

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

NOTICE OF PROPOSED REGULATORY ACTION

**Title 16, California Code of Regulations
Sections 416 and 3060 – Substantial Relationship Criteria
Sections 418 and 3061 – Criteria for Rehabilitation**

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.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under “Contact Person” in this Notice.

COMMENT PERIOD

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 April 27, 2020**, or must be received by the Board at the public hearing, if one is requested and scheduled. Oral comments will be accepted at the hearing, if one is requested and scheduled.

AVAILABILITY OF MODIFICATIONS

The Board, upon its own motion or at the insistence 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 this Notice as the Contact Person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 481, 482, 493, 6716, 7818, and 8710 of the Business and Professions Code (BPC), and to implement, interpret, or make specific BPC sections 141, 475, 480, 481, 482, 488, 490, 492, 493, 6775, 6775.1, 6777, 6779, 7860, 7862, 7863, 7864, 8780, 8780.1, 8783, and 8784, the Board is considering amending Sections 416, 418, 3060, and 3061 of Title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST

The Board regulates professional engineers, land surveyors, geologists, and geophysicists. BPC sections 6716, 7818, and 8710 authorize the Board to adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Professional Engineers Act (Business and Professions Code section 6700, et seq.), the Geologist and Geophysicist Act (Business and Professions Code section 7800, et seq.), and the Professional Land Surveyors' Act (Business and Professions Code section 8700, et seq.).

BPC section 141 allows for the use of disciplinary action taken in other jurisdictions to be considered by the Board.

Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), amended BPC sections 475, 480, 481, 482, 488, 490, 492, and 493 relative to substantial relationship and rehabilitation criteria in the use of criminal history, disciplinary history, professional misconduct, or prior acts evidence in initial licensing approvals or denials, and decisions to suspend, revoke, or discipline licensees. The new provisions will go into effect July 1, 2020.

The primary purpose of this proposal is to implement, interpret, and make specific the provisions of BPC sections 141, 475, 480, 481, 482, 488, 490, 492, and 493 relative to substantial relationship and rehabilitation criteria in the use of criminal history, disciplinary history, professional misconduct, or prior acts evidence in initial licensing approvals or denials, and decisions to suspend, revoke, or discipline licensees. The Board is proposing the following changes:

Amend Sections 416 and 3060 of Article 1 of Division 5 and Article 5 of Division 29, respectively, of Title 16 of the California Code of Regulations (Substantial Relationship Criteria):

The proposed amendments, for purposes of denial, suspension, or revocation of a license, would add professional misconduct and out-of-state discipline as grounds requiring the Board to consider the substantially related criteria, and require the Board, in making the substantial relationship determination for a crime, to consider the following criteria: (1) the nature and gravity of the offense; (2) the number of years elapsed since the date of the offense; and (3) the nature and duties of a person holding the license. The proposal would also add that substantially related crimes, professional misconduct, or acts would include violating other state or federal laws governing the practices of professional engineering, land surveying, geology, and geophysics.

Amend Sections 418 and 3061 of Article 1 of Division 5 and Article 5 of Division 29, respectively, of Title 16 of the California Code of Regulations (Criteria for Rehabilitation):

The proposed amendments would clarify that the Board, when considering a license denial or discipline on the ground that the applicant or licensee was convicted of a crime, would have to determine whether the applicant or licensee made a showing of rehabilitation and is presently eligible for a license, if the applicant or licensee completed the criminal sentence without a violation of parole or probation. In making that

determination, the proposal would require the Board to consider the nature and gravity of the crime, the length of the parole or probation period, the extent to which the parole or probation period was shortened or lengthened, and the reasons therefor, the terms or conditions of parole or probation and the extent to which they bear on the applicant's or licensee's rehabilitation, and the extent to which the terms or conditions of parole were modified, and why. The proposal would require a broader set of rehabilitation criteria to be considered for applicants and licensees who had not completed the criminal sentence without a violation of parole or probation, did not sufficiently demonstrate their rehabilitation under the narrower set of criteria, or when the denial or discipline was based on something other than a conviction.

POLICY STATEMENT OVERVIEW/ANTICIPATED BENEFITS OF PROPOSAL

As specified in the legislative analyses of AB 2138, this proposal seeks to reduce barriers to licensure for individuals with prior criminal convictions, which may reduce recidivism and provide economic opportunity to California's residents. In addition, the proposal seeks to improve clarity, transparency, and consistency for applicants and licensees in the Board's use of their criminal histories. Furthermore, by reducing barriers to licensure, the Board anticipates there may be benefits to consumers who may have greater access to licensed professionals.

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 of these topics 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:

The Board anticipates that there may be an increased cost to the state as a result of amending the sections identified in the regulatory proposal. By further defining the substantial relationship and rehabilitation criteria for criminal convictions, Board staff may see an increased workload to research convictions and to substantiate that rehabilitation has been achieved. The Board anticipates that any additional workload would be absorbable within existing resources. Should the workload be greater than anticipated, the Board will seek additional resources through the annual budget process.

Cost or Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

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

Business Impact:

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

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

Cost Impact on Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

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 Board licenses individuals, not businesses, and the proposed amendments affect only individuals who are applying for licensure or who are already licensed and who have been convicted of a crime or had disciplinary action taken against them in another jurisdiction.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have an impact on the creation of jobs or new businesses, 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 proposal may benefit individuals, who would have greater access to licensure, reduce criminal recidivism, and provide economic opportunity to California residents with a criminal history. The public may benefit from the proposal with increased access to licensed professionals, which may benefit the health, safety, and welfare of California's consumers. The regulatory proposal does not affect worker safety or 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 the 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.

The following alternatives to this proposal were considered:

- Option 1: To pursue a regulatory change that requires the Board to find rehabilitation if the applicant completed their terms of their criminal probation or parole. Courts give little weight to the fact that an applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole since they are under the direct supervision of correctional authorities and are required to behave in an exemplary fashion. As such, the Board believes that reviewing each individual on the basis of multiple criteria is the better indicator of whether individuals are rehabilitated and not a danger to the public's health, safety, and welfare. For these reasons, the Board rejected this option.
- Option 2: Do nothing, meaning the Board would not adopt the regulations. The Board opted not to pursue this option because, pursuant to AB 2138, the Board is mandated to adopt proposed regulations by July 1, 2020.

Any interested person may submit comments to the Board in writing relevant to the above determinations addressed to the individuals listed under "Contact Person" in this Notice.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the 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 upon request from the individuals listed under "Contact Person" in this Notice.

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

All of the information upon which the proposed regulatory action is based is contained in the rulemaking file which is available for public inspection by contacting the individuals listed under "Contact Person" in this Notice.

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: Nancy Eissler, Assistant Executive Officer
Address: Board for Professional Engineers, Land Surveyors,
and Geologists
2535 Capitol Oaks Drive, Suite 300
Sacramento, CA 95833
Telephone No.: 916-263-2241
Fax No.: 916-263-2221
E-Mail Address: Nancy.Eissler@dca.ca.gov

The backup contact person is:

Name: Jeff Alameida, Administrative Services Manager
Address: Board for Professional Engineers, Land Surveyors,
and Geologists
2535 Capitol Oaks Drive, Suite 300
Sacramento, CA 95833
Telephone No.: 916-263-2269
Fax No.: 916-263-2221
E-Mail Address: Jeff.Alameida@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.bpelsq.ca.gov.