologists at DWR, Caltrans, and Fish and Game that are not represented on this attachment.

Response:

The Board determined, through publicly accessible data at the Department of Finance California Budget website (<http://www.ebudget.ca.gov/>) the top Departments that may employ licensed professional engineers, land surveyors, and geologists in order to estimate a fiscal impact for public agencies. The Board does not keep employment information for its licensees, therefore, the estimates on Attachment III are generated from the stated publicly accessible data. No changes to the text are required due to this comment.

Additional Modified 15-Day Re-Notice:

The Board received six (6) comments during the additional 15-day comment period.

Comment 1 (Dave, Cascadia Engineering):

Thanks for your work on this, the fee increases seem completely reasonable and I have zero objection.

I am curious what these fees go towards funding, can you let me know where I might find that information?

Response:

Although the question posed does not pertain to the subject of the modifications

proposed in this 15-day notice, the Board is providing the following response. Information regarding operational support as a result of the funding provided by the regulatory fees are described in the Initial Statement of Reasons (ISOR). All information pertaining to rulemaking proposals can be found on the Board's website: www.bpelsg.ca.gov/about_us/rulemaking.shtml. An excerpt pulled from page 5 of the ISOR identifies "Under the Board's internal accounting practices, the Licensing Unit is sustained by application fees, the Examination Unit is sustained by examination fees, and the Administration Unit, Enforcement Unit, Executive, and pro rata are sustained by renewal fees."

Comment 2 (Alan W. Rasplicka):

I received the attached notice and the proposed changes are not clear to me. The notice states that Changes that are the subject of this 15-day noticed public comment period are shown as additions in double-underlined italics and deletions in double strikethrough italics. I did not see any double-underlined italics within the document. I did see some single underlined text with no italics that did not appear to be defined. Could you please help me understand what I am missing? If the document is incorrect, please revise and recirculate.

Response:

Changes that are the subject of this 15-day noticed public comment period are shown as additions in double-underlined italics and deletions in ~~double-strikethrough italics~~. The changes are in CCR sections 407 (c) and 3005 (d). The only change made was to change the date relating to renewal fees from July 1, 2020, to January 1, 2021.

Board staff also responded directly to Mr. Rasplicka's inquiry, stating, "The changes are located in CCR section 407 (c) and 3005 (d). Changes to both sections move the biennial renewal fee effective date out to January 1, 2021 for all expiring licenses."

Comment 3 (Christine Jansen, PE)

I would like to provide comments on the fee text changes. With our current economic climate and the unpredictable nature of the world right now, I believe these fee increase are extremely insensitive and poorly timed. I acknowledge that the resolution was proposed before the shutdown of our state, but the continuation of pursuit of these changes is not appropriate. Applicants are most often either still in college or have just graduate. If they're lucky they've gotten a job and been able to maintain it through the shutdown. Most however are facing layoffs, reduced hours or reduced pay. This is similar for those of us who are facing renewal fees too. Due to all of the financial hardships, it is my opinion that this resolution should not be passed and the board should be more economically aware of their individuals they support and serve.

Response:

Although the comments do not pertain to the subject of the modifications proposed in this 15-day notice, the Board is providing the following response. The Board rejects this comment. While the Board understands individuals may have

financial concerns at this time, it is necessary for the Board to adjust its fees to maintain its operations. The Board anticipates the standardized fee structure proposed will foster an affordable path to licensure, align fees with the full cost of operational services, and set fees to facilitate the effective administration of the Board while meeting the needs of the public, applicants, and licensees.

Comment 4 (Randy R. Bick, PE):

Email message received with attachments June 12, 2020:

As a licensed Civil Engineer within the State of California for over 40 years, I believe the proposed bi-annual renewal fees are excessive considering they represent an increase of over 56% than last renewal.

On the surface the fee increase amount appears to be somewhat arbitrary. In my opinion, as the State provides additional License Categories, and more and more professionals get licensed thru the State of California, the fees for renewals should actually go lower and not higher.

Accordingly, I respectfully request the Board provide its rationale and methods in determining these fee increases, including all data driven comparisons to other States. For example, in the States of Washington and Florida charge \$116 and \$97.50, respectively for their biannual renewal fees.

Response:

Although the comments do not pertain to the subject of the modifications proposed in this 15-day notice, the Board is providing the following response.

The Board rejects this comment. Detailed information regarding current costs, historical operational costs, and the proposed increase in fees are included in the Initial Statement of Reasons (ISOR). All information pertaining to rulemaking proposals can be found on the Board's website: www.bpelsg.ca.gov/about_us/rulemaking.shtml. As a state agency, we are following statutory obligations and cannot comment on how any other states are funded. While the Board understands individuals may have financial concerns at this time, it is necessary for the Board to adjust its fees to maintain its operations. The Board anticipates the standardized fee structure proposed will foster an affordable path to licensure, align fees with the full cost of operational services, and set fees to facilitate the effective administration of the Board while meeting the needs of the public, applicants, and licensees.

Comment 5 (Tyler Munzing, Director of Government Affairs, American Council of Engineering Companies, California):

Our Executive Committee had a conversation about the proposed Board fee increases. Some questions for you:

1. Do the current fees cover the Board's current costs? We believe the answer to be no.
2. Does the Board currently operate at a loss relative to the revenues generated by fees? We believe the answer to be yes.

3. Do the proposed fee increases fix the above? If yes, for how long? If no, what is the remaining difference between anticipated costs and anticipated revenues?
4. Does the Board have a scholarship or reduced fee schedule for (primarily first-time applicants) experiencing financial hardships?

Thanks for all your help, we would like to work with you guys on this.

Response:

Although the questions posed do not pertain to the subject of the modifications proposed in this 15-day notice, the Board is providing the following response.

1. The detailed information regarding current costs, historical operational costs, and the proposed increase in fees are included in the Initial Statement of Reasons (ISOR). All information pertaining to rulemaking proposals can be found on the Board's website: www.bpelsg.ca.gov/about_us/rulemaking.shtml. Excerpts pulled from the ISOR in response to the public comment are provided.

2. The necessity for this proposed regulatory action is to standardize fees for services for all regulated professions and ensure future fiscal solvency for the Board. Analysis of the Fund Condition statement confirms the Board must implement budgetary adjustments to address dissimilar fees amongst all professions it regulates and protect the Fund from becoming insolvent as projected in Fiscal Year (FY) 2020-21. Analysis of the Board's fund balance measured by Months in Reserve (MIR) projects that at the end of FY 2019-20, a 0.5-month reserve will exist. The Board's budget will become insolvent in FY 2020-21 with a deficit of -\$3.3 million and -3.1 MIR. (ISOR, page 2)

3. The regulatory proposal "ensures future fiscal solvency for the Board and its operations, standardizes fees across all of the Board's regulated professions, and provides an affordable path to licensure for all applicants." (ISOR, page 11) Attachment III in the ISOR describes fee alternatives and Fund Condition Impact. Alternative 1 is the proposed structure the Board has identified that would provide fiscal solvency through FY 2023-24.

4. The Board does not have a scholarship and has tried to ensure an affordable path to licensure for first-time applicants by reducing application fees. Table A in the ISOR identifies the average exam and application fee based on historical operational costs. The proposed fees amounts are lower than the averages to support an affordable path to licensure.

Comment 6 (Hartford Engineering, Gerald D. Hartford, Jr., PE):

It is obvious via the changes being proposed to Title 6, Divisions 5 and 29, specifically paragraphs #407, #410, #3005 and #3010, that fees to obtain/maintain a professional engineers license in California will rise, if these changes are adopted.

The question is WHY and for WHAT purpose are the fees being raised?

On WHAT will the increase in fees be spent?

And why such an increased amount (56.5%)?

Raised fees merely indicate a higher taxation on professional services.

We question the need for this rise in fees and request that you justify why they are required.

Response:

Although the comment and questions posed do not pertain to the subject of the modifications proposed in this 15-day notice, the Board is providing the following response. Information regarding the purpose, the history, and the necessity for the proposed regulatory fees are described in the Initial Statement of Reasons (ISOR). All information pertaining to rulemaking proposals can be found on the Board's website: www.bpelsg.ca.gov/about_us/rulemaking.shtml. Excerpts pulled from the ISOR in response to the public comment are provided. The necessity for this proposed regulatory action is to standardize fees for services for all regulated professions and ensure future fiscal solvency for the Board. (ISOR, page 2) Under the Board's internal accounting practices, the Licensing Unit is sustained by application fees, the Examination Unit is sustained by examination fees, and the Administration Unit, Enforcement Unit, Executive, and pro rata are sustained by renewal fees. (ISOR, page 5) While the changes in fees by percentage (-233% to 63%) vary drastically, standardizing fees across all regulated professions is based on the economic value provided by an affordable path to licensure, aligning fees with the full cost of operational services, and setting fees to facilitate the effective administration of the Board while meeting the needs of the public, applicants, and licensees. (ISOR, page 10)

Fiscal Impact Assessment

As described in detail in the Notice, BPELSG indicates because the fees are already being assessed and the proposed regulations only standardize the fee amount levels across all professions, any workload and costs related to implementing the proposed regulations will be minimal and absorbed within existing resources.

The Board estimates the proposed regulations will increase revenues by approximately \$4.6 to \$5.1 million per year, eliminate any structural imbalance, and allow for a prudent fund balance reserve.