

**BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND
GEOLOGISTS
DEPARTMENT OF CONSUMER AFFAIRS
CALIFORNIA CODE OF REGULATIONS. TITLE 16. DIVISIONS 5 AND 29.**

NOTICE IS HEREBY GIVEN that the Board for Professional Engineers, Land Surveyors, and Geologists (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

Hearing location: 2020 West El Camino Avenue, Suite 800
Sacramento, CA 95833
Hearing Date: January 14, 2020
Hearing Time: 10:00 a.m. to 12:00 p.m.

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under contact person in this Notice, must be received by the Board at its office no later than 12:00 p.m. on **January 14, 2020**, or must be received by the Board at the hearing.

The Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text.

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

Authority and Reference Citations: Pursuant to the authority vested by Sections 6716, 6765, 6799, 7818, 7854, 7887, 8710, 8749, and 8805 of the Business and Professions Code (BPC), and to implement, interpret or make specific Sections 119, 122, 158, 6706.3, 6765, 6795, 6798, 6799, 7851, 7880, 7881, 7887, 8749, 8775.3, 8801, 8802, 8804, 8804.5, and 8805 of said code, the Board is considering changes to Title 16, Divisions 5 and 29, Sections 407, 410, 3005, and 3010 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST

In accordance with the provisions of the Administrative Procedure Act, BPC sections 6716, 7818, and 8710 authorize the Board to adopt, amend, or repeal rules and regulations which are reasonably necessary to carry out the provisions of the Professional Engineers Act (BPC sections 6700, et seq.), the Geologist and Geophysicist Act (BPC sections 7800, et seq.), and the Professional Land Surveyors' Act (BPC sections 8700, et seq.), respectively. BPC sections 6799, 7887, and 8805 prescribe and establish the

statutory limits for the fees that the Board may charge and collect for each of the professions under the regulatory jurisdiction of the Board. BPC sections 6765, 7854, and 8749 authorize the Board to issue duplicate certificates and to adopt rules and regulations governing the issuance of such certificates.

The Board proposes to amend Sections 407, 410, and 3005 and to adopt Section 3010 of Divisions 5 and 29 of Title 16 of the CCR. The purpose for amending Sections 407 and 3005 is to standardize fees for services for all regulated professions, address structural imbalances in the Board's budget and ensure future fiscal solvency. The purpose for amending Section 410 and adopting Section 3010 is to clarify under what circumstances certificates, including duplicate certificates, will be issued.

The application, examination, renewal, retired, delinquent, and duplicate certificate fees have remained the same since 2012 and are disparate across the regulated professions. In this proposed rulemaking, the Board seeks to amend Sections 407 and 3005 to standardize said fees as detailed in **Attachment I**. Section 410 is proposed to be amended and Section 3010 is proposed to be added to address when and how the Board will issue certificates, including duplicate certificates.

The Board anticipates the proposed standardized fee structure 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 proposed fees will apply to the renewal of licenses that expire after the effective date of the amendments to the regulations and to all other specified fees to be charged as of the effective date of the amendments to the regulations.

Amend Title 16 CCR Sections 407 and 3005 Relating to Fees.

The existing regulations set forth the fees that may be charged and collected by the Board for an application, examination, renewal of a license, delinquency of a license, and retired license. The proposed fee changes will standardize fees amongst all professions regulated by the Board. See **Attachment I** for description of fee changes. The Board last adjusted fees in 2012 and that fee structure has provided operational program support until Fiscal Year (FY) 2017-18.

Proposed changes to all regulatory fees across all professions are detailed below.

Impact to Application, Renewal, Retired, and Delinquent Fees:

The proposed fee changes will standardize fees amongst all professions regulated by the Board. Standardization by regulated profession is provided in **Attachment I**.

Impact to Examination Fees:

For all California specific state examinations, the proposed fee changes will support the actual cost to develop, maintain, and administer examinations and standardize fees amongst all regulated professions. For professional geologists also required to take the National Association of State Boards of Geology (ASBOG®) examinations those fees are set by the national organization and are identified in **Attachment I**.

Transfer of Duplicate Certificate Fee from Section 410 to Section 407:

Currently, the fee to be charged for the issuance of a duplicate certificate to a professional engineer or a professional land surveyor is specified in Section 410, while other fees are listed in Section 407. The fee charged to professional geologists and professional geophysicists for duplicate certificates is specified in Section 3005, which also identifies other fees applicable to those professions. It is more appropriate to specify all fees to be charged in one regulatory section; therefore, the Board is proposing to specify the duplicate certificate fee in Section 407 and remove it from Section 410.

Change in Duplicate Certificate Fee in Section 3005:

The Board's internal process to issue a duplicate certificate is the same whether it is issued under the laws pertaining to professional engineers and land surveyors or those pertaining to professional geologists and geophysicists. As such, it is appropriate to charge the same fee of \$10 for this service across all of the Board's regulated professions.

Amend Title 16. CCR Section 410 and Adopt Title 16. CCR Section 3010 Relating to Certificates.

The Board proposes to amend Section 410 and adopt Section 3010 of Divisions 5 and 29, respectively, of Title 16 of the CCR relating to certificates. Currently, Section 410 addresses when and how the Board will issue certificates, including duplicate certificates, to professional engineers and professional land surveyors and specifies the fee to be charged for duplicate certificates. There is no section in the regulations promulgated under the Geologist and Geophysicist Act that addresses when and how the Board will issue certificates, including duplicate certificates, to professional geologists and professional geophysicists; however, the fee to be charged for duplicate certificates is specified in Section 3005. This proposal would also add Section 3010 to address when and how the Board will issue certificates, including duplicate certificates, to professional geologists and geophysicists. This will provide consistency regarding the procedures for all of the Board's regulated professions.

Furthermore, this proposal would amend Section 410 to remove the specific dollar amount of the fee and indicate that the fee to be charged for duplicate certificates is specified in Section 407, which is the section that lists all of the specific fees to be charged by the Board. Additionally, language is proposed to be added to Section 410 to clarify that the affidavit is to be submitted in instances where a certificate was destroyed or mutilated, as well as in instances where the certificate was lost, since the preceding sentence requires an affidavit in all three of those circumstances.

POLICY STATEMENT OVERVIEW//ANTICIPATED BENEFITS OF PROPOSAL

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. In FY 2021-22, this deficit will be approximately -\$7.5 million or -6.8 MIR. The current fee structure is not comparable to the services provided. **Attachment II** details the Board’s fund condition updated with the 2019-20 Governor’s Budget Act. Standardizing the Board’s various fee amounts across the professions and resolving the structural fund imbalance are unattainable without a fee change.

There are several factors that have created the need to standardize fees. On July 1, 2016, Assembly Bill 177 – Bonilla (Chapter 428, Statutes of 2015) merged the Geologist and Geophysicist Account under the Professional Engineer’s and Land Surveyor’s Fund into one Fund. Prior to the Funds merging, the Geologist and Geophysicist Account was expending more than generated revenue, thus creating a structural fund imbalance in the Fund. This impact has been absorbed while the Board has studied equitable and service-based fee levels amongst all regulated professions.

Additionally, expenditures have increased over the past four years by an average of 8%, or \$872,000, and are tied to increases in employee salaries and benefits, operating expenses related to examination development costs, and pro rata charges, which in themselves have been impacted by the increases in employee salaries and benefits, as follows:

	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
Actual Positions	48.0	51.0	50.0	47.0
Personal Services	\$ 3,675	\$ 4,184	\$ 4,535	\$ 4,621
Operating Expenses	\$ 3,580	\$ 3,621	\$ 3,706	\$ 4,829
Departmental Prorata	\$1,315	\$1,300	\$1,748	\$1,736

Note: Dollars represented in thousands

- Since FY 2014/15 salaries and wages, temporary help, and benefits increased by \$946,000 related to filling program vacancies, merit salary adjustments, retirement and healthcare increases, and bargaining unit salary adjustments. Operating expenses have increased by \$1,249,000 related to examination development contracts, examination expert consultant contracts, and enforcement. Departmental Prorata rose by \$421,000 and Statewide Prorata rose by \$690,000.

On January 1, 2017, the Board stopped collecting an application fee for refile applicants. Prior to January 1, 2017, applicants were required to pay an application fee each time they applied and refiled to take an exam. A separate refile application fee is no longer required. If one needs to retake a California state-specific exam, one needs to submit the appropriate re-examination form and only the required exam fee(s) prior to being authorized by the Board to schedule to retake the exam(s). Additionally, professional engineer and professional land surveyor applicants who need to re-take a national exam now register directly with the national exam vendor and pay the exam fees directly to that

vendor. The Board is not involved in that stage of the process and, therefore, does not need to collect a refile application fee.

These changes in the application process, while helping to expedite the process so that qualified individuals may be licensed sooner, have contributed to the decrease in the number of applications submitted to date and the historical revenue collected. Over two FYs (2016-17 and 2017-18), average revenue has decreased by \$657,000, and the direct impact in regulatory licenses has been a \$780,000 reduction from FY 2016-17 to FY 2017-18. Cyclical renewal fees have helped absorb the direct reduction in regulatory licenses but have not eliminated the structural imbalance in the Fund.

Additionally, the Board's current and varied fee structure, last adjusted in 2012, does not support the actual costs of services provided today. The cost incurred to fulfill a current service is not equal to the current fee associated with that service. There are also disparities among the fees charged for different license types. The processes for approving and enforcing licensure are generally the same for all professions regulated by the Board, and the costs incurred to fulfill those services is mostly the same for all regulated professions. One example of a fee disparity between the regulated professions is the application fee charged to individuals applying under the Geology and Geophysicist Act (\$250 application fee) versus those applying under the Professional Engineers Act and the Professional Land Surveyors' Act (\$125 application fee). This means applicants for licensure as professional geologists, professional geophysicists, certified engineering geologists, and certified hydrogeologists are charged double the fee that applicants for licensure as professional engineers and professional land surveyors are charged for generally the same service.

Additionally, the proposed amendments to Section 410 will clarify that the fee to be charged for duplicate certificates for professional engineers and professional land surveyors is specified in Section 407, where all the fees charged by the Board are listed. They will also clarify wording. The proposed addition of Section 3010 will indicate when and how the Board will issue certificates, including duplicate certificates, to professional geologists and geophysicists, thereby standardizing the procedures addressed in regulations across all of the Board's regulated licenses.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing these regulations and amendments, the Board has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The fiscal effect on state government includes numerous agencies (Department of Transportation, Forestry and Fire Protection, Conservation, Fish and Wildlife,

Toxic Substances, Water Resources, Air Resources Board, etc.) that have licensed engineers, land surveyors, geologists, and geophysicists in their employment. Quite often agencies reimburse for application, exam, and license fees if the individual is successful in meeting all requirements for licensure. **Attachment III** identifies the current cost impact to California state agencies and proposed impact. The Board cannot determine how many applicants or examinees there are in state agencies as they would be ordinary applicants and may not be working for a state agency at this moment.

The Board does not receive any federal funding.

Nondiscretionary Costs/Savings to Local Agencies:

Local agencies may be required to reimburse their employees' license fees. Typically, a Memorandum of Understanding (MOU) negotiated between the State, as the employer, and the collective bargaining unit (union) dictates reimbursement procedures. The Board cannot determine how many licensees there are in local agencies. It is impractical to determine the number of licensees in local agencies based on available data because the fees are paid separately by or on behalf of individual licensees. The Board considered the impact, and concludes that there is a very small impact that won't affect hiring or budgets in a significant way.

Local Mandate:

This proposed regulatory action does not impose a mandate on local agencies or school districts.

Cost to Any Local Agency or School District for Which Government Code Sections 17500-17630 Requires Reimbursement:

None

Business Impact:

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

Impact on Jobs/New Businesses:

The Board has determined that this proposed regulatory action is unlikely to have an impact on the creation of new businesses or jobs or the elimination of existing businesses or jobs or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Board has determined that the proposed regulatory action will have no significant statewide adverse economic impact directly affecting businesses. The proposed regulations will affect currently licensed professional engineers, professional land surveyors, professional geologists, professional geophysicists, certified engineering geologists, and certified hydrogeologists as it applies to the

proposed change in license renewal fees. The proposed regulations will affect individuals who apply for a license as a professional engineer, professional land surveyor, professional geologist, professional geophysicist, certified engineering geologist, and certified hydrogeologist and for a certification as an Engineer-in-Training, Land Surveyor-in-Training, or Geologist-in-Training, as the required application and examination fees will be changing to a more standardized structure across all regulated professions.

Effect on Housing Costs:

None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses in the state of California as the proposed amendments affect only individual practitioners renewing, replacing, or retiring their Board-issued certificate or license, individual applicants for licensure, and individual exam candidates.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

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

Benefits of Regulation:

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

Specifically, this proposal is designed to enable the Board to continue its licensing, disciplinary, and oversight operations in the interest of the health, safety, and welfare of California consumers by ensuring only actively licensed practitioners are providing engineering, land surveying, geology, and geophysics services. Additionally, it will improve consistency between the regulations for the various professions regulated by the Board. This proposal does not affect the state's environment.

CONSIDERATION OF ALTERNATIVES

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

Any interested person may present statements or arguments relevant to the above

determinations in writing, or orally at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board at 2535 Capitol Oaks Drive, Suite 300, Sacramento, California 95833. Materials regarding this proposal can also be found at: http://www.bpelsg.ca.gov/about_us/rulemaking.shtml

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

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below. You may obtain a copy of the final statement of reasons, once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

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

Name: Jeff Alameida
Address: 2535 Capitol Oaks Drive, Suite 300
Sacramento, CA 95833
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E-Mail Address: Jeff.Alameida@dca.ca.gov

The back-up contact person is:

Name: Nancy Eissler
Address: 2535 Capitol Oaks Drive, Suite 300
Sacramento, CA 95833
Telephone No.: (916) 263-2241
Fax No.: (916) 263-2246
E-Mail Address: Nancy.Eissler@dca.ca.gov

WEBSITE ACCESS:

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