



Governor Edmund G. Brown

Board for Professional Engineers, Land Surveyors, and Geologists

Meeting of the Board for Professional Engineers, Land Surveyors, and Geologists

November 5-6, 2015

Thursday, November 5, beginning at 9:00
a.m. and continuing on Friday, November 6,
beginning at 9:00 a.m., if necessary

San Bernardino County Public Works
825 E. 3rd Street
San Bernardino, CA 92415

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LAND SURVEYORS, AND GEOLOGISTS

BOARD MEETING LOCATION

NOVEMBER 5-6, 2015

SAN BERNARDINO COUNTY PUBLIC WORKS
825 E. 3RD STREET
SAN BERNARDINO, CA 92415

Board Members: Robert Stockton, President; Coby King, Vice President; Natalie Alavi; Asha Brooks; Chelsea Esquibias; Eric Johnson; Kathy Jones Irish; Betsy Mathieson; Mohammad Qureshi; Hong Beom Rhee; Karen Roberts; Jerry Silva; and Patrick Tami

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I. Roll Call to Establish a Quorum

II. Public Comment

NOTE: The Board cannot take action on items not on the agenda. The Board will also allow for Public Comment during the discussion of each item on the agenda.

III. Legislation

- A. Discussion of Legislation for 2015: AB 12, AB 85, AB 177, AB 181, AB 320, AB 507, SB 209, and SB 284
- B. Legislative Proposals for 2016

JANUARY							
	S	M	T	W	TH	F	S
Interim Recess						1	2
Wk. 1	3	4	5	6	7	8	9
Wk. 2	10	11	12	13	14	15	16
Wk. 3	17	18	19	20	21	22	23
Wk. 4	24	25	26	27	28	29	30
Wk. 1	31						

FEBRUARY							
	S	M	T	W	TH	F	S
Wk. 1		1	2	3	4	5	6
Wk. 2	7	8	9	10	11	12	13
Wk. 3	14	15	16	17	18	19	20
Wk. 4	21	22	23	24	25	26	27
Wk. 1	28	29					

MARCH							
	S	M	T	W	TH	F	S
Wk. 1			1	2	3	4	5
Wk. 2	6	7	8	9	10	11	12
Wk. 3	13	14	15	16	17	18	19
Spring Recess	20	21	22	23	24	25	26
Wk. 4	27	28	29	30	31		

APRIL							
	S	M	T	W	TH	F	S
Wk. 4						1	2
Wk. 1	3	4	5	6	7	8	9
Wk. 2	10	11	12	13	14	15	16
Wk. 3	17	18	19	20	21	22	23
Wk. 4	24	25	26	27	28	29	30

MAY							
	S	M	T	W	TH	F	S
Wk. 1	1	2	3	4	5	6	7
Wk. 2	8	9	10	11	12	13	14
Wk. 3	15	16	17	18	19	20	21
Wk. 4	22	23	24	25	26	27	28
No Hrgs.	29	30	31				

DEADLINES

- Jan. 1

Statutes take effect (Art. IV, Sec. 8(c)).
- Jan. 4

Legislature reconvenes (J.R. 51(a)(4)).
- Jan. 10

Budget Bill must be submitted by Governor (Art. IV, Sec. 12(a)).
- Jan. 15

Last day for **policy committees** to hear and report to **fiscal committees** fiscal bills introduced in their house in the odd-numbered year. (J.R. 61(b)(1)).
- Jan. 18

Martin Luther King, Jr. Day observed.
- Jan. 22

Last day for any committee to hear and report to the **Floor** bills introduced in their house in 2015 (J.R. 61(b)(2)). Last day to submit **bill requests** to the Office of Legislative Counsel.
- Jan. 31

Last day for each house to pass **bills** introduced in that house in the odd-numbered year (J.R. 61(b)(3)), (Art. IV, Sec. 10(c)).

- Feb. 15

Presidents’ Day observed.
- Feb. 19

Last day for bills to be **introduced** (J.R. 61(b)(4), J.R. 54(a)).

- Mar. 17

Spring Recess begins upon adjournment (J.R. 51(b)(1)).
- Mar. 28

Legislature reconvenes from Spring Recess (J.R. 51(b)(1)).

- Apr. 1

Cesar Chavez Day observed.
- Apr. 22

Last day for **policy committees** to hear and report to fiscal committees **fiscal bills** introduced in their house (J.R. 61(b)(5)).

- May 6

Last day for **policy committees** to hear and report to the Floor **nonfiscal** bills introduced in their house (J.R. 61(b)(6)).
- May 13

Last day for **policy committees** to meet prior to June 6 (J.R. 61(b)(7)).
- May 27

Last day for **fiscal committees** to hear and report to the Floor bills introduced in their house (J.R. 61(b)(8)). Last day for **fiscal committees** to meet prior to June 6 (J.R. 61(b)(9)).
- May 30

Memorial Day observed.
- May 31 - June 3

Floor Session only. No committee may meet for any purpose except Rules Committee, bills referred pursuant to Assembly Rule 77.2, and Conference Committees (J.R. 61(b)(10), J.R. 61(h)).

*Holiday schedule subject to final approval by Rules Committee.

Opposed Legislation

Assembly Bill 320 (Wood D) **Environmental Engineer**

Status: 8/28/2015-Failed Deadline pursuant to Rule 61(a)(11)

Location: 8/28/2015-S. 2 YEAR -Senate Appropriations. Suspense file.

Last Amendment: 7/8/2015

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Updated 10/21/15

Staff Analysis: AB 320

Bill Summary: This bill would prohibit a person from using the title "Environmental Engineer" unless the person is licensed as an "Environmental Engineer". This bill would set forth the intent of the Legislature that the Board be responsible for defining Environmental Engineering through rulemaking and that the Board adopt standardized examination materials applicable to Environmental Engineering, as specified.

Staff Comment: Introducing an “Environmental Engineer” Title Act will not regulate the practice of environmental engineering; only the use of the title is regulated. Moreover, AB 320 will not prevent a person from practicing environmental engineering; it will only prevent a person from using the title “Environmental Engineer.” The legislative intent provision in AB 320 indicates it is necessary for public protection to “regulate this profession.” However, this bill would not regulate this profession; it will only restrict a person from using the title. For the last 20 years, the Board has held the position that restricting only the use of the title without also regulating the associated practice does not provide sufficient public protection. AB 320 would require the Board to adopt through the regulatory process a definition of “environmental engineering.” The Board believes that the resulting definition would be so narrow in scope due to need to prevent overlap with regulated practices, such as civil engineering and geology, that it would preclude people from having the required experience needed to qualify for licensure.

Board Position: Oppose - as amended 7/8/2015.

Laws: An act to amend Section 6732 of the Business and Professions Code, relating to engineers.



BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS

2535 Capitol Oaks Drive, Suite 300, Sacramento, California, 95833-2944

Telephone: (916) 263-2222 – Toll Free: 1-866-780-5370

Facsimile: (916) 263-2246

www.bpelsg.ca.gov



August 11, 2015

The Honorable Ricardo Lara
Chair, Senate Appropriations Committee
State Capitol, Room 2206
Sacramento, CA 95814

Re: Assembly Bill 320 (Wood) – **Oppose**

Dear Chairman Lara:

The Board for Professional Engineers, Land Surveyors, and Geologists (Board) has voted to **OPPOSE** Assembly Bill 320, as amended July 8th, 2015, which is scheduled to be heard in the Appropriations Committee on August 17, 2015.

Assembly Bill 320 would add the title "Environmental Engineer" as a Title Act license. The legislative intent provision in AB 320 indicates it is necessary for public protection to "regulate this profession." However, this bill would not regulate this profession; it will only restrict a person from using the title. AB 320 will not prevent a person from practicing environmental engineering; it will only prevent a person from using the title "Environmental Engineer."

AB 320 would require the Board to adopt through the regulatory process a definition of "environmental engineering." It has been estimated that it will cost the Board between \$60,000 and \$150,000 to perform the occupational analysis to develop the definition. Once the definition is adopted, the Board will then be able to decide if the national environmental engineering examination will be appropriate for licensure in California, or if it will need to develop its own examination. If it were to be determined that the national examination is not appropriate and the Board had to develop its own examination, the costs incurred by the Board could range from \$100,000 to \$200,000.

If you have any questions or concerns please contact Kara Williams, Legislative Analyst, at 916.263.5438.

Sincerely,

A handwritten signature in cursive script, likely belonging to Richard B. Moore, PLS, is positioned above the typed name.

RICHARD B. MOORE, PLS
Executive Officer

cc Members, Senate Appropriations Committee
Brendan McCarthy Consultant, Senate Appropriations Committee

AMENDED IN SENATE JULY 8, 2015
AMENDED IN ASSEMBLY APRIL 23, 2015
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 320

Introduced by Assembly Member Wood

February 13, 2015

An act to amend Section 6732 of the Business and Professions Code, relating to engineers.

LEGISLATIVE COUNSEL'S DIGEST

AB 320, as amended, Wood. Engineers.

Existing law provides for the licensing and regulation of professional engineers and land surveyors by the Board for Professional Engineers, Land Surveyors, and Geologists in the Department of Consumer Affairs. Existing law prohibits a person from representing himself or herself as an engineer, as described by various titles, unless the person is licensed as an engineer. Existing law makes a violation of those prohibitions a misdemeanor.

This bill would additionally prohibit a person from using the title “environmental engineer” unless the person is licensed as an engineer. The bill would provide legislative findings and declarations in support of the licensure of environmental engineers in California. ~~The bill would permit a licensed civil, electrical, or mechanical engineer to use the title “environmental engineer” without obtaining additional qualifications.~~ The bill would set forth the intent of the Legislature that the board be responsible for defining environmental engineering through rulemaking and that the board adopt standardized examination materials applicable to environmental engineering, as specified

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Over the past few decades, the study and practice of
4 environmental engineering has expanded greatly throughout
5 California and the nation. Many colleges in California have
6 accredited environmental engineering programs and thousands of
7 California engineers currently provide essential environmental
8 engineering services to all levels of government, private industry,
9 and the public.

10 (b) Despite leading the way in environmental protection and
11 global climate change remediation programs, the State of California
12 is an anomaly in that it does not currently offer a pathway for the
13 licensure of environmental engineers. Forty-eight other states test
14 and provide a licensing path for environmental engineers. Hawaii
15 and California currently do not.

16 (c) As programs of environmental mitigation and protection
17 continue to expand in scope and complexity for our air, water, and
18 soil testing and certification of environmental engineers is needed
19 to establish benchmarks for competency to protect and safeguard
20 the public.

21 (d) The Board for Professional Engineers, Land Surveyors, and
22 Geologists (BPELSG) safeguards the life, health, property, and
23 public welfare by regulating the practice of professional
24 engineering. The BPELSG provides this public service by testing
25 and licensing individuals, establishing regulations, enforcing laws
26 and regulations, and providing information so that consumers can
27 make informed decisions.

(e) In the early 1970s, the BPELSG created title acts in the branches of agriculture, control system, corrosion, fire protection, manufacturing, nuclear, quality, safety, and traffic. At that time, the BPELSG did not approve a petition to add an environmental engineer title act. In 1986, the authority to establish new title registration branches returned to the Legislature.

(f) In California, professional engineers are licensed in the three practice act categories of civil, electrical, and mechanical engineering, and licensed in the 10 title act categories of agricultural, chemical, control system, fire protection, industrial, manufacturing, metallurgical, nuclear, petroleum, and traffic engineering.

(g) Environmental engineering is the branch of engineering that understands and applies engineering principles in the areas of solid waste management, water supply and treatment, wastewater treatment, air pollution management, hazardous waste management, and related environmental and public health impact, assessment, and mitigation including the physical, chemical, and biological processes by which pollutants form, release, disperse, react, or neutralize in air, water, or soil.

(h) Given the proliferation of the practice of environmental engineering in the public and private sectors in California, it is now necessary to create an environmental engineering title act within the Professional Engineers Act to safeguard life, health, property, and the public welfare and regulating this profession.

(i) It is the intent of the Legislature that the BPELSG will be responsible for defining “environmental engineering” through rulemaking, adding to the definitions found in Section 404 of Title 16 of the California Code of Regulations, and using the same process used to define the other title acts. It is the intent of the Legislature that the BPELSG will also adopt national standardized examination materials applicable to environmental engineering, similar to testing for other branches of engineering.

(j) Creating a new environmental engineering title act does not require the expenditure of state funds. Just as is the case with other practice and title act licensees, it is the intent of the Legislature that applicant fees will cover the cost of license and registration.

SEC. 2. Section 6732 of the Business and Professions Code is amended to read:

6732. ~~(a)~~ It is unlawful for anyone other than a professional engineer licensed under this chapter to stamp or seal any plans, specifications, plats, reports, or other documents with the seal or stamp of a professional engineer, or in any manner, use the title “professional engineer,” “licensed engineer,” “registered engineer,” or “consulting engineer,” or any of the following branch titles: “agricultural engineer,” “chemical engineer,” “civil engineer,” “control system engineer,” “electrical engineer,” “environmental engineer,” “fire protection engineer,” “industrial engineer,” “mechanical engineer,” “metallurgical engineer,” “nuclear engineer,” “petroleum engineer,” or “traffic engineer,” or any combination of these words and phrases or abbreviations thereof unless licensed under this chapter.

~~(b) Notwithstanding subdivision (a), a professional engineer licensed as a civil, electrical, or mechanical engineer, may use the title “environmental engineer” without obtaining additional qualifications.~~

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Opposed Legislation

Assembly Bill 85 (Wilk R)

Open meetings.

Status: 9/28/2015-Vetoed by the Governor

Location: 9/28/2015-A. VETOED

Last Amendment: 4/15/2015

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Updated 10/21/15

Staff Analysis: AB 85

Bill Summary: This bill would, under the Bagley-Keene Open Meeting Act, specify that the definition of "state body" includes an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body that consists of 3 or more individuals, as prescribed, except a board, commission, committee, or similar multimember body on which a member of a body serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation. This bill contains other related provisions.

Staff Comment: The Board already obeys the Bagley-Keene Open Meeting Act. This bill would further define a "state body" to include groups of two or more.

Board Position: Oppose-as amended 4/15/2015.

Laws: An act to amend Section 11121 of the Government Code, relating to State government, and declaring the urgency thereof, to take effect immediately.

BILL NUMBER: AB 85
VETOED DATE: 09/28/2015

To the Members of the California State Assembly:

I am returning Assembly Bill 85 without my signature.

This bill expands the Bagley-Keene Open Meeting Act to include state advisory bodies, regardless of their size.

My thinking on this matter has not changed from last year when I vetoed a similar measure, AB 2058. I believe strongly in transparency and openness but the more informal deliberation of advisory bodies is best left to current law.

Sincerely,

Edmund G. Brown Jr.



BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS

2535 Capitol Oaks Drive, Suite 300, Sacramento, California, 95833-2944

Telephone: (916) 263-2222 – Toll Free: 1-866-780-5370

Facsimile: (916) 263-2246

www.bpelsg.ca.gov



August 11, 2015

The Honorable Ricardo Lara
Chair, Senate Appropriations Committee
State Capitol, Room 2206
Sacramento, CA 95814

Re: Assembly Bill 85 (Wilk). – **Oppose**

Dear Senator Lara:

The Board for Professional Engineers, Land Surveyors, and Geologists (Board) has voted to **OPPOSE** Assembly Bill 85, as amended April 15, 2015, which is scheduled to be heard in the Appropriations Committee on August 17, 2015.

Assembly Bill 85 proposes to amend the Bagley-Keene Open Meeting Act, specifically Government Code section 11121, relating to what constitutes a “state body” for purposes of compliance with the Act to conduct meetings in an open forum to allow for the public to participate. The author has indicated that the purpose of this bill is to clarify the Bagley-Keene Open Meeting Act regarding what constitutes a “state body” under its provisions. According to the author, there is an ambiguity in the current law regarding whether standing committees composed of fewer than three members must comply with the Act. The author contends that some state agencies interpret the law to allow standing committees that contain fewer than three members and do not vote on action items to hold meetings that are closed to the public. The author indicates that the amendment proposed by AB 85 is intended to clarify that standing committees, including advisory committees composed of less than three members, are subject to the Act and must allow for public participation at their meetings.

The Board respectfully disagrees that there is an ambiguity in the current law and believes that the proposed amendment would, in fact, create an ambiguity regarding what constitutes an advisory body that does not have authority to act on its own. As Governor Brown said in his veto message of AB 2058 (Wilk), 2013-2014 Legislative Session, advisory committees do not have the authority to act on their own. They must present any findings or recommendations to the overall state body before formal action can be taken, and that state body must conduct its meetings in an open public forum and allow for public input before any action can be taken.

The Board strongly believes in complying with the Bagley-Keene Open Meeting Act because of the importance of public participation and encourages members of the public to attend its meetings and address the Board. However, the Board cannot support AB 85 in its current form due to the ambiguity created by this proposed amendment.

If you wish to discuss the Board’s concerns with AB 85 further, please feel free to contact Kara Williams, Legislative Analyst, at Kara.Williams@dca.ca.gov or (916) 263-5438.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Moore", is located below the word "Sincerely,".

RICHARD B. MOORE, PLS
Executive Officer

cc Members, Senate Appropriations Committee
Mark McKenzie Staff Director, Senate Appropriations Committee

AMENDED IN ASSEMBLY APRIL 15, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 85

Introduced by Assembly Member Wilk

January 6, 2015

An act to amend Section 11121 of the Government Code, relating to state government, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL’S DIGEST

AB 85, as amended, Wilk. Open meetings.

The Bagley-Keene Open Meeting Act requires that all meetings of a state body, as defined, be open and public and that all persons be permitted to attend and participate in a meeting of a state body, subject to certain conditions and exceptions.

This bill would specify that the definition of “state body” includes an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body that consists of 3 or more individuals, as prescribed, except a board, commission, committee, or similar multimember body on which a member of a body serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.

~~This bill would make legislative findings and declarations, including, but not limited to, a statement of the Legislature’s intent that this bill is declaratory of existing law.~~

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. The Legislature finds and declares all of the~~
2 ~~following:~~

3 ~~(a) The unpublished decision of the Third District Court of~~
4 ~~Appeals in Funeral Security Plans v. State Board of Funeral~~
5 ~~Directors (1994) 28 Cal. App. 4th 1470 is an accurate reflection of~~
6 ~~legislative intent with respect to the applicability of the~~
7 ~~Bagley-Keene Open Meeting Act (Article 9 (commencing with~~
8 ~~Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of~~
9 ~~the Government Code) to a two-member standing advisory~~
10 ~~committee of a state body.~~

11 ~~(b) A two-member committee of a state body, even if operating~~
12 ~~solely in an advisory capacity, already is a "state body," as define~~
13 ~~in subdivision (d) of Section 11121 of the Government Code, if a~~
14 ~~member of the state body sits on the committee and the committee~~
15 ~~receives funds from the state body.~~

16 ~~(c) It is the intent of the Legislature that this bill is declaratory~~
17 ~~of existing law.~~

18 ~~SEC. 2.~~

19 ~~SECTION 1.~~ Section 11121 of the Government Code is
20 ~~amended to read:~~

21 ~~11121. As used in this article, "state body" means each of the~~
22 ~~following:~~

23 ~~(a) Every state board, or commission, or similar multimember~~
24 ~~body of the state that is created by statute or required by law to~~
25 ~~conduct official meetings and every commission created by~~
26 ~~executive order.~~

27 ~~(b) A board, commission, committee, or similar multimember~~
28 ~~body that exercises any authority of a state body delegated to it by~~
29 ~~that state body.~~

30 ~~(c) An advisory board, advisory commission, advisory~~
31 ~~committee, advisory subcommittee, or similar multimember~~
32 ~~advisory body of a state body, if created by formal action of the~~
33 ~~state body or of any member of the state body, and if the advisory~~

1 body so created consists of three or more persons, except as in
 2 subdivision (d).

3 (d) A board, commission, committee, or similar multimember
 4 body on which a member of a body that is a state body pursuant
 5 to this section serves in his or her official capacity as a
 6 representative of that state body and that is supported, in whole or
 7 in part, by funds provided by the state body, whether the
 8 multimember body is organized and operated by the state body or
 9 by a private corporation.

10 ~~SEC. 3.~~

11 *SEC. 2.* This act is an urgency statute necessary for the
 12 immediate preservation of the public peace, health, or safety within
 13 the meaning of Article IV of the Constitution and shall go into
 14 immediate effect. The facts constituting the necessity are:

15 In order to avoid unnecessary litigation and ensure the people's
 16 right to access the meetings of public bodies pursuant to Section
 17 3 of Article 1 of the California Constitution, it is necessary that
 18 *this act take effect immediately* ~~immediately~~.

Watched Legislation

Assembly Bill 12 (Cooley D)

State government: administrative regulations: review

Status: 8/28/2015-Failed Deadline pursuant to Rule 61(a)(11).

Location: 8/28/2015-S. 2 YEAR- Senate Appropriations.

Last Amend: 8/19/2015

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Updated 10/21/15

Staff Analysis: AB 12

Bill Summary: This bill would require every state agency, department, board, bureau or other entity to review and revise regulations to eliminate inconsistent, overlapping, duplicative, and outdated provisions and adopt the revisions as emergency regulations by January 1, 2018. Additionally, this bill would require the Business, Consumer Services, and Housing Agency to submit a report to the Governor and Legislature affirming compliance with these provisions. Non-significant technical amendments were made 8/19/15.

Staff Comment: Board staff routinely reviews and revises regulations. We established a legislative and regulatory review committee to complete this workload. Staff anticipate this requirement to be absorbable.

Board Position: Watch -as amended 8/19/2015.

Laws: An act to amend Section 11349.1.5 of, and to add and repeal Chapter 3.6 (commencing with Section 11366) of Part 1 of Division 3 of Title 2 of, the Government Code, relating to state agency regulations.

AMENDED IN SENATE AUGUST 19, 2015

AMENDED IN ASSEMBLY APRIL 22, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 12

Introduced by Assembly Member Cooley
(Coauthors: Assembly Members Chang, Daly, and Wilk)
(Coauthor: Senator Huff)

December 1, 2014

An act to add and repeal Chapter 3.6 (commencing with Section 11366) of Part 1 of Division 3 of Title 2 of the Government Code, relating to state agency regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 12, as amended, Cooley. State government: administrative regulations: review.

Existing law authorizes various state entities to adopt, amend, or repeal regulations for various specified purposes. The Administrative Procedure Act requires the Office of Administrative Law and a state agency proposing to adopt, amend, or repeal a regulation to review the proposed changes for, among other things, consistency with existing state regulations.

This bill would, until January 1, 2019, require each state agency to, on or before January 1, 2018, review that agency's regulations, identify any regulations that are duplicative, overlapping, inconsistent, or out of date, to revise those identified regulations, as provided, and report to the Legislature and Governor, as specified

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 3.6 (commencing with Section 11366) is added to Part 1 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 3.6. REGULATORY REFORM

Article 1. Findings and Declarations

11366. The Legislature finds and declares all of the following:

(a) The Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500)) requires agencies and the Office of Administrative Law to review regulations to ensure their consistency with law and to consider impacts on the state's economy and businesses, including small businesses.

(b) However, the act does not require agencies to individually review their regulations to identify overlapping, inconsistent, duplicative, or out-of-date regulations that may exist.

(c) At a time when the state's economy is slowly recovering, unemployment and underemployment continue to affect all Californians, especially older workers and younger workers who received college degrees in the last seven years but are still awaiting their first great job, and with state government improving but in need of continued fiscal discipline, it is important that state agencies systematically undertake to identify, publicly review, and eliminate overlapping, inconsistent, duplicative, or out-of-date regulations, both to ensure they more efficiently implement and enforce laws and to reduce unnecessary and outdated rules and regulations.

Article 2. Definition

11366.1. For the purposes of this chapter, the following definitions shall apply

(a) "State agency" means a state agency, as defined in Section 11000, except those state agencies or activities described in Section 11340.9.

(b) “Regulation” has the same meaning as provided in Section 11342.600.

Article 3. State Agency Duties

11366.2. On or before January 1, 2018, each state agency shall do all of the following:

(a) Review all provisions of the California Code of Regulations applicable to, or adopted by, *adopted by* that state agency.

(b) Identify any regulations that are duplicative, overlapping, inconsistent, or out of date.

(c) Adopt, amend, or repeal regulations to reconcile or eliminate any duplication, overlap, inconsistencies, or out-of-date provisions, and shall comply with the process specified in Article 5 (commencing with Section 11346) of Chapter 3.5, unless the addition, revision, or deletion is without regulatory effect and may be done pursuant to Section 100 of Title 1 of the California Code of Regulations.

(d) Hold at least one noticed public hearing, ~~that~~ *which* shall be noticed on the Internet Web site of the state agency, for the purposes of accepting public comment on proposed revisions to its regulations.

(e) Notify the appropriate policy and fiscal committees of each house of the Legislature of the revisions to regulations that the state agency proposes to make at least 30 days prior to initiating the process under Article 5 (commencing with Section 11346) of Chapter 3.5 or Section 100 of Title 1 of the California Code of Regulations.

(g) (1) Report to the Governor and the Legislature on the state agency’s compliance with this chapter, including the number and content of regulations the state agency identifies as duplicative, overlapping, inconsistent, or out of date, and the state agency’s actions to address those regulations.

(2) The report shall be submitted in compliance with Section 9795 of the Government Code.

11366.3. (a) On or before January 1, 2018, each agency listed in Section 12800 shall notify a department, board, or other unit within that agency of any existing regulations adopted by that department, board, or other unit that the agency has determined may be duplicative, overlapping, or inconsistent with a regulation

1 adopted by another department, board, or other unit within that
2 agency.

3 (b) A department, board, or other unit within an agency shall
4 notify that agency of revisions to regulations that it proposes to
5 make at least 90 days prior to a noticed public hearing pursuant to
6 subdivision (d) of Section 11366.2 and at least 90 days prior to
7 adoption, amendment, or repeal of the regulations pursuant to
8 subdivision (c) of Section 11366.2. The agency shall review the
9 proposed regulations and make recommendations to the
10 department, board, or other unit within 30 days of receiving the
11 notification regarding any duplicative, overlapping, or inconsistent
12 regulation of another department, board, or other unit within the
13 agency.

14 11366.4. An agency listed in Section 12800 shall notify a state
15 agency of any existing regulations adopted by that agency that
16 may duplicate, overlap, or be inconsistent with the state agency's
17 regulations.

18 11366.45. This chapter shall not be construed to weaken or
19 undermine in any manner any human health, public or worker
20 rights, public welfare, environmental, or other protection
21 established under statute. This chapter shall not be construed to
22 affect the authority or requirement for an agency to adopt
23 regulations as provided by statute. Rather, it is the intent of the
24 Legislature to ensure that state agencies focus more efficiently and
25 directly on their duties as prescribed by law so as to use scarce
26 public dollars more efficiently to implement the law, while
27 achieving equal or improved economic and public benefits
28

29 Article 4. Chapter Repeal 30

31 11366.5. This chapter shall remain in effect only until January
32 1, 2019, and as of that date is repealed, unless a later enacted
33 statute, that is enacted before January 1, 2019, deletes or extends
34 that date.

Watched Legislation

Assembly Bill 507 (Olsen R)

Department of Consumer Affairs: BreEZe system: annual report.

Status: 8/17/2015-In committee: Set, first hearing. Hearing canceled at the request of author.

Location: 7/13/2015 - Senate Business, Professions and Economic Development

Last Amendment: 7/9/2015

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Updated 10/21/15

Staff Analysis: AB 507

Bill Summary: AB 507 would, on or before March 1, 2016, require the Department of Consumer Affairs to submit an annual report to the Legislature and the Department of Finance that includes, among other things, the department's plans for implementing the BreEZe system at specified regulatory entities included in the departments' 3rd phase of the BreEZe implementation project, including, but not limited to, a timeline for the implementation. This bill contains other related provisions.

Staff Comment: This bill would require DCA to submit a report that would include a timeline, total estimated costs and a cost-benefit analysis for the remaining boards and bureaus that have not yet transitioned into the BreEZe system. We are one of the Boards which have not yet transitioned into the BreEZe system.

Board Position: Watch – as amended 7/9/15.

Laws: An act to add Section 210.5 to the Business and Professions Code, relating to the Department of Consumer Affairs.

AMENDED IN SENATE JULY 9, 2015
AMENDED IN ASSEMBLY JUNE 1, 2015
AMENDED IN ASSEMBLY MARCH 26, 2015
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 507

Introduced by Assembly Member Olsen
(Principal coauthor: Assembly Member Gray)
(Coauthors: Assembly Members ~~Chang and Dodd~~ Chang, Dodd,
***Obernolte, and Waldron*)**
(Coauthor: Senator Bates)

February 23, 2015

An act to add Section 210.5 to the Business and Professions Code, relating to the Department of Consumer Affairs, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 507, as amended, Olsen. Department of Consumer Affairs: BreEZe system: annual report.

Existing law authorizes the Department of Consumer Affairs to enter into a contract with a vendor for the licensing and enforcement of the BreEZe system, which is a specified integrated, enterprisewide enforcement case management and licensing system, no sooner than 30 days after written notification to certain committees of the Legislature. Existing law requires the amount of contract funds for the system to be consistent with costs approved by the office of the State Chief Information Office, based on information provided by the department in a specified manne .

This bill would, ~~on and after October 1, 2015, or before March 1, 2016, or thereafter when available,~~ require the department to submit an annual report to the Legislature and the Department of Finance that includes, among other things, the department's plans for implementing the BreEZe system at specified regulatory entities included in the department's 3rd phase of the BreEZe implementation project, *when available*, including, but not limited to, a timeline for the implementation. *The bill would also require the department to post on its Internet Web site the name of each regulatory entity that is utilizing the BreEZe system once the regulatory entity begins using the BreEZe system.*

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 210.5 is added to the Business and
2 Professions Code, immediately following Section 210, to read:
3 210.5. (a) ~~On and after October 1, 2015, or before March 1,~~
4 *2016, or thereafter when available,* the department shall submit
5 an annual report to the Legislature and the Department of Finance
6 that includes ~~all of~~ the following:
7 (1) The department's plan for implementing the BreEZe system
8 at the regulatory entities in the department's third phase of the
9 implementation project, including, but not limited to, a timeline
10 for implementation.
11 (2) ~~The total estimated costs of implementation of the BreEZe~~
12 ~~system at the regulatory entities in the department's third phase~~
13 ~~of the implementation project and the results of any related~~
14 ~~cost-benefit analysis the department conducted for the third phase~~
15 ~~of the implementation project.~~ *conducts.*
16 (3) ~~A description of whether and to what extent the BreEZe~~
17 ~~system will achieve any operational efficiencies resulting from~~
18 ~~achieved as a result of BreEZe implementation by the boards and~~
19 ~~regulatory entities within the department's jurisdiction.~~ *jurisdiction,*
20 *if available.*
21 (b) The report described in subdivision (a) shall be submitted
22 in compliance with Section 9795 of the Government Code.

(c) *The department shall post on its Internet Web site the name of each regulatory entity that is utilizing the BreEZe system once the regulatory entity begins using the BreEZe system.*

(e)

(d) For purposes of this section, “the regulatory entities in the department’s third phase of the implementation project” includes all of the following:

(1) Acupuncture Board.

(2) Board for Professional Engineers, Land Surveyors, and Geologists.

(3) Bureau of Automotive Repair.

(4) Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.

(5) Bureau for Private Postsecondary Education.

(6) California Architects Board.

(7) California Board of Accountancy.

(8) California State Board of Pharmacy.

(9) Cemetery and Funeral Bureau.

(10) Contractors’ State License Board.

(11) Court Reporters Board of California.

(12) Landscape Architects Technical Committee.

(13) Professional Fiduciaries Bureau.

(14) Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.

(15) State Athletic Commission.

(16) State Board of Chiropractic Examiners.

(17) State Board of Guide Dogs for the Blind.

(18) Structural Pest Control Board.

(19) Telephone Medical Advice Services Bureau.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Because of the circumstances surrounding the implementation of the BreEZe system, and in order to ensure that healing arts and other professionals are licensed in a timely and efficient manner, it is necessary that this act take effect immediately.

Watched Legislation

Senate Bill 209 (Pavley D)

Surface mining: inspections: financial assurances: reclamation plans.

Status: 9/2/2015- 9/11/2015-Failed Deadline pursuant to Rule 61(a)(14).

Location: 9/11/2015-A. 2 YEAR-Assembly floor.

Last Amendment: 9/4/2015

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Updated 10/21/15
Staff Analysis: SB 209

Bill Summary: This bill would require the Department of Conservation to offer continuing educational opportunities for lead agency employees to become certified, as appropriate, by the department to inspect surface mining operations. The bill would prohibit a lead agency that operates a surface mining operation from having an inspection performed by a lead agency employee, as specified, unless that employee has become certified as a surface mining operation inspector within the previous 2 years. This bill would revise the proof of financial assurances to be submitted with the annual report. The bill would define “financial assurances” to be the combination of an approved current financial assurance cost estimate and a financial assurance mechanism, as specified. The bill would require the inspections be conducted by a state licensed geologist, state licensed civil engineer, or state licensed geophysicist, as specified.

Staff Comment: According to the coalition headed by the sponsor, The Sierra Fund, the state has a strong interest in ensuring the mine operations in the state are operated in compliance with its locally issued permit which protects the state’s water and air from contamination, and to ensure that when the mine ceases operation that it is remediated to be ready for a beneficial end use. The coalition is participating in the ongoing stakeholder process and recognizes Governor Brown’s call to reform SMARA “top to bottom.”

Board Position: Watch - as amended 9/2/2015.

Staff Recommendation: Board staff recommends the Board take a **support** position on the bill as amended 9/4/2015. SB 209’s language of concern has been amended to reflect the Boards requested changes. Board Licensees are now referred to as “appropriately licensed California-licensed professional”. The amended language clearly identifies those who are legally authorized to practice in the State of California.

Laws: An act to amend Section 607, 2006.5, 2207, 2772, 2773.1, and 2774 of the Public Resources Code, relating to surface mining

AMENDED IN ASSEMBLY SEPTEMBER 4, 2015

AMENDED IN ASSEMBLY SEPTEMBER 2, 2015

AMENDED IN ASSEMBLY AUGUST 17, 2015

AMENDED IN ASSEMBLY JULY 16, 2015

AMENDED IN ASSEMBLY JULY 7, 2015

AMENDED IN SENATE MAY 12, 2015

AMENDED IN SENATE MARCH 19, 2015

SENATE BILL

No. 209

Introduced by Senator Pavley

February 11, 2015

An act to amend Sections 607, 2207, 2714, ~~2733~~, 2770, 2772, ~~2773.1~~, and ~~2774~~, ~~2774.1~~, ~~2774.4~~, and ~~2776~~ of, and to add Sections ~~2006.5~~, ~~2736~~, ~~2772.1~~, ~~2006.5~~ and ~~2773.4~~ ~~2773.1.5~~ to, the Public Resources Code, relating to surface mining.

LEGISLATIVE COUNSEL'S DIGEST

SB 209, as amended, Pavley. Surface mining: inspections: financial assurances: reclamation plans.

(1) Existing law establishes the Office of Mine Reclamation within the Department of Conservation. Existing law requires the State Mining and Geology Board to impose, by regulation, an annual reporting fee on the operators of all active and idle mining operations. Existing law requires the maximum amount of the annual fee imposed on each mining operation to not exceed \$4,000. Existing law limits the maximum amount of the total revenue generated from the reporting fee to no more than \$3,500,000, as specified

This bill would instead establish the Division of Mines within the department under the direction of the Supervisor of Mines and Reclamation. The bill also would raise the maximum amount of the annual reporting fee to \$10,000 per mining operation, except as specified. The bill would raise the maximum amount of the total revenue generated from the reporting fee to \$8,000,000, as specified

(2) The Surface Mining and Reclamation Act of 1975 prohibits a person, with exceptions, from conducting surface mining operations unless, among other things, a permit is obtained from, a specific reclamation plan is submitted to and approved by, and financial assurances for reclamation have been approved by the lead agency for the operation of the surface mining operation.

This bill would revise and recast provisions of the act related to the approval of reclamation plans and, among other things, would require a reclamation plan filed by an operator of a surface mining operation with a lead agency to include specified reclamation maps; require a lead agency, when submitting a proposed final reclamation plan to the Director of Conservation, to incorporate specified items of information and documents in the submitted reclamation plan within certain timeframes; and require the director to take certain actions upon receiving a proposed final reclamation plan. *maps and would require a borrow pit operated by a lead agency to include a specified interim management plan.* By adding to the duties of a local government acting as a lead agency under the act, this bill would impose a state-mandated local program.

~~This bill also would require a lead agency or the board to conduct a specified public hearing if the lead agency has evidence that an operator is financially incapable of performing reclamation in accordance with its approved reclamation plan or that the operator has abandoned a surface mining operation without completing reclamation and to take appropriate actions to seize the operator's financial assurances~~

This bill would revise and recast provisions of the act related to the proof of financial assurances, as defined; and, among other things, would require an operator to establish an appropriate financial assurance mechanism within 30 days of a sale or transfer of a surface mining operation; require a lead agency to submit a surface mining operation's proposed financial assurance cost estimate with a specified report to the director for review, as specified; and require the director to take certain actions upon receiving a financial assurance cost estimate from a lead agency. By adding to the duties of a local government acting as

~~a lead agency under the act, this bill would impose a state-mandated local program. allow an operator, after the board has adopted a specified regulation, to include in a financial assurance mechanism a corporate financial test, as described~~

~~This bill would require the Department of Conservation and the board, in consultation with the Board for Professional Engineers, Land Surveyors, and Geologists, to adopt regulations that set forth the minimum qualifications for a person conducting an inspection of a surface mining operation, as specified. The bill also would authorize a lead agency to cause an inspection to be conducted by an unlicensed employee who meets specified criteria; impose new requirements on the lead agency relating to the timing of inspections; and require the department to establish, no later than July 1, December 31, 2016, a training program for all surface mine inspectors, as specified. By adding to the duties of a local government acting as a lead agency under the act, this bill would impose a state-mandated local program.~~

(3) ~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason~~

(4) ~~This bill would make its operation contingent on the enactment of Assembly Bill 1142 of the 2015–16 Regular Session.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 607 of the Public Resources Code is
2 amended to read:
3 607. The work of the department shall be divided into at least
4 the following:
5 (a) ~~California Geological Survey.~~
6 (b) ~~Division of Oil, Gas, and Geothermal Resources.~~
7 (c) ~~Division of Land Resource Protection.~~
8 (d) ~~Division of Mines.~~
9 SEC. 2. Section 2006.5 is added to the Public Resources Code,
10 to read:

2006.5. "Supervisor of Mines and Reclamation" means the individual directing the Division of Mines established pursuant to subdivision (d) of Section 607.

SEC. 3. Section 2207 of the Public Resources Code is amended to read:

2207. (a) The owner or the operator of a mining operation within the state shall forward to the director annually, not later than a date established by the director, upon forms approved by the board from time to time, a report that identifies all of the following:

(1) The name, address, and telephone number of the person, company, or other owner of the mining operation.

(2) The name, address, and telephone number of a designated agent who resides in this state, and who will receive and accept service of all orders, notices, and processes of the lead agency, board, director, or court.

(3) The location of the mining operation, its name, its mine number as issued by the Division of Mines or the director, its section, township, range, latitude, longitude, and approximate boundaries of the mining operation marked on a United States Geological Survey 7 1/2-minute or 15-minute quadrangle map.

(4) The lead agency.

(5) The approval date of the mining operation's reclamation plan.

(6) The mining operation's status as active, idle, reclaimed, or in the process of being reclaimed.

(7) The commodities produced by the mine and the type of mining operation.

~~(8) Proof of annual inspection—A copy of the previously completed annual inspection form and a requested date, within 12 months of the prior inspection date, for the next annual inspection by the lead agency.~~

~~(9) Proof of the most recently approved financial cost estimate and the approved financial assurance cost mechanism. financial assurances.~~

(10) Ownership of the property, including government agencies, if applicable, by the assessor's parcel number, and total assessed value of the mining operation.

(11) The approximate permitted size of the mining operation subject to Chapter 9 (commencing with Section 2710), in acres.

(12) The approximate total acreage of land newly disturbed by the mining operation during the previous calendar year.

(13) The approximate total of disturbed acreage reclaimed during the previous calendar year.

(14) The approximate total unreclaimed disturbed acreage remaining as of the end of the calendar year.

(15) The total production for each mineral commodity produced during the previous year.

(16) A copy of any approved reclamation plan and any amendments or conditions of approval to any existing reclamation plan approved by the lead agency.

(b) Every year, not later than the date established by the director, the person submitting the report pursuant to subdivision (a) shall forward to the lead agency, upon forms furnished by the board, a report that provides all of the information specified in subdivision (a).

(2) The owner or operator of a mining operation shall allow access to the property to any governmental agency or the agent of any company providing financial assurances in connection with the reclamation plan in order that the reclamation can be carried out by the entity or company, in accordance with the provisions of the reclamation plan.

(c) Subsequent reports shall include only changes in the information submitted for the items described in subdivision (a), except that, instead of the approved reclamation plan, the reports shall include any reclamation plan amendments approved during the previous year. The reports shall state whether review of a reclamation plan, financial assurances, or an interim management plan is pending under subdivision ~~(b)~~ or (h) of Section 2770, or whether an appeal before the board or lead agency governing body is pending under subdivision (e) or (h) of Section 2770. The director shall notify the person submitting the report and the owner's designated agent in writing that the report and the fee required pursuant to subdivision (d) have been received, specify the mining operation's mine number if one has not been issued by the Division of Mines, and notify the person and agent of any deficiencies in the report within 90 days of receipt. That person or agent shall have 30 days from receipt of the notification to correct the noted deficiencies and forward the revised report to the director and the lead agency. Any person who fails to comply with

1 this section, or knowingly provides incorrect or false information
 2 in reports required by this section, may be subject to an
 3 administrative penalty as provided in subdivision (c) of Section
 4 2774.1.

5 (d)(1) The board shall impose, by regulation, pursuant to
 6 paragraph (2), an annual reporting fee on, and method for collecting
 7 annual fees from, each active or idle mining operation. The
 8 maximum fee for any single mining operation may not exceed ten
 9 thousand dollars (\$10,000) annually and may not be less than one
 10 hundred dollars (\$100) annually, as adjusted for the cost of living
 11 as measured by the California Consumer Price Index for all urban
 12 consumers, calendar year averages, using the percentage change
 13 in the previous year, except that the maximum fee for any single
 14 mining operation shall not exceed six thousand dollars (\$6,000)
 15 in the 2016–17 fiscal year and eight thousand dollars (\$8,000) in
 16 the 2017–18 fiscal year.

17 (2)(A) The board shall adopt, by regulation, a schedule of fees
 18 authorized under paragraph (1) to cover the department's cost in
 19 carrying out this section and Chapter 9 (commencing with Section
 20 2710), as reflected in the Governor's proposed Budget, and may
 21 adopt those regulations as emergency regulations. In establishing
 22 the schedule of fees to be paid by each active and idle mining
 23 operation, the fees shall be calculated on an equitable basis
 24 reflecting the size and type of operation. The board shall also
 25 consider the total assessed value of the mining operation, the
 26 acreage disturbed by mining activities, and the acreage subject to
 27 the reclamation plan.

28 (B) Regulations adopted pursuant to this subdivision shall be
 29 adopted by the board in accordance with the Administrative
 30 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
 31 Part 1 of Division 3 of Title 2 of the Government Code). The
 32 adoption of any emergency regulations pursuant to this subdivision
 33 shall be considered necessary to address an emergency and shall
 34 be considered by the Office of Administrative Law to be necessary
 35 for the immediate preservation of the public peace, health, safety,
 36 and general welfare.

37 (3) The total revenue generated by the reporting fees may not
 38 exceed, and may be less than, the amount of eight million dollars
 39 (\$8,000,000), as adjusted for the cost of living as measured by the
 40 California Consumer Price Index for all urban consumers, calendar

1 year averages, using the percentage change in the previous year,
 2 beginning with the 2016–17 fiscal year and annually thereafter. If
 3 the director determines that the revenue collected during the
 4 preceding fiscal year was greater or less than the cost to operate
 5 the program, the board shall adjust the fees to compensate for the
 6 overcollection or undercollection of revenues.

7 (4)(A) The reporting fees established pursuant to this
 8 subdivision shall be deposited in the Mine Reclamation Account,
 9 which is hereby created. Any fees, penalties, interest, fines, or
 10 charges collected by the director or board pursuant to this chapter
 11 or Chapter 9 (commencing with Section 2710) shall be deposited
 12 in the Mine Reclamation Account. The money in the account shall
 13 be available to the department and board, upon appropriation by
 14 the Legislature, for the purpose of carrying out this section and
 15 complying with Chapter 9 (commencing with Section 2710), which
 16 includes, but is not limited to, classification and designation of
 17 areas with mineral resources of statewide or regional significance
 18 reclamation plan and financial assurance review, mine inspection,
 19 and enforcement.

20 (B)(i) In addition to reporting fees, the board shall collect five
 21 dollars (\$5) per ounce of gold and ten cents (\$0.10) per ounce of
 22 silver mined within the state and shall deposit the fees collected
 23 in the Abandoned Mine Reclamation and Minerals Fund
 24 Subaccount, which is hereby created in the Mine Reclamation
 25 Account. The department may expend the moneys in the
 26 subaccount, upon appropriation by the Legislature, for only the
 27 purposes of Section 2796.5 and as authorized herein for the
 28 remediation of abandoned mines.

29 (ii) Notwithstanding subdivision (j) of Section 2796.5, fees
 30 collected pursuant to clause (i) may also be used to remediate
 31 features of historic abandoned mines and lands that they impact.
 32 For the purposes of this section, historic abandoned mines are
 33 mines for which operations have been conducted before January
 34 1, 1976, and include, but are not limited to, historic gold and silver
 35 mines.

36 (5) In case of late payment of the reporting fee, a penalty of not
 37 less than one hundred dollars (\$100) or 10 percent of the amount
 38 due, whichever is greater, plus interest at the rate of 1 ½ percent
 39 per month, computed from the delinquent date of the assessment
 40 until and including the date of payment, shall be assessed. New

1 mining operations that have not submitted a report shall submit a
2 report prior to commencement of operations. The new operation
3 shall submit its fee according to the reasonable fee schedule
4 adopted by the board, and the month that the report is received
5 shall become that operation's anniversary month.

6 (e) The lead agency, or the board when acting as the lead agency,
7 may impose a fee upon each mining operation to cover the
8 reasonable costs incurred in implementing this chapter and Chapter
9 9 (commencing with Section 2710).

10 (f) For purposes of this section, "mining operation" means a
11 mining operation of any kind or character whatever in this state,
12 including, but not limited to, a mining operation that is classified
13 as a "surface mining operation" as defined in Section 2735, unless
14 excepted by Section 2714. For the purposes of fee collections only,
15 "mining operation" may include one or more mines operated by
16 a single operator or mining company on one or more sites, if the
17 total annual combined mineral production for all sites is less than
18 100 troy ounces for precious metals, if precious metals are the
19 primary mineral commodity produced, or less than 100,000 short
20 tons if the primary mineral commodity produced is not precious
21 metals.

22 (g) Any information in reports submitted pursuant to subdivision
23 (a) that includes or otherwise indicates the total mineral production,
24 reserves, or rate of depletion of any mining operation may not be
25 disclosed to any member of the public, as defined in subdivision
26 (b) of Section 6252 of the Government Code. Other portions of
27 the reports are public records unless excepted by statute. Statistical
28 bulletins based on these reports and published under Section 2205
29 shall be compiled to show, for the state as a whole and separately
30 for each lead agency, the total of each mineral produced therein.
31 In order not to disclose the production, reserves, or rate of depletion
32 from any identifiable mining operation, no production figure shall
33 be published or otherwise disclosed unless that figure is the
34 aggregated production of not less than three mining operations. If
35 the production figure for any lead agency would disclose the
36 production, reserves, or rate of depletion of less than three mining
37 operations or otherwise permit the reasonable inference of the
38 production, reserves, or rate of depletion of any identifiable mining
39 operation, that figure shall be combined with the same figure of
40 not less than two other lead agencies without regard to the location

1 of the lead agencies. The bulletin shall be published annually by
2 June 30 or as soon thereafter as practicable.

3 (h) The approval of a form by the board pursuant to this section
4 is not the adoption of a regulation for purposes of the
5 Administrative Procedure Act (Chapter 3.5 (commencing with
6 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
7 Code) and is not subject to that act.

8 SEC. 4. Section 2714 of the Public Resources Code is amended
9 to read:

10 2714. This chapter does not apply to any of the following
11 activities:

12 (a) Excavations or grading of lands conducted for farming.

13 (b) Onsite excavation and onsite earthmoving activities that are
14 integral and necessary for the construction of structures and that
15 are undertaken to prepare a site for the construction of those
16 structures, including landscaping or other land improvements
17 associated with those structures, including the related excavation,
18 grading, compaction, or the creation of fills, road cuts, and
19 embankments, whether or not surplus materials are exported from
20 the site, subject to all of the following conditions:

21 (1) All required permits for the construction and any associated
22 landscaping or related land improvements have been approved by
23 a public agency in accordance with applicable provisions of state
24 law and locally adopted plans and ordinances, including, but not
25 limited to, the California Environmental Quality Act (Division 13
26 (commencing with Section 21000)).

27 (2) The lead agency's approval of the construction project
28 included consideration of the onsite excavation and onsite
29 earthmoving activities pursuant to the California Environmental
30 Quality Act (Division 13 (commencing with Section 21000)).

31 (3) The approved construction project is consistent with the
32 general plan or zoning of the site.

33 (4) Surplus materials shall not be exported from the site unless
34 and until actual construction work has commenced and shall cease
35 if it is determined that construction activities have terminated, have
36 been indefinitely suspended, or are no longer being actively
37 pursued.

38 (c) Operation of a plant site used for mineral processing,
39 including associated onsite structures, equipment, machines, tools,
40 or other materials, including the onsite stockpiling and onsite

1 recovery of mined materials, subject to all of the following
2 conditions:

3 (1) The plant site is located on lands designated for industrial
4 or commercial uses in the applicable county or city general plan.

5 (2) The plant site is located on lands zoned industrial or
6 commercial or are contained within a zoning category intended
7 exclusively for industrial activities by the applicable city or county.

8 (3) None of the minerals being processed are being extracted
9 onsite.

10 (4) All reclamation work has been completed pursuant to the
11 approved reclamation plan for any mineral extraction activities
12 that occurred onsite after January 1, 1976.

13 (d) Prospecting for or the extraction of minerals for commercial
14 purposes where the removal of overburden or mineral product
15 totals less than 1,000 cubic yards in any one location and the total
16 surface area disturbed is less than one acre.

17 (e) Surface mining operations that are required by federal law
18 in order to protect a mining claim, if those operations are conducted
19 solely for that purpose.

20 (f) Any other surface mining operations that the board
21 determines to be of an infrequent nature and that involve only
22 minor surface disturbances.

23 (g) The solar evaporation of sea water or bay water for the
24 production of salt and related minerals.

25 (h) Emergency excavations or grading conducted by the
26 Department of Water Resources or the Central Valley Flood
27 Protection Board for the purpose of averting, alleviating, repairing,
28 or restoring damage to property due to imminent or recent floods
29 disasters, or other emergencies.

30 (i) (1) Surface mining operations conducted on lands owned
31 or leased, or upon which easements or rights-of-way have been
32 obtained, by the Department of Water Resources for the purpose
33 of the State Water Resources Development System or flood control,
34 and surface mining operations on lands owned or leased, or upon
35 which easements or rights-of-way have been obtained, by the
36 Central Valley Flood Protection Board for the purpose of flood
37 control, if the Department of Water Resources adopts, after
38 submission to and consultation with, the department, a reclamation
39 plan for lands affected by these activities, and those lands are
40 reclaimed in conformance with the standards specified in

1 regulations of the board adopted pursuant to this chapter. The
2 Department of Water Resources shall provide an annual report to
3 the department by the date specified by the department on these
4 mining activities.

5 (2) Nothing in this subdivision shall require the Department of
6 Water Resources or the Central Valley Flood Protection Board to
7 obtain a permit or secure approval of a reclamation plan from any
8 city or county in order to conduct surface mining operations
9 specified in paragraph (1). Nothing in this subdivision shall
10 preclude the bringing of an enforcement action pursuant to Section
11 2774.1, if it is determined that a surface mine operator, acting
12 under contract with the Department of Water Resources or the
13 Central Valley Flood Protection Board on lands other than those
14 owned or leased, or upon which easements or rights-of-way have
15 been obtained, by the Department of Water Resources or the
16 Central Valley Flood Protection Board, is otherwise not in
17 compliance with this chapter.

18 (j) (1) Excavations or grading for the exclusive purpose of
19 obtaining materials for roadbed construction and maintenance
20 conducted in connection with timber operations or forest
21 management on land owned by the same person or entity. This
22 exemption is limited to excavation and grading that is conducted
23 adjacent to timber operation or forest management roads and shall
24 not apply to onsite excavation or grading that occurs within 100
25 feet of a Class One watercourse or 75 feet of a Class Two
26 watercourse, or to excavation for materials that are, or have been,
27 sold for commercial purposes.

28 (2) This exemption shall be available only if slope stability and
29 erosion are controlled in accordance with subdivision (f) of Section
30 3704 and subdivision (d) of Section 3706 of Title 14 of the
31 California Code of Regulations and, upon closure of the site, the
32 person closing the site implements, where necessary, revegetation
33 measures and postclosure uses in consultation with the Department
34 of Forestry and Fire Protection.

35 (k) Excavations, grading, or other earthmoving activities in an
36 oil or gas field that are integral to and necessary for ongoing
37 operations for the extraction of oil or gas that comply with all of
38 the following conditions:

39 (1) The operations are being conducted in accordance with
40 Division 3 (commencing with Section 3000).

(2) The operations are consistent with any general plan or zoning applicable to the site.

(3) The earthmoving activities are within oil or gas field properties under a common owner or operator.

(4) No excavated materials are sold for commercial purposes.

(1) The immediate excavation or grading of lands affected by a natural disaster for the purpose of restoring those lands to their prior condition.

(2) The immediate removal of material deposited by a flood onto lands being farmed for the purpose of restoring those lands to their prior condition.

SEC. 5. ~~Section 2733 of the Public Resources Code is amended to read:~~

~~2733. "Reclamation" means the combined process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other adverse effects from surface mining operations, including adverse surface effects incidental to underground mines, so that mined lands are reclaimed to a usable condition that is readily adaptable for alternate land uses and create no danger to public health or safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, slope stabilization, or other measures.~~

SEC. 6. ~~Section 2736 is added to the Public Resources Code, to read:~~

~~2736. "Financial assurance" means an approved current financial assurance cost estimate and a financial assurance mechanism that is at least equal to the current approved financial assurance cost estimate.~~

SEC. 7. ~~Section 2770 of the Public Resources Code is amended to read:~~

~~2770. (a) Except as provided in this section, a person shall not conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by the lead agency for the operation pursuant to this article.~~

~~(b) A person with an existing surface mining operation who has vested rights pursuant to Section 2776 and who does not have an approved reclamation plan shall submit a reclamation plan to the lead agency not later than March 31, 1988. If a reclamation plan~~

1 application is not on file by March 31, 1988, the continuation of
 2 the surface mining operation is prohibited until a reclamation plan
 3 is submitted to the lead agency.

4 (e) ~~Reserved~~

5 (d) ~~Reserved~~

6 (e) ~~A person who, based on the evidence of the record, can~~
 7 ~~substantiate that a lead agency has either (1) failed to act according~~
 8 ~~to due process or has relied on considerations not related to the~~
 9 ~~specific applicable requirements of Sections 2772, 2773, and~~
 10 ~~2773.1, and the lead agency surface mining ordinance adopted~~
 11 ~~pursuant to subdivision (a) of Section 2774, in reaching a decision~~
 12 ~~to deny approval of a reclamation plan or financial assurances for~~
 13 ~~reclamation, or (2) failed to act within a reasonable time of receipt~~
 14 ~~of a completed application, may appeal that action or inaction to~~
 15 ~~the board.~~

16 (f) ~~The board may decline to hear an appeal if it determines that~~
 17 ~~the appeal raises no substantial issues related to the lead agency's~~
 18 ~~review pursuant to this section.~~

19 (g) ~~Appeals that the board does not decline to hear shall be~~
 20 ~~scheduled and heard at a public hearing within 45 days of the filing~~
 21 ~~of the appeal or a longer period as may be mutually agreed upon~~
 22 ~~by the board and the person filing the appeal. In hearing an appeal,~~
 23 ~~the board shall only determine whether the reclamation plan or the~~
 24 ~~financial assurances meet the applicable requirements of Sections~~
 25 ~~2772, 2773, and 2773.1 and the lead agency surface mining~~
 26 ~~ordinance adopted pursuant to subdivision (a) of Section 2774. A~~
 27 ~~reclamation plan or financial assurances determined to meet these~~
 28 ~~requirements shall be approved. A reclamation plan or financial~~
 29 ~~assurances determined not to meet these requirements shall be~~
 30 ~~returned to the person filing the appeal with a notice of deficiencies~~
 31 ~~who shall be granted once only a period of 30 days, or a longer~~
 32 ~~period mutually agreed upon by the operator and the board, to~~
 33 ~~correct the noted deficiencies and submit the revised reclamation~~
 34 ~~plan or the revised financial assurances to the lead agency for~~
 35 ~~review and approval.~~

36 (h) ~~(1) Within 90 days of a surface mining operation becoming~~
 37 ~~idle, as defined in Section 2727.1, the operator shall submit to the~~
 38 ~~lead agency for review and approval an interim management plan.~~
 39 ~~The review and approval of an interim management plan shall not~~
 40 ~~be considered a project for purposes of the California~~

Environmental Quality Act (Division 13 (commencing with Section 21000)). The approved interim management plan shall be considered an amendment to the surface mining operation's approved reclamation plan for purposes of this chapter. The interim management plan shall provide measures the operator will implement to maintain the site in compliance with this chapter, including, but not limited to, all permit conditions.

(2) Except for an interim management plan for a borrow pit surface mining operation owned or operated by the lead agency solely for use by the lead agency an interim management plan may remain in effect for a period not to exceed five years, at which time the lead agency shall do one of the following:

(A) Renew the interim management plan for an additional period not to exceed five years, which may be renewed for one additional five-year renewal period at the expiration of the first five-year renewal period, if the lead agency finds that the surface mining operator has complied fully with the interim management plan.

(B) Require the operator to commence reclamation in accordance with its approved reclamation plan.

(3) The financial assurances required by Section 2773.1 shall remain in effect during the period that the surface mining operation is idle. If the surface mining operation is still idle after the expiration of its interim management plan, the surface mining operation shall commence reclamation in accordance with its approved reclamation plan.

(4) Within 60 days of the receipt of the interim management plan or a longer period mutually agreed upon by the lead agency and the operator, the lead agency shall review and approve the plan in accordance with its ordinance adopted pursuant to subdivision (a) of Section 2774, so long as the plan satisfies the requirements of this subdivision, and so notify the operator in writing. Otherwise, the lead agency shall notify the operator in writing of any deficiencies in the plan. The operator shall have 30 days, or a longer period mutually agreed upon by the operator and the lead agency, to submit a revised plan.

(5) The lead agency shall approve or deny approval of the revised interim management plan within 60 days of receipt. If the lead agency denies approval of the revised interim management plan, the operator may appeal that action to the lead agency's governing body, which shall schedule a public hearing within 45

1 days of the filing of the appeal or a longer period mutually agreed
2 upon by the operator and the governing body.

3 ~~(6) Unless review of an interim management plan is pending~~
4 ~~before the lead agency or an appeal is pending before the lead~~
5 ~~agency's governing body, a surface mining operation that remains~~
6 ~~idle for over one year after becoming idle, as defined in Section~~
7 ~~2727.1, without obtaining approval of an interim management plan~~
8 ~~shall be considered abandoned and the operator shall commence~~
9 ~~and complete reclamation in accordance with the approved~~
10 ~~reclamation plan.~~

11 ~~(i) An enforcement action that may be brought against a surface-~~
12 ~~mining operation for operating without an approved reclamation~~
13 ~~plan, financial assurance, or interim management plan shall be~~
14 ~~held in abeyance pending review pursuant to subdivision (b) or~~
15 ~~(h), or the resolution of an appeal filed with the board pursuant to~~
16 ~~subdivision (c), or with a lead agency governing body pursuant to~~
17 ~~subdivision (h).~~

18 ~~(j) Notwithstanding paragraph (1) of subdivision (b) of Section~~
19 ~~2774, a lead agency may conduct an inspection of a borrow pit~~
20 ~~surface mining operation owned or operated by the lead agency~~
21 ~~solely for use by the lead agency once every two calendar years~~
22 ~~during a period when the borrow pit surface mining operation is~~
23 ~~idle.~~

24 ~~SEC. 8. Section 2772 of the Public Resources Code is amended~~
25 ~~to read:~~

26 ~~2772. (a) The reclamation plan shall be filed with the lead-~~
27 ~~agency, on a form provided by the lead agency, by any person who~~
28 ~~owns, leases, or otherwise controls or operates on all or any portion~~
29 ~~of any mined lands and who plans to conduct surface mining~~
30 ~~operations on the lands.~~

31 ~~(b) In addition to the other requirements for a reclamation plan,~~
32 ~~a reclamation plan for a borrow pit surface mining operation owned~~
33 ~~or operated by the lead agency solely for use by the lead agency~~
34 ~~shall include an interim management plan that shall maintain the~~
35 ~~site in compliance with this chapter during a period when the~~
36 ~~borrow pit surface mining operation is idle.~~

37 ~~(c) The reclamation plan shall include all of the following~~
38 ~~information and documents:~~

1 ~~(1) The name and address of the surface mining operator and~~
 2 ~~the names and addresses of any persons designated by the operator~~
 3 ~~as an agent for the service of process.~~

4 ~~(2) The anticipated quantity and type of minerals for which the~~
 5 ~~surface mining operation is to be conducted.~~

6 ~~(3) The proposed dates for the initiation of mining operations~~
 7 ~~and the completion of mining and reclamation of the surface mining~~
 8 ~~operation.~~

9 ~~(4) The maximum anticipated depth of the surface mining~~
 10 ~~operation.~~

11 ~~(5) A reclamation plan map or maps that shall include all of the~~
 12 ~~following:~~

13 ~~(A) Size and legal description of the lands that will be affected~~
 14 ~~by the surface mining operation and the names and addresses of~~
 15 ~~the owners of all surface interests and mineral interests in the lands.~~

16 ~~(B) Clearly defined and accurately drawn property lines,~~
 17 ~~setbacks, easements, and the reclamation plan boundary.~~

18 ~~(C) Existing topography and final topography depicted with~~
 19 ~~contour lines drawn at appropriate intervals for the site's~~
 20 ~~conditions.~~

21 ~~(D) Detailed geologic description of the area of the surface~~
 22 ~~mining operation.~~

23 ~~(E) Location of railroads, utility facilities, access roads,~~
 24 ~~temporary roads to be reclaimed, and any roads remaining for the~~
 25 ~~approved end use.~~

26 ~~(F) All maps, diagrams, or calculations that require preparation~~
 27 ~~in accordance with the Professional Engineers Act (Chapter 7~~
 28 ~~commencing with Section 6700) of Division 3 of the Business~~
 29 ~~and Professions Code), the Geologist and Geophysicist Act~~
 30 ~~(Chapter 12.5 (commencing with Section 7800) of Division 3 of~~
 31 ~~the Business and Professions Code), or the Professional Land~~
 32 ~~Surveyors' Act (Chapter 15 (commencing with Section 8700) of~~
 33 ~~Division 3 of the Business and Professions Code) shall be prepared~~
 34 ~~by an appropriately licensed California-licensed professional, shall~~
 35 ~~include his or her license number and name, and shall bear the~~
 36 ~~signature and seal of the licensee.~~

37 ~~(6) A description of and a plan for the type of surface mining~~
 38 ~~to be employed and a time schedule that will provide for the~~
 39 ~~completion of surface mining on each segment of the mined lands~~
 40 ~~so that reclamation can be initiated at the earliest possible time on~~

1 those portions of the mined lands that will not be subject to further
2 disturbance by the surface mining operation.

3 ~~(7) A description of the proposed use or potential uses of the~~
4 ~~mined lands after reclamation and evidence that all owners of a~~
5 ~~possessory interest in the land have been notified of the proposed~~
6 ~~use or potential uses.~~

7 ~~(8) A description of the manner in which reclamation, adequate~~
8 ~~for the proposed use or potential uses, will be accomplished,~~
9 ~~including both of the following:~~

10 ~~(A) A description of the manner in which known contaminants~~
11 ~~will be controlled and mining waste will be disposed.~~

12 ~~(B) A description of the manner in which affected streambed~~
13 ~~channels and streambanks will be rehabilitated to a condition that~~
14 ~~minimizes erosion and sedimentation.~~

15 ~~(9) An assessment of the effect of implementation of the~~
16 ~~reclamation plan on future mining in the area.~~

17 ~~(10) A statement that the person submitting the reclamation~~
18 ~~plan accepts responsibility for reclaiming the mined lands in~~
19 ~~accordance with the reclamation plan.~~

20 ~~(11) Any other information that the lead agency may require~~
21 ~~by ordinance.~~

22 ~~(d) An item of information or a document required pursuant to~~
23 ~~this chapter, including subdivision (c), that has already been~~
24 ~~prepared as part of a permit application for the surface mining~~
25 ~~operation, or as part of an environmental document prepared for~~
26 ~~the project pursuant to the California Environmental Quality Act~~
27 ~~(Division 13 (commencing with Section 21000)), or required as a~~
28 ~~condition of approval, shall be included in the reclamation plan.~~
29 ~~Regulatory aspects that are solely of a local concern shall not be~~
30 ~~included in the reclamation plan. To the extent the information or~~
31 ~~document referenced in the reclamation plan is used to meet the~~
32 ~~requirements of this chapter, including subdivision (c), the~~
33 ~~information or document shall become part of the reclamation plan~~
34 ~~and shall be subject to all other requirements of this chapter.~~

35 ~~(e) This section does not limit or expand the Supervisor of Mines~~
36 ~~and Reclamation's authority or responsibility to review a document~~
37 ~~in accordance with the California Environmental Quality Act~~
38 ~~(Division 13 (commencing with Section 21000)).~~

39 ~~SEC. 9. Section 2772.1 is added to the Public Resources Code,~~
40 ~~to read:~~

1 2772.1. ~~(a)(1)~~ Prior to approving a surface mining operation's—
 2 reclamation plan or plan amendments, the lead agency shall submit
 3 the proposed final reclamation plan or amendments to the director
 4 for review. All documentation for the submission shall be submitted
 5 to the director at one time.

6 ~~(2)~~ An item of information or a document required pursuant to—
 7 this chapter, including subdivision (c) of Section 2772, that has
 8 been prepared as part of a permit application for the surface mining
 9 operation, not including aspects that are solely of a local concern,
 10 or as part of an environmental document prepared for the project
 11 pursuant to the California Environmental Quality Act (Division
 12 13 (commencing with Section 21000)) shall be incorporated into
 13 the proposed final reclamation plan. An item of information or a
 14 document that is incorporated shall be inserted into the
 15 corresponding section of the proposed final reclamation plan or
 16 attached to the proposed final reclamation plan with a specific
 17 reference in the corresponding section of the proposed final
 18 reclamation plan. Any information or document incorporated into
 19 the proposed final reclamation plan shall become part of the
 20 approved reclamation plan and shall be subject to all other
 21 requirements of this article.

22 ~~(3)~~ The lead agency shall certify to the director that the proposed
 23 final reclamation plan is a complete submission and is in
 24 compliance with all of the following:

25 ~~(A)~~ The applicable requirements of this chapter, including
 26 subdivision (c) of Section 2772.

27 ~~(B)~~ Article 1 (commencing with Section 3500) of Chapter 8 of
 28 Division 2 of Title 14 of the California Code of Regulations.

29 ~~(C)~~ The lead agency's surface mining ordinance in effect at the
 30 time that the proposed final reclamation plan is submitted to the
 31 director for review.

32 ~~(b)(1)~~ The director shall have 30 days from the date of receipt—
 33 of a proposed final reclamation plan or plan amendments submitted
 34 pursuant to subdivision (a) to prepare written comments if the
 35 director chooses.

36 ~~(2)~~ If the director determines that the lead agency's submission—
 37 pursuant to subdivision (a) is incomplete or that the submission
 38 includes maps, diagrams, or calculations that require preparation
 39 by an appropriately licensed California-licensed professional, the
 40 director shall return the submission to the lead agency. The director

1 shall identify the incomplete components or those maps, diagrams,
 2 or calculations that require completion by an appropriately licensed
 3 California-licensed professional. The review by the director
 4 pursuant to paragraph (1) shall not begin until the director receives
 5 a complete submission, including maps, diagrams, or calculations
 6 prepared by an appropriately licensed California-licensed
 7 professional.

8 ~~(3)(A)~~ The lead agency shall review and evaluate and prepare
 9 a written response to the director's comments received pursuant
 10 to paragraph (1) describing the disposition of the major issues
 11 raised by the comments. The lead agency shall submit the lead
 12 agency's response to the director at least 30 days prior to the
 13 intended approval of the proposed final reclamation plan or plan
 14 amendment. The lead agency's response shall include either of the
 15 following:

16 (i) ~~A~~ A description of how the lead agency proposes to adopt the
 17 director's comments to the proposed final reclamation plan or plan
 18 amendment.

19 (ii) ~~A~~ detailed description of the reasons why the lead agency
 20 proposes not to adopt the director's comments.

21 ~~(B)~~ Copies of any written comments received and responses
 22 prepared by the lead agency pursuant to subparagraph (A) shall
 23 be forwarded to the operator.

24 ~~(C)~~ ~~(i)~~ The lead agency shall give the director at least 30 days'
 25 notice of the time, place, and date of the hearing at which the
 26 proposed final reclamation plan or plan amendment is scheduled
 27 to be approved by the lead agency.

28 ~~(ii)~~ If no hearing is required by this chapter, the local ordinance,
 29 or other state law, the lead agency shall provide 30 days' notice
 30 to the director that the lead agency intends to approve the proposed
 31 final reclamation plan or plan amendment.

32 ~~(D)~~ Within 30 days following approval of the reclamation plan,
 33 the lead agency shall provide the director notice of the approval
 34 and a statement that identifies any additional conditions or other
 35 permit requirements imposed upon the surface mining operation.
 36 During that time, the department shall retain all of its powers,
 37 duties, and authorities pursuant to this chapter. The lead agency
 38 shall provide, as soon as practicable, but no later than 60 days after
 39 approval of the reclamation plan, both of the following:

~~(i) Certified copies of all maps, diagrams, or calculations signed and sealed by an appropriately licensed California-licensed professional.~~

~~(ii) A certified copy of the approved reclamation plan incorporating all approved modifications to the proposed final reclamation plan.~~

~~(4) To the extent there is a conflict between the comments of a trustee agency or a responsible agency that are based on that agency's statutory or regulatory authority and the comments of other commenting agencies that are received by the lead agency pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)) regarding a reclamation plan or plan amendments, the lead agency shall consider only the comments of the trustee agency or responsible agency.~~

~~(e) A lead agency shall notify the director of the filing of an application for a permit to conduct surface mining operations within 30 days of an application being filed with the lead agency. By July 1, 1991, each lead agency shall submit to the director for every active or idle mining operation within its jurisdiction, a copy of the mining permit required pursuant to Section 2774, and any conditions or amendments to those permits. By July 1 of each subsequent year, the lead agency shall submit to the director for each active or idle mining operation a copy of any permit or reclamation plan amendments, as applicable, or a statement that there have been no changes during the previous year. Failure to file with the director the information required pursuant to this section shall be a cause for action under Section 2774.4.~~

~~(d) This section does not limit or expand the Supervisor of Mines and Reclamation's authority or responsibility to review a document in accordance with the California Environmental Quality Act (Division 13 (commencing with Section 21000)).~~

~~SEC. 10. Section 2773.1 of the Public Resources Code is amended to read:~~

~~2773.1. (a) Lead agencies shall require financial assurances of each surface mining operation to ensure reclamation is performed in accordance with the surface mining operation's approved reclamation plan, as follows:~~

~~(1) Financial assurance mechanisms may take the form of surety bonds executed by an admitted surety insurer, as defined in subdivision (a) of Section 995.120 of the Code of Civil Procedure,~~

1 irrevocable letters of credit, trust funds, or other forms of financial
 2 assurances specified by the board pursuant to subdivision (c) that
 3 are at least equal to the annual financial assurance cost estimate
 4 that the lead agency reasonably determines are adequate to perform
 5 reclamation in accordance with the surface mining operation's
 6 approved reclamation plan.

7 ~~(2) The financial assurances shall remain in effect for the~~
 8 ~~duration of the surface mining operation and any additional period~~
 9 ~~until reclamation is completed.~~

10 ~~(3) The amount of financial assurances required of a surface~~
 11 ~~mining operation for any one year shall be adjusted annually to~~
 12 ~~account for new lands disturbed by surface mining operations,~~
 13 ~~inflation, and reclamation of lands accomplished in accordance~~
 14 ~~with the approved reclamation plan.~~

15 ~~(4) Each financial assurance mechanism shall be made payable~~
 16 ~~to the lead agency and the department. A financial assurance~~
 17 ~~mechanism shall not be released without the written consent of~~
 18 ~~the lead agency and the department. Financial assurance~~
 19 ~~mechanisms that were approved by the lead agency prior to January~~
 20 ~~1, 1993, and were made payable to the State Geologist shall be~~
 21 ~~considered payable to the department for purposes of this chapter.~~
 22 ~~However, if a surface mining operation has received approval of~~
 23 ~~its financial assurances from a public agency other than the lead~~
 24 ~~agency, the lead agency shall deem those financial assurances~~
 25 ~~adequate for purposes of this section, or shall credit them toward~~
 26 ~~fulfillment of the financial assurances required by this section, if~~
 27 ~~they are made payable to the public agency, the lead agency, and~~
 28 ~~the department and otherwise meet the requirements of this section.~~
 29 ~~In any event, if a lead agency and one or more public agencies~~
 30 ~~exercise jurisdiction over a surface mining operation, the total~~
 31 ~~amount of financial assurances required by the lead agency and~~
 32 ~~the public agencies for any one year shall not exceed that amount~~
 33 ~~which is necessary to perform reclamation of lands remaining~~
 34 ~~disturbed. For purposes of this paragraph, a "public agency" may~~
 35 ~~include a federal agency.~~

36 ~~(b)(1) If the lead agency has evidence that an operator is~~
 37 ~~financially incapable of performing reclamation in accordance~~
 38 ~~with its approved reclamation plan or that the operator has~~
 39 ~~abandoned the surface mining operation without completing~~
 40 ~~reclamation, the lead agency or the board shall conduct a public~~

1 hearing with notice of the hearing provided to the operator and the
2 department at least 30 days prior to the hearing.

3 ~~(2) If the lead agency or the board, following the public hearing,~~
4 ~~determines that the operator is financially incapable of performing~~
5 ~~reclamation in accordance with its approved reclamation plan, or~~
6 ~~has abandoned its surface mining operation without completing~~
7 ~~reclamation, either the lead agency or the director shall do all of~~
8 ~~the following:~~

9 ~~(A) Notify the operator by personal service or certified mail~~
10 ~~that the lead agency or the director intends to take appropriate~~
11 ~~action to seize the financial assurances and specify the reasons for~~
12 ~~so doing.~~

13 ~~(B) (i) Proceed to take appropriate action to seize the financia-~~
14 ~~assurances and use the proceeds from the financial assurances to~~
15 ~~conduct and complete reclamation in accordance with the approved~~
16 ~~reclamation plan.~~

17 ~~(ii) If the surface mining operation cannot be reclaimed in~~
18 ~~accordance with its approved reclamation plan or the financia-~~
19 ~~assurances are inadequate to reclaim in accordance with the~~
20 ~~approved reclamation plan, the lead agency or the director may~~
21 ~~use the proceeds of the financial assurances to reclaim or remediate~~
22 ~~mining disturbances as appropriate for the site conditions, as~~
23 ~~determined by the lead agency and the director. The proceeds of~~
24 ~~the financial assurances shall not be used for a y other purpose.~~

25 ~~(iii) The operator is responsible for the costs of conducting and~~
26 ~~completing reclamation in accordance with the approved~~
27 ~~reclamation plan or a remediation plan developed pursuant to this~~
28 ~~section, as determined to be appropriate by the lead agency and~~
29 ~~director, that are in excess of the proceeds of the financia-~~
30 ~~assurances.~~

31 ~~(c) Financial assurances shall no longer be required of a surface~~
32 ~~mining operation, and shall be released, upon written concurrence~~
33 ~~by the lead agency and the director, which shall be forwarded to~~
34 ~~the operator, that reclamation has been completed in accordance~~
35 ~~with the approved reclamation plan. If a surface mining operation~~
36 ~~is sold or ownership is transferred to another person, the existing~~
37 ~~financial assurances shall remain in force and shall not be released~~
38 ~~by the lead agency and the director until new financial assurances~~
39 ~~are secured from the new owner and have been approved by the~~
40 ~~lead agency in accordance with Sections 2770 and 2773.1. Within~~

1 30 days of the sale or transfer of the surface mining operation, the
 2 new operator shall establish an appropriate financial assurance
 3 mechanism and sign a new statement pursuant to paragraph (10)
 4 of subdivision (c) of Section 2772.

5 (d) ~~The lead agency shall have primary responsibility to seize~~
 6 ~~financial assurances and to reclaim mine sites under subdivision~~
 7 ~~(b). However, in cases where the board is not the lead agency~~
 8 ~~pursuant to Section 2774.4, the director may act to seize financia-~~
 9 ~~assurances and reclaim mine sites pursuant to subdivision (b) only~~
 10 ~~if both of the following occur:~~

11 (1) ~~The financial incapability of the operator or the abandonment~~
 12 ~~of the mining operation has come to the attention of the director.~~

13 (2) ~~The lead agency has been notified in writing by the director~~
 14 ~~of the financial incapability of the operator or the abandonment~~
 15 ~~of the mining operation for at least 15 days, the lead agency has~~
 16 ~~not taken appropriate measures to seize the financial assurances~~
 17 ~~and reclaim the mine site, and one of the following has occurred:~~

18 (A) ~~The lead agency has been notified in writing by the director~~
 19 ~~that failure to take appropriate measures to seize the financia-~~
 20 ~~assurances or to reclaim the mine site shall result in actions being~~
 21 ~~taken against the lead agency under Section 2774.4.~~

22 (B) ~~The director determines that there is a violation that amounts~~
 23 ~~to an imminent and substantial endangerment to the public health,~~
 24 ~~safety, or to the environment.~~

25 (C) ~~The lead agency notifies the director in writing that its good-~~
 26 ~~faith attempts to seize the financial assurances have not been~~
 27 ~~successful.~~

28 The director shall comply with subdivision (b) in seizing the
 29 financial assurances and reclaiming mine sites

30 (e) ~~The board may adopt regulations specifying financia-~~
 31 ~~assurance mechanisms other than surety bonds, irrevocable letters~~
 32 ~~of credit, and trust funds that the board determines are reasonably~~
 33 ~~available and adequate to ensure reclamation pursuant to this~~
 34 ~~chapter, but these mechanisms shall not include solely financia-~~
 35 ~~tests or surety bonds executed by one or more personal sureties.~~
 36 ~~These mechanisms may include reclamation bond pool programs~~
 37 ~~or corporate financial tests, as described in subdivision (f);~~
 38 ~~combined with additional financial assurance mechanisms, as~~
 39 ~~identified in this section, that together ensure the completion of~~
 40 ~~reclamation in accordance with the approved reclamation plan.~~

~~(f)(1) Corporate financial tests shall provide for no more than—~~
~~75 percent of the financial assurance cost estimate approved within~~
~~the last year. Use of a financial test shall meet all of the following~~
~~requirements:~~

~~(A) Be annually approved by both the lead agency and the~~
~~director and may be disallowed by either the lead agency or the~~
~~director.~~

~~(B) Include an assessment from an independent certified public~~
~~accountant using generally accepted accounting principles in the~~
~~United States.~~

~~(2) Corporate financial tests shall only be allowed after the board~~
~~adopts a regulation that establishes a comprehensive analysis of a~~
~~corporation's financial status that includes financial net worth;~~
~~income; liabilities, including other environmental assurances; and~~
~~assets located within the United States. The regulation shall include~~
~~additional measures to provide the lead agency or the director with~~
~~the recovery of costs associated with the full collection and~~
~~satisfaction of the financial assurance mechanisms.~~

~~(3) A surface mining operation shall have at least 25 percent of~~
~~the financial assurance cost estimate or four million dollars~~
~~(\$4,000,000), whichever is greater, in an acceptable financial~~
~~assurance mechanism other than a corporate financial test.~~

~~(4) Subject to the requirements of this subdivision, an operator~~
~~of multiple surface mining operations may use a corporate financial~~
~~test that combines the financial assurance cost estimates of each~~
~~surface mining operation.~~

~~(g) On or before March 1, 1993, the board shall adopt guidelines~~
~~to implement this section. The guidelines are exempt from the~~
~~requirements of the Administrative Procedure Act (Chapter 3.5~~
~~(commencing with Section 11340) of Part 1 of Division 3 of Title~~
~~2 of the Government Code) and are not subject to review by the~~
~~Office of Administrative Law.~~

~~SEC. 11. Section 2773.4 is added to the Public Resources Code,~~
~~to read:~~

~~2773.4. (a)(1) Prior to approving the financial assurances of~~
~~a surface mining operation pursuant to Sections 2770 and 2773.1,~~
~~the lead agency shall submit the proposed financial assurance cost~~
~~estimate, with a statement that it is adequate to reclaim the surface~~
~~mining operation in accordance with the approved reclamation~~
~~plan, to the director for review. All documentation for that~~

1 submission shall be complete and submitted to the director at one
2 time:

3 (2) ~~If the director determines that the lead agency's submission~~
4 ~~pursuant to paragraph (1) is incomplete, the director shall return~~
5 ~~the submission to the lead agency, specifically noting those~~
6 ~~elements of the cost estimate that are incomplete. The review by~~
7 ~~the director pursuant to subdivision (b) shall not begin until the~~
8 ~~director receives a complete submission:~~

9 (b) ~~The director shall have 45 days from the date of receipt of~~
10 ~~a complete financial assurance cost estimate pursuant to subdivision~~
11 ~~(a) to prepare written comments or request a reassessment if the~~
12 ~~director chooses:~~

13 (c) ~~(1) ~~A~~ If the director can demonstrate that the proposed—~~
14 ~~financial assurance cost estimate is inadequate to reclaim the~~
15 ~~surface mining operation in accordance with the approved~~
16 ~~reclamation plan, the director may request a reassessment by the~~
17 ~~lead agency:~~

18 (B) ~~If the director requests a reassessment of a financial~~
19 ~~assurance cost estimate, the lead agency shall reassess and resubmit~~
20 ~~the proposed financial assurance cost estimate within 45 days of~~
21 ~~the director's request:~~

22 (2) ~~If the lead agency or operator disagrees with the director's~~
23 ~~request for reassessment, or the director determines that a financial~~
24 ~~assurance cost estimate resubmitted pursuant to this subdivision~~
25 ~~remains inadequate, the lead agency, operator, or director may~~
26 ~~request a review hearing by the board:~~

27 (3) ~~Financial assurance cost estimates shall not be approved~~
28 ~~pending the director's request for reassessment pursuant to this~~
29 ~~subdivision:~~

30 (4) ~~Financial assurance cost estimates determined to be~~
31 ~~inadequate by the board shall be returned to the lead agency for~~
32 ~~reassessment and resubmission to the director pursuant to this~~
33 ~~section. Financial assurance cost estimates determined to be~~
34 ~~adequate by the board may be approved by the lead agency:~~

35 (d) ~~(1) The lead agency shall prepare a written response to the~~
36 ~~director's comments, if any, describing the disposition of the major~~
37 ~~issues raised by the director's comments. The lead agency shall~~
38 ~~submit its proposed response to the director at least 30 days prior~~
39 ~~to approval of the financial assurance cost estimate and shall~~
40 ~~include either of the following:~~

1 ~~(A) A description of how the lead agency proposes to adopt the~~
 2 ~~director's comments to the financial assurance cost estimate~~

3 ~~(B) A detailed description of the reasons why the lead agency~~
 4 ~~proposes not to adopt the director's comments.~~

5 ~~(2) Copies of any written comments received and responses~~
 6 ~~prepared by the lead agency pursuant to paragraph (1) shall be~~
 7 ~~provided to the operator.~~

8 ~~(3)(A) The lead agency shall give the director at least 30 days'—~~
 9 ~~notice of the time, place, and date of the hearing at which the~~
 10 ~~financial assurance cost estimate is scheduled to be approved by~~
 11 ~~the lead agency.~~

12 ~~(B) If no hearing is required by this chapter, the local ordinance,~~
 13 ~~or other state law, then the lead agency shall provide 30 days'~~
 14 ~~notice to the director that it intends to approve the financia-~~
 15 ~~assurance cost estimate.~~

16 ~~(4) The lead agency shall send to the director its final response—~~
 17 ~~to the director's comments within 30 days of its approval of the~~
 18 ~~financial assurance cost estimate during which time the department~~
 19 ~~retains all of its powers, duties, and authorities pursuant to this~~
 20 ~~chapter.~~

21 ~~(e)(1) Within 30 days of the lead agency's approval of the~~
 22 ~~financial assurance cost estimate, the operator shall provide the~~
 23 ~~lead agency and the director an appropriate financial assurance~~
 24 ~~mechanism that is at least equal to the approved financial assurance~~
 25 ~~cost estimate.~~

26 ~~(2) Within 15 days of receipt of a financial assurance~~
 27 ~~mechanism, the lead agency and the director shall review the~~
 28 ~~financial assurance mechanism to determine if the type of~~
 29 ~~mechanism, including release instructions, complies with the~~
 30 ~~requirements of this chapter.~~

31 ~~(3) Financial assurance mechanisms determined to be~~
 32 ~~noncompliant with this chapter shall be returned to the operator,~~
 33 ~~with instructions on how to correct the type or release instructions~~
 34 ~~of the financial assurance mechanism.~~

35 ~~(f) To the extent there is a conflict between the comments of a~~
 36 ~~trustee agency or a responsible agency that are based on that~~
 37 ~~agency's statutory or regulatory authority and the comments of~~
 38 ~~other commenting agencies that are received by the lead agency~~
 39 ~~pursuant to the California Environmental Quality Act (Division~~
 40 ~~13 (commencing with Section 21000)) regarding a financia-~~

1 assurance cost estimate or financial assurance mechanism, the lead
 2 agency shall consider only the comments of the trustee agency or
 3 responsible agency.

4 ~~(g) The review of existing financial assurances shall not be~~
 5 ~~considered a project for the purposes of the California~~
 6 ~~Environmental Quality Act (Division 13 (commencing with Section~~
 7 ~~21000)).~~

8 SEC. 12. ~~Section 2774 of the Public Resources Code is~~
 9 ~~amended to read:~~

10 2774. ~~(a) Every lead agency shall adopt ordinances in~~
 11 ~~accordance with state policy that establish procedures for the~~
 12 ~~review and approval of reclamation plans and financial assurances~~
 13 ~~and the issuance of a permit to conduct surface mining operations;~~
 14 ~~except that any lead agency without an active surface mining~~
 15 ~~operation in its jurisdiction may defer adopting an implementing~~
 16 ~~ordinance until the filing of a permit application. The ordinances~~
 17 ~~shall establish procedures requiring at least one public hearing and~~
 18 ~~shall be periodically reviewed by the lead agency and revised, as~~
 19 ~~necessary, to ensure that the ordinances continue to be in~~
 20 ~~accordance with state policy.~~

21 ~~(b) (1) (A) The lead agency shall conduct an inspection of a~~
 22 ~~surface mining operation within six months of receipt by the lead~~
 23 ~~agency of the surface mining operation's report submitted pursuant~~
 24 ~~to Section 2207, solely to determine whether the surface mining~~
 25 ~~operation is in compliance with this chapter.~~

26 ~~(B) A lead agency shall not inspect a surface mining operation~~
 27 ~~less than once in any calendar year. The lead agency shall cause~~
 28 ~~an inspection to be conducted by an individual who is qualifie~~
 29 ~~pursuant to paragraph (2) and who satisfies the provisions of~~
 30 ~~subdivision (e), including, but not limited to, a state-licensed~~
 31 ~~geologist, state-licensed civil engineer, state-licensed landscape~~
 32 ~~architect, state-licensed forester, or lead agency employee who~~
 33 ~~has not been employed by the surface mining operation within the~~
 34 ~~jurisdiction of the lead agency in any capacity during the previous~~
 35 ~~12 months.~~

36 ~~(C) Notwithstanding subparagraph (B), a lead agency employee~~
 37 ~~who is qualified pursuant to paragraph (2) and who satisfies the~~
 38 ~~provisions of subdivision (e) may inspect a surface mining~~
 39 ~~operation owned or operated by the lead agency.~~

~~(D) All inspections shall be conducted using a form developed by the department and approved by the board that includes the relevant professional licensing and disciplinary information of the person qualified pursuant to paragraph (2) who conducted the inspection. The operator shall be solely responsible for the reasonable cost of the inspection.~~

~~(E) The lead agency shall notify the director within 60 days of the date of completion of the inspection that the inspection has been conducted. The inspection notice shall contain a statement regarding the surface mining operation's compliance with this chapter, shall include a copy of the completed inspection form, and shall specify which aspects of the surface mining operations, if any, are inconsistent with this chapter and those noncompliant aspects that have been corrected following the inspection, with proof of correction. For each remaining noncompliant aspect, the lead agency shall provide to the director a copy of the notice of violation, the notice of violation combined with an order to comply pursuant to Section 2774.1, or a statement that indicates the lead agency does not intend to initiate an enforcement action pursuant to Section 2774.1. If the surface mining operation has a review of its reclamation plan, financial assurances, or an interim management plan pending under subdivision (b) or (h) of Section 2770, or an appeal pending before the board or lead agency governing body under subdivision (c) or (h) of Section 2770, the inspection notice shall so indicate. The lead agency shall forward to the operator a copy of the inspection notice, a copy of the completed inspection form, and any supporting documentation, including, but not limited to, any inspection report prepared by the individual qualified pursuant to paragraph (2).~~

~~(2)(A) The department and the board, in consultation with the Board for Professional Engineers, Land Surveyors, and Geologists, shall adopt regulations that set forth the minimum qualification for a person conducting an inspection of a surface mining operation pursuant to this chapter. The regulations shall delineate those aspects of an inspection that require the inspector to meet state licensure requirements.~~

~~(B) Beginning January 1 of the year following adoption of the regulations required pursuant to subparagraph (A), but not less than 180 days after adoption, all surface mine inspections shall be performed by a qualified individual.~~

~~(e) (1) On or before July 1, 2016, the department shall establish a training program for all surface mine inspectors. The program shall be designed to include a guidance document, developed by the department and approved by the board, to provide instruction and recommendations to surface mine inspectors performing inspections pursuant to subdivision (b).~~

~~(2) The training program shall include no less than four inspection workshops per year, offered by the department, in different regions of the state, to provide practical application of the guidance document material.~~

~~(3) On and after January 1, 2019, all inspectors shall have on file with the lead agency and the department a certificate of completion of an inspection workshop. An inspector shall attend a workshop no later than five years after the date of his or her most recent certificate.~~

~~(d) In addition to subdivision (b), lead agencies or the Supervisor of Mines and Reclamation may inspect at any time a surface mining operation to determine if the operation is in compliance with this chapter and Section 2207.~~

~~(e) The approval of the guidance document by the board pursuant to subdivision (c) is not the adoption of a regulation for the purposes of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) and is not subject to that chapter.~~

~~SEC. 13. Section 2774.1 of the Public Resources Code is amended to read:~~

~~2774.1. (a) Except as provided in subdivision (i) of Section 2770, if the lead agency or the director determines, based upon an annual inspection pursuant to Section 2774, or otherwise confirmed by an inspection of the mining operation, that a surface mining operation is not in compliance with this chapter, the lead agency or the director may notify the operator of that violation by personal service or certified mail. If the lead agency or the director determines that the noted violations cannot be corrected within 30 days of the notice, the lead agency shall or the director may combine the notice of violation with an order to comply. If the violation extends beyond 30 days after the date of the lead agency's or the director's notification, the lead agency or the director may issue an order by personal service or certified mail requiring the operator to comply with this chapter or, if the operator does not~~

1 have an approved reclamation plan or financial assurances, cease
2 all further mining activities.

3 ~~(b) An order to comply issued under subdivision (a) shall take~~
4 ~~effect 30 days following service unless the operator within that~~
5 ~~30-day period requests a hearing before the lead agency for orders~~
6 ~~issued by the lead agency, or the board for orders issued by the~~
7 ~~director, concerning the alleged violation. An order to comply~~
8 ~~shall specify which aspects of the surface mine's activities or~~
9 ~~operations are inconsistent with this chapter, shall specify a time~~
10 ~~for compliance that the lead agency or director determines is~~
11 ~~reasonable, not to exceed two years, taking into account the~~
12 ~~seriousness of the violation and any good faith efforts to comply~~
13 ~~with applicable requirements, and may include an administrative~~
14 ~~penalty imposed pursuant to subdivision (c). If a lead agency or~~
15 ~~the director determines compliance with an order to comply will~~
16 ~~exceed two years, the board may specify a longer period based on~~
17 ~~an application and showing of good cause.~~

18 ~~(c) (1) In an order to comply pursuant to subdivision (b), the~~
19 ~~lead agency or the director may impose an administrative penalty~~
20 ~~of not more than five thousand dollars (\$5,000) per day, assessed~~
21 ~~from the original date of noncompliance with this chapter. The~~
22 ~~penalty may be imposed administratively by the lead agency or~~
23 ~~the director. In determining the amount of the administrative~~
24 ~~penalty, the lead agency or the director shall take into consideration~~
25 ~~the nature, circumstances, extent, and gravity of the violation or~~
26 ~~violations, any prior history of violations, the degree of culpability,~~
27 ~~economic savings, if any, resulting from the violation, and any~~
28 ~~other matters justice may require.~~

29 ~~(2) If an operator fails to comply with an order to comply that~~
30 ~~did not originally impose an administrative penalty, or if an~~
31 ~~operator fails to submit a report or pay annual fees to the director~~
32 ~~or lead agency pursuant to Section 2207, the lead agency or director~~
33 ~~may impose an administrative penalty pursuant to this paragraph.~~
34 ~~The administrative penalty shall become effective upon issuance~~
35 ~~of the assessment and payment shall be made to the lead agency~~
36 ~~or the director within 30 days, unless the operator petitions the~~
37 ~~legislative body of the lead agency, the board, or the superior court~~
38 ~~for review as provided in Section 2774.2. An assessment shall be~~
39 ~~served by personal service or by certified mail upon the operator.~~

~~(3) Penalties collected by the director shall not be used for purposes other than to cover the reasonable costs incurred by the director in implementing this chapter or Section 2207.~~

~~(d) If the lead agency or the director determines that the surface mine is not in compliance with this chapter, so that the surface mine presents an imminent and substantial endangerment to the public health or the environment, the lead agency or the Attorney General, on behalf of the director, may seek an order from a court of competent jurisdiction enjoining that operation.~~

~~(e) Upon a complaint by the director, the department, or the board, the Attorney General may bring an action to recover administrative penalties under this section, and penalties under Section 2207, in any court of competent jurisdiction in this state against any person violating any provision of this chapter or Section 2207, or any regulation adopted pursuant to this chapter or Section 2207. The Attorney General may bring this action on his or her own initiative if, after examining the complaint and the evidence, he or she believes a violation has occurred. The Attorney General may also seek an order from a court of competent jurisdiction compelling the operator to comply with this chapter and Section 2207.~~

~~(f) The lead agency has primary responsibility for enforcing this chapter and Section 2207. In cases where the board is not the lead agency pursuant to Section 2774.4, enforcement actions may be initiated by the director pursuant to this section only after the violation has come to the attention of the director and either of the following occurs:~~

~~(A) The lead agency has been notified by the director in writing of the violation for at least 30 days, and has not taken appropriate enforcement action, which may include failing to issue an order to comply within a reasonable time after issuing a notice of violation.~~

~~(B) The director determines that there is a violation that amounts to an imminent and substantial endangerment to the public health or safety, or to the environment.~~

~~(2) The director shall comply with this section in initiating enforcement actions.~~

~~(g) Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal.~~

SEC. 14. ~~Section 2774.4 of the Public Resources Code is amended to read:~~

~~2774.4. (a) The board shall exercise some or all of a lead agency's powers under this chapter pursuant to subdivision (c), except for permitting authority and vested rights determinations pursuant to Section 2776, if the board finds that a lead agency has done any of the following:~~

~~(1) Approved reclamation plans or financial assurances that are not consistent with this chapter.~~

~~(2) Failed to inspect or cause the inspection of surface mining operations as required by this chapter.~~

~~(3) Failed to seize the financial assurances and to carry out the reclamation of surface mining operations as required by this chapter.~~

~~(4) Failed to take appropriate enforcement actions as required by this chapter.~~

~~(5) Intentionally misrepresented the results of inspections required under this chapter.~~

~~(6) Failed to submit information to the department as required by this chapter.~~

~~(b) The board shall conduct a public hearing no sooner than three years after the board has taken action pursuant to subdivision (a) to determine if a lead agency has corrected its deficiencies in implementing and enforcing this chapter and the rules and regulations adopted pursuant to this chapter or has developed a program that will adequately administer this chapter and Section 2207. If the board finds sufficient evidence of correction or the development of a program to adequately implement this chapter and Section 2207, the board shall restore to the lead agency some or all of the powers assumed by the board pursuant to subdivision (a).~~

~~(c) Before taking any action pursuant to subdivision (a), the board shall first conduct a hearing, providing 30 days' notice to the lead agency, and shall determine if the lead agency has engaged in conduct described in subdivision (a). If the board finds that the lead agency has engaged in conduct described in subdivision (a), the board shall do either of the following:~~

~~(1) (A) Require the lead agency to develop a remedial plan to correct the noted deficiencies. The remedial plan shall describe specific objectives and corresponding processes designed to~~

1 address, at a minimum, the noted deficiencies and a time that the
2 remedial plan will be fully implemented.

3 ~~(B) The board shall set a hearing to review the completion of~~
4 ~~the remedial plan consistent with paragraph (2) and subdivisions~~
5 ~~(d) and (e):~~

6 ~~(2) Take immediate action pursuant to subdivision (a) and hold~~
7 ~~a public hearing within the lead agency's area of jurisdiction, upon~~
8 ~~a 45-day written notice given to the public in at least one newspaper~~
9 ~~of general circulation within the city or county and directly mailed~~
10 ~~to the lead agency and to all operators within the lead agency's~~
11 ~~jurisdiction who have submitted reports as required by Section~~
12 ~~2207.~~

13 ~~(d) Affected operators and interested persons have the right at~~
14 ~~the public hearing to present oral and written evidence on the~~
15 ~~matter being considered. The board, at the public hearing, may~~
16 ~~place reasonable limits on the right of affected operators and~~
17 ~~interested persons to question and solicit testimony.~~

18 ~~(e)(1) If the board decides to take action pursuant to subdivision~~
19 ~~(a) and exercise some or all of a lead agency's powers pursuant to~~
20 ~~this chapter, except for permitting authority and vested rights~~
21 ~~determinations pursuant to Section 2776, the board shall, based~~
22 ~~on the record of the public hearing, adopt written findings that~~
23 ~~explain all of the following:~~

24 ~~(A) The action to be taken by the board.~~

25 ~~(B) Why the board decided to take the action.~~

26 ~~(C) Why the action is authorized by and meets the requirements~~
27 ~~of subdivision (a):~~

28 ~~(2) In addition, the findings shall address the significant issues~~
29 ~~raised or written evidence presented by affected operators,~~
30 ~~interested persons, the lead agency, or the department and finding~~
31 ~~from any review of the lead agency's administrative and~~
32 ~~enforcement program. The transcript of testimony and exhibits,~~
33 ~~together with all papers and requests filed in the proceedings, shall~~
34 ~~constitute the exclusive record for decision by the board.~~

35 ~~(f) If the board finds that the lead agency has not satisfactorily~~
36 ~~completed the remedial plan prepared pursuant to paragraph (1)~~
37 ~~of subdivision (c), the board shall follow the procedures set forth~~
38 ~~in paragraph (2) of subdivision (c) and subdivisions (d) and (e):~~

39 ~~(g) The lead agency, any affected operator, or any interested~~
40 ~~person who has presented oral or written evidence at the public~~

1 hearing before the board pursuant to subdivision (d) may obtain a
 2 review of the board's action taken pursuant to subdivision (a) by
 3 filing in the superior court a petition for a writ of mandate withi-
 4 30 days following the issuance of the board's decision. Section
 5 1094.5 of the Code of Civil Procedure governs judicial proceedings
 6 pursuant to this subdivision, except that in every case the court
 7 shall exercise its independent judgment. If a petition for a writ of
 8 mandate is not filed within the time limits set by this subdivision,
 9 the board's action under subdivision (a) shall not be subject to
 10 review by any court or agency.

11 SEC. 15. ~~Section 2776 of the Public Resources Code is~~
 12 ~~amended to read:~~

13 ~~2776. (a) (1) A person who has obtained a vested right to~~
 14 ~~conduct surface mining operations prior to January 1, 1976, shall~~
 15 ~~not be required to secure a permit pursuant to this chapter as long~~
 16 ~~as the vested right continues and as long as no substantial changes~~
 17 ~~are made in the operation except in accordance with this chapter.~~
 18 ~~A person shall be deemed to have vested rights if, prior to January~~
 19 ~~1, 1976, the person has, in good faith and in reliance upon a permit~~
 20 ~~or other authorization, if the permit or other authorization was~~
 21 ~~required, diligently commenced surface mining operations and~~
 22 ~~incurred substantial liabilities for work and materials necessary~~
 23 ~~for the surface mining operations. Expenses incurred in obtaining~~
 24 ~~the enactment of an ordinance in relation to a particular operation~~
 25 ~~or the issuance of a permit shall not be deemed liabilities for work~~
 26 ~~or materials.~~

27 ~~(2) A lead agency shall maintain records associated with a vested~~
 28 ~~right determination.~~

29 ~~(b) The reclamation plan required to be filed pursuant to~~
 30 ~~subdivision (b) of Section 2770 shall apply to operations conducted~~
 31 ~~after January 1, 1976, or to be conducted.~~

32 ~~(c) Nothing in this chapter shall be construed as requiring the~~
 33 ~~filing of a reclamation plan for or the reclamation of mined lands~~
 34 ~~on which surface mining operations were conducted prior to~~
 35 ~~January 1, 1976.~~

36 *SEC. 5. Section 2770 of the Public Resources Code is amended*
 37 *to read:*

38 2770. (a) Except as provided in this section, a person shall not
 39 conduct surface mining operations unless a permit is obtained
 40 from, a reclamation plan has been submitted to and approved by,

1 and financial assurances for reclamation have been approved by;
2 by the lead agency for the operation pursuant to this article.

3 (b) ~~A~~ person with an existing surface mining operation who has
4 vested rights pursuant to Section 2776 and who does not have an
5 approved reclamation plan shall submit a reclamation plan to the
6 lead agency not later than March 31, 1988. If a reclamation plan
7 application is not on file by March 31, 1988, the continuation of
8 the surface mining operation is prohibited until a reclamation plan
9 is submitted to the lead agency. ~~For purposes of this subdivision,~~
10 ~~a reclamation plan may consist of all or the appropriate sections~~
11 ~~of any plans or written agreements previously approved by the~~
12 ~~lead agency or another agency, together with any additional~~
13 ~~documents needed to substantially meet the requirements of~~
14 ~~Sections 2772 and 2773 and the lead agency surface mining~~
15 ~~ordinance adopted pursuant to subdivision (a) of Section 2774,~~
16 ~~provided that all documents which together were proposed to serve~~
17 ~~as the reclamation plan are submitted for approval to the lead~~
18 ~~agency in accordance with this chapter.~~

19 ~~(c) If a person with an existing surface mining operation has~~
20 ~~received lead agency approval of its financial assurances for~~
21 ~~reclamation prior to January 1, 1991, the lead agency shall~~
22 ~~administratively review those existing financial assurances in~~
23 ~~accordance with subdivision (d) prior to January 1, 1992. The~~
24 ~~review of existing financial assurances shall not be considered a~~
25 ~~project for purposes of Division 13 (commencing with Section~~
26 ~~21000). A person with an existing surface mining operation that~~
27 ~~does not have financial assurances that received lead agency~~
28 ~~approval prior to January 1, 1991, shall submit financial assurances~~
29 ~~for reclamation for review in accordance with subdivision (d).~~

30 ~~(d) The lead agency's review of a reclamation plan submitted~~
31 ~~pursuant to subdivision (b) or of financial assurances pursuant to~~
32 ~~subdivision (c) is limited to whether the plan or the financia-~~
33 ~~assurances substantially meet the applicable requirements of~~
34 ~~Sections 2772, 2773, and 2773.1, and the lead agency surface~~
35 ~~mining ordinance adopted pursuant to subdivision (a) of Section~~
36 ~~2774, but, in any event, the lead agency shall require that financia-~~
37 ~~assurances for reclamation be sufficient to perform reclamation~~
38 ~~of lands remaining disturbed. Reclamation plans or financia-~~
39 ~~assurances determined to substantially meet these requirements~~
40 ~~shall be approved by the lead agency for purposes of this chapter.~~

~~Reclamation plans or financial assurances determined not to substantially meet these requirements shall be returned to the operator within 60 days. The operator has 60 days to revise the plan or financial assurances to address identified deficiencies, at which time the revised plan or financial assurances shall be returned to the lead agency for review and approval. Except as specified in subdivision (c) or (i), unless the operator has filed on or before July 1, 1990, an appeal pursuant to subdivision (c) with regard to nonapproval of the reclamation plan, or has filed on or before January 1, 1994, an appeal pursuant to subdivision (c) with regard to nonapproval of financial assurances, and that appeal is pending before the board, the continuation of the surface mining operation is prohibited until a reclamation plan and financial assurances for reclamation are approved by the lead agency.~~

~~(c) [Reserved]~~

~~(d) [Reserved]~~

~~(e)(1) A person who, who can substantiate, based on the evidence of the record, can substantiate that a lead agency has either (1) failed to act according to due process or has relied on considerations not related to the specific applicable requirements of Sections 2772, 2772.1, 2773, and 2773.1, 2773.3, and 2773.4 and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, 2774 in reaching a decision to deny approval of a reclamation plan or financial assurances for reclamation, or (2) failed to act within a reasonable time of receipt of a completed application, or (3) failed to review and approve reclamation plans or financial assurances as required by subdivisions (c) and (d), application may appeal that action or inaction to the board.~~

~~(2) The director may appeal a lead agency's approval of a financial assurance cost estimate to the board if the director has commented pursuant to Section 2773.4 that the financial assurance cost estimate is inadequate based on consideration of the following:~~

~~(A) Section 2773.1.~~

~~(B) Article 11 (commencing with Section 3800) of Title 14 of the California Code of Regulations.~~

~~(C) The board's financial assurance guidelines adopted pursuant to subdivision (f) of Section 2773.1~~

~~(3) If the approved financial assurance cost estimate applies to a reclamation plan approved for a new surface mining operation,~~

1 *an expanded surface mining operation, or an interim financial*
 2 *assurance due to an order to comply, stipulated or otherwise, the*
 3 *operator shall provide a financial assurance mechanism pursuant*
 4 *to subdivision (e) of Section 2773.4 in the amount of the approved*
 5 *financial assurance cost estimate, notwithstanding an appeal file*
 6 *pursuant to this subdivision and subject to modification pending*
 7 *the outcome of the appeal.*

8 *(4) If the approved financial assurance cost estimate is an*
 9 *update to an existing approved financial assurance cost estimate,*
 10 *the existing financial assurance mechanism shall remain in place*
 11 *and shall not be adjusted until a final determination by the board*
 12 *on the appeal filed pursuant to this subdivision.*

13 ~~(f) (1) The board may decline to hear an appeal if it determines~~
 14 ~~that the appeal raises no substantial issues related to the lead~~
 15 ~~agency's review pursuant to this section. decision to deny approval~~
 16 ~~of a reclamation plan or financial assurance or the timeliness in~~
 17 ~~reviewing a completed application. An appeal filed by the director~~
 18 ~~shall be heard by the board.~~

19 ~~(g) Appeals that the board does not decline to hear shall be~~
 20 ~~scheduled and heard at a public hearing within 45 days of the filing~~
 21 ~~of the appeal, or a longer period as may be mutually agreed upon~~
 22 ~~by the board and the person filing the appeal. In hearing an appeal,~~
 23 ~~the board shall only determine whether the reclamation plan or the~~
 24 ~~financial assurances substantially meet the applicable requirements~~
 25 ~~of Sections 2772, 2773, and 2773.1, and the lead agency surface~~
 26 ~~mining ordinance adopted pursuant to subdivision (a) of Section~~
 27 ~~2774. A reclamation plan or financial assurances determined to~~
 28 ~~meet these requirements shall be approved. A reclamation plan or~~
 29 ~~financial assurances determined not to meet these requirements~~
 30 ~~shall be returned to the person filing the appeal with a notice of~~
 31 ~~deficiencies, who shall be granted, once only, a period of 30 days,~~
 32 ~~or a longer period mutually agreed upon by the operator and the~~
 33 ~~board, to correct the noted deficiencies and submit the revised~~
 34 ~~reclamation plan or the revised financial assurances to the lead~~
 35 ~~agency for review and approval.~~

36 *(2) If the board takes up an appeal, the appeal shall be*
 37 *scheduled and heard at a public hearing within 45 days of the*
 38 *filing of the appeal or a longer period may be mutually agreed*
 39 *upon by the board, the appellant, and the operator or the board,*
 40 *the director, and the operator.*

(g) (1) (A) When hearing an appeal filed pursuant to subdivision (e), the board shall determine whether the reclamation plan or the financial assurance cost estimate substantially meets the applicable requirements of Sections 2772, 2772.1, 2773, 2773.1, 2773.3, and 2773.4, and Article 1 (commencing with Section 3500), Article 9 (commencing with Section 3700), and Article 11 (commencing with Section 3800) of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, and the lead agency's surface mining ordinance adopted pursuant to subdivision (a) of Section 2774. The board shall approve or uphold a reclamation plan or financial assurance cost estimate determined to meet those applicable requirements. In any event, the total amount of financial assurances required for any one year shall not exceed the amount necessary to perform reclamation of lands remaining disturbed.

(B) For purposes of this subdivision, "substantially" means actual compliance in respect to the substance and form requirements essential to the objectives of this chapter.

(2) (A) A reclamation plan determined not to meet the applicable requirements of Sections 2772, 2772.1, 2773, 2773.1, 2773.3, and 2773.4 and the lead agency's surface mining ordinance adopted pursuant to subdivision (a) of Section 2774 shall be returned to the operator with a notice of deficiencies. The operator shall be granted, once only, a period of 30 days or a longer period mutually agreed upon by the operator and the board to do both of the following:

- (i) Correct the noted deficiencies
- (ii) Submit the revised reclamation plan to the lead agency for review and approval.

(B) Within 10 days of the hearing, the board shall provide notice via certified mail to the lead agency, the operator, and the department of the board's determination. The notice shall include instructions to the operator to submit to the lead agency for approval a revised reclamation plan consistent with the board's determination.

(3) (A) If the board determines the lead agency's approved financial assurance cost estimate does not meet the requirements of Sections 2773.1 and 2773.4, and Article 11 (commencing with Section 3800) of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, and the board's financia

1 assurance guidelines adopted pursuant to subdivision (f) of Section
2 2773.1, the board shall note the deficiencies and, based on the
3 record, include adequate cost estimates for each noted deficiency.

4 (B) Within 10 days of the hearing, the board shall provide notice
5 via certified mail to the lead agency, the operator, and the
6 department of the board's determination with instructions to the
7 operator to submit to the lead agency for approval a revised
8 financial assurance cost estimate consistent with the board's
9 determination. The instructions shall include a reasonable
10 submission deadline of not less than 30 days.

11 (C) The lead agency shall approve the revised financial
12 assurance cost estimate. That approval shall supersede and void
13 the prior approved financial assurance cost estimate.

14 (D) A financial assurance mechanism shall be established by
15 the operator pursuant to subdivision (e) of Section 2773.4 following
16 the approval of the financial assurance cost estimate.

17 (E) The failure of the operator to submit to the lead agency a
18 revised financial assurance cost estimate consistent with the
19 board's determination and deadline may be grounds for the
20 issuance of an order to comply pursuant to subdivision (a) of
21 Section 2774.1.

22 (h) (1) Within 90 days of a surface mining operation becoming
23 idle, as defined in Section 2727.1, the operator shall submit to the
24 lead agency for review and ~~approval~~, approval an interim
25 management plan. The review and approval of an interim
26 management plan shall not be considered a project for purposes
27 of ~~Division the California Environmental Quality Act (Division~~
28 13 (commencing with Section 21000) 21000)). The approved
29 interim management plan shall be considered an amendment to
30 the surface mining operation's approved reclamation ~~plan~~, plan
31 for purposes of this chapter. The interim management plan shall
32 provide measures the operator will implement to maintain the site
33 in compliance with this chapter, including, but not limited to, all
34 permit conditions.

35 (2) ~~The~~ Except for an interim management plan for a borrow
36 pit surface mining operation owned or operated by the lead agency
37 solely for use by the lead agency, an interim management plan
38 may remain in effect for a period not to exceed five years, at which
39 time the lead agency shall do one of the following:

(A) Renew the interim management plan for an additional period not to exceed five years, which may be renewed for one additional five-year renewal period at the expiration of the first five-year renewal period, if the lead agency finds that the surface mining operator has complied fully with the interim management plan.

(B) Require the ~~surface mining~~ operator to commence reclamation in accordance with its approved reclamation plan.

(3) The financial assurances required by Section 2773.1 shall remain in effect during the period that the surface mining operation is idle. If the surface mining operation is still idle after the expiration of its interim management plan, the ~~surface mining operation~~ operator shall commence reclamation in accordance with its approved reclamation plan.

(4) Within 60 days of the receipt of the interim management ~~plan~~, plan or a longer period mutually agreed upon by the lead agency and the operator, the lead agency shall review and approve the plan in accordance with its ordinance adopted pursuant to subdivision (a) of Section 2774, so long as the plan satisfies the requirements of this subdivision, and so notify the operator in writing. Otherwise, the lead agency shall notify the operator in writing of any deficiencies in the plan. The operator shall have 30 days, or a longer period mutually agreed upon by the operator and the lead agency, to submit a revised plan.

(5) The lead agency shall approve or deny approval of the revised interim management plan within 60 days of receipt. If the lead agency denies approval of the revised interim management plan, the operator may appeal that action to the lead agency's governing body, which shall schedule a public hearing within 45 days of the filing of the ~~appeal~~, appeal or a longer period mutually agreed upon by the operator and the governing body.

(6) Unless review of an interim management plan is pending before the lead ~~agency~~, agency or an appeal is pending before the lead agency's governing body, a surface mining operation that remains idle for over one year after becoming ~~idle~~ idle, as defined in Section ~~2727.1~~ 2727.1, without obtaining approval of an interim management plan shall be considered abandoned and the operator shall commence and complete reclamation in accordance with the approved reclamation plan.

1 (7) If a lead agency owns or operates a borrow pit surface
 2 mining operation that is solely for use by the lead agency, then all
 3 of the following apply:

4 (A) The borrow pit surface mining operation is exempt from the
 5 requirements of this subdivision.

6 (B) The lead agency shall maintain financial assurances while
 7 the borrow pit surface mining operation is idle.

8 (C) The lead agency may obtain an interim management plan
 9 for the borrow pit surface mining to comply with subdivision (b)
 10 of Section 2772. That interim management plan shall not expire.

11 (i) An enforcement action that may be brought against a surface
 12 mining operation for operating without an approved reclamation
 13 plan, financial assurance, or interim management plan shall be
 14 held in abeyance pending review pursuant to subdivision ~~(b)~~, ~~(e)~~,
 15 ~~(d)~~, or (h), or the resolution of an appeal filed with the board
 16 pursuant to subdivision (e), or with a lead agency governing body
 17 pursuant to subdivision (h).

18 (j) Notwithstanding paragraph (1) of subdivision (b) of Section
 19 2774, a lead agency may inspect every two years a borrow pit
 20 surface mining operation that is solely for use by the lead agency
 21 while that surface mining operation is idle.

22 SEC. 6. Section 2772 of the Public Resources Code is amended
 23 to read:

24 2772. (a) The reclamation plan shall be filed with the lead
 25 agency, on a form provided by the lead agency, by any person who
 26 owns, leases, or otherwise controls or operates on ~~all~~, *all* or any
 27 portion of ~~any, any mined lands, lands~~ and who plans to conduct
 28 surface mining operations on the lands.

29 ~~(b) All documentation for the reclamation plan shall be~~
 30 ~~submitted.~~ *In addition to the other requirements for a reclamation*
 31 *plan set forth in this section, a reclamation plan for a borrow pit*
 32 *surface mining operation owned or operated by the lead agency*
 33 *to the department at one time, solely for use by the lead agency*
 34 *shall include maintenance measures that become effective when*
 35 *the borrow pit surface mining operation is idle.*

36 (c) The reclamation plan shall include all of the following
 37 information and documents:

38 (1) The name and address of the ~~surface mining~~ operator and
 39 the names and addresses of any persons designated by the operator
 40 as an agent for the service of process.

(2) The anticipated quantity and type of minerals for which the surface mining operation is to be conducted.

(3) The proposed dates for the initiation and termination of the surface mining operation.

(4) The maximum anticipated depth of the surface mining operation.

(5) A reclamation plan map or maps that shall include all of the following:

(5) The size-

(A) Size and legal description of the lands that will be affected by the surface mining operation, a map that includes the boundaries and topographic details of the lands, a description of the general geology of the area, a detailed description of the geology of the area in which surface mining is to be conducted, the location of all streams, roads, railroads, and utility facilities within, or adjacent to, the lands, the location of all proposed access roads to be constructed in conducting the surface mining operation, operation and the names and addresses of the owners of all surface interests and mineral interests in the lands.

(B) Clearly defined and accurately drawn property lines, setbacks, easements, and the reclamation plan boundary.

(C) Existing topography and final topography depicted with contour lines drawn at appropriate intervals for the site's conditions.

(D) Detailed geologic description of the area of the surface mining operation.

(E) Location of railroads, utility facilities, access roads, temporary roads to be reclaimed, and any roads remaining for the approved end use.

(F) All maps, diagrams, or calculations that require preparation in accordance with the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code), the Geologist and Geophysicist Act (Chapter 12.5 (commencing with Section 7800) of Division 3 of the Business and Professions Code), or the Professional Land Surveyors' Act (Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code) shall be prepared by an appropriately licensed California-licensed professional, shall include his or her license number and name, and shall bear the signature and seal of the licensee.

(6) ~~A~~ description of ~~of~~ and a plan ~~for~~ *for* the type of surface mining to be ~~employed~~ *employed* and a time schedule that will provide for the completion of surface mining on each segment of the mined lands so that reclamation can be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance by the surface mining operation.

(7) ~~A~~ A description of the proposed use or potential uses of the mined lands after reclamation and evidence that all owners of a possessory interest in the land have been notified of the proposed use or potential uses.

(8) ~~A~~ A description of the manner in which reclamation, adequate for the proposed use or potential ~~uses~~ *uses*, will be accomplished, including both of the following:

(A) ~~A~~ A description of the manner in which *known* contaminants will be ~~controlled~~ *controlled* and mining waste will be disposed.

(B) ~~A~~ A description of the manner in which affected streambed channels and streambanks will be rehabilitated to a condition ~~minimizing that minimizes erosion and sedimentation will occur.~~ *sedimentation.*

(9) ~~A~~ An assessment of the effect of implementation of the reclamation plan on future mining in the area.

(10) ~~A~~ A statement that the person submitting the reclamation plan accepts responsibility for reclaiming the mined lands in accordance with the reclamation plan.

(11) ~~A~~ Any other information ~~which~~ *that* the lead agency may require by ordinance.

(12) *A chart identifying the page number, chapter, appendix, or other specific location in the reclamation plan where content meeting the requirements, as applicable, of Sections 2772, 2773, and 2773.3 and Article 1 (commencing with Section 3500) and Article 9 (commencing with Section 3700) of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations is located.*

(d) ~~An~~ An item of information or a document required pursuant to subdivision ~~(e)~~ *(c)*, that has already been prepared as part of a permit application for the surface mining operation, or as part of an environmental document prepared for the project pursuant to ~~Division the California Environmental Quality Act (Division 13 (commencing with Section 21000); 21000))~~ may be included in the reclamation plan by reference, if that item of information or that document is attached to the reclamation plan when the lead

1 agency submits the reclamation plan to the director for review. To
 2 the extent that the information or document information, document,
 3 or component of a document referenced in the reclamation plan is
 4 used to meet the requirements of subdivision (e), the information
 5 or (c) or Section 2773 or 2773.3, the information, document, or
 6 component of a document shall become part of the reclamation
 7 plan and shall be subject to all other requirements of this article.

8 (e) ~~Nothing in this~~ This section is intended to does not limit or
 9 expand the department's Supervisor of Mines and Reclamation's
 10 authority or responsibility to review a document in accordance
 11 with Division the California Environmental Quality Act (Division
 12 13 (commencing with Section 21000) 21000)).

13 SEC. 7. Section 2773.1.5 is added to the Public Resources
 14 Code, to read:

15 2773.1.5. (a) Notwithstanding subdivision (e) of Section
 16 2773.1, a financial assurance mechanism may include corporate
 17 financial tests combined with surety bonds, irrevocable letters of
 18 credit, or trust funds, as described in this section, that together
 19 ensure the completion of reclamation in accordance with the
 20 approved reclamation plan.

21 (b) (1) Corporate financial tests shall only be allowed after
 22 the board adopts a regulation that establishes a comprehensive
 23 analysis and test of a corporation's financial status that includes,
 24 but is not limited to, all of the following:

25 (A) A minimum financial net worth of at least thirty-five million
 26 dollars (\$35,000,000), adjusted annually to reflect changes in the
 27 Consumer Price Index, as calculated by the United States Bureau
 28 of Labor Statistics.

29 (B) Income.

30 (C) Liabilities, including other environmental assurances.

31 (D) Assets located within the United States.

32 (2) The regulation also shall include, but need not be limited
 33 to, all of the following:

34 (A) Additional measures to provide the lead agency or the
 35 director with the recovery of costs associated with the full
 36 collection and satisfaction of the financial assurance mechanisms.

37 (B) Requirements for corporate financial tests that include, but
 38 are not limited to, all of the following:

39 (i) Provide for no more than 75 percent of the financial
 40 assurance cost estimate approved within the last year.

1 (ii) *Be annually approved by both the lead agency and the*
 2 *director.*

3 (iii) *Be able to be disallowed by either the lead agency or the*
 4 *director.*

5 (iv) *Include an assessment from an independent certified public*
 6 *accountant using generally accepted accounting principles in the*
 7 *United States.*

8 (c) *Each surface mining operation shall have at least 25 percent*
 9 *of the financial assurance cost estimate in an acceptable financial*
 10 *assurance mechanism other than a corporate financial test if a*
 11 *qualifying corporation operates multiple surface mining*
 12 *operations.*

13 (d) *Subject to the requirements of this subdivision, an operator*
 14 *of multiple surface mining operations may use a corporate*
 15 *financial test that combines the financial assurance cost estimates*
 16 *of each surface mining operation.*

17 SEC. 8. *Section 2774 of the Public Resources Code is amended*
 18 *to read:*

19 2774. (a) *Every lead agency shall adopt ordinances in*
 20 *accordance with state policy that establish procedures for the*
 21 *review and approval of reclamation plans and financial assurances*
 22 *and the issuance of a permit to conduct surface mining operations,*
 23 *except that any lead agency without an active surface mining*
 24 *operation in its jurisdiction may defer adopting an implementing*
 25 *ordinance until the filing of a permit application. The ordinances*
 26 *shall establish procedures requiring at least one public hearing and*
 27 *shall be periodically reviewed by the lead agency and revised, as*
 28 *necessary, to ensure that the ordinances continue to be in*
 29 *accordance with state policy.*

30 (b) ~~The lead agency shall conduct an inspection of a cause~~
 31 ~~surface mining operation within six months of receipt by the lead~~
 32 ~~agency of the surface mining operation's report submitted pursuant~~
 33 ~~to Section 2207, operations to be inspected in intervals of no more~~
 34 ~~than 12 months, solely to determine whether the surface mining~~
 35 ~~operation is in compliance with this chapter. In no event shall a~~
 36 ~~lead agency inspect a surface mining operation less than once in~~
 37 ~~any calendar year. The lead agency may shall cause an inspection~~
 38 ~~to be conducted by a state-licensed state-licensed geologist, state~~
 39 ~~licensed state-licensed civil engineer, state-licensed state-licensed~~
 40 ~~landscape architect, or state-licensed state-licensed forester, who~~

1 ~~is experienced in land reclamation and~~ *or a qualified lead agency*
 2 *employee who has not been employed by a the surface mining*
 3 *operation within the jurisdiction of the lead agency being inspected*
 4 *in any capacity during the previous 12 months. months, except that*
 5 *a qualified lead agency employee may inspect surface mining*
 6 *operations conducted by the local agency. All inspections shall*
 7 *be conducted using a form developed by the department and*
 8 *approved by the board that*~~shall include~~ *includes the professional*
 9 *licensing and disciplinary information of the person who conducted*
 10 *the inspection. The operator shall be solely responsible for the*
 11 *reasonable cost of the inspection. The lead agency shall notify*
 12 *provide a notice of completion of inspection to the director within*
 13 ~~30 90 days of the date of completion of conducting the inspection~~
 14 ~~that the inspection has been conducted.~~ *inspection. The notice shall*
 15 *contain a statement regarding the surface mining operation's*
 16 *compliance with this chapter, shall include chapter and a copy of*
 17 *the completed inspection form, and shall specify which aspects of*
 18 *the surface mining operations, if any, are inconsistent with this*
 19 *chapter. If specify, as applicable, all of the following:*
 20 *(A) Aspects of the surface mining operation, if any, that were*
 21 *found to be inconsistent with this chapter but were corrected before*
 22 *the submission of the inspection form to the director.*
 23 *(B) Aspects of the surface mining operation, if any, that were*
 24 *found to be inconsistent with this chapter but were not corrected*
 25 *before the submission of the inspection form to the director.*
 26 *(C) A statement describing the lead agency's intended response*
 27 *to any aspects of the surface mining operation found to be*
 28 *inconsistent with this chapter but were not corrected before the*
 29 *submission of the inspection form to the director.*
 30 *(2) If the surface mining operation has a review of its*
 31 *reclamation plan, financial assurances, or an interim management*
 32 *plan pending under subdivision (b), (c), (d), or (h) of Section 2770,*
 33 *or an appeal pending before the board or lead agency governing*
 34 *body under subdivision (e) or (h) of Section 2770, the notice shall*
 35 *so indicate. The lead agency shall forward to the operator a copy*
 36 *of the notice, a copy of the completed inspection form, and any*
 37 *supporting documentation, including, but not limited to, any*
 38 *inspection report prepared by the geologist, civil engineer,*
 39 *landscape architect, or forester, forester, or qualified lead agency*
 40 *employee who conducted the inspection.*

~~(e) Before approving a surface mining operation's reclamation plan, financial assurances, including existing financial assurances reviewed by the lead agency pursuant to subdivision (c) of Section 2770, or any amendments, the lead agency shall submit the plan, assurances, or amendments to the director for review. All documentation for that submission shall be submitted to the director at one time. When the lead agency submits a reclamation plan or plan amendments to the director for review, the lead agency shall also submit to the director, for use in reviewing the reclamation plan or plan amendments, information from any related document prepared, adopted, or certified pursuant to Division 13 (commencing with Section 21000), and shall submit any other pertinent information. The lead agency shall certify to the director that the reclamation plan is in compliance with the applicable requirements of this chapter and Article 1 (commencing with Section 3500) of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations and the lead agency's mining ordinance in effect at the time that the reclamation plan is submitted to the director for review.~~

~~(d)(1) The director shall have 30 days from the date of receipt of a reclamation plan or plan amendments submitted pursuant to subdivision (c), and 45 days from the date of receipt of financial assurances submitted pursuant to subdivision (c), to prepare written comments, if the director so chooses. The lead agency shall evaluate written comments received from the director relating to the reclamation plan, plan amendments, or financial assurances within a reasonable amount of time.~~

~~(2) The lead agency shall prepare a written response to the director's comments describing the disposition of the major issues raised by the director's comments, and submit the lead agency's proposed response to the director at least 30 days prior to approval of the reclamation plan, plan amendment, or financial assurance. The lead agency's response to the director's comments shall describe whether the lead agency proposes to adopt the director's comments to the reclamation plan, plan amendment, or financial assurance. If the lead agency does not propose to adopt the director's comments, the lead agency shall specify, in detail, why the lead agency proposes not to adopt the comments. Copies of any written comments received and responses prepared by the lead agency shall be forwarded to the operator. The lead agency shall~~

1 also give the director at least 30 days' notice of the time, place,
 2 and date of the hearing before the lead agency at which time the
 3 reclamation plan, plan amendment, or financial assurance is
 4 scheduled to be approved by the lead agency. If no hearing is
 5 required by this chapter, or by the local ordinance, or other state
 6 law, then the lead agency shall provide 30 days' notice to the
 7 director that it intends to approve the reclamation plan, plan
 8 amendment, or financial assurance. The lead agency shall send to
 9 the director its final response to the director's comments within
 10 30 days following its approval of the reclamation plan, plan
 11 amendment, or financial assurance during which period the
 12 department retains all powers, duties, and authorities of this
 13 chapter.

14 (3) ~~To the extent that there is a conflict between the comments~~
 15 ~~of a trustee agency or a responsible agency that are based on the~~
 16 ~~agency's statutory or regulatory authority and the comments of~~
 17 ~~other commenting agencies which are received by the lead agency~~
 18 ~~pursuant to Division 13 (commencing with Section 21000)~~
 19 ~~regarding a reclamation plan or plan amendments, the lead agency~~
 20 ~~shall consider only the comments of the trustee agency or~~
 21 ~~responsible agency.~~

22 (c) ~~A lead agency shall notify the director of the filing of an~~
 23 ~~application for a permit to conduct surface mining operations~~
 24 ~~within 30 days of an application being filed with the lead agency.~~
 25 ~~By July 1, 1991, each lead agency shall submit to the director for~~
 26 ~~every active or idle mining operation within its jurisdiction, a copy~~
 27 ~~of the mining permit required pursuant to Section 2774, and any~~
 28 ~~conditions or amendments to those permits. By July 1 of each~~
 29 ~~subsequent year, the lead agency shall submit to the director for~~
 30 ~~each active or idle mining operation a copy of any permit or~~
 31 ~~reclamation plan amendments, as applicable, or a statement that~~
 32 ~~there have been no changes during the previous year. Failure to~~
 33 ~~file with the director the information required under this section~~
 34 ~~shall be cause for action under Section 2774.4.~~

35 (c) *If an operator does not request an inspection date on the*
 36 *annual report filed pursuant to Section 2207 or if the lead agency*
 37 *is unable to cause the inspection of a given surface mining*
 38 *operation on the date requested by the operator, the lead agency*
 39 *shall provide the operator with a minimum of five days' written*

1 notice of a pending inspection or a lesser time period if agreed to
2 by the operator.

3 (d) No later than July 1 of each year, the lead agency shall
4 submit to the director for each active or idle surface mining
5 operation within the lead agency's jurisdiction the following
6 information:

7 (1) A copy of any permit or reclamation plan amendments, as
8 applicable.

9 (2) A statement that there have been no changes during the
10 previous year, as applicable.

11 (3) The date of each surface mining operation's last inspection.

12 (4) The date of each surface mining operation's last financial
13 assurance review pursuant to Section 2773.1 for each operation
14 listed.

15 (e)(1) No later than December 31, 2016, the department shall
16 establish a training program for all surface mine inspectors. The
17 program shall be designed to include a guidance document,
18 developed by the department, in consultation with the board and
19 stakeholders, to provide instruction and recommendations to
20 surface mine inspectors performing inspections pursuant to
21 subdivision (b).

22 (2) The training program shall include inspections workshops
23 offered by the department in different regions of the state to provide
24 practical application of the guidance document material.

25 (3) On and after July 1, 2019, all inspectors shall have on file
26 with the lead agency and the department a certificate of completion
27 of an inspection workshop. An inspector shall attend a workshop
28 no later than five years after the date of his or her most recent
29 certificate.

30 (4) The adoption of the guidance document by the department
31 pursuant to this subdivision shall be subject to the requirements
32 of the Administrative Procedure Act (Chapter 3.5 (commencing
33 with Section 11340) of Part 1 of Division 3 of Title 2 of the
34 Government Code).

35 ~~SEC. 16.~~

36 SEC. 9. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 a local agency or school district has the authority to levy service
39 charges, fees, or assessments sufficient to pay for the program or

1 level of service mandated by this act, within the meaning of Section
2 17556 of the Government Code.

3 ~~SEC. 17.~~

4 *SEC. 10.* This act shall become operative only if both this bill
5 and Assembly Bill 1142 of the 2015–16 Regular Session are
6 enacted and become ~~operative~~. *operative on or before January 1,*
7 *2016.*

O

Supported Legislation

Assembly Bill 177 (Bonilla D)

Professions and vocations: licensing boards: authority: extension.

Status: 10/2/2015-Chaptered by Secretary of State - Chapter 428, Statutes of 2015.

Location: 10/2/2015-A. CHAPTERED

Last Amendment: 9/4/2015

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Updated 10/21/15

Staff Analysis: AB 177

Bill Summary: The Professional Engineers Act provides for the licensure and regulation of engineers by the Board for Professional Engineers, Land Surveyors, and Geologists, in the Department of Consumer Affairs. This bill would extend the operation of these provisions until January 1, 2020.

Staff Comment: As drafted, among other things, AB 177 would extend the sunset date for this Board to January 1, 2020. AB 177 would merge the Geology and Geophysics Account of the Professional Engineer's and Land Surveyor's Fund into the fund, which would be renamed the Professional Engineer's, Land Surveyor's, and Geologist's Fund. Recent amendments defined the merger would become effective July 1, 2016 which is also the beginning of the new Fiscal Year. Additionally, AB 177 would add a much needed cause for disciplinary action by the board if a licensee or certificate holder fails or refuses to respond to a written request from a representative of the board to cooperate in the investigation of a complaint against that licensee or certificate holder.

Board Position: Support - as amended 9/4/2015.

Laws: An act to amend Sections 6710, 6714, 6749, 6797, 7839.2, 7841, 7841.1, 7841.2, 8710, 8759, and 8800 of, to add Sections 6775.2, 7860.2, and 8780.2 to, to repeal Section 7885 of, and to repeal and add Section 7886 of, the Business and Professions Code, relating to professions and vocations.

Assembly Bill No. 177

CHAPTER 428

An act to amend Sections 207, 5510, 5517, 5620, 5621, 5622, 6710, 6714, 6749, 7839.2, 7841, 7841.1, 7841.2, 8710, and 8759 of, to amend and repeal Section 7885 of, to amend, repeal, and add Sections 205, 6797, 7886, and 8800 of, to add Section 5550.2 to, and to add and repeal Sections 6775.2, 7860.2, and 8780.2 of, the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.

[Approved by Governor October 2, 2015. Filed with
Secretary of State October 2, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 177, Bonilla. Professions and vocations: licensing boards.

(1)¶The Professional Engineers Act provides for the licensure and regulation of engineers by the Board for Professional Engineers, Land Surveyors, and Geologists. The act requires the board to appoint an executive office . Existing law repeals the board and the executive officer position on January 1, 2016.

This bill would extend the operation of these provisions to January 1, 2020. The bill, until January 1, 2020, would add as a cause for disciplinary action by the board, as specified, the failure or refusal of a licensee or certificate holder under the act to respond to a written request from a representative of the board to cooperate in the investigation of a complaint against that licensee or certificate holder .

(2)¶ Existing law, the Architects Practice Act, provides for the licensure and regulation of architects and landscape architects by the California Architects Board and authorizes the board to appoint an executive office . Existing law establishes, within the jurisdiction of the board, the Landscape Architects Technical Committee for the purpose of, among other things, assisting the board in the examination of candidates for a landscape architect's license. Existing law repeals the board, the executive office position, and the committee on January 1, 2016. Existing law requires a person to pass an examination as a condition of licensure as an architect and authorizes a person to take the examination if he or she meets certain examination eligibility requirements.

This bill would extend the operation of those provisions to January 1, 2020. The bill would also authorize the board to grant eligibility to a candidate to take the licensure examination if he or she is enrolled in an Additional Path to Architecture Licensing program, as specified

(3)¶The Professional Land Surveyors' Act provides for the licensure and regulation of land surveyors by the Board for Professional Engineers, Land

Surveyors, and Geologists, which is vested with the power to administer the act until January 1, 2016.

This bill would extend that power to January 1, 2020. The bill, until January 1, 2020, would also add as a cause for disciplinary action by the board, as specified, the failure or refusal of a licensee or certificate holder under the act to respond to a written request from a representative of the board to cooperate in the investigation of a complaint against that licensee or certificate holder.

(4) The Geologist and Geophysicist Act provides for the registration and regulation of professional geologists and professional geophysicists and the certification of applicants in a specialty in geology and geologists-in-training by the Board for Professional Engineers, Land Surveyors, and Geologists. The act requires an applicant for registration as a geologist to meet certain requirements, including, among others, that he or she has graduated with a major in geological sciences from college or university, and requires an applicant for registration as a geophysicist to meet certain requirements, including, among others, that he or she has completed a combination of at least 30 semester hours in courses, as specified. The act requires an applicant for certification as a geologist-in-training to comply with certain requirements, including, among others, that the applicant successfully pass the Fundamentals of Geology examination.

This bill would provide for licensure instead of registration under the act. The bill would also allow an applicant for licensure as a geologist to have graduated from a college or university with a major in a discipline other than geological sciences that, in the opinion of the board, is relevant to geology. The bill would also allow an applicant for licensure as a geophysicist to have completed at least the equivalent of 30 semester hours in courses, as specified. The bill would require an applicant for certification as a geologist-in-training to have graduated from a college or university with a major in geological sciences or any other discipline relevant to geology, as specified. The bill, until January 1, 2020, would add as a cause for disciplinary action by the board, as specified, the failure or refusal of a licensee or certificate holder under the act to respond to a written request from a representative of the board to cooperate in the investigation of a complaint against that licensee or certificate holder.

(5) Under existing law, there is the Professions and Vocations Fund in the State Treasury, which consists of certain special funds and accounts, including the Professional Engineer's and Land Surveyor's Fund and the Geology and Geophysics Account of the Professional Engineer's and Land Surveyor's Fund. Under existing law the moneys in the Geology and Geophysics Account are continuously appropriated to carry out the purposes of the Geologist and Geophysicist Act, the moneys in the Professional Engineers's and Land Surveyor's Fund are continuously appropriated for the purposes of the Professional Engineers Act and the Professional Land Surveyors' Act, and the moneys in those funds that are attributable to administrative fines, civil penalties, and criminal penalties, as specified, are

not continuously appropriated and are only available for expenditure upon appropriation by the Legislature.

This bill, beginning July 1, 2016, would abolish the Geology and Geophysics Account of the Professional Engineer's and Land Surveyor's Fund and would rename the Professional Engineer's and Land Surveyor's Fund as the Professional Engineer's, Land Surveyor's, and Geologist's Fund. The bill would direct those moneys collected under the Professional Engineers Act, the Professional Land Surveyors' Act, and the Geologist and Geophysicist Act to be deposited into the Professional Engineer's, Land Surveyor's, and Geologist's Fund, a continuously appropriated fund. Because additional moneys, except for fine and penalty money, would be deposited into a continuously appropriated fund, the bill would make an appropriation.

(6) This bill would incorporate additional changes in Section 205 of the Business and Professions Code, proposed by AB 179 and AB 180, that would become operative only if this bill and either or both of those bills are chaptered and become effective January 1, 2016, and this bill is chaptered last.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 205 of the Business and Professions Code is amended to read:

205. (a) There is in the State Treasury the Professions and Vocations Fund. The fund shall consist of the following special funds:

- (1) Accountancy Fund.
- (2) California Architects Board Fund.
- (3) Athletic Commission Fund.
- (4) Barbering and Cosmetology Contingent Fund.
- (5) Cemetery Fund.
- (6) Contractors' License Fund.
- (7) State Dentistry Fund.
- (8) State Funeral Directors and Embalmers Fund.
- (9) Guide Dogs for the Blind Fund.
- (10) Home Furnishings and Thermal Insulation Fund.
- (11) California Architects Board-Landscape Architects Fund.
- (12) Contingent Fund of the Medical Board of California.
- (13) Optometry Fund.
- (14) Pharmacy Board Contingent Fund.
- (15) Physical Therapy Fund.
- (16) Private Investigator Fund.
- (17) Professional Engineer's and Land Surveyor's Fund.
- (18) Consumer Affairs Fund.
- (19) Behavioral Sciences Fund.
- (20) Licensed Midwifery Fund.
- (21) Court Reporters' Fund.

- (22) Veterinary Medical Board Contingent Fund.
 - (23) Vocational Nurses Account of the Vocational Nursing and Psychiatric Technicians Fund.
 - (24) Electronic and Appliance Repair Fund.
 - (25) Geology and Geophysics Account of the Professional Engineer's and Land Surveyor's Fund.
 - (26) Dispensing Opticians Fund.
 - (27) Acupuncture Fund.
 - (28) Physician Assistant Fund.
 - (29) Board of Podiatric Medicine Fund.
 - (30) Psychology Fund.
 - (31) Respiratory Care Fund.
 - (32) Speech-Language Pathology and Audiology and Hearing Aid Dispensers Fund.
 - (33) Board of Registered Nursing Fund.
 - (34) Psychiatric Technician Examiners Account of the Vocational Nursing and Psychiatric Technicians Fund.
 - (35) Animal Health Technician Examining Committee Fund.
 - (36) State Dental Hygiene Fund.
 - (37) State Dental Assistant Fund.
 - (38) Structural Pest Control Fund.
 - (39) Structural Pest Control Eradication and Enforcement Fund.
 - (40) Structural Pest Control Research Fund.
 - (b) For accounting and recordkeeping purposes, the Professions and Vocations Fund shall be deemed to be a single special fund, and each of the several special funds therein shall constitute and be deemed to be a separate account in the Professions and Vocations Fund. Each account or fund shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.
 - (c) This section shall remain in effect only until July 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2016, deletes or extends that date.
- SEC. 2. Section 205 is added to the Business and Professions Code, to read:
205. (a) There is in the State Treasury the Professions and Vocations Fund. The fund shall consist of the following special funds:
- (1) Accountancy Fund.
 - (2) California Architects Board Fund.
 - (3) Athletic Commission Fund.
 - (4) Barbering and Cosmetology Contingent Fund.
 - (5) Cemetery Fund.
 - (6) Contractors' License Fund.
 - (7) State Dentistry Fund.
 - (8) State Funeral Directors and Embalmers Fund.
 - (9) Guide Dogs for the Blind Fund.
 - (10) Home Furnishings and Thermal Insulation Fund.
 - (11) California Architects Board-Landscape Architects Fund.

- (12) Contingent Fund of the Medical Board of California.
 - (13) Optometry Fund.
 - (14) Pharmacy Board Contingent Fund.
 - (15) Physical Therapy Fund.
 - (16) Private Investigator Fund.
 - (17) Professional Engineer's, Land Surveyor's, and Geologist's Fund.
 - (18) Consumer Affairs Fund.
 - (19) Behavioral Sciences Fund.
 - (20) Licensed Midwifery Fund.
 - (21) Court Reporters' Fund.
 - (22) Veterinary Medical Board Contingent Fund.
 - (23) Vocational Nurses Account of the Vocational Nursing and Psychiatric Technicians Fund.
 - (24) Electronic and Appliance Repair Fund.
 - (25) Dispensing Opticians Fund.
 - (26) Acupuncture Fund.
 - (27) Physician Assistant Fund.
 - (28) Board of Podiatric Medicine Fund.
 - (29) Psychology Fund.
 - (30) Respiratory Care Fund.
 - (31) Speech-Language Pathology and Audiology and Hearing Aid Dispensers Fund.
 - (32) Board of Registered Nursing Fund.
 - (33) Psychiatric Technician Examiners Account of the Vocational Nursing and Psychiatric Technicians Fund.
 - (34) Animal Health Technician Examining Committee Fund.
 - (35) State Dental Hygiene Fund.
 - (36) State Dental Assistant Fund.
 - (37) Structural Pest Control Fund.
 - (38) Structural Pest Control Eradication and Enforcement Fund.
 - (39) Structural Pest Control Research Fund.
 - (b) For accounting and recordkeeping purposes, the Professions and Vocations Fund shall be deemed to be a single special fund, and each of the several special funds therein shall constitute and be deemed to be a separate account in the Professions and Vocations Fund. Each account or fund shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.
 - (c) This section shall become operative on July 1, 2016.
- SEC. 2.1. Section 205 is added to the Business and Professions Code, to read:
205. (a) There is in the State Treasury the Professions and Vocations Fund. The fund shall consist of the following special funds:
- (1) Accountancy Fund.
 - (2) California Architects Board Fund.
 - (3) Athletic Commission Fund.
 - (4) Barbering and Cosmetology Contingent Fund.
 - (5) Cemetery Fund.

- (6) ~~Contractors' License Fund.~~
 - (7) ~~State Dentistry Fund.~~
 - (8) ~~State Funeral Directors and Embalmers Fund.~~
 - (9) ~~Guide Dogs for the Blind Fund.~~
 - (10) ~~Home Furnishings and Thermal Insulation Fund.~~
 - (11) ~~California Architects Board-Landscape Architects Fund.~~
 - (12) ~~Contingent Fund of the Medical Board of California.~~
 - (13) ~~Optometry Fund.~~
 - (14) ~~Pharmacy Board Contingent Fund.~~
 - (15) ~~Physical Therapy Fund.~~
 - (16) ~~Private Investigator Fund.~~
 - (17) ~~Professional Engineer's, Land Surveyor's, and Geologist's Fund.~~
 - (18) ~~Consumer Affairs Fund.~~
 - (19) ~~Behavioral Sciences Fund.~~
 - (20) ~~Licensed Midwifery Fund.~~
 - (21) ~~Court Reporters' Fund.~~
 - (22) ~~Veterinary Medical Board Contingent Fund.~~
 - (23) ~~Vocational Nursing and Psychiatric Technicians Fund.~~
 - (24) ~~Electronic and Appliance Repair Fund.~~
 - (25) ~~Dispensing Opticians Fund.~~
 - (26) ~~Acupuncture Fund.~~
 - (27) ~~Physician Assistant Fund.~~
 - (28) ~~Board of Podiatric Medicine Fund.~~
 - (29) ~~Psychology Fund.~~
 - (30) ~~Respiratory Care Fund.~~
 - (31) ~~Speech-Language Pathology and Audiology and Hearing Aid Dispensers Fund.~~
 - (32) ~~Board of Registered Nursing Fund.~~
 - (33) ~~Animal Health Technician Examining Committee Fund.~~
 - (34) ~~State Dental Hygiene Fund.~~
 - (35) ~~State Dental Assistant Fund.~~
 - (36) ~~Structural Pest Control Fund.~~
 - (37) ~~Structural Pest Control Eradication and Enforcement Fund.~~
 - (38) ~~Structural Pest Control Research Fund.~~
 - (b) ~~For accounting and recordkeeping purposes, the Professions and Vocations Fund shall be deemed to be a single special fund, and each of the several special funds therein shall constitute and be deemed to be a separate account in the Professions and Vocations Fund. Each account or fund shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.~~
 - (c) ~~This section shall become operative on July 1, 2016.~~
- SEC. 2.2. Section 205 is added to the Business and Professions Code, to read:
205. (a) ~~There is in the State Treasury the Professions and Vocations Fund. The fund shall consist of the following special funds:~~
- (1) ~~Accountancy Fund.~~
 - (2) ~~California Architects Board Fund.~~

- (3) Athletic Commission Fund.
- (4) Barbering and Cosmetology Contingent Fund.
- (5) Cemetery and Funeral Fund.
- (6) Contractors' License Fund.
- (7) State Dentistry Fund.
- (8) Guide Dogs for the Blind Fund.
- (9) Home Furnishings and Thermal Insulation Fund.
- (10) California Architects Board-Landscape Architects Fund.
- (11) Contingent Fund of the Medical Board of California.
- (12) Optometry Fund.
- (13) Pharmacy Board Contingent Fund.
- (14) Physical Therapy Fund.
- (15) Private Investigator Fund.
- (16) Professional Engineer's, Land Surveyor's, and Geologist's Fund.
- (17) Consumer Affairs Fund.
- (18) Behavioral Sciences Fund.
- (19) Licensed Midwifery Fund.
- (20) Court Reporters' Fund.
- (21) Veterinary Medical Board Contingent Fund.
- (22) Vocational Nurses Account of the Vocational Nursing and Psychiatric Technicians Fund.
- (23) Electronic and Appliance Repair Fund.
- (24) Dispensing Opticians Fund.
- (25) Acupuncture Fund.
- (26) Physician Assistant Fund.
- (27) Board of Podiatric Medicine Fund.
- (28) Psychology Fund.
- (29) Respiratory Care Fund.
- (30) Speech-Language Pathology and Audiology and Hearing Aid Dispensers Fund.
- (31) Board of Registered Nursing Fund.
- (32) Psychiatric Technician Examiners Account of the Vocational Nursing and Psychiatric Technicians Fund.
- (33) Animal Health Technician Examining Committee Fund.
- (34) State Dental Hygiene Fund.
- (35) State Dental Assistant Fund.
- (36) Structural Pest Control Fund.
- (37) Structural Pest Control Eradication and Enforcement Fund.
- (38) Structural Pest Control Research Fund.
- (b) For accounting and recordkeeping purposes, the Professions and Vocations Fund shall be deemed to be a single special fund, and each of the several special funds therein shall constitute and be deemed to be a separate account in the Professions and Vocations Fund. Each account or fund shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.
- (c) This section shall become operative on July 1, 2016.

SEC. 2.3. Section 205 is added to the Business and Professions Code, to read:

205. (a) There is in the State Treasury the Professions and Vocations Fund. The fund shall consist of the following special funds:

- (1) Accountancy Fund.
 - (2) California Architects Board Fund.
 - (3) Athletic Commission Fund.
 - (4) Barbering and Cosmetology Contingent Fund.
 - (5) Cemetery and Funeral Fund.
 - (6) Contractors' License Fund.
 - (7) State Dentistry Fund.
 - (8) Guide Dogs for the Blind Fund.
 - (9) Home Furnishings and Thermal Insulation Fund.
 - (10) California Architects Board-Landscape Architects Fund.
 - (11) Contingent Fund of the Medical Board of California.
 - (12) Optometry Fund.
 - (13) Pharmacy Board Contingent Fund.
 - (14) Physical Therapy Fund.
 - (15) Private Investigator Fund.
 - (16) Professional Engineer's, Land Surveyor's, and Geologist's Fund.
 - (17) Consumer Affairs Fund.
 - (18) Behavioral Sciences Fund.
 - (19) Licensed Midwifery Fund.
 - (20) Court Reporters' Fund.
 - (21) Veterinary Medical Board Contingent Fund.
 - (22) Vocational Nursing and Psychiatric Technicians Fund.
 - (23) Electronic and Appliance Repair Fund.
 - (24) Dispensing Opticians Fund.
 - (25) Acupuncture Fund.
 - (26) Physician Assistant Fund.
 - (27) Board of Podiatric Medicine Fund.
 - (28) Psychology Fund.
 - (29) Respiratory Care Fund.
 - (30) Speech-Language Pathology and Audiology and Hearing Aid Dispensers Fund.
 - (31) Board of Registered Nursing Fund.
 - (32) Animal Health Technician Examining Committee Fund.
 - (33) State Dental Hygiene Fund.
 - (34) State Dental Assistant Fund.
 - (35) Structural Pest Control Fund.
 - (36) Structural Pest Control Eradication and Enforcement Fund.
 - (37) Structural Pest Control Research Fund.
- (b) For accounting and recordkeeping purposes, the Professions and Vocations Fund shall be deemed to be a single special fund, and each of the several special funds therein shall constitute and be deemed to be a separate account in the Professions and Vocations Fund. Each account or fund shall

be available for expenditure only for the purposes as are now or may hereafter be provided by law.

(c) This section shall become operative on July 1, 2016.

SEC. 3. Section 207 of the Business and Professions Code is amended to read:

207. (a) Notwithstanding any other provision of law, the money in any fund described in Section 205 that is attributable to administrative fines civil penalties, and criminal penalties imposed by a regulating entity, or cost recovery by a regulating entity from enforcement actions and case settlements, shall not be continuously appropriated. The money in each fund that is not continuously appropriated shall be available for expenditure as provided in this code only upon appropriation by the Legislature.

(b) Notwithstanding any other provision of law, the annual Budget Act may appropriate, in a single budget item for each individual fund described in subdivision (a) of Section 205, the entire amount available for expenditure in the budget year for that fund. That appropriation may include funds that are continuously appropriated and funds that are not continuously appropriated.

SEC. 4. Section 5510 of the Business and Professions Code is amended to read:

5510. There is in the Department of Consumer Affairs a California Architects Board which consists of 10 members.

Any reference in law to the California Board of Architectural Examiners shall mean the California Architects Board.

This section shall remain in effect only until January 1, 2020, and as of that date is repealed. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 5. Section 5517 of the Business and Professions Code is amended to read:

5517. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

This section shall remain in effect only until January 1, 2020, and as of that date is repealed.

SEC. 6. Section 5550.2 is added to the Business and Professions Code, to read:

5550.2. Notwithstanding subdivision (b) of Section 5552, the board may grant eligibility, based on an eligibility point determined by the Additional Path to Architectural Licensing Program, for a candidate to take the examination for a license to practice architecture if he or she is enrolled in an Additional Path to Architectural Licensing program that integrates the experience and examination components offered by a National Architectural Accrediting Board-accredited degree program.

SEC. 7. Section 5620 of the Business and Professions Code is amended to read:

5620. The duties, powers, purposes, responsibilities, and jurisdiction of the California State Board of Landscape Architects that were succeeded to and vested with the Department of Consumer Affairs in accordance with Chapter 908 of the Statutes of 1994 are hereby transferred to the California Architects Board. The Legislature finds that the purpose for the transfer of power is to promote and enhance the efficiency of state government and that assumption of the powers and duties by the California Architects Board shall not be viewed or construed as a precedent for the establishment of state regulation over a profession or vocation that was not previously regulated by a board, as defined in Section 477.

(a) There is in the Department of Consumer Affairs a California Architects Board as defined in Article 2 (commencing with Section 5510) of Chapter 3 of Division 3.

Whenever in this chapter "board" is used, it refers to the California Architects Board.

(b) Except as provided herein, the board may delegate its authority under this chapter to the Landscape Architects Technical Committee.

(c) After review of proposed regulations, the board may direct the examining committee to notice and conduct hearings to adopt, amend, or repeal regulations pursuant to Section 5630, provided that the board itself shall take final action to adopt, amend, or repeal those regulations.

(d) The board shall not delegate its authority to discipline a landscape architect or to take action against a person who has violated this chapter.

(e) This section shall remain in effect only until January 1, 2020, and as of that date is repealed.

SEC. 8. Section 5621 of the Business and Professions Code is amended to read:

5621. (a) There is hereby created within the jurisdiction of the board, a Landscape Architects Technical Committee, hereinafter referred to in this chapter as the landscape architects committee.

(b) The landscape architects committee shall consist of five members who shall be licensed to practice landscape architecture in this state. The Governor shall appoint three of the members. The Senate Committee on Rules and the Speaker of the Assembly shall appoint one member each.

(c) The initial members to be appointed by the Governor are as follows: one member for a term of one year; one member for a term of two years; and one member for a term of three years. The Senate Committee on Rules and the Speaker of the Assembly shall initially each appoint one member for a term of four years. Thereafter, appointments shall be made for four-year terms, expiring on June 1 of the fourth year and until the appointment and qualification of his or her successor or until one year shall have elapsed, whichever first occurs. Vacancies shall be filled for the unexpired term.

(d) No person shall serve as a member of the landscape architects committee for more than two consecutive terms.

(e) This section shall remain in effect only until January 1, 2020, and as of that date is repealed.

SEC. 9. Section 5622 of the Business and Professions Code is amended to read:

5622. (a) ~~¶~~ The landscape architects committee may assist the board in the examination of candidates for a landscape architect's license and, after investigation, evaluate and make recommendations regarding potential violations of this chapter.

(b) ~~¶~~ The landscape architects committee may investigate, assist, and make recommendations to the board regarding the regulation of landscape architects in this state.

(c) ~~¶~~ The landscape architects committee may perform duties and functions that have been delegated to it by the board pursuant to Section 5620.

(d) ~~¶~~ The landscape architects committee may send a representative to all meetings of the full board to report on the committee's activities.

(e) ~~¶~~ This section shall remain in effect only until January 1, 2020, and as of that date is repealed.

SEC. 10. Section 6710 of the Business and Professions Code is amended to read:

6710. (a) ~~¶~~ There is in the Department of Consumer Affairs a Board for Professional Engineers, Land Surveyors, and Geologists, which consists of 15 members.

(b) ~~¶~~ Any reference in any law or regulation to the Board of Registration for Professional Engineers and Land Surveyors, or the Board for Professional Engineers and Land Surveyors, is deemed to refer to the Board for Professional Engineers, Land Surveyors, and Geologists.

(c) ~~¶~~ This section shall remain in effect only until January 1, 2020, and as of that date is repealed. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 11. Section 6714 of the Business and Professions Code is amended to read:

6714. The board shall appoint an executive officer at a salary to be fixed and determined by the board with the approval of the Director of Finance.

This section shall remain in effect only until January 1, 2020, and as of that date is repealed.

SEC. 12. Section 6749 of the Business and Professions Code is amended to read:

6749. (a) ~~¶~~ A professional engineer shall use a written contract when contracting to provide professional engineering services to a client pursuant to this chapter. The written contract shall be executed by the professional engineer and the client or the client's representative prior to the professional engineer commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following:

(1) ~~¶~~ A description of the services to be provided to the client by the professional engineer.

(2) ~~¶~~ A description of any basis of compensation applicable to the contract, and the method of payment agreed upon by the parties.

(3) The name, address, and license or certificate number of the professional engineer, and the name and address of the client.

(4) A description of the procedure that the professional engineer and the client will use to accommodate additional services.

(5) A description of the procedure to be used by both parties to terminate the contract.

(b) This section shall not apply to any of the following:

(1) Professional engineering services rendered by a professional engineer for which the client will not pay compensation.

(2) A professional engineer who has a current or prior contractual relationship with the client to provide engineering services, and that client has paid the professional engineer all of the fees that are due under the contract.

(3) If the client knowingly states in writing after full disclosure of this section that a contract which complies with the requirements of this section is not required.

(4) Professional engineering services rendered by a professional engineer to any of the following:

(A) A professional engineer licensed or registered under this chapter.

(B) A land surveyor licensed under Chapter 15 (commencing with Section 8700).

(C) An architect licensed under Chapter 3 (commencing with Section 5500).

(D) A contractor licensed under Chapter 9 (commencing with Section 7000).

(E) A geologist or a geophysicist licensed under Chapter 12.5 (commencing with Section 7800).

(F) A manufacturing, mining, public utility, research and development, or other industrial corporation, if the services are provided in connection with or incidental to the products, systems, or services of that corporation or its affiliates

(G) A public agency .

(c) "Written contract" as used in this section includes a contract that is in electronic form.

SEC. 13. Section 6775.2 is added to the Business and Professions Code, to read:

6775.2. (a) The failure of, or refusal by, a licensee or a certificate holder to respond to a written request from a representative of the board to cooperate in the investigation of a complaint against that licensee or certificate holder constitutes a cause for disciplinary action under Section 6775 or 6775.1.

(b) This section shall remain in effect only until January 1, 2020, and as of that date is repealed.

SEC. 14. Section 6797 of the Business and Professions Code is amended to read:

6797. (a) The department shall receive and account for all money derived from the operation of this chapter and, at the end of each month, shall report such money to the Controller and shall pay it to the Treasurer, who shall

keep the money in a separate fund known as the Professional Engineer's and Land Surveyor's Fund.

(b) For accounting and recordkeeping purposes, the Professional Engineer's and Land Surveyor's Fund shall be deemed to be a single special fund, and shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.

(c) The fees and civil penalties received under this chapter shall be deposited in the Professional Engineer's and Land Surveyor's Fund. All moneys in the fund are hereby appropriated for the purposes of this chapter.

(d) This section shall remain in effect only until July 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2016, deletes or extends that date.

SEC. 15. Section 6797 is added to the Business and Professions Code, to read:

6797. (a) The department shall receive and account for all money derived from the operation of this chapter and, at the end of each month, shall report such money to the Controller and shall pay it to the Treasurer, who shall keep the money in a separate fund known as the Professional Engineer's, Land Surveyor's, and Geologist's Fund.

(b) For accounting and recordkeeping purposes, the Professional Engineer's, Land Surveyor's, and Geologist's Fund shall be deemed to be a single special fund, and shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.

(c) The fees and civil penalties received under this chapter shall be deposited in the Professional Engineer's, Land Surveyor's, and Geologist's Fund. All moneys in the fund are hereby appropriated for the purposes of this chapter.

(d) This section shall become operative on July 1, 2016.

SEC. 16. Section 7839.2 of the Business and Professions Code is amended to read:

7839.2. (a) A professional geologist or professional geophysicist shall use a written contract when contracting to provide geological or geophysical services to a client pursuant to this chapter. The written contract shall be executed by the professional geologist or professional geophysicist and the client or the client's representative prior to the professional geologist or professional geophysicist commencing work, unless the client states in writing that work may be commenced before the contract is executed. The written contract shall include, but is not limited to, all of the following:

(1) A description of the services to be provided to the client by the professional geologist or professional geophysicist.

(2) A description of any basis of compensation applicable to the contract, and the method of payment agreed upon by the parties.

(3) The name, address, and license or certificate number of the professional geologist or professional geophysicist, and the name and address of the client.

(4) ~~A~~ description of the procedure that the professional geologist or professional geophysicist and the client will use to accommodate additional services.

(5) ~~A~~ description of the procedure to be used by both parties to terminate the contract.

(b) ~~I~~ Subdivision (a) shall not apply to any of the following:

(1) ~~G~~Geologic or geophysical services rendered by a professional geologist or professional geophysicist for which the client will not pay compensation.

(2) ~~A~~ geologist or geophysicist who has a current or prior contractual relationship with the client to provide geologic or geophysical services, and who has already been paid the fees that are due under the contract by the client.

(3) ~~I~~If the client executes a waiver in writing after full disclosure of this section that a contract that complies with the requirements of this section is not required.

(4) ~~I~~ Geological or geophysical services rendered by a geologist or geophysicist to any of the following:

(A) ~~A~~ geologist or geophysicist licensed under this chapter.

(B) ~~A~~ n engineer licensed under Chapter 7 (commencing with Section 6700).

(C) ~~I~~ A land surveyor licensed under Chapter 15 (commencing with Section 8700).

(D) ~~I~~ An architect licensed under Chapter 3 (commencing with Section 5500).

(E) ~~I~~ A contractor licensed under Chapter 9 (commencing with Section 7000).

(F) ~~A~~ public agency.

(c) ~~I~~ As used in this section, "written contract" includes a contract in electronic form.

SEC. 17. Section 7841 of the Business and Professions Code is amended to read:

7841. An applicant for licensure as a geologist shall have all the following qualifications

(a) ~~N~~ot have committed any acts or crimes constituting grounds for denial of licensure under Section 480.

(b) ~~G~~raduation from a college or university with a major in geological sciences or any other discipline that, in the opinion of the board, is relevant to geology.

(c) ~~I~~ Have a documented record of a minimum of five years of professional geological experience of a character satisfactory to the board, demonstrating that the applicant is qualified to assume responsible charge of this work upon licensure as a geologist. This experience shall be gained under the supervision of a geologist or geophysicist licensed in this or any other state, or under the supervision of others who, in the opinion of the board, have the training and experience to have responsible charge of geological work. Professional geological work does not include routine sampling, laboratory work, or geological drafting.

Each year of undergraduate study in the geological sciences shall count as one-half year of training up to a maximum of two years, and each year of graduate study or research counts as a year of training.

Teaching in the geological sciences at college level shall be credited year for year toward meeting the requirement in this category, provided that the total teaching experience includes six semester units per semester, or equivalent if on the quarter system, of upper division or graduate courses.

Credit for undergraduate study, graduate study, and teaching, individually, or in any combination thereof, shall in no case exceed a total of three years towards meeting the requirement for at least five years of professional geological work as set forth above.

The ability of the applicant shall have been demonstrated by the applicant having performed the work in a responsible position, as the term "responsible position" is defined in regulations adopted by the board. The adequacy of the required supervision and experience shall be determined by the board in accordance with standards set forth in regulations adopted by it.

(d) ~~S~~Successfully pass a written examination that incorporates a national examination for geologists created by a nationally recognized entity approved by the board, and a supplemental California specific examination. The California specific examination shall test the applicant's knowledge of state laws, rules and regulations, and of seismicity and geology unique to practice within this state.

SEC. 18. Section 7841.1 of the Business and Professions Code is amended to read:

7841.1. An applicant for licensure as a geophysicist shall have all of the following qualifications. This section shall not apply to applicants for licensure as geologists.

(a) ~~N~~Not have committed any acts or crimes constituting grounds for denial of licensure under Section 480.

(b) ~~M~~Meet one of the following educational requirements fulfilled at a school or university whose curricula meet criteria established by rules of the board.

(1) ~~G~~Graduation with a major in a geophysical science or any other discipline that, in the opinion of the board, is relevant to geophysics.

(2) ~~C~~Completion of a combination of at least 30 semester hours, or the equivalent, in courses that, in the opinion of the board, are relevant to geophysics. At least 24 semester hours, or the equivalent, shall be in the third or fourth year, or graduate courses.

(c) ~~H~~Have at least seven years of professional geophysical work that shall include either a minimum of three years of professional geophysical work under the supervision of a professional geophysicist, except that prior to July 1, 1973, professional geophysical work shall qualify under this subdivision if it is under the supervision of a qualified geophysicist, or a minimum of five years' experience in responsible charge of professional geophysical work. Professional geophysical work does not include the routine maintenance or operation of geophysical instruments, or, even if

carried out under the responsible supervision of a professional geophysicist, the routine reduction or plotting of geophysical observations.

Each year of undergraduate study in the geophysical sciences referred to in this section shall count as one-half year of training up to a maximum of two years, and each year of graduate study or research counts as a year of training.

Teaching in the geophysical sciences referred to in this section at a college level shall be credited year for year toward meeting the requirement in this category, provided that the total teaching experience includes six semester units per semester, or equivalent if on the quarter system, of third or fourth year or graduate courses.

Credit for undergraduate study, graduate study, and teaching, individually, or in any combination thereof, shall in no case exceed a total of four years towards meeting the requirements for at least seven years of professional geophysical work as set forth above.

The ability of the applicant shall have been demonstrated by his or her having performed the work in a responsible position, as the term "responsible position" is defined in regulations adopted by the board. The adequacy of the required supervision and experience shall be determined by the board in accordance with standards set forth in regulations adopted by it.

(d) ~~S~~uccessfully pass a written examination.

SEC. 19. Section 7841.2 of the Business and Professions Code is amended to read:

7841.2. An applicant for certification as a geologist-in-training shall comply with all of the following:

(a) ~~I~~ Not have committed acts or crimes constituting grounds for denial of certification under Section 480

(b) ~~S~~uccessfully pass the Fundamentals of Geology examination.

(c) ~~I~~ Graduation from a college or university with a major in geological sciences or any other discipline that, in the opinion of the board, is relevant to geology.

SEC. 20. Section 7860.2 is added to the Business and Professions Code, to read:

7860.2. (a) ~~I~~ The failure of, or refusal by, a licensee or a certificate holder to respond to a written request from a representative of the board to cooperate in the investigation of a complaint against that licensee or certificate holder constitutes a cause for disciplinary action under Section 7860.

(b) ~~I~~ This section shall remain in effect only until January 1, 2020, and as of that date is repealed.

SEC. 21. Section 7885 of the Business and Professions Code is amended to read:

7885. (a) ~~I~~The board shall report each month to the State Controller the amount and source of all revenue received by it pursuant to this chapter and at the same time pay the entire amount thereof into the State Treasury for credit to the Geology and Geophysics Account, which is hereby created within the Professional Engineer's and Land Surveyor's Fund established in Section 6797.

(b) All moneys in the Geology and Geophysics Fund on January 1, 2012, shall be transferred on that date to the Geology and Geophysics Account of the Professional Engineer's and Land Surveyor's Fund.

(c) This section shall remain in effect only until July 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2016, deletes or extends that date.

SEC. 22. Section 7886 of the Business and Professions Code is amended to read:

7886. (a) The moneys paid into the Geology and Geophysics Account of the Professional Engineer's and Land Surveyor's Fund pursuant to this chapter are hereby appropriated to be used by the board to carry out the provisions of this chapter.

(b) This section shall remain in effect only until July 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2016, deletes or extends that date.

SEC. 23. Section 7886 is added to the Business and Professions Code, to read:

7886. (a) The department shall receive and account for all money derived under the operation of this chapter and, at the end of each month, shall report such money to the Controller and shall pay it to the Treasurer, who shall keep the money in a separate fund known as the Professional Engineer's, Land Surveyor's, and Geologist's Fund.

(b) For accounting and recordkeeping purposes, the Professional Engineer's, Land Surveyor's, and Geologist's Fund shall be deemed to be a single special fund and shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.

(c) The fees and civil penalties received under this chapter shall be deposited in the Professional Engineer's, Land Surveyor's, and Geologist's Fund. All moneys in the fund are hereby appropriated for the purposes of this chapter.

(d) This section shall become operative on July 1, 2016.

SEC. 24. Section 8710 of the Business and Professions Code is amended to read:

8710. (a) The Board for Professional Engineers, Land Surveyors, and Geologists is vested with power to administer the provisions and requirements of this chapter, and may make and enforce rules and regulations that are reasonably necessary to carry out its provisions.

(b) The board may adopt rules and regulations of professional conduct that are not inconsistent with state and federal law. The rules and regulations may include definitions of incompetence and negligence. Every person who holds a license or certificate issued by the board pursuant to this chapter, or a license or certificate issued to a civil engineer pursuant to Chapter 7 (commencing with Section 6700), shall be governed by these rules and regulations.

(c) This section shall remain in effect only until January 1, 2020, and as of that date is repealed. Notwithstanding any other law, the repeal of this

section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 25. Section 8759 of the Business and Professions Code is amended to read:

8759. (a) A licensed land surveyor or licensed civil engineer authorized to practice land surveying shall use a written contract when contracting to provide professional services to a client pursuant to this chapter. The written contract shall be executed by the licensed land surveyor or licensed civil engineer and the client or the client's representative prior to the licensed land surveyor or licensed civil engineer commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following:

(1) A description of the services to be provided to the client by the licensed land surveyor or licensed civil engineer.

(2) A description of any basis of compensation applicable to the contract, and the method of payment agreed upon by the parties.

(3) The name, address, and license or certificate number of the licensed land surveyor or licensed civil engineer, and the name and address of the client.

(4) A description of the procedure that the licensed land surveyor or licensed civil engineer and the client will use to accommodate additional services.

(5) A description of the procedure to be used by both parties to terminate the contract.

(b) This section shall not apply to any of the following:

(1) Professional land surveying services rendered by a licensed land surveyor or licensed civil engineer for which the client will not pay compensation.

(2) A licensed land surveyor or licensed civil engineer who has a current or prior contractual relationship with the client to provide professional services pursuant to this chapter, and that client has paid the licensed land surveyor or licensed civil engineer all of the fees that are due under the contract.

(3) If the client knowingly states in writing after full disclosure of this section that a contract which complies with the requirements of this section is not required.

(4) Professional services rendered by a licensed land surveyor or a licensed civil engineer to any of the following:

(A) A professional engineer licensed under Chapter 7 (commencing with Section 6700).

(B) A land surveyor licensed under this chapter.

(C) An architect licensed under Chapter 3 (commencing with Section 5500).

(D) A contractor licensed under Chapter 9 (commencing with Section 7000).

(E) ~~A~~ geologist or a geophysicist licensed under Chapter 12.5 (commencing with Section 7800).

(F) ~~A~~ manufacturing, mining, public utility, research and development, or other industrial corporation, if the services are provided in connection with or incidental to the products, systems, or services of that corporation or its affiliates

(G) ~~A~~ public agency.

(c) ~~l~~ "Written contract" as used in this section includes a contract that is in electronic form.

SEC. 26. Section 8780.2 is added to the Business and Professions Code, to read:

8780.2. (a) ~~l~~ The failure of, or refusal by, a licensee or a certificate holder to respond to a written request from a representative of the board to cooperate in the investigation of a complaint against that licensee or certificate holder constitutes a cause for disciplinary action under Section 8780 or 8780.1.

(b) ~~l~~ This section shall remain in effect only until January 1, 2020, and as of that date is repealed.

SEC. 27. Section 8800 of the Business and Professions Code is amended to read:

8800. (a) ~~l~~ The department shall receive and account for all money derived under the operation of this chapter and, at the end of each month, shall report such money to the Controller and shall pay it to the Treasurer, who shall keep the money in a separate fund known as the Professional Engineer's and Land Surveyor's Fund.

(b) ~~l~~ For accounting and recordkeeping purposes, the Professional Engineer's and Land Surveyor's Fund shall be deemed to be a single special fund, and shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.

(c) ~~l~~ The fees and civil penalties received under this chapter shall be deposited in the Professional Engineer's and Land Surveyor's Fund. All moneys in the fund are hereby appropriated for the purposes of this chapter.

(d) ~~l~~ This section shall remain in effect only until July 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2016, deletes or extends that date.

SEC. 28. Section 8800 is added to the Business and Professions Code, to read:

8800. (a) ~~l~~ The department shall receive and account for all money derived under the operation of this chapter and, at the end of each month, shall report such money to the Controller and shall pay it to the Treasurer, who shall keep the money in a separate fund known as the Professional Engineer's, Land Surveyor's, and Geologist's Fund.

(b) ~~l~~ For accounting and recordkeeping purposes, the Professional Engineer's, Land Surveyor's, and Geologist's Fund shall be deemed to be a single special fund, and shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.

(c) ~~l~~ The fees and civil penalties received under this chapter shall be deposited in the Professional Engineer's, Land Surveyor's, and Geologist's

Fund. All moneys in the fund are hereby appropriated for the purposes of this chapter.

(d) This section shall become operative on July 1, 2016.

SEC. 29. (a) Section 2.1 of this bill incorporates changes to Section 205 of the Business and Professions Code proposed by both this bill and Assembly Bill 179. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2016, (2) each bill amends Section 205 of the Business and Professions Code, and (3) Assembly Bill 180 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 179, in which case Sections 2, 2.2, and 2.3 of this bill shall not become operative.

(b) Section 2.2 of this bill incorporates changes to Section 205 of the Business and Professions Code proposed by both this bill and Assembly Bill 180. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2016, (2) each bill amends Section 205 of the Business and Professions Code, (3) Assembly Bill 179 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 180 in which case Sections 2, 2.1, and 2.3 of this bill shall not become operative.

(c) Section 2.3 of this bill incorporates changes to Section 205 of the Business and Professions Code proposed by this bill, Assembly Bill 179, and Assembly Bill 180. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2016, (2) all three bills amend Section 205 of the Business and Professions Code, and (3) this bill is enacted after Assembly Bill 179 and Assembly Bill 180, in which case Sections 2, 2.1, and 2.2 of this bill shall not become operative.

Supported Legislation

Assembly Bill 181 (Bonilla D)

Status: 10/2/2015-Chaptered by Secretary of State - Chapter 430, Statutes of 2015.

Location: 10/2/2015-A. CHAPTERED

Last Amendment: 9/4/2015

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Updated 10/21/15

Staff Analysis: AB 181

Bill Summary: Existing law requires all civil engineering plans, calculations, specifications, and reports for the construction of all public school structures, hospitals and other medical facilities be prepared by, or under the responsible charge of, a licensed civil engineer who is also licensed as a structural engineer. This bill would repeal the requirements that all civil engineering plans and other specified documents for construction of public school structures be prepared by, or under the responsible charge of, a licensed architect or a licensed civil engineer who is also licensed as a structural engineer.

Staff Comment: This is the Senate Committee on Business, Professions and Economic Development omnibus bill. This bill would remove language that was added to Section 6735 last year at request of SEAOC. Concerns have been expressed by several parties over the new wording of Section 6735 and the potential misinterpretation that could result for this new wording. It was decided that the best course of action would be to remove that language and return Section 6735 to its prior state and allow SEAOC to develop cleaner language that could be included with its “Significate Structures” proposal in the future. The June 25, 2015, version of the bill adds a proposed amendment to Section 7818 to correct a typographical error in the reference to a Government Code section; this change is being made at the request of the Board.

Board Position: Support- as amended 9/4/2015.

Laws: An act to amend Sections 5070.1, 5087, 6735, 7083, 7818, 8508, 8513, 8552, 8611, and 17913 of, and to repeal Section 8516.5 of, the Business and Professions Code, and to amend Section 13995.40 of the Government Code, relating to business and professions.

Assembly Bill No. 181

CHAPTER 430

An act to amend Sections 5055, 5070.1, 5087, 6735, 7083, 7200, 7200.5, 7200.7, 7201, 7202, 7208, 7209, 7209.5, 7210.5, 7211.1, 7211.2, 7215, 7215.5, 7217, 7303, 7303.2, 7313, 7395.1, 7401, 7404, 7407, 7685, 7818, 8508, 8513, 8552, 8611, and 17913 of, to add Sections 7314.3 and 7402.5 to, and to repeal Sections 7304, 7308, and 8516.5 of, the Business and Professions Code, and to amend Section 13995.40 of the Government Code, relating to business and professions.

[Approved by Governor October 2, 2015. Filed with
Secretary of State October 2, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 181, Bonilla. Business and professions.

(1) Existing law provides for the practice of accountancy by the California Board of Accountancy. Existing law, until January 1, 2019, authorizes an individual whose principal place of business is not in this state and who has a valid and current license, certificate, or permit to practice public accountancy from another state to engage in the practice of public accountancy in this state under a practice privilege without obtaining a certificate or license subject to specified requirements. Existing law provides that an accountant whose license was canceled by operation of law, after nonrenewal, as specified, may, upon application to the board and meeting specified requirements, have his or her license placed into a retired status.

This bill would authorize an individual practicing public accountancy in this state under a practice privilege to be styled and known as a "certified public accountant" and use the abbreviation "C.P.A." The bill would prohibit the board from restoring that license in retired status to active or inactive status and instead would require the individual to apply for a new license in order to restore his or her license.

Existing law authorizes the board to issue a certified public accountant (CPA) license to an applicant who holds a valid and unrevoked CPA license in another state, under specified conditions.

This bill would require that an out-of-state applicant hold a current, active, and unrestricted CPA license in order to be issued a CPA license under this provision.

(2) The Professional Engineers Act provides for the regulation and licensure of professional engineers by the Board for Professional Engineers, Land Surveyors, and Geologists. A violation of the licensing provisions of the act is a misdemeanor. Existing law requires all civil engineering plans, calculations, specifications, and reports to be prepared by, or under the responsible charge of, a licensed civil engineer, as specified. Existing law

requires all civil engineering plans, calculations, specifications, and reports for the construction of all public school structures to be prepared by, or under the responsible charge of, a licensed architect or a licensed civil engineer who is also licensed as a structural engineer. Existing law requires all civil engineering plans, calculations, specifications, and reports for the construction of all hospitals and other medical facilities having surgery and emergency treatment areas to be prepared by, or under the responsible charge of, a licensed civil engineer who is also licensed as a structural engineer.

This bill would repeal the requirements that all civil engineering plans and other specified documents for construction of public school structures be prepared by, or under the responsible charge of, a licensed architect or a licensed civil engineer who is also licensed as a structural engineer. The bill would also repeal the requirements that all civil engineering plans and other specified documents for construction of specified hospital and medical facilities be prepared by, or under the responsible charge of, a licensed civil engineer who is also licensed as a structural engineer.

(3) Existing law establishes within the Department of Consumer Affairs a State Board of Guide Dogs for the Blind, which consists of 7 members appointed by the Governor. Existing law authorizes the board to issue licenses for guide dog training and instructional services. A violation of these licensing provisions is a misdemeanor.

This bill would also include dogs trained and provided for visually impaired persons within these licensing requirements. The bill would change reporting requirements from a calendar year to a fiscal year period and would make technical changes.

(4) The Barbering and Cosmetology Act provides for the licensure and regulation, including inspection, of barbers and cosmetologists by the State Board of Barbering and Cosmetology in the Department of Consumer Affairs. Existing law requires that the board consist of certain members, and authorizes the board to appoint an executive office. Under existing law, these provisions are repealed on January 1, 2016.

This bill would extend the operation of the board and the executive office to January 1, 2020.

Existing law also requires the board to conduct specified reviews and reports by various dates in the past.

This bill would delete those requirements and would require the board, no later than November 1, 2018, to conduct specified reviews regarding training and examinations and report its findings to specified committees of the Legislature. The bill would require the board to establish a protocol for inspecting establishments when an inspector has difficulty understanding or communicating with the owner, manager, or employees of the establishment due to language barriers, and to evaluate the protocol every two years to ensure that it remains current. The bill would require the board to establish a Health and Safety Advisory Committee to provide the board with advice and recommendations on health and safety issues before the board. The bill would also require the board to issue regulations for a personal service permit, as defined, that, among other things, may require

an applicant for a personal service permit to have proof of liability insurance, and would authorize fees for the issuance and renewal of a personal service permit. The bill would require the board to report to the Legislature, on or before July 1, 2017, as specified, regarding the regulatory process and the issuance of personal service permits. The bill would also make technical, nonsubstantive changes to these provisions.

(5) Under the Funeral Directors and Embalmers Law, the Cemetery and Funeral Bureau regulates licensed funeral establishments and requires that they be operated by a licensed funeral director who is required to provide written information regarding funeral goods and services and prices to consumers. Existing law requires a funeral establishment that maintains an Internet Web site to also post that information on its Internet Web site provided by a link from the homepage. A violation of these provisions is a misdemeanor.

This bill would require that the funeral establishment's Internet Web site contain specified key words.

(6) Existing law provides for the licensure and regulation of structural pest control operators and registered companies by the Structural Pest Control Board. The California Constitution provides that laborers of every class who have worked upon or have furnished material for a property have a lien upon that property for the value of the labor done and material furnished. The California Constitution requires the Legislature to provide, by law, for the speedy and efficient enforcement of those liens. Existing law requires specified registered companies to provide notice regarding possible liens, as specified, to the owner of property prior to entering into a contract to provide work on that property. A violation of these provisions is a misdemeanor.

This bill would extend the notice requirements to all registered companies.

Existing law requires a structural pest control operator to provide a report detailing the results of an inspection for wood destroying pests or organisms prior to commencing work on a contract or expressing an opinion regarding the presence or absence of wood destroying pests or organisms, to the Structural Pest Control Board, within the Department of Consumer Affairs, as specified. Existing law requires that the pest control operator deliver a copy of the report to the person requesting inspection, or designated agent, within 10 business days of the inspection. Existing law requires a pest control operator to deliver a copy of that report to the owner or the owner's agent within 10 working days of an inspection.

This bill would remove the requirement that the pest control operator provide the owner of the property or the owner's agent with a copy of the report, unless the owner was the person who requested the inspection.

(7) Existing law creates the California Travel and Tourism Commission and provides for the membership and meetings of the commission.

This bill would specify that all meetings of the commission take place in California and would authorize commissioners to attend meetings of the commission by conference telephone or other technology.

(8) This bill would make various other nonsubstantive changes.

(9) Because this bill would expand the definition of a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason

The people of the State of California do enact as follows:

SECTION 1. Section 5055 of the Business and Professions Code is amended to read:

5055. Any person who has received from the board a certificate of certified public accountant, or who is authorized to practice public accountancy in this state pursuant to Article 5.1 (commencing with Section 5096), may, subject to Section 5051, be styled and known as a “certified public accountant” and may also use the abbreviation “C.P.A.” No other person, except a firm registered under this chapter, shall assume or use that title, designation, or abbreviation or any other title, designation, sign, card, or device tending to indicate that the person using it is a certified public accountant.

SEC. 2. Section 5070.1 of the Business and Professions Code is amended to read:

5070.1. (a) The board may establish, by regulation, a system for the placement of a license into a retired status, upon application, for certified public accountants and public accountants who are not actively engaged in the practice of public accountancy or any activity that requires them to be licensed by the board.

(b) No licensee with a license in a retired status shall engage in any activity for which a permit is required.

(c) The board shall deny an applicant’s application to place a license in a retired status if the permit is subject to an outstanding order of the board, is suspended, revoked, or otherwise punitively restricted by the board, or is subject to disciplinary action under this chapter.

(d)(1) The holder of a license that was canceled pursuant to Section 5070.7 may apply for the placement of that license in a retired status pursuant to subdivision (a).

(2) Upon approval of an application made pursuant to paragraph (1), the board shall reissue that license in a retired status.

(3) The holder of a canceled license that was placed in retired status between January 1, 1994, and January 1, 1999, inclusive, shall not be required to meet the qualifications established pursuant to subdivision (e), but shall be subject to all other requirements of this section.

(e) The board shall establish minimum qualifications to place a license in retired status.

(f) ~~The~~ The board may exempt the holder of a license in a retired status from the renewal requirements described in Section 5070.5.

(g) ~~The~~ The board shall establish minimum qualifications for the restoration of a license in a retired status to an active status. These minimum qualifications shall include, but are not limited to, continuing education and payment of a fee as provided in subdivision (h) of Section 5134.

(h) ~~The~~ The board shall not restore to active or inactive status a license that was canceled by operation of law, pursuant to subdivision (a) of Section 5070.7, and then placed into retired status pursuant to subdivision (d). The individual shall instead apply for a new license, as described in subdivision (c) of Section 5070.7, in order to restore his or her license.

SEC. 3. Section 5087 of the Business and Professions Code is amended to read:

5087. (a) ~~The~~ The board may issue a certified public accountant license to any applicant who is a holder of a current, active, and unrestricted certified public accountant license issued under the laws of any state, if the board determines that the standards under which the applicant received the license are substantially equivalent to the standards of education, examination, and experience established under this chapter and the applicant has not committed acts or crimes constituting grounds for denial under Section 480. To be authorized to sign reports on attest engagements, the applicant shall meet the requirements of Section 5095.

(b) ~~The~~ The board may in particular cases waive any of the requirements regarding the circumstances in which the various parts of the examination were to be passed for an applicant from another state.

SEC. 4. Section 6735 of the Business and Professions Code is amended to read:

6735. (a) ~~All~~ All civil (including structural and geotechnical) engineering plans, calculations, specifications, and reports (hereinafter referred to as "documents") shall be prepared by, or under the responsible charge of, a licensed civil engineer and shall include his or her name and license number. Interim documents shall include a notation as to the intended purpose of the document, such as "preliminary," "not for construction," "for plan check only," or "for review only." All civil engineering plans and specification that are permitted or that are to be released for construction shall bear the signature and seal or stamp of the licensee and the date of signing and sealing or stamping. All final civil engineering calculations and reports shall bear the signature and seal or stamp of the licensee, and the date of signing and sealing or stamping. If civil engineering plans are required to be signed and sealed or stamped and have multiple sheets, the signature, seal or stamp, and date of signing and sealing or stamping shall appear on each sheet of the plans. If civil engineering specifications, calculations, and reports are required to be signed and sealed or stamped and have multiple pages, the signature, seal or stamp, and date of signing and sealing or stamping shall appear at a minimum on the title sheet, cover sheet, or signature sheet.

(b) ~~Notwithstanding~~ Notwithstanding subdivision (a), a licensed civil engineer who signs civil engineering documents shall not be responsible for damage caused by

subsequent changes to or uses of those documents, if the subsequent changes or uses, including changes or uses made by state or local governmental agencies, are not authorized or approved by the licensed civil engineer who originally signed the documents, provided that the engineering service rendered by the civil engineer who signed the documents was not also a proximate cause of the damage.

SEC. 5. Section 7083 of the Business and Professions Code is amended to read:

7083. (a) ~~Notwithstanding~~ any other law, licensees shall notify the registrar, on a form prescribed by the registrar, in writing within 90 days of any change to information recorded under this chapter. This notification requirement shall include, but not be limited to, changes in business address, personnel, business name, qualifying individual bond exemption pursuant to Section 7071.9, or exemption to qualify multiple licenses pursuant to Section 7068.1.

(b) ~~Failure~~ of the licensee to notify the registrar of any change to information within 90 days shall cause the change to be effective the date the written notification is received at the board's headquarters office

(c) ~~Failure~~ to notify the registrar of the changes within the 90 days is grounds for disciplinary action.

SEC. 6. Section 7200 of the Business and Professions Code is amended to read:

7200. (a) ~~There is in the Department of Consumer Affairs a State Board of Guide Dogs for the Blind in whom enforcement of this chapter is vested. The board shall consist of seven members appointed by the Governor. One member shall be the Director of Rehabilitation or his or her designated representative. The remaining members shall be persons who have shown a particular interest in dealing with the problems of persons who are blind or visually impaired and at least two of them shall be persons who are blind or visually impaired who use guide dogs.~~

(b) ~~This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.~~

SEC. 7. Section 7200.5 of the Business and Professions Code is amended to read:

7200.5. The board shall have exclusive authority in this state to issue licenses for the instruction of persons who are blind or visually impaired in the use of guide dogs and for the training of guide dogs for use by persons who are blind or visually impaired. It shall also have exclusive authority in this state to issue licenses to operate schools for the training of guide dogs and the instruction of persons who are blind or visually impaired in the use of guide dogs.

SEC. 8. Section 7200.7 of the Business and Professions Code is amended to read:

7200.7. A fee equal to no more than 0.005 of all school expenses incurred in the most recently concluded school fiscal year, as specified in the audit required under Section 7217, shall be paid no later than April 30 of each year for renewal of a school's license pursuant to Section 7200.5. The board shall, by regulation, define the exact amount of the fee. All fees collected pursuant to this section shall be deposited into the Guide Dogs for the Blind Fund, which is hereby created.

SEC. 9. Section 7201 of the Business and Professions Code is amended to read:

7201. No person shall be eligible to membership in the board who is a stockholder in, or an owner of, or financially interested directly or indirectly, in any company, organization, or concern supplying, delivering, or furnishing any guide dogs for use by persons who are blind or visually impaired.

SEC. 10. Section 7202 of the Business and Professions Code is amended to read:

7202. Each of the appointed members of the board shall hold office for a term of four years and until his or her successor is appointed and qualified or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs. No person shall serve as an appointed member of the board for more than two consecutive terms.

SEC. 11. Section 7208 of the Business and Professions Code is amended to read:

7208. Pursuant to the provisions of the Administrative Procedure Act the board may make such rules and regulations as are reasonably necessary to:

- (a) Govern the procedure of the board.
- (b) Govern the admission of applicants for examination for license to instruct persons who are blind or visually impaired in the use of guide dogs or to engage in the business of training, selling, hiring, or being in the business of supplying guide dogs for persons who are blind or visually impaired.
- (c) Govern the operation of schools which furnish guide dogs and train persons who are blind or visually impaired to use guide dogs.
- (d) The reissuance of licenses.
- (e) The reexamination of licensees.

SEC. 12. Section 7209 of the Business and Professions Code is amended to read:

7209. A person to be eligible for examination as an instructor must (a) have a knowledge of the special problems of persons who are blind or visually impaired and how to teach them, (b) be able to demonstrate by actual blindfold test under traffic conditions his or her ability to train guide dogs with whom persons who are blind or visually impaired would be safe, (c) be suited temperamentally and otherwise to instruct persons who are blind or visually impaired in the use of guide dogs, and (d) have had at least three years' actual experience, comprising such number of hours as the board may require, as an instructor, and have handled 22 person-dog units;

or its equivalent, as determined by the board, as an apprentice under a licensed instructor or under an instructor in a school satisfactory to the board.

SEC. 13. Section 7209.5 of the Business and Professions Code is amended to read:

7209.5. Except as the context otherwise requires, as used in this chapter the term "instructor" means a person who instructs persons who are blind or visually impaired in the use of guide dogs or who engages in the business of training, selling, hiring, or supplying guide dogs for persons who are blind or visually impaired.

SEC. 14. Section 7210.5 of the Business and Professions Code is amended to read:

7210.5. It is unlawful to solicit funds for any person purporting to provide guide dogs for persons who are blind or visually impaired in this state unless the person for whose benefit the solicitation is made holds a valid and unimpaired license issued by the State Board of Guide Dogs for the Blind.

As used in this section "person" means an individual, firm, partnership, association, corporation, limited liability company, or cooperative association.

SEC. 15. Section 7211.1 of the Business and Professions Code is amended to read:

7211.1. (a) As a condition of renewal of an instructor's license, the instructor shall provide proof of completion of not less than 8 hours of continuing education. The board shall determine the form of proof.

(b) Continuing education shall meet the criteria specified in Section 166, and shall be in one or more of the following subject matter areas:

- (1) Blindness and mobility.
- (2) Health issues relating to blindness.
- (3) Instructing persons who are blind or visually impaired.
- (4) Care and training of dogs.

SEC. 16. Section 7211.2 of the Business and Professions Code is amended to read:

7211.2. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

SEC. 17. Section 7215 of the Business and Professions Code is amended to read:

7215. No person shall sell, give, or furnish any guide dog to a person who is blind or visually impaired unless the following requirements have been met:

- (a) The dog has been immunized against distemper and rabies.

(b) The dog has been spayed or neutered.

(c) The dog has been examined by a licensed veterinarian and found to be in good health.

A certificate from a veterinarian certifying to the foregoing shall be delivered to the recipient of the dog at the time the dog is assigned to a client.

SEC. 18. Section 7215.5 of the Business and Professions Code is amended to read:

7215.5. (a) During the first year following the successful training of each person-dog unit, and release from a guide dog training school of the trained person supplied with a guide dog, the school may retain title to the trained dog. During this probationary year, the school may enter into a contractual agreement with the user of the dog describing the conditions under which the user may maintain the status of legal custodian of the dog. During the probationary year, the school, acting in what it deems to be the best interest of the user, the dog, or the public, may temporarily or permanently resume possession of the dog.

(b) Within 15 days after the end of each fiscal year, each licensed school shall report to the board the following:

(1) The number of dog ownership titles transferred to dog users pursuant to this section during the calendar year.

(2) The number of title recoveries and repossessions made by the school pursuant to this section during the calendar year.

(3) The number, type, and amount of charges assessed for followup training, instruction, veterinary, or boarding services, pursuant to this section, which make a distinction between users who have acquired title to their dogs and users who have not acquired title.

(4) The views of the governing entity of the school as to any problems or concerns relative to compliance with the provisions of this section, along with recommendations for appropriate legislative or administrative changes commensurate with the purposes of this section.

(c) Immediately upon completion of the first year following the successful training referred to above, if the training school and the dog user are mutually satisfied with the operation of the person-dog unit, title to the dog shall be transferred to the user who is blind or visually impaired if the user so desires. Transfer of title shall be evidenced by a transfer of title agreement executed by both parties thereto. The school may retain an option to recover title and possession to the guide dog subject to conditions described in the transfer of title agreement. These conditions may include, but are not limited to, the following:

(1) If in the school's opinion, the guide dog is being misused or neglected or mistreated by its user who is blind or visually impaired.

(2) If the user to whom the dog was furnished has ceased to use the dog as a guide and the dog is not too old to be retrained as a guide for another person who is blind or visually impaired.

(3) If, in the school's opinion, the dog is no longer a safe guide and the user refuses to cease using the dog as a guide after being requested by the school to cease this use.

(d) The guide dog school shall make no distinction as to the quality or extent of followup or supportive services available to its blind graduates based on whether they elect to acquire title to their dogs or allow title to remain with the school after the probationary year. The school may, however, make this distinction when assessing reasonable and appropriate charges for followup training, instruction, veterinary, or boarding services.

(e) No applicant for admission to a guide dog training school, nor any enrolled student, shall be required by the school prior to completion of his or her training to sign any instrument or to announce his or her intention regarding transfer of title of the dog from the school to himself or herself upon completion of the training and probation period.

SEC. 19. Section 7217 of the Business and Professions Code is amended to read:

7217. (a) Within 60 days after the termination of the fiscal year of a school, there shall be furnished to the board the following:

(1) A list of students accepted for training and those who have completed training.

(2) A list of the number of dogs trained.

(b) Within 90 days after the end of a fiscal year, there shall be furnished to the board an independent audit of the school's finances by a certified public accountant licensed by this state.

SEC. 20. Section 7303 of the Business and Professions Code is amended to read:

7303. (a) Notwithstanding Article 8 (commencing with Section 9148) of Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code, there is in the Department of Consumer Affairs the State Board of Barbering and Cosmetology in which the administration of this chapter is vested.

(b) The board shall consist of nine members. Five members shall be public members, and four members shall represent the professions. The Governor shall appoint three of the public members and the four professional members. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint one public member. Members of the board shall be appointed for a term of four years, except that of the members appointed by the Governor, two of the public members and two of the professions members shall be appointed for an initial term of two years. No board member may serve longer than two consecutive terms.

(c) The board may appoint an executive officer who is exempt from civil service. The executive officer shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter. The appointment of the executive officer is subject to the approval of the director. In the event that a newly authorized board replaces an existing or previous bureau, the director may appoint an interim executive officer for the board who shall serve temporarily until the new board appoints a permanent executive officer.

(d) The executive officer shall provide examiners, inspectors, and other personnel necessary to carry out the provisions of this chapter.

(e) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 21. Section 7303.2 of the Business and Professions Code is amended to read:

7303.2. The board shall conduct the following reviews, and shall report its findings and recommendations to the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions, and Economic Development no later than November 1, 2018:

(a) The board, pursuant to Section 139, shall review the 1,600-hour training requirement for cosmetologists, conduct an occupational analysis of the cosmetology profession in California, and conduct a review of the national written examination for cosmetologists and of the practical examination, in order to evaluate whether both examinations assess critical competencies for California cosmetologists and meet professional testing standards.

(b) The board shall review the Spanish language examination if, by January 1, 2016, the pass rate for Spanish speakers did not increase to the average pass rate for all other language examinations during the two-year period prior to January 1, 2016.

SEC. 22. Section 7304 of the Business and Professions Code is repealed.

SEC. 23. Section 7308 of the Business and Professions Code is repealed.

SEC. 24. Section 7313 of the Business and Professions Code is amended to read:

7313. (a)(1) To ensure compliance with the laws and regulations of this chapter, the board's executive officer and authorized representatives shall, except as provided by Section 159.5, have access to, and shall inspect, any establishment or mobile unit during business hours or at any time in which barbering, cosmetology, or electrolysis are being performed. It is the intent of the Legislature that inspections be conducted on Saturdays and Sundays as well as weekdays, if collective bargaining agreements and civil service provisions permit.

(2) The board shall maintain a program of random and targeted inspections of establishments to ensure compliance with applicable laws relating to the public health and safety and the conduct and operation of establishments. The board or its authorized representatives shall inspect establishments to reasonably determine compliance levels and to identify market conditions that require targeted enforcement. The board shall not reduce the number of employees assigned to perform random inspections, targeted inspections, and investigations relating to field operations below the level funded by the annual Budget Act and described in supporting budget documents, and shall not redirect funds or personnel-years allocated to those inspection and investigation purposes to other purposes.

(b) To ensure compliance with health and safety requirements adopted by the board, the executive officer and authorized representatives shall, except as provided in Section 159.5, have access to, and shall inspect the premises of, all schools in which the practice of barbering, cosmetology, or electrolysis is performed on the public. Notices of violation shall be issued to schools for violations of regulations governing conditions related to the health and safety of patrons. Each notice shall specify the section violated and a timespan within which the violation must be corrected. A copy of the notice of violation shall be provided to the Bureau for Private Postsecondary Education.

(c) With prior written authorization from the board or its executive office, any member of the board may enter and visit, in his or her capacity as a board member, any establishment, during business hours or at any time when barbering, cosmetology, or electrolysis is being performed. The visitation by a board member shall be for the purpose of conducting official board business, but shall not be used as a basis for any licensing disciplinary action by the board.

(d) The board shall adopt a protocol for inspecting establishments when an inspector has difficulty understanding or communicating with the owner, manager, or employees of the establishment due to language barriers. The board shall evaluate the protocol every two years to ensure the protocol remains current.

SEC. 25. Section 7314.3 is added to the Business and Professions Code, to read:

7314.3. The board shall establish a Health and Safety Advisory Committee to provide the board with advice and recommendations on health and safety issues before the board.

SEC. 26. Section 7395.1 of the Business and Professions Code is amended to read:

7395.1. (a) A student who is enrolled in a school of cosmetology approved by the Bureau for Private Postsecondary Education in a course approved by the board may, upon completion of a minimum of 60 percent of the clock hours required for graduation in the course, work as an unpaid extern in a cosmetology establishment participating in the educational program of the school of cosmetology.

(b) A person working as an extern shall receive clock hour credit toward graduation, but that credit shall not exceed eight hours per week and shall not exceed 10 percent of the total clock hours required for completion of the course.

(c) The externship program shall be conducted in cosmetology establishments meeting all of the following criteria:

- (1) The establishment is licensed by the board.
- (2) The establishment has a minimum of four licensees working at the establishment, including employees and owners or managers.
- (3) All licensees at the establishment are in good standing with the board.
- (4) Licensees working at the establishment work for salaries or commissions rather than on a space rental basis.

(5) No more than one extern shall work in an establishment for every four licensees working in the establishment. No regularly employed licensee shall be displaced or have his or her work hours reduced or altered to accommodate the placement of an extern in an establishment. Prior to placement of the extern, the establishment shall agree in writing sent to the school and to all affected licensees that no reduction or alteration of any licensee's current work schedule shall occur. This shall not prevent a licensee from voluntarily reducing or altering his or her work schedule.

(6) Externs shall wear conspicuous school identification at all times while working in the establishment, and shall carry a school laminated identification, that includes a picture, in a form approved by the board.

(d) No less than 90 percent of the responsibilities and duties of the extern shall consist of the acts included within the practice of cosmetology as defined in Section 7316

(2) The establishment shall consult with the assigning school regarding the extern's progress during the unpaid externship. The owner or manager of the establishment shall monitor and report on the student's progress to the school on a regular basis, with assistance from supervising licensees.

(3) A participating school shall assess the extern's learning outcome from the externship program. The school shall maintain accurate records of the extern's educational experience in the externship program and records that indicate how the extern's learning outcome translates into course credit.

(e) Participation in an externship program made available by a school shall be voluntary, may be terminated by the student at any time, and shall not be a prerequisite for graduation.

(f) The cosmetology establishment that chooses to utilize the extern is liable for the extern's general liability insurance, as well as cosmetology malpractice liability insurance, and shall furnish proof to the participating school that the establishment is covered by both forms of liability insurance and that the extern is covered under that insurance.

(g) (1) It is the purpose of the externship program authorized by this section to provide students with skills, knowledge, and attitudes necessary to acquire employment in the field for which they are being trained, and to extend formalized classroom instruction.

(2) Instruction shall be based on skills, knowledge, attitudes, and performance levels in the area of cosmetology for which the instruction is conducted.

(3) An extern may perform only acts listed within the definition of the practice of cosmetology as provided in Section 7316, if a licensee directly supervises those acts, except that an extern may not use or apply chemical treatments unless the extern has received appropriate training in application of those treatments from an approved cosmetology school. An extern may work on a paying client only in an assisting capacity and only with the direct and immediate supervision of a licensee.

(4) The extern shall not perform any work in a manner that would violate law.

SEC. 27. Section 7401 of the Business and Professions Code is amended to read:

7401. (a) ~~A~~An individual licensed pursuant to Section 7396 shall report to the board at the time of license renewal, his or her practice status, designated as one of the following:

- (1) ~~F~~Full-time practice in California.
- (2) ~~I~~ Full-time practice outside of California.
- (3) ~~P~~art-time practice in California.
- (4) ~~N~~ot working in the industry.
- (5) ~~R~~etired.
- (6) ~~O~~ther practice status, as may be further defined by the board

(b) ~~A~~An individual licensed pursuant to Section 7396 shall, at the time of license renewal, identify himself or herself on the application as one of the following:

- (1) ~~I~~ Employee.
- (2) ~~I~~ Independent contractor or booth renter.
- (3) ~~S~~alon owner.

(c) ~~A~~An individual licensed pursuant to Section 7347 shall report to the board at the time of license renewal, whether either of the following is applicable to him or her:

- (1) ~~I~~ He or she has a booth renter operating in the establishment.
- (2) ~~I~~ He or she has an independent contractor operating in the establishment.

SEC. 28. Section 7402.5 is added to the Business and Professions Code, to read:

7402.5. (a) ~~I~~F or purposes of this section, a “personal service permit” means a permit that authorizes an individual to perform services, for which he or she holds a license pursuant to this chapter, outside of an establishment, as defined in Section 7346, in accordance with the regulations established by the board.

(b) ~~T~~The board may issue a personal service permit to an individual who meets the criteria for a personal service permit set forth in regulation.

(c) ~~I~~ The board shall issue regulations regarding a personal service permit. In establishing the regulations, the board shall hold, at a minimum, two stakeholder meetings.

(1) ~~I~~ The board shall determine the appropriate licensing categories that may apply for a personal service permit in order to protect consumer safety.

(2) ~~T~~The board shall authorize a personal service permit holder to perform services outside of a licensed establishment.

(3) ~~I~~ The board shall not exempt a personal service permit holder from any of the board’s existing regulations or requirements on health and safety.

(4) ~~T~~The board shall not require a personal service permit holder to be employed by an establishment, unless the board determines that it would be necessary in order to maintain consumer safety.

(5) ~~I~~ The regulations may require an applicant for a personal service permit to have proof of liability insurance and to pass a criminal background clearance.

(d) A personal service permit shall be valid for two years and shall be renewed prior to expiration. The fee for a personal service permit shall be no greater than fifty dollars (\$50). The fee for the renewal of a personal service permit shall be no greater than fifty dollars (\$50). The delinquency fee shall be 50 percent of the renewal fee in effect on the date of the renewal.

(e) The board shall report on the progress of the regulatory process and issuance of personal service permits to the Legislature on or before July 1, 2017.

(1) The report shall be submitted in compliance with Section 9795 of the Government Code.

(2) The requirement to report to the Legislature under this subdivision is inoperative on July 1, 2021, pursuant to Section 10231.5 of the Government Code.

SEC. 29. Section 7404 of the Business and Professions Code is amended to read:

7404. The grounds for disciplinary action are as follows:

(a) Unprofessional conduct which includes, but is not limited to, any of the following:

(1) Incompetence or gross negligence, including failure to comply with generally accepted standards for the practice of barbering, cosmetology, or electrology or disregard for the health and safety of patrons.

(2) Repeated similar negligent acts.

(3) Conviction of any crime substantially related to the qualifications, functions, or duties of the licenseholder, in which case, the records of conviction or a certified copy shall be conclusive evidence thereof.

(4) Advertising by means of knowingly false or deceptive statements.

(b) Failure to comply with the requirements of this chapter.

(c) Failure to comply with the rules governing health and safety adopted by the board and approved by the State Department of Public Health, for the regulation of establishments, or any practice licensed and regulated under this chapter.

(d) Failure to comply with the rules adopted by the board for the regulation of establishments, or any practice licensed and regulated under this chapter.

(e) Continued practice by a person knowingly having an infectious or contagious disease.

(f) Habitual drunkenness, habitual use of or addiction to the use of any controlled substance.

(g) Obtaining or attempting to obtain practice in any occupation licensed and regulated under this chapter, or money, or compensation in any form, by fraudulent misrepresentation.

(h) Failure to display the license or health and safety rules and regulations in a conspicuous place.

(i) Engaging, outside of a licensed establishment and for compensation in any form whatever, in any practice for which a license is required under this chapter, except that when the service is provided because of illness or other physical or mental incapacitation of the recipient of the service and

when performed by a licensee obtained for the purpose from a licensed establishment.

(j) Permitting a license to be used where the holder is not personally, actively, and continuously engaged in business.

(k) The making of any false statement as to a material matter in any oath or affidavit, which is required by the provisions of this chapter.

(l) Refusal to permit or interference with an inspection authorized under this chapter.

(m) Any action or conduct which would have warranted the denial of a license.

(n) Failure to surrender a license that was issued in error or by mistake.

SEC. 30. Section 7407 of the Business and Professions Code is amended to read:

7407. The board shall establish by regulation a schedule of administrative fines for violations of this chapter. All moneys collected under this section shall be deposited in the board's contingent fund.

The schedule shall indicate for each type of violation whether, in the board's discretion, the violation can be corrected. The board shall ensure that it and the Bureau for Private Postsecondary Education do not issue citations for the same violation.

SEC. 31. Section 7685 of the Business and Professions Code is amended to read:

7685. (a) Every funeral director shall provide to any person, upon beginning discussion of prices or of the funeral goods and services offered, a written or printed list containing, but not necessarily limited to, the price for professional services offered, which may include the funeral director's services, the preparation of the body, the use of facilities, and the use of automotive equipment. All services included in this price or prices shall be enumerated. The funeral director shall also provide a statement on that list that gives the price range for all caskets offered for sale.

(2) The list shall also include a statement indicating that the survivor of the deceased who is handling the funeral arrangements, or the responsible party, is entitled to receive, prior to the drafting of any contract, a copy of any preneed agreement that has been signed and paid for, in full or in part, by or on behalf of the deceased, and that is in the possession of the funeral establishment.

(3) The funeral director shall also provide a written statement or list that, at a minimum, specifically identifies a particular casket or caskets by price and by thickness of metal, or type of wood, or other construction, interior and color, in addition to other casket identification requirements under Part 453 of Title 16 of the Code of Federal Regulations and any subsequent version of this regulation, when a request for specific information on a casket or caskets is made in person by any individual. Prices of caskets and other identifying features such as thickness of metal, or type of wood, or other construction, interior and color, in addition to other casket identification requirements required to be given over the telephone by Part 453 of Title

16 of the Code of Federal Regulations and any subsequent version of this regulation, shall be provided over the telephone, if requested.

(b) ~~Each~~ licensed funeral establishment that maintains an Internet Web site shall post on its Internet Web site the list of funeral goods and services that are required to be included in the establishment's general price list, pursuant to federal rule, and a statement that the general price list is available upon request.

(2) ~~Information~~ posted pursuant to paragraph (1) shall be provided by a link from the homepage of the Internet Web site with a word or combination of words, including, but not limited to, "goods," "merchandise," "products," or "services."

(3) ~~An~~ establishment that posts on its Internet Web site home page the words "price information" or a similar phrase that includes the word "price," with a link that leads to the establishment's general price list, need not comply with paragraphs (1) or (2).

(4) ~~Nothing~~ in this subdivision shall be construed to affect an establishment's obligations under federal or state law effective prior to January 1, 2013.

(5) ~~This~~ subdivision shall become operative on January 1, 2013.

SEC. 32. Section 7818 of the Business and Professions Code is amended to read:

7818. The board, pursuant to the provisions contained in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, may adopt, amend or repeal rules and regulations to carry out the provisions of this chapter.

SEC. 33. Section 8508 of the Business and Professions Code is amended to read:

8508. "Household" means any structure and its contents that are used for persons and their convenience.

SEC. 34. Section 8513 of the Business and Professions Code is amended to read:

8513. (a) ~~The~~ board shall prescribe a form entitled "Notice to Owner" that shall describe, in nontechnical language and in a clear and coherent manner using words with common and everyday meaning, the pertinent provisions of this state's mechanics lien laws and the rights and responsibilities of an owner of property and a registered pest control company thereunder. Each company registered under this chapter, prior to entering into a contract with an owner for work for which a company registration is required, shall give a copy of this "Notice to Owner" to the owner, his or her agent, or the payer.

(b) ~~No~~ company that is required to be registered under this chapter shall require or request a waiver of lien rights from any subcontractor, employee, or supplier.

(c) ~~Each~~ company registered under this chapter that acts as a subcontractor for another company registered under this chapter shall, within 20 days of commencement of any work for which a company registration is required, give the preliminary notice in accordance with Chapter 2 (commencing with

Section 8200) of Title 2 of Part 6 of Division 4 of the Civil Code, to the owner, his or her agent, or the payer.

(d) Each company registered under this chapter that acts as a prime contractor for work for which a company registration is required shall, prior to accepting payment for the work, furnish to the owner, his or her agent, or the payer a full and unconditional release from any claim of mechanics lien by any subcontractor entitled to enforce a mechanics lien pursuant to Section 8410 of the Civil Code.

(e) Each company registered under this chapter that subcontracts to another company registered under this chapter work for which a company registration is required shall furnish to the subcontractor the name of the owner, his or her agent, or the payer.

(f) A violation of the provisions of this section is a ground for disciplinary action.

SEC. 35. Section 8516.5 of the Business and Professions Code is repealed.

SEC. 36. Section 8552 of the Business and Professions Code is amended to read:

8552. It is unlawful for any person to advertise or represent in any manner that any pest control work, in whole or in part, has been done upon any structure, unless the work has been performed by a registered company, except as otherwise provided in this chapter.

SEC. 37. Section 8611 of the Business and Professions Code is amended to read:

8611. (a) Each branch office shall have a branch supervisor designated by the registered company to supervise and assist the company's employees who are located at that branch. The branch supervisor shall be an individual who is licensed by the board as an operator or a field representative in the branch or branches of business being conducted and his or her license shall be prominently displayed in the branch office

(b) If a branch supervisor ceases for any reason to be connected with a registered company, the company shall notify the registrar in writing within 10 days from that cessation. If this notice is given, the company's branch office registration shall remain in force for a reasonable length of time to be determined by rules of the board, during which period the company shall submit to the registrar in writing the name of another qualified branch supervisor.

SEC. 38. Section 17913 of the Business and Professions Code is amended to read:

17913. (a) The fictitious business name statement shall contain all of the information required by this subdivision and shall be substantially in the following form:

FICTITIOUS BUSINESS NAME STATEMENT

The following person (persons) is (are) doing business as

*

at ** _____:

* * *

☐ This business is conducted by ****
☐ The registrant commenced to transact business under the fictitious business name or names listed above on

☐ I declare that all information in this statement is true and correct. (A registrant who declares as true any material matter pursuant to Section 17913 of the Business and Professions Code that the registrant knows to be false is guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000).)

Registrant signature _____

☐ Statement filed with the County Clerk of _____ County on _____

NOTICE—IN ACCORDANCE WITH SUBDIVISION (a) OF SECTION 17920, A FICTITIOUS NAME STATEMENT GENERALLY EXPIRES AT THE END OF FIVE YEARS FROM THE DATE ON WHICH IT WAS FILED IN THE OFFICE OF THE COUNTY CLERK, EXCEPT, AS PROVIDED IN SUBDIVISION (b) OF SECTION 17920, WHERE IT EXPIRES 40 DAYS AFTER ANY CHANGE IN THE FACTS SET FORTH IN THE STATEMENT PURSUANT TO SECTION 17913 OTHER THAN A CHANGE IN THE RESIDENCE ADDRESS OF A REGISTERED OWNER. A NEW FICTITIOUS BUSINESS NAME STATEMENT MUST BE FILED BEFORE THE EXPIRATION.

THE FILING OF THIS STATEMENT DOES NOT OF ITSELF AUTHORIZE THE USE IN THIS STATE OF A FICTITIOUS BUSINESS NAME IN VIOLATION OF THE RIGHTS OF ANOTHER UNDER FEDERAL, STATE, OR COMMON LAW (SEE SECTION 14411 ET SEQ., BUSINESS AND PROFESSIONS CODE).

(b) ☐ The fictitious business name statement shall contain the following information set forth in the manner indicated in the form provided by subdivision (a):

(1) ☐ Where the asterisk (*) appears in the form, insert the fictitious business name or names. Only those businesses operated at the same address and under the same ownership may be listed on one fictitious business name statement.

(2) ☐ Where the two asterisks (**) appear in the form: If the registrant has a place of business in this state, insert the street address, and county, of his or her principal place of business in this state. If the registrant has no place of business in this state, insert the street address, and county, of his or her principal place of business outside this state.

(3) ☐ Where the three asterisks (***) appear in the form: If the registrant is an individual, insert his or her full name and residence address. If the registrants are a married couple, insert the full name and residence address

of both parties to the marriage. If the registrant is a general partnership, copartnership, joint venture, or limited liability partnership, insert the full name and residence address of each general partner. If the registrant is a limited partnership, insert the full name and residence address of each general partner. If the registrant is a limited liability company, insert the name and address of the limited liability company, as set out in its articles of organization on file with the California Secretary of State, and the state of organization. If the registrant is a trust, insert the full name and residence address of each trustee. If the registrant is a corporation, insert the name and address of the corporation, as set out in its articles of incorporation on file with the California Secretary of State, and the state of incorporation. If the registrants are state or local registered domestic partners, insert the full name and residence address of each domestic partner. If the registrant is an unincorporated association other than a partnership, insert the name of each person who is interested in the business of the association and whose liability with respect to the association is substantially the same as that of a general partner.

(4) Where the four asterisks (****) appear in the form, insert whichever of the following best describes the nature of the business: (i) "an individual," (ii) "a general partnership," (iii) "a limited partnership," (iv) "a limited liability company," (v) "an unincorporated association other than a partnership," (vi) "a corporation," (vii) "a trust," (viii) "copartners," (ix) "a married couple," (x) "joint venture," (xi) "state or local registered domestic partners," or (xii) "a limited liability partnership."

(5) Where the five asterisks (*****) appear in the form, insert the date on which the registrant first commenced to transact business under the fictitious business name or names listed, if already transacting business under that name or names. If the registrant has not yet commenced to transact business under the fictitious business name or names listed, insert the statement, "Not applicable."

(c) The registrant shall declare that all of the information in the fictitious business statement is true and correct. A registrant who declares as true any material matter pursuant to this section that the registrant knows to be false is guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000).

(d) (1) At the time of filing of the fictitious business name statement, the registrant filing on behalf of the registrant shall present personal identification in the form of a California driver's license or other government identification acceptable to the county clerk to adequately determine the identity of the registrant filing on behalf of the registrant as provided in subdivision (e) and the county clerk may require the registrant to complete and sign an affidavit of identity.

(2) In the case of a registrant utilizing an agent for submission of the registrant's fictitious business name statement for filing, at the time of filing of the fictitious business name statement, the agent filing on behalf of the registrant shall present personal identification in the form of a California driver's license or other government identification acceptable to the county

clerk to adequately determine the identity of the agent filing on behalf of the registrant as provided in subdivision (e). The county clerk may also require the agent to submit a notarized statement signed by the registrant declaring the registrant has authorized the agent to submit the filing on behalf of the registrant.

(e) If the registrant is a corporation, a limited liability company, a limited partnership, or a limited liability partnership, the county clerk may require documentary evidence issued by the California Secretary of State and deemed acceptable by the county clerk, indicating the current existence and good standing of that business entity to be attached to a completed and notarized affidavit of identity, for purposes of subdivision (d).

(f) The county clerk may require a registrant that mails a fictitious business name statement to a county clerk's office for filing to submit a completed and notarized affidavit of identity. A registrant that is a corporation, limited liability company, limited partnership, or limited liability partnership, if required by the county clerk to submit an affidavit of identity, shall also submit documentary evidence issued by the California Secretary of State indicating the current existence and good standing of that business entity.

(g) A county clerk that chooses to establish procedures pursuant to this section shall prescribe the form of affidavit of identity for filing by a registrant in that county.

SEC. 39. Section 13995.40 of the Government Code is amended to read:

13995.40. (a) Upon approval of the initial referendum, the office shall establish a nonprofit mutual benefit corporation named the California Travel and Tourism Commission. The commission shall be under the direction of a board of commissioners, which shall function as the board of directors for purposes of the Nonprofit Corporation Law.

(b) The board of commissioners shall consist of 37 commissioners comprising the following:

(1) The director, who shall serve as chairperson.

(2) Twelve members, who are professionally active in the tourism industry, and whose primary business, trade, or profession is directly related to the tourism industry, shall be appointed by the Governor. Each appointed commissioner shall represent only one of the 12 tourism regions designated by the office, and the appointed commissioners shall be selected so as to represent, to the greatest extent possible, the diverse elements of the tourism industry. Appointed commissioners are not limited to individuals who are employed by or represent assessed businesses.

(B) If an appointed commissioner ceases to be professionally active in the tourism industry or his or her primary business, trade, or profession ceases to be directly related to the tourism industry, he or she shall automatically cease to be an appointed commissioner 90 days following the date on which he or she ceases to meet both of the eligibility criteria specified in subparagraph (A), unless the commissioner becomes eligible again within that 90-day period.

(3) Twenty-four elected commissioners, including at least one representative of a travel agency or tour operator that is an assessed business.

(c) The commission established pursuant to Section 15364.52 shall be inoperative so long as the commission established pursuant to this section is in existence.

(d) Elected commissioners shall be elected by industry category in a referendum. Regardless of the number of ballots received for a referendum, the nominee for each commissioner slot with the most weighted votes from assessed businesses within that industry category shall be elected commissioner. In the event that an elected commissioner resigns, dies, or is removed from office during his or her term, the commission shall appoint a replacement from the same industry category that the commissioner in question represented, and that commissioner shall fill the remaining term of the commissioner in question. The number of commissioners elected from each industry category shall be determined by the weighted percentage of assessments from that category.

(e) The director may remove any elected commissioner following a hearing at which the commissioner is found guilty of abuse of office or moral turpitude.

(f) (1) The term of each elected commissioner shall commence July 1 of the year next following his or her election, and shall expire on June 30 of the fourth year following his or her election. If an elected commissioner ceases to be employed by or with an assessed business in the category and segment which he or she was representing, his or her term as an elected commissioner shall automatically terminate 90 days following the date on which he or she ceases to be so employed, unless, within that 90-day period, the commissioner again is employed by or with an assessed business in the same category and segment.

(2) Terms of elected commissioners that would otherwise expire effective December 31 of the year during which legislation adding this subdivision is enacted shall automatically be extended until June 30 of the following year.

(g) With the exception of the director, no commissioner shall serve for more than two consecutive terms. For purposes of this subdivision, the phrase "two consecutive terms" shall not include partial terms.

(h) Except for the original commissioners, all commissioners shall serve four-year terms. One-half of the commissioners originally appointed or elected shall serve a two-year term, while the remainder shall serve a four-year term. Every two years thereafter, one-half of the commissioners shall be appointed or elected by referendum.

(i) The selection committee shall determine the initial slate of candidates for elected commissioners. Thereafter the commissioners, by adopted resolution, shall nominate a slate of candidates, and shall include any additional candidates complying with the procedure described in Section 13995.62.

(j) The commissioners shall elect a vice chairperson from the elected commissioners.

- (k) The commission may lease space from the office
- (l) The commission and the office shall be the official state representatives of California tourism.
- (m) ~~(1)~~ All commission meetings shall be held in California.
- (2) Commissioners may participate in meetings by means of conference telephone and other technology.
- (n) No person shall receive compensation for serving as a commissioner, but each commissioner shall receive reimbursement for reasonable expenses incurred while on authorized commission business.
- (o) Assessed businesses shall vote only for commissioners representing their industry category.
- (p) Commissioners shall comply with the requirements of the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)). The Legislature finds and declares that commissioners appointed or elected on the basis of membership in a particular tourism segment are appointed or elected to represent and serve the economic interests of those tourism segments and that the economic interests of these members are the same as those of the public generally.
- (q) Commission meetings shall be subject to the requirements of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1).
- (r) The executive director of the commission shall serve as secretary to the commission, a nonvoting position, and shall keep the minutes and records of all commission meetings.

SEC. 40. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Supported Legislation

Senate Bill 284 (Cannella R)

Engineering and land surveying: limited liability partnerships.

Status: 8/10/2015-Chaptered by Secretary of State - Chapter 157, Statutes of 2015.

Last Amendment: 5/5/2015

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Updated 8/26/15

Staff Analysis: SB 284

Bill Summary: Current law, until January 1, 2016, also provides that engineers or land surveyors are not prohibited from practicing or offering to practice, within the scope of their licensure, as a limited liability partnership if specified requirements are met, including, among others, that any offer, promotion, or advertisement by the business that contains the name of any individual in the business must clearly and specifically designate the license or registration discipline of the individual named. Current law repeals these provisions on January 1, 2016. This bill would extend the operation of these provisions until January 1, 2019. This bill contains other existing laws.

Staff Comment: SB 284 will simply continue the authorization for engineers and land surveyors to operate within their scope of licensure while conducting business as a limited liability partnership similar to that of certified public accountants and attorneys and to be designated as a registered limited liability partnership or foreign limited liability partnership, something that they have been authorized to do since 2010. ACEC-CA is the sponsor of this bill.

Board Position: Support - as amended 5/5/2015.

Laws: An act to amend and repeal Sections 6738 and 8729 of the Business and Professions Code, and to amend and repeal Sections 16101, 16956, and 16959 of the Corporations Code, relating to the practice of engineering and land surveying.

Board staff has prepared a list of legislative proposals that it recommends the Board pursue during the 2016 legislative session. The Board discussed and agreed to the concepts of these legislative proposals for inclusion in its 2014 Sunset Report at the July 31-August 1, 2014, meeting and formally approved the Sunset Report at the November 13, 2014, meeting. However, the Assembly Business and Professions Committee, which sponsored the Board's Sunset bill (AB 177) declined to include these proposals in that bill. The Committee chose to focus on a few specific proposals that it felt needed immediate attention and recommended that the Board pursue the other proposals separately.

Staff recommends that the Board approve moving forward with these proposals by directing staff to seek authors to introduce legislation. The proposed text as prepared by staff is included; however, it should be noted that the Legislative Counsel may make modifications to submitted language prior to its introduction in bill form. All proposals that are introduced as legislation will be presented to the Board as is done with any other legislation the Board is following.

Overview of Legislative Proposals

1) Clarification of Application Process

Amend Business and Professions Code Sections 6751, 6755, 6756, 6762, 6763.5, 7842, 7843, 7850, 7850.1, 7850.5, 8731, 8740, 8741, 8741.1, 8742, 8743, 8744, and 8748.5 to clarify that a person applies for a license or a certificate and must meet all of the qualifications, including education, experience, and examination, prior to licensure, rather than stating that a person is applying to take an examination. This proposal would not place any new requirements on applicants for licensure or certification. Many applicants, professional references, and licensees believe that an individual "applies for an exam" when in fact individuals apply to become licensed. Each year, we receive some reference forms that actually state something to the effect of "I'm not sure if the applicant is ready to be licensed, let the exam weed them out." Current laws are inconsistent in terms of clearly communicating this concept, and it is important to understand that education and work experience are equally or more important than the examination portion of the requirements.

2) Examination on California Laws and Rules

Add Business and Professions Code Sections 6795.2, 7881.5, and 8801.5 and amend Sections 7841.1 and 7841.2 to add new sections to require completion of an examination on the Board's laws and regulations at the time of renewal and to amend existing section to require applicants for licensure as a professional geologist or professional geophysicist to take and pass an examination on the Board's laws and regulations. This proposal would institute an online examination relating to the Board's laws and regulations to be completed at the time of renewal of the license. 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. 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. In addition, it is proposed that applicants for licensure as a professional geologist or a professional geophysicist be required to take and pass an examination on the laws and rules as a requirement for licensure, as professional engineer and professional land surveyor applicants are currently required to do.

3) Separate Renewal and Application Fees

Amend Business and Professions Code Sections 6799 and 8805 to clarify that the application and license renewal fees for professional engineers and land surveyors are separate fees and that the renewal fee is not based on the application fee. The proposal would conform the Professional Engineers Act and the Professional Land Surveyors' Act to the language already in place in the Geologist and Geophysicist Act so that the maximum amount of the renewal fee that may be charged is not tied to the application fee in effect at the time. It should be noted that the actual fee amounts are established in regulation through the rulemaking process, which requires the Board to provide specific justification for the actual dollar amount to be charged based on the operational needs of the Board. Requiring that the renewal fee for professional engineers and professional land surveyors be based on the application fee could lead to a situation where the application fee would need to be lowered based on the actual costs to process the applications, which would then require the renewal fee to also be lowered, even if doing so was not supported by the operational needs of the Board. The Board's 2015 Sunset bill (AB 177) merges the two separate funds under which the Board operates be merged into one fund; this merger will become effective on July 1, 2016. As part of that merger, staff is performing a comprehensive review of the fees charged to ensure a fair and equitable distribution across all licenses. The language in Sections 6799 and 8805 needs to be changed so that the renewal fees for all licenses can be established based on the operational needs of the Board, rather than having some of them tied to the application fee, which could prevent them from being established at the appropriate level to meet the operational needs of the Board while ensuring that the fees are fair and equitably distributed across all license disciplines.

4) PG-PGp Sign & Seal

Amend Business and Professions Code sections 7835, 7835.1, 7852, and 7852.1 to require professional geologists and geophysicists to sign and seal (or stamp) their final work product documents to indicate their responsibility for them and to require professional geologists and geophysicists to obtain a seal (or stamp). The proposal would provide for consistent operations among the Board's licensing programs by conforming the law relating to geologists and geophysicists to those for professional engineers and land surveyors. 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 and require professional engineers and land surveyors to obtain a seal. 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, and requiring the licensees to obtain a seal reinforces the requirement that they must sign and seal their documents to indicate their responsibility for them.

5) Geology Examination Contract

Amend Business and Professions Code Section 7844 to authorize the Board for Professional Engineers, Land Surveyors, and Geologists to make arrangements with a public or private organization to conduct the examination and to contract with a public or private organization for materials or services related to the examination. The proposal would provide for consistent operations among the Board's licensing programs by conforming the law relating to geologists and geophysicists to those for professional engineers and land surveyors. The Board currently purchases the licensing examinations for geologists from ASBOG, the national organization that develops the examinations. However, the Board must still administer the examinations rather than contracting with ASBOG to administer them. The Professional Engineers Act (Business and Professions Code section 6700, et seq.) and the Professional Land Surveyors' Act (Business and Professions Code section 8700, et seq.) contain provisions authorizing the Board to contract with an outside organization to administer the licensing examinations for engineers and land surveyors. The Board contracts with NCEES, the national organization that develops the engineering and land surveying examinations, to administer these examinations.

1) Proposed Text – Clarification of Application Process

Section 6751 of the Business and Professions Code is amended to read:

(a) The applicant for certification as an engineer-in-training shall comply with all of the following:

(1) Not have committed acts or crimes constituting grounds for denial of ~~registration~~ licensure under Section 480.

(2) Successfully pass the first division of the examination.

~~(3) The applicant shall be eligible to sit for the first division of the examination after satisfactory completion of~~ Satisfactorily complete three years or more of postsecondary engineering education, three years or more of engineering experience, or a combination of postsecondary education and experience in engineering totaling three years.

~~(b)~~ The board need not verify the applicant's eligibility for certification as an engineer-in-training other than to require the applicant to sign a statement of eligibility on the application form.

~~(b)~~ (c) The applicant for ~~registration~~ licensure as a professional engineer shall comply with all of the following:

(1) Not have committed acts or crimes constituting grounds for denial of ~~registration~~ licensure under Section 480.

(2) Furnish evidence of six years or more of qualifying experience in engineering work satisfactory to the board evidencing that the applicant is competent to practice the character of engineering in the branch for which he or she is applying for ~~registration, and successfully pass the second division of the examination~~ licensure.

~~(3) The applicant for the second division of the examination shall successfully pass the first division examination~~ Be certified as an engineer-in-training in California, be certified as an engineer-in-training or engineer intern in another state or territory of the United States, or shall be exempt therefrom.

(4) Successfully pass the second division of the examination.

Section 6755 of the Business and Professions Code is amended to read:

(a) Examination duration and composition shall be designed to conform to the following general principle: The first division of the examination shall test the applicant's knowledge of appropriate fundamental engineering subjects, including mathematics and the basic sciences; the second division of the examination shall test the applicant's ability to apply his or her knowledge and experience and to assume responsible charge in the professional practice of the branch of engineering in which the applicant is being examined.

~~(b) The applicant for the second division of the examination shall have successfully passed the first division examination or shall be exempt therefrom.~~

~~(e)~~ The board may by rule provide for a waiver of the first division of the examination for applicants whose education and experience qualifications substantially exceed the requirements of subdivision (a) of Section 6751.

~~(d)~~ (c) The board may by rule provide for a waiver of the second division of the examination for persons eminently qualified for ~~registration~~ licensure in this state by virtue of their standing in the engineering community, their years of experience, and those other qualifications as the board deems appropriate.

Section 6756 of the Business and Professions Code is amended to read:

(a) An applicant for certification as an engineer-in-training shall, upon ~~making a passing grade in that division of the examination~~ meeting all of the requirements prescribed in subdivisions (a) and (b) of Section 6755, relating to fundamental engineering subjects 6751, be issued a certificate as an engineer-in-training. A renewal or other fee, other than the application and examination fees, may not be charged for this certification. The certificate shall become invalid when the holder has qualified as a professional engineer as provided in Section 6762.

(b) An engineer-in-training certificate does not authorize the holder thereof to practice or offer to practice civil, electrical, or mechanical engineering work, in his or her own right, or to use the titles specified in Sections 6732, 6736, and 6736.1.

(c) It is unlawful for anyone other than the holder of a valid engineer-in-training certificate issued under this chapter to use the title of "engineer-in-training" or any abbreviation of that title.

Section 6762 of the Business and Professions Code is amended to read:

Any applicant for licensure as a professional engineer, upon meeting all of the requirements prescribed in subdivision (c) of Section 6751, ~~who has passed the second division examination and who~~ has otherwise qualified hereunder as a professional engineer, shall have a certificate of registration issued to him or her as a professional engineer in the particular branch for which he or she is found qualified.

Section 6763.5 of the Business and Professions Code is amended to read:

If an applicant for ~~registration~~ licensure as a professional engineer, ~~or~~ certification as an engineer-in-training, or for authorization to use the title "structural engineer" or "soil engineer," is found by the board to lack the qualifications required for ~~admission to the examination for such registration licensure~~, certification, or authorization, the board may, in accordance with the provisions of Section 158 of this code, refund to him or her one-half of the amount of his or her application fee.

Section 7842 of the Business and Professions Code is amended to read:

(a) An applicant for certification in a specialty in geology shall meet all of the requirements of Section 7841 and, in addition, his or her seven years of professional geological work shall include one of the following:

~~(a)~~ (1) A minimum of three years performed under the supervision of a geologist certified in the specialty for which the applicant is seeking certification or under the supervision of a licensed civil engineer if the applicant is seeking certification as an engineering geologist, except that prior to July 1, 1970, professional geological work shall qualify under this subdivision if it is performed under the supervision of a geologist qualified in the specialty for which the applicant is seeking certification or under the supervision of a licensed civil engineer if the applicant is seeking certification as an engineering geologist.

~~(b)~~ (2) A minimum of five years' experience in responsible charge of professional geological work in the specialty for which the applicant is seeking certification.

(b) In addition to meeting the requirements of subdivision (a), an applicant for certification in a specialty of geology shall successfully pass a written examination in that specialty.

(c) An applicant for a certification of a specialty in geology shall be meet the requirements of subdivisions (a) and (b) and shall be licensed as a professional geologist prior to the issuance of the specialty certification.

Section 7843 of the Business and Professions Code is amended to read:

(a) An applicant for certification as a geologist-in-training shall, upon ~~making a passing grade in the National Association of State Boards of Geology's Fundamentals of Geology examination~~ meeting all of the requirements prescribed in Section 7841.2, be issued a certificate as a geologist-in-training. A renewal or other fee, other than the application fee, may not be charged for this certification. The certificate shall become invalid when the holder has qualified as a professional geologist as provided in Section 7841.

(b) A geologist-in-training certificate does not authorize the holder thereof to practice or offer to practice geology, in his or her own right, or to use the title specified in Section 7804.

(c) It is unlawful for anyone other than the holder of a valid geologist-in-training certificate issued under this chapter to use the title of "geologist-in-training" or any abbreviation of that title.

Section 7850 of the Business and Professions Code is amended to read:

Any applicant for licensure as a professional geologist, upon meeting all of the requirements prescribed in Section 7841 ~~who has passed the examination~~ and who has otherwise qualified hereunder as a geologist, upon payment of the registration fee fixed by this chapter shall have a certificate of registration issued to him or her as a professional geologist.

Section 7850.1 of the Business and Professions Code is amended to read:

Any applicant for licensure as a professional geologist, upon meeting all of the requirements prescribed in Section 7841.1 ~~who has passed the examination~~ and who has otherwise qualified hereunder as a geophysicist, upon payment of the registration fee fixed by this chapter shall have a certificate of registration issued to him or her as a professional geophysicist.

Section 7850.5 of the Business and Professions Code is amended to read:

An applicant for certification as a certified specialty geologist, upon meeting all of the requirements prescribed in Section 7842 ~~who has passed the examination for a certified specialty geologist~~ and who has otherwise qualified under this chapter in the specialty, upon payment of the fee fixed by this chapter shall have a certificate issued to him or her as a certified specialty geologist.

A certificate of certified specialty geologist shall be signed by the president and executive officer and issued under the seal of the board.

Section 8731 of the Business and Professions Code is amended to read:

A ~~registered~~ licensed civil engineer and a civil engineer exempt from ~~registration~~ licensure under Chapter 7 (commencing with Section 6700) of Division 3 are exempt from licensing under this chapter and may engage in the practice of land surveying with the same rights and privileges, and the same duties and responsibilities ~~of as~~ as a licensed land surveyor, provided that for civil engineers who become ~~registered~~ licensed after January 1, 1982, they shall ~~pass the second division examination provided for in Section 8741 and obtain a land surveyor's license as a land surveyor under the provisions of this chapter,~~ before practicing land surveying as defined in this chapter.

Section 8740 of the Business and Professions Code is amended to read:

(a) An application for certification as a land surveyor-in-training or ~~each division of the examination~~ for a license as a land surveyor shall be made to the board on the form prescribed by it, with all statements therein made under oath, and shall be accompanied by the fee fixed by this chapter.

(b) The board may authorize an organization specified by the board pursuant to Section 8745 to receive directly from applicants payment of the examination fees charged by that organization as payment for examination materials and services.

Section 8741 of the Business and Professions Code is amended to read:

~~(a) The first division of the examination shall test the applicant's fundamental knowledge of surveying, mathematics, and basic science. The board may prescribe by regulation reasonable educational or experience requirements including two years of postsecondary education in land surveying, two years of experience in land surveying, or a combination of postsecondary education and experience in land surveying totaling two years for admission to the first division of the examination. Applicants registered by the board as a California civil engineer are exempt from this division of the examination.~~

~~The second division of the examination shall test the applicant's ability to apply his or her knowledge and experience and to assume responsible charge in the professional practice of land surveying.~~

The applicant for certification as a land surveyor-in-training shall comply with all of the following:

(1) Not have committed acts or crimes constituting grounds for denial of licensure under Section 480.

(2) Successfully pass the first division of the examination.

(3) Satisfactorily complete two years or more of postsecondary education in land surveyor, two years or more of experience in land surveying, or a combination of postsecondary education and experience in land surveying totaling two years.

~~(b) The applicant for the second division examination shall have successfully passed the first division examination, or shall be exempt therefrom. The applicant shall be~~

The board need not verify the applicant's eligibility for certification as a land surveyor-in-training other than to require the applicant to sign a statement of eligibility on the application form.

(c) The board may prescribe by regulation reasonable educational or experience requirements to meet the requirements of subparagraph (3) of subdivision (a) of this section.

(d) The applicant for licensure as a professional land surveyor shall comply with all of the following:

(1) Not have committed acts or crimes constituting grounds for denial of licensure under Section 480.

(2) Furnish evidence that he or she meets the requirements of Section 8742.

(3) Be certified as a land surveyor-in-training in California, be certified as a land surveyor-in-training or surveyor intern in another state or territory of the United States, or be exempt therefrom. Applicants licensed by the board as a civil engineer are exempt from the requirement of this subparagraph.

(4) Be thoroughly familiar with (1) the procedure and rules governing the survey of public lands as set forth in Manual of Surveying Instructions (2009), published by the federal Bureau of Land Management and (2) the principles of real property relating to boundaries and conveyancing.

(5) Successfully pass the second division of the examination.

~~(c) The board may by rule provide for a waiver of the first division of the examination for applicants whose education and experience qualifications substantially exceed the requirements of Section 8742.~~

~~(d) The board may by rule provide for a waiver of the second division of the examination and the assignment to a special examination for those applicants whose educational qualifications are equal to, and whose experience qualifications substantially exceed, those qualifications established under subdivision (c). The special examination may be either written or oral, or a combination of both.~~

Section 8741.1 of the Business and Professions Code is amended to read:

(a) The first division of the examination shall test the applicant's fundamental knowledge of surveying, mathematics, and basic science.

(b) The second division of the examination shall test the applicant's ability to apply his or her knowledge and experience and to assume responsible charge in the professional practice of land surveying.

The second division of the examination ~~for licensure as a land surveyor~~ shall include an examination that incorporates a national examination for land surveying by a nationally recognized entity approved by the board, and a supplemental California specific examination. The California specific examination shall include as a separate part an examination to test the applicant's knowledge of the provisions of this chapter and the board's rules and regulations regulating the practice of professional land surveying in this state.

~~The board shall use the national examination on or before June 1, 2003. In the meantime, the board may continue to provide the current state only second division examination and administer the test on the provisions of this chapter and board rules as a separate part of the second division examination for licensure as a land surveyor.~~

(c) The board may by rule provide for a waiver of the first division of the examination for applicants whose education and experience qualifications substantially exceed the requirements of Section 8742.

(d) The board may by rule provide for a waiver of the second division of the examination and the assignment to a special examination for those applicants whose educational qualifications are equal to and whose experience qualifications substantially exceed those qualifications established under subdivision (c). The special examination may be either written or oral, or a combination of both.

Section 8742 of the Business and Professions Code is amended to read:

(a) The educational qualifications and experience in land surveying, which an applicant ~~for the second division examination a license as a land surveyor~~ shall possess, shall be not less than one of the following prescribed criteria:

(1) Graduation from a four-year curriculum with an emphasis in land surveying approved by the board or accredited by a national or regional accrediting agency recognized by the United States Office of Education at a postsecondary educational institution and two years of actual broad based progressive experience in land surveying, including one year of responsible field training and one year of responsible office training satisfactory to the board.

(2) Actual broad based progressive experience in land surveying for at least six years, including one year of responsible field training and one year of responsible office training satisfactory to the board.

(3) ~~Registration~~ Licensure as a civil engineer with two years of actual broad based progressive experience in land surveying satisfactory to the board.

(b) With respect to an applicant for a license as a land surveyor, the board shall count one year of postsecondary education in land surveying as one year of experience in land surveying up to a maximum of four years, provided the applicant has graduated from the course in land surveying and the curriculum in land surveying is approved by the board or is accredited by a regional or national accrediting agency recognized for the purpose by the United States Office of Education. Each year of study in an approved or an accredited course in land surveying without graduation shall be counted the same as one-half year of experience.

Each applicant claiming equivalent credit for education may be required to produce a complete transcript of all college level courses completed.

Until January 1, 2000, the board may, at its discretion, confer credit as experience in land surveying, not in excess of two years, for successfully passing the first division of the examination prescribed in Section 8741.

Section 8743 of the Business and Professions Code is amended to read:

The names and addresses of at least four land surveyors or civil engineers, duly qualified to practice in the place in which such practice has been conducted, each of whom has sufficient knowledge of the applicant to enable him or her to certify to the applicant's professional integrity, ability, and fitness to receive a license, shall be submitted with the application for ~~the second division of the examination~~ a license as a land surveyor.

Section 8744 of the Business and Professions Code is amended to read:

The applicant for ~~the second division of the examination~~ a license as a land surveyor shall state in his or her application that, should he or she be licensed, he or she will support the Constitution of this state and of the United States, and that he or she will faithfully discharge the duties of a licensed land surveyor.

Section 8747 of the Business and Professions Code is amended to read:

Any applicant who has ~~passed the examinations~~ met the requirements for certification or licensure prescribed by the board under this chapter shall have a suitable license issued to him or her.

(a) An applicant who has ~~passed the first division of the examination~~ met the requirements of subdivisions (a) and (b) of Section 8741 shall be issued a certificate as a land surveyor-in-training. No renewal or other fee, other than the application fee, shall be charged for this certification. This certificate shall become invalid upon the person ~~passing the second division of the examination~~ and being issued a license as a land surveyor, as provided in subdivision (b). A land surveyor-in-training certificate shall not authorize the holder thereof to practice or offer to practice land surveying. No person shall use the title of land surveyor-in-training, or any abbreviation of this title, unless he or she is the holder of a valid land surveyor-in-training certificate.

(b) An applicant who has ~~passed the second division of the examination~~ met the requirements of subdivision (d) of Section 8741 shall be issued a license as a land surveyor. The license shall authorize him or her to practice as a land surveyor.

Section 8748.5 of the Business and Professions Code is amended to read:

If an applicant for license as a land surveyor or certification as a land surveyor-in-training is found by the board to lack the qualifications required for ~~admission to the examination~~ for such license or certification, the board may, in accordance with the provisions of Section 158 of this code, refund to him or her one-half of the amount of his or her application fee.

2) Proposed Text – Examination on California Laws and Rules

Section 6795.2 is added to the Business and Professions Code to read:

At the time of renewal specified in Section 6795 or 6796, the certificate holder shall take and pass an examination that shall test the certificate holder's knowledge of the provisions of this chapter and the board's rules and regulations. Failure to take and pass this examination shall constitute a cause for disciplinary action under Section 6775.

Section 7881.5 is added to the Business and Professions Code to read:

At the time of renewal specified in Section 7880 or 7881, the certificate holder shall take and pass an examination that shall test the certificate holder's knowledge of the provisions of this chapter and the board's rules and regulations. Failure to take or pass this examination shall constitute a cause for disciplinary action under Section 7860.

Section 8801.1 is added to the Business and Professions Code to read:

At the time of renewal specified in Section 8801 or 8802, the license holder shall take and pass an examination that shall test the license holder's knowledge of the provisions of this chapter and the board's rules and regulations. Failure to take or pass this examination shall constitute a cause for disciplinary action under Section 8780.

Section 7841 of the Business and Professions Code is amended to read:

An applicant for licensure as a geologist shall have all the following qualifications:

(a) Not have committed any acts or crimes constituting grounds for denial of licensure under Section 480.

(b) Graduation from a college or university with a major in geological sciences or any other discipline that, in the opinion of the board, is relevant to geology.

(c) Have a documented record of a minimum of five years of professional geological experience of a character satisfactory to the board, demonstrating that the applicant is qualified to assume responsible charge of this work upon licensure as a geologist. This experience shall be gained under the supervision of a geologist or geophysicist licensed in this or any other state, or under the supervision of others who, in the opinion of the board, have the training and experience to have responsible charge of geological work. Professional geological work does not include routine sampling, laboratory work, or geological drafting.

Each year of undergraduate study in the geological sciences shall count as one-half year of training up to a maximum of two years, and each year of graduate study or research counts as a year of training.

Teaching in the geological sciences at college level shall be credited year for year toward meeting the requirement in this category, provided that the total teaching experience includes six semester units per semester, or equivalent if on the quarter system, of upper division or graduate courses.

Credit for undergraduate study, graduate study, and teaching, individually, or in any combination thereof, shall in no case exceed a total of three years towards meeting the requirement for at least five years of professional geological work as set forth above.

The ability of the applicant shall have been demonstrated by the applicant having performed the work in a responsible position, as the term "responsible position" is defined in

regulations adopted by the board. The adequacy of the required supervision and experience shall be determined by the board in accordance with standards set forth in regulations adopted by it.

(d) Successfully pass a written examination that incorporates a national examination for geologists created by a nationally recognized entity approved by the board, and a supplemental California specific examination. The California specific examination shall test the applicant's knowledge of state laws, rules and regulations, and of seismicity and geology unique to practice within this state. The board shall administer the test on the state laws and the board's rules and regulations as a separate part of the examination for licensure as a geologist.

Section 7841.1. Qualifications for registration as a geophysicist

An applicant for licensure as a geophysicist shall have all of the following qualifications. This section shall not apply to applicants for licensure as geologists.

(a) Not have committed any acts or crimes constituting grounds for denial of licensure under Section 480.

(b) Meet one of the following educational requirements fulfilled at a school or university whose curricula meet criteria established by rules of the board.

(1) Graduation with a major in a geophysical science or any other discipline that, in the opinion of the board, is relevant to geophysics.

(2) Completion of a combination of at least 30 semester hours, or the equivalent, in courses that, in the opinion of the board, are relevant to geophysics. At least 24 semester hours, or the equivalent, shall be in the third or fourth year, or graduate courses.

(c) Have at least seven years of professional geophysical work that shall include either a minimum of three years of professional geophysical work under the supervision of a professional geophysicist, except that prior to July 1, 1973, professional geophysical work shall qualify under this subdivision if it is under the supervision of a qualified geophysicist, or a minimum of five years' experience in responsible charge of professional geophysical work. Professional geophysical work does not include the routine maintenance or operation of geophysical instruments, or, even if carried out under the responsible supervision of a professional geophysicist, the routine reduction or plotting of geophysical observations.

Each year of undergraduate study in the geophysical sciences referred to in this section shall count as one-half year of training up to a maximum of two years, and each year of graduate study or research counts as a year of training.

Teaching in the geophysical sciences referred to in this section at a college level shall be credited year for year toward meeting the requirement in this category, provided that the total teaching experience includes six semester units per semester, or equivalent if on the quarter system, of third or fourth year or graduate courses.

Credit for undergraduate study, graduate study, and teaching, individually, or in any combination thereof, shall in no case exceed a total of four years towards meeting the requirements for at least seven years of professional geophysical work as set forth above.

The ability of the applicant shall have been demonstrated by his or her having performed the work in a responsible position, as the term "responsible position" is defined in regulations adopted by the board. The adequacy of the required supervision and experience shall be determined by the board in accordance with standards set forth in regulations adopted by it.

(d) Successfully pass a written examination that shall test the applicant's knowledge of state laws, rules, and regulations, and of the principles and practices of geophysics within this state.

The board shall administer the test on the state laws and the board's rules and regulations as a separate part of the examination for licensure as a geophysicist.

3) Proposed Text – Separate Renewal and Application Fees

Section 6799 of the Business and Professions Code is amended to read:

(a) The amount of the fees prescribed by this chapter shall be fixed by the board in accordance with the following schedule:

(1) The fee for filing each application for licensure as a professional engineer and each application for authority level designation at not more than four hundred dollars (\$400) and for each application for certification as an engineer-in-training at not more than one hundred dollars (\$100).

(2) The fee to take an examination administered by a public or private organization pursuant to Section 6754 shall be no greater than the actual cost of the development and administration of the examination and may be paid directly to the organization by the applicant.

(3) The renewal fee for each branch of professional engineering in which licensure is held, and the renewal fee for each authority level designation held, at no more than ~~the professional engineer application fee currently in effect~~ four hundred dollars (\$400).

(4) The fee for a retired license at not more than 50 percent of the professional engineer application fee in effect on the date of application.

(5) The delinquency fee at not more than 50 percent of the renewal fee in effect on the date of reinstatement.

(6) The board shall establish by regulation an appeal fee for examination. The regulation shall include provisions for an applicant to be reimbursed the appeal fee if the appeal results in passage of examination. The fee charged shall be no more than the costs incurred by the board.

(7) All other document fees are to be set by the board by rule.

(b) Applicants wishing to be examined in more than one branch of engineering shall be required to pay the additional fee for each examination after the first.

Section 8805 of the Business and Professions Code is amended to read:

The amount of the fees prescribed by this chapter shall be fixed by the board in accordance with the following schedule:

(a) The fee for filing each application for licensure as a land surveyor at not more than four hundred dollars (\$400) and for each application for certification as a land surveyor-in-training (LSIT) at not more than one hundred dollars (\$100).

(b) The fees to take an examination administered by a public or private organization pursuant to Section 8745 shall be no greater than the actual cost of the development and administration of the examination and may be paid directly to the organization by the applicant.

(c) The renewal fee for a land surveyor at not more than ~~the application fee~~ four hundred dollars (\$400).

(d) The fee for a retired license at not more than 50 percent of the professional land surveyor application fee in effect on the date of application.

(e) The delinquency fee at not more than 50 percent of the renewal fee in effect on the date of reinstatement.

(f) The board shall establish by regulation an appeal fee for examination. The regulation shall include provisions for an applicant to be reimbursed the appeal fee if the appeal results in passage of examination. The fee shall be no more than the costs incurred by the board.

(g) All other document fees are to be set by the board by rule.

4) Proposed Text – PG-PGp Sign & Seal

Section 7835 of the Business and Professions Code is amended to read:

All geologic plans, specifications, reports, or documents shall be prepared by a professional geologist or ~~registered~~ licensed certified specialty geologist, or by a subordinate employee under his or her direction. In addition, they shall be signed by the professional geologist or ~~registered~~ licensed certified specialty geologist ~~or~~ and stamped with his or her seal, ~~either~~ both of which shall indicate his or her responsibility for them.

Section 7835.1 of the Business and Professions Code is amended to read:

All geophysical plans, specifications, reports, or documents shall be prepared by a professional geophysicist, registered certified specialty geophysicist, professional geologist, registered certified specialty geologist, or by a subordinate employee under his or her direction. In addition, they shall be signed by the professional geophysicist, registered certified specialty geophysicist, professional geologist, or registered certified specialty geologist, ~~or~~ and stamped with his or her seal, ~~either~~ both of which shall indicate his or her responsibility for them.

Section 7852 of the Business and Professions Code is amended to read:

(a) Each geologist ~~registered~~ licensed under this chapter ~~may~~ shall, upon ~~registration~~ licensure, obtain a seal of the design authorized by the board bearing the ~~registrant's~~ licensee's name, number of his or her certificate, and the legend "professional geologist."

(b) Each specialty geologist certified under this chapter ~~may~~ shall, upon certification, obtain a seal of the design authorized by the board bearing the ~~registrant's~~ licensee's name, number of his or her certificate, and the legend of the appropriate specialty in geology in which he or she is certified under this chapter.

Section 7852.1 of the Business and Professions Code is amended to read:

(a) Each geophysicist ~~registered~~ licensed under this chapter ~~may~~ shall, upon ~~registration~~ licensure, obtain a seal of the design authorized by the board bearing the ~~registrant's~~ licensee's name, number of his or her certificate, and the legend "professional geophysicist."

(b) Each specialty geophysicist certified under this chapter ~~may~~ shall, upon certification, obtain a seal of the design authorized by the board bearing the ~~registrant's~~ licensee's name, number of his or her certificate, and the legend of the appropriate specialty in geophysics in which he or she is certified under this chapter.

5) Proposed Text – Geology Examination Contract

Section 7844 of the Business and Professions Code is amended to read:

Examinations for ~~registration~~ licensure shall be held at the times and places within the state as the board shall determine. The scope of examinations and the methods of procedure may be prescribed by rule of the board.

The board may make arrangements with a public or private organization to conduct the examination. The board may contract with a public or private organization for materials or services related to the examination.

IV. Consideration of Rulemaking Proposals

- V. Presentation Regarding North Carolina Board of Dental Examiners v. Federal Trade Commission (113 S.Ct. 1101 (2015)) and California Attorney General Opinion 15-402
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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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**NORTH CAROLINA STATE BOARD OF DENTAL
EXAMINERS *v.* FEDERAL TRADE COMMISSION****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT**

No. 13–534. Argued October 14, 2014—Decided February 25, 2015

North Carolina’s Dental Practice Act (Act) provides that the North Carolina State Board of Dental Examiners (Board) is “the agency of the State for the regulation of the practice of dentistry.” The Board’s principal duty is to create, administer, and enforce a licensing system for dentists; and six of its eight members must be licensed, practicing dentists.

The Act does not specify that teeth whitening is “the practice of dentistry.” Nonetheless, after dentists complained to the Board that nondentists were charging lower prices for such services than dentists did, the Board issued at least 47 official cease-and-desist letters to nondentist teeth whitening service providers and product manufacturers, often warning that the unlicensed practice of dentistry is a crime. This and other related Board actions led nondentists to cease offering teeth whitening services in North Carolina.

The Federal Trade Commission (FTC) filed an administrative complaint, alleging that the Board’s concerted action to exclude nondentists from the market for teeth whitening services in North Carolina constituted an anticompetitive and unfair method of competition under the Federal Trade Commission Act. An Administrative Law Judge (ALJ) denied the Board’s motion to dismiss on the ground of state-action immunity. The FTC sustained that ruling, reasoning that even if the Board had acted pursuant to a clearly articulated state policy to displace competition, the Board must be actively supervised by the State to claim immunity, which it was not. After a hearing on the merits, the ALJ determined that the Board had unreasonably restrained trade in violation of antitrust law. The FTC again sustained the ALJ, and the Fourth Circuit affirmed the FTC in

all respects.

Held: Because a controlling number of the Board’s decisionmakers are active market participants in the occupation the Board regulates, the Board can invoke state-action antitrust immunity only if it was subject to active supervision by the State, and here that requirement is not met. Pp. 5–18.

(a) Federal antitrust law is a central safeguard for the Nation’s free market structures. However, requiring States to conform to the mandates of the Sherman Act at the expense of other values a State may deem fundamental would impose an impermissible burden on the States’ power to regulate. Therefore, beginning with *Parker v. Brown*, 317 U. S. 341, this Court interpreted the antitrust laws to confer immunity on the anticompetitive conduct of States acting in their sovereign capacity. Pp. 5–6.

(b) The Board’s actions are not cloaked with *Parker* immunity. A nonsovereign actor controlled by active market participants—such as the Board—enjoys *Parker* immunity only if “the challenged restraint . . . [is] clearly articulated and affirmatively expressed as state policy,’ and . . . ‘the policy . . . [is] actively supervised by the State.’” *FTC v. Phoebe Putney Health System, Inc.*, 568 U. S. ___, ___ (quoting *California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, 445 U. S. 97, 105). Here, the Board did not receive active supervision of its anticompetitive conduct. Pp. 6–17.

(1) An entity may not invoke *Parker* immunity unless its actions are an exercise of the State’s sovereign power. See *Columbia v. Omni Outdoor Advertising, Inc.*, 499 U. S. 365, 374. Thus, where a State delegates control over a market to a nonsovereign actor the Sherman Act confers immunity only if the State accepts political accountability for the anticompetitive conduct it permits and controls. Limits on state-action immunity are most essential when a State seeks to delegate its regulatory power to active market participants, for dual allegiances are not always apparent to an actor and prohibitions against anticompetitive self-regulation by active market participants are an axiom of federal antitrust policy. Accordingly, *Parker* immunity requires that the anticompetitive conduct of nonsovereign actors, especially those authorized by the State to regulate their own profession, result from procedures that suffice to make it the State’s own. *Midcal*’s two-part test provides a proper analytical framework to resolve the ultimate question whether an anticompetitive policy is indeed the policy of a State. The first requirement—clear articulation—rarely will achieve that goal by itself, for entities purporting to act under state authority might diverge from the State’s considered definition of the public good and engage in private self-dealing. The second *Midcal* requirement—active supervision—seeks to avoid this

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harm by requiring the State to review and approve interstitial policies made by the entity claiming immunity. Pp. 6–10.

(2) There are instances in which an actor can be excused from *Midcal*'s active supervision requirement. Municipalities, which are electorally accountable, have general regulatory powers, and have no private price-fixing agenda, are subject exclusively to the clear articulation requirement. See *Hallie v. Eau Claire*, 471 U. S. 34, 35. That *Hallie* excused municipalities from *Midcal*'s supervision rule for these reasons, however, all but confirms the rule's applicability to actors controlled by active market participants. Further, in light of *Omni*'s holding that an otherwise immune entity will not lose immunity based on ad hoc and *ex post* questioning of its motives for making particular decisions, 499 U. S., at 374, it is all the more necessary to ensure the conditions for granting immunity are met in the first place, see *FTC v. Ticor Title Ins. Co.*, 504 U. S. 621, 633, and *Phoebe Putney, supra*, at _____. The clear lesson of precedent is that *Midcal*'s active supervision test is an essential prerequisite of *Parker* immunity for any nonsovereign entity—public or private—controlled by active market participants. Pp. 10–12.

(3) The Board's argument that entities designated by the States as agencies are exempt from *Midcal*'s second requirement cannot be reconciled with the Court's repeated conclusion that the need for supervision turns not on the formal designation given by States to regulators but on the risk that active market participants will pursue private interests in restraining trade. State agencies controlled by active market participants pose the very risk of self-dealing *Midcal*'s supervision requirement was created to address. See *Goldfarb v. Virginia State Bar*, 421 U. S. 773, 791. This conclusion does not question the good faith of state officers but rather is an assessment of the structural risk of market participants' confusing their own interests with the State's policy goals. While *Hallie* stated "it is likely that active state supervision would also not be required" for agencies, 471 U. S., at 46, n. 10, the entity there was more like prototypical state agencies, not specialized boards dominated by active market participants. The latter are similar to private trade associations vested by States with regulatory authority, which must satisfy *Midcal*'s active supervision standard. 445 U. S., at 105–106. The similarities between agencies controlled by active market participants and such associations are not eliminated simply because the former are given a formal designation by the State, vested with a measure of government power, and required to follow some procedural rules. See *Hallie, supra*, at 39. When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest. Thus,

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the Court holds today that a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal's* active supervision requirement in order to invoke state-action antitrust immunity. Pp. 12–14.

(4) The State argues that allowing this FTC order to stand will discourage dedicated citizens from serving on state agencies that regulate their own occupation. But this holding is not inconsistent with the idea that those who pursue a calling must embrace ethical standards that derive from a duty separate from the dictates of the State. Further, this case does not offer occasion to address the question whether agency officials, including board members, may, under some circumstances, enjoy immunity from damages liability. Of course, States may provide for the defense and indemnification of agency members in the event of litigation, and they can also ensure *Parker* immunity is available by adopting clear policies to displace competition and providing active supervision. Arguments against the wisdom of applying the antitrust laws to professional regulation absent compliance with the prerequisites for invoking *Parker* immunity must be rejected, see *Patrick v. Burget*, 486 U. S. 94, 105–106, particularly in light of the risks licensing boards dominated by market participants may pose to the free market. Pp. 14–16.

(5) The Board does not contend in this Court that its anticompetitive conduct was actively supervised by the State or that it should receive *Parker* immunity on that basis. The Act delegates control over the practice of dentistry to the Board, but says nothing about teeth whitening. In acting to expel the dentists' competitors from the market, the Board relied on cease-and-desist letters threatening criminal liability, instead of other powers at its disposal that would have invoked oversight by a politically accountable official. Whether or not the Board exceeded its powers under North Carolina law, there is no evidence of any decision by the State to initiate or concur with the Board's actions against the nondentists. P. 17.

(c) Here, where there are no specific supervisory systems to be reviewed, it suffices to note that the inquiry regarding active supervision is flexible and context-dependent. The question is whether the State's review mechanisms provide "realistic assurance" that a non-sovereign actor's anticompetitive conduct "promotes state policy, rather than merely the party's individual interests." *Patrick*, 486 U. S., 100–101. The Court has identified only a few constant requirements of active supervision: The supervisor must review the substance of the anticompetitive decision, see *id.*, at 102–103; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy, see *ibid.*; and the "mere potential for state

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supervision is not an adequate substitute for a decision by the State,” *Ticor, supra*, at 638. Further, the state supervisor may not itself be an active market participant. In general, however, the adequacy of supervision otherwise will depend on all the circumstances of a case. Pp. 17–18.

717 F. 3d 359, affirmed.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed a dissenting opinion, in which SCALIA and THOMAS, JJ., joined.

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 13–534

**NORTH CAROLINA STATE BOARD OF DENTAL
EXAMINERS, PETITIONER *v.* FEDERAL
TRADE COMMISSION****ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT**

[February 25, 2015]

JUSTICE KENNEDY delivered the opinion of the Court.

This case arises from an antitrust challenge to the actions of a state regulatory board. A majority of the board’s members are engaged in the active practice of the profession it regulates. The question is whether the board’s actions are protected from Sherman Act regulation under the doctrine of state-action antitrust immunity, as defined and applied in this Court’s decisions beginning with *Parker v. Brown*, 317 U. S. 341 (1943).

**I
A**

In its Dental Practice Act (Act), North Carolina has declared the practice of dentistry to be a matter of public concern requiring regulation. N. C. Gen. Stat. Ann. §90–22(a) (2013). Under the Act, the North Carolina State Board of Dental Examiners (Board) is “the agency of the State for the regulation of the practice of dentistry.” §90–22(b).

The Board’s principal duty is to create, administer, and enforce a licensing system for dentists. See §§90–29 to

90–41. To perform that function it has broad authority over licensees. See §90–41. The Board’s authority with respect to unlicensed persons, however, is more restricted: like “any resident citizen,” the Board may file suit to “perpetually enjoin any person from . . . unlawfully practicing dentistry.” §90–40.1.

The Act provides that six of the Board’s eight members must be licensed dentists engaged in the active practice of dentistry. §90–22. They are elected by other licensed dentists in North Carolina, who cast their ballots in elections conducted by the Board. *Ibid.* The seventh member must be a licensed and practicing dental hygienist, and he or she is elected by other licensed hygienists. *Ibid.* The final member is referred to by the Act as a “consumer” and is appointed by the Governor. *Ibid.* All members serve 3-year terms, and no person may serve more than two consecutive terms. *Ibid.* The Act does not create any mechanism for the removal of an elected member of the Board by a public official. See *ibid.*

Board members swear an oath of office, §138A–22(a), and the Board must comply with the State’s Administrative Procedure Act, §150B–1 *et seq.*, Public Records Act, §132–1 *et seq.*, and open-meetings law, §143–318.9 *et seq.* The Board may promulgate rules and regulations governing the practice of dentistry within the State, provided those mandates are not inconsistent with the Act and are approved by the North Carolina Rules Review Commission, whose members are appointed by the state legislature. See §§90–48, 143B–30.1, 150B–21.9(a).

B

In the 1990’s, dentists in North Carolina started whitening teeth. Many of those who did so, including 8 of the Board’s 10 members during the period at issue in this case, earned substantial fees for that service. By 2003, nondentists arrived on the scene. They charged lower

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prices for their services than the dentists did. Dentists soon began to complain to the Board about their new competitors. Few complaints warned of possible harm to consumers. Most expressed a principal concern with the low prices charged by nondentists.

Responding to these filings, the Board opened an investigation into nondentist teeth whitening. A dentist member was placed in charge of the inquiry. Neither the Board's hygienist member nor its consumer member participated in this undertaking. The Board's chief operations officer remarked that the Board was "going forth to do battle" with nondentists. App. to Pet. for Cert. 103a. The Board's concern did not result in a formal rule or regulation reviewable by the independent Rules Review Commission, even though the Act does not, by its terms, specify that teeth whitening is "the practice of dentistry."

Starting in 2006, the Board issued at least 47 cease-and-desist letters on its official letterhead to nondentist teeth whitening service providers and product manufacturers. Many of those letters directed the recipient to cease "all activity constituting the practice of dentistry"; warned that the unlicensed practice of dentistry is a crime; and strongly implied (or expressly stated) that teeth whitening constitutes "the practice of dentistry." App. 13, 15. In early 2007, the Board persuaded the North Carolina Board of Cosmetic Art Examiners to warn cosmetologists against providing teeth whitening services. Later that year, the Board sent letters to mall operators, stating that kiosk teeth whiteners were violating the Dental Practice Act and advising that the malls consider expelling violators from their premises.

These actions had the intended result. Nondentists ceased offering teeth whitening services in North Carolina.

C

In 2010, the Federal Trade Commission (FTC) filed an

administrative complaint charging the Board with violating §5 of the Federal Trade Commission Act, 38 Stat. 719, as amended, 15 U. S. C. §45. The FTC alleged that the Board's concerted action to exclude nondentists from the market for teeth whitening services in North Carolina constituted an anticompetitive and unfair method of competition. The Board moved to dismiss, alleging state-action immunity. An Administrative Law Judge (ALJ) denied the motion. On appeal, the FTC sustained the ALJ's ruling. It reasoned that, even assuming the Board had acted pursuant to a clearly articulated state policy to displace competition, the Board is a "public/private hybrid" that must be actively supervised by the State to claim immunity. App. to Pet. for Cert. 49a. The FTC further concluded the Board could not make that showing.

Following other proceedings not relevant here, the ALJ conducted a hearing on the merits and determined the Board had unreasonably restrained trade in violation of antitrust law. On appeal, the FTC again sustained the ALJ. The FTC rejected the Board's public safety justification, noting, *inter alia*, "a wealth of evidence . . . suggesting that non-dentist provided teeth whitening is a safe cosmetic procedure." *Id.*, at 123a.

The FTC ordered the Board to stop sending the cease-and-desist letters or other communications that stated nondentists may not offer teeth whitening services and products. It further ordered the Board to issue notices to all earlier recipients of the Board's cease-and-desist orders advising them of the Board's proper sphere of authority and saying, among other options, that the notice recipients had a right to seek declaratory rulings in state court.

On petition for review, the Court of Appeals for the Fourth Circuit affirmed the FTC in all respects. 717 F. 3d 359, 370 (2013). This Court granted certiorari. 571 U. S. ____ (2014).

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II

Federal antitrust law is a central safeguard for the Nation’s free market structures. In this regard it is “as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms.” *United States v. Topco Associates, Inc.*, 405 U. S. 596, 610 (1972). The antitrust laws declare a considered and decisive prohibition by the Federal Government of cartels, price fixing, and other combinations or practices that undermine the free market.

The Sherman Act, 26 Stat. 209, as amended, 15 U. S. C. §1 *et seq.*, serves to promote robust competition, which in turn empowers the States and provides their citizens with opportunities to pursue their own and the public’s welfare. See *FTC v. Ticor Title Ins. Co.*, 504 U. S. 621, 632 (1992). The States, however, when acting in their respective realm, need not adhere in all contexts to a model of unfettered competition. While “the States regulate their economies in many ways not inconsistent with the antitrust laws,” *id.*, at 635–636, in some spheres they impose restrictions on occupations, confer exclusive or shared rights to dominate a market, or otherwise limit competition to achieve public objectives. If every duly enacted state law or policy were required to conform to the mandates of the Sherman Act, thus promoting competition at the expense of other values a State may deem fundamental, federal antitrust law would impose an impermissible burden on the States’ power to regulate. See *Exxon Corp. v. Governor of Maryland*, 437 U. S. 117, 133 (1978); see also Easterbrook, *Antitrust and the Economics of Federalism*, 26 J. Law & Econ. 23, 24 (1983).

For these reasons, the Court in *Parker v. Brown* interpreted the antitrust laws to confer immunity on anticompetitive conduct by the States when acting in their sovereign capacity. See 317 U. S., at 350–351. That ruling

recognized Congress' purpose to respect the federal balance and to "embody in the Sherman Act the federalism principle that the States possess a significant measure of sovereignty under our Constitution." *Community Communications Co. v. Boulder*, 455 U. S. 40, 53 (1982). Since 1943, the Court has reaffirmed the importance of *Parker's* central holding. See, e.g., *Ticor, supra*, at 632–637; *Hoover v. Ronwin*, 466 U. S. 558, 568 (1984); *Lafayette v. Louisiana Power & Light Co.*, 435 U. S. 389, 394–400 (1978).

III

In this case the Board argues its members were invested by North Carolina with the power of the State and that, as a result, the Board's actions are cloaked with *Parker* immunity. This argument fails, however. A nonsovereign actor controlled by active market participants—such as the Board—enjoys *Parker* immunity only if it satisfies two requirements: "first that 'the challenged restraint . . . be one clearly articulated and affirmatively expressed as state policy,' and second that 'the policy . . . be actively supervised by the State.'" *FTC v. Phoebe Putney Health System, Inc.*, 568 U. S. ___, ___ (2013) (slip op., at 7) (quoting *California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, 445 U. S. 97, 105 (1980)). The parties have assumed that the clear articulation requirement is satisfied, and we do the same. While North Carolina prohibits the unauthorized practice of dentistry, however, its Act is silent on whether that broad prohibition covers teeth whitening. Here, the Board did not receive active supervision by the State when it interpreted the Act as addressing teeth whitening and when it enforced that policy by issuing cease-and-desist letters to nondentist teeth whiteners.

A

Although state-action immunity exists to avoid conflicts

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between state sovereignty and the Nation's commitment to a policy of robust competition, *Parker* immunity is not unbounded. "[G]iven the fundamental national values of free enterprise and economic competition that are embodied in the federal antitrust laws, 'state action immunity is disfavored, much as are repeals by implication.'" *Phoebe Putney, supra*, at ____ (slip op., at 7) (quoting *Ticor, supra*, at 636).

An entity may not invoke *Parker* immunity unless the actions in question are an exercise of the State's sovereign power. See *Columbia v. Omni Outdoor Advertising, Inc.*, 499 U. S. 365, 374 (1991). State legislation and "decision[s] of a state supreme court, acting legislatively rather than judicially," will satisfy this standard, and "*ipso facto* are exempt from the operation of the antitrust laws" because they are an undoubted exercise of state sovereign authority. *Hoover, supra*, at 567–568.

But while the Sherman Act confers immunity on the States' own anticompetitive policies out of respect for federalism, it does not always confer immunity where, as here, a State delegates control over a market to a non-sovereign actor. See *Parker, supra*, at 351 ("[A] state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful"). For purposes of *Parker*, a nonsovereign actor is one whose conduct does not automatically qualify as that of the sovereign State itself. See *Hoover, supra*, at 567–568. State agencies are not simply by their governmental character sovereign actors for purposes of state-action immunity. See *Goldfarb v. Virginia State Bar*, 421 U. S. 773, 791 (1975) ("The fact that the State Bar is a state agency for some limited purposes does not create an antitrust shield that allows it to foster anticompetitive practices for the benefit of its members"). Immunity for state agencies, therefore, requires more than a mere facade of state involvement, for it is necessary in light of

Parker's rationale to ensure the States accept political accountability for anticompetitive conduct they permit and control. See *Ticor*, 504 U. S., at 636.

Limits on state-action immunity are most essential when the State seeks to delegate its regulatory power to active market participants, for established ethical standards may blend with private anticompetitive motives in a way difficult even for market participants to discern. Dual allegiances are not always apparent to an actor. In consequence, active market participants cannot be allowed to regulate their own markets free from antitrust accountability. See *Midcal*, *supra*, at 106 (“The national policy in favor of competition cannot be thwarted by casting [a] gauzy cloak of state involvement over what is essentially a private price-fixing arrangement”). Indeed, prohibitions against anticompetitive self-regulation by active market participants are an axiom of federal antitrust policy. See, e.g., *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U. S. 492, 501 (1988); *Hoover*, *supra*, at 584 (Stevens, J., dissenting) (“The risk that private regulation of market entry, prices, or output may be designed to confer monopoly profits on members of an industry at the expense of the consuming public has been the central concern of . . . our antitrust jurisprudence”); see also Elhauge, *The Scope of Antitrust Process*, 104 Harv. L. Rev. 667, 672 (1991). So it follows that, under *Parker* and the Supremacy Clause, the States’ greater power to attain an end does not include the lesser power to negate the congressional judgment embodied in the Sherman Act through unsupervised delegations to active market participants. See Garland, *Antitrust and State Action: Economic Efficiency and the Political Process*, 96 Yale L. J. 486, 500 (1986).

Parker immunity requires that the anticompetitive conduct of nonsovereign actors, especially those authorized by the State to regulate their own profession, result from procedures that suffice to make it the State’s own.

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See *Goldfarb, supra*, at 790; see also 1A P. Areeda & H. Hovencamp, *Antitrust Law* ¶226, p. 180 (4th ed. 2013) (Areeda & Hovencamp). The question is not whether the challenged conduct is efficient, well-functioning, or wise. See *Ticor, supra*, at 634–635. Rather, it is “whether anti-competitive conduct engaged in by [nonsovereign actors] should be deemed state action and thus shielded from the antitrust laws.” *Patrick v. Burget*, 486 U. S. 94, 100 (1988).

To answer this question, the Court applies the two-part test set forth in *California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, 445 U. S. 97, a case arising from California’s delegation of price-fixing authority to wine merchants. Under *Midcal*, “[a] state law or regulatory scheme cannot be the basis for antitrust immunity unless, first, the State has articulated a clear policy to allow the anticompetitive conduct, and second, the State provides active supervision of [the] anticompetitive conduct.” *Ticor, supra*, at 631 (citing *Midcal, supra*, at 105).

Midcal’s clear articulation requirement is satisfied “where the displacement of competition [is] the inherent, logical, or ordinary result of the exercise of authority delegated by the state legislature. In that scenario, the State must have foreseen and implicitly endorsed the anticompetitive effects as consistent with its policy goals.” *Phoebe Putney*, 568 U. S., at ____ (slip op., at 11). The active supervision requirement demands, *inter alia*, “that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy.” *Patrick, supra*, U. S., at 101.

The two requirements set forth in *Midcal* provide a proper analytical framework to resolve the ultimate question whether an anticompetitive policy is indeed the policy of a State. The first requirement—clear articulation—rarely will achieve that goal by itself, for a policy may

satisfy this test yet still be defined at so high a level of generality as to leave open critical questions about how and to what extent the market should be regulated. See *Ticor, supra*, at 636–637. Entities purporting to act under state authority might diverge from the State’s considered definition of the public good. The resulting asymmetry between a state policy and its implementation can invite private self-dealing. The second *Midcal* requirement—active supervision—seeks to avoid this harm by requiring the State to review and approve interstitial policies made by the entity claiming immunity.

Midcal’s supervision rule “stems from the recognition that ‘[w]here a private party is engaging in anticompetitive activity, there is a real danger that he is acting to further his own interests, rather than the governmental interests of the State.’” *Patrick, supra*, at 100. Concern about the private incentives of active market participants animates *Midcal*’s supervision mandate, which demands “realistic assurance that a private party’s anticompetitive conduct promotes state policy, rather than merely the party’s individual interests.” *Patrick, supra*, at 101.

B

In determining whether anticompetitive policies and conduct are indeed the action of a State in its sovereign capacity, there are instances in which an actor can be excused from *Midcal*’s active supervision requirement. In *Hallie v. Eau Claire*, 471 U. S. 34, 45 (1985), the Court held municipalities are subject exclusively to *Midcal*’s “‘clear articulation’” requirement. That rule, the Court observed, is consistent with the objective of ensuring that the policy at issue be one enacted by the State itself. *Hallie* explained that “[w]here the actor is a municipality, there is little or no danger that it is involved in a private price-fixing arrangement. The only real danger is that it will seek to further purely parochial public interests at the

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expense of more overriding state goals.” 471 U. S., at 47. *Hallie* further observed that municipalities are electorally accountable and lack the kind of private incentives characteristic of active participants in the market. See *id.*, at 45, n. 9. Critically, the municipality in *Hallie* exercised a wide range of governmental powers across different economic spheres, substantially reducing the risk that it would pursue private interests while regulating any single field. See *ibid.* That *Hallie* excused municipalities from *Midcal*’s supervision rule for these reasons all but confirms the rule’s applicability to actors controlled by active market participants, who ordinarily have none of the features justifying the narrow exception *Hallie* identified. See 471 U. S., at 45.

Following *Goldfarb*, *Midcal*, and *Hallie*, which clarified the conditions under which *Parker* immunity attaches to the conduct of a nonsovereign actor, the Court in *Columbia v. Omni Outdoor Advertising, Inc.*, 499 U. S. 365, addressed whether an otherwise immune entity could lose immunity for conspiring with private parties. In *Omni*, an aspiring billboard merchant argued that the city of Columbia, South Carolina, had violated the Sherman Act—and forfeited its *Parker* immunity—by anticompetitively conspiring with an established local company in passing an ordinance restricting new billboard construction. 499 U. S., at 367–368. The Court disagreed, holding there is no “conspiracy exception” to *Parker*. *Omni, supra*, at 374.

Omni, like the cases before it, recognized the importance of drawing a line “relevant to the purposes of the Sherman Act and of *Parker*: prohibiting the restriction of competition for private gain but permitting the restriction of competition in the public interest.” 499 U. S., at 378. In the context of a municipal actor which, as in *Hallie*, exercised substantial governmental powers, *Omni* rejected a conspiracy exception for “corruption” as vague and unworkable, since “virtually all regulation benefits some

segments of the society and harms others” and may in that sense be seen as “‘corrupt.’” 499 U. S., at 377. *Omni* also rejected subjective tests for corruption that would force a “deconstruction of the governmental process and probing of the official ‘intent’ that we have consistently sought to avoid.” *Ibid.* Thus, whereas the cases preceding it addressed the preconditions of *Parker* immunity and engaged in an objective, *ex ante* inquiry into nonsovereign actors’ structure and incentives, *Omni* made clear that recipients of immunity will not lose it on the basis of ad hoc and *ex post* questioning of their motives for making particular decisions.

Omni’s holding makes it all the more necessary to ensure the conditions for granting immunity are met in the first place. The Court’s two state-action immunity cases decided after *Omni* reinforce this point. In *Ticor* the Court affirmed that *Midcal*’s limits on delegation must ensure that “[a]ctual state involvement, not deference to private price-fixing arrangements under the general auspices of state law, is the precondition for immunity from federal law.” 504 U. S., at 633. And in *Phoebe Putney* the Court observed that *Midcal*’s active supervision requirement, in particular, is an essential condition of state-action immunity when a nonsovereign actor has “an incentive to pursue [its] own self-interest under the guise of implementing state policies.” 568 U. S., at ____ (slip op., at 8) (quoting *Hallie*, *supra*, at 46–47). The lesson is clear: *Midcal*’s active supervision test is an essential prerequisite of *Parker* immunity for any nonsovereign entity—public or private—controlled by active market participants.

C

The Board argues entities designated by the States as agencies are exempt from *Midcal*’s second requirement. That premise, however, cannot be reconciled with the Court’s repeated conclusion that the need for supervision

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turns not on the formal designation given by States to regulators but on the risk that active market participants will pursue private interests in restraining trade.

State agencies controlled by active market participants, who possess singularly strong private interests, pose the very risk of self-dealing *Midcal*'s supervision requirement was created to address. See *Areeda & Hovenkamp* ¶227, at 226. This conclusion does not question the good faith of state officers but rather is an assessment of the structural risk of market participants' confusing their own interests with the State's policy goals. See *Patrick*, 486 U. S., at 100–101.

The Court applied this reasoning to a state agency in *Goldfarb*. There the Court denied immunity to a state agency (the Virginia State Bar) controlled by market participants (lawyers) because the agency had “joined in what is essentially a private anticompetitive activity” for “the benefit of its members.” 421 U. S., at 791, 792. This emphasis on the Bar's private interests explains why *Goldfarb*, though it predates *Midcal*, considered the lack of supervision by the Virginia Supreme Court to be a principal reason for denying immunity. See 421 U. S., at 791; see also *Hoover*, 466 U. S., at 569 (emphasizing lack of active supervision in *Goldfarb*); *Bates v. State Bar of Ariz.*, 433 U. S. 350, 361–362 (1977) (granting the Arizona Bar state-action immunity partly because its “rules are subject to pointed re-examination by the policymaker”).

While *Hallie* stated “it is likely that active state supervision would also not be required” for agencies, 471 U. S., at 46, n. 10, the entity there, as was later the case in *Omni*, was an electorally accountable municipality with general regulatory powers and no private price-fixing agenda. In that and other respects the municipality was more like prototypical state agencies, not specialized boards dominated by active market participants. In important regards, agencies controlled by market partici-

pants are more similar to private trade associations vested by States with regulatory authority than to the agencies *Hallie* considered. And as the Court observed three years after *Hallie*, “[t]here is no doubt that the members of such associations often have economic incentives to restrain competition and that the product standards set by such associations have a serious potential for anticompetitive harm.” *Allied Tube*, 486 U. S., at 500. For that reason, those associations must satisfy *Midcal*’s active supervision standard. See *Midcal*, 445 U. S., at 105–106.

The similarities between agencies controlled by active market participants and private trade associations are not eliminated simply because the former are given a formal designation by the State, vested with a measure of government power, and required to follow some procedural rules. See *Hallie*, *supra*, at 39 (rejecting “purely formalistic” analysis). *Parker* immunity does not derive from nomenclature alone. When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest. See *Areeda & Hovenkamp* ¶227, at 226. The Court holds today that a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal*’s active supervision requirement in order to invoke state-action antitrust immunity.

D

The State argues that allowing this FTC order to stand will discourage dedicated citizens from serving on state agencies that regulate their own occupation. If this were so—and, for reasons to be noted, it need not be so—there would be some cause for concern. The States have a sovereign interest in structuring their governments, see *Gregory v. Ashcroft*, 501 U. S. 452, 460 (1991), and may conclude there are substantial benefits to staffing their

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agencies with experts in complex and technical subjects, see *Southern Motor Carriers Rate Conference, Inc. v. United States*, 471 U. S. 48, 64 (1985). There is, moreover, a long tradition of citizens esteemed by their professional colleagues devoting time, energy, and talent to enhancing the dignity of their calling.

Adherence to the idea that those who pursue a calling must embrace ethical standards that derive from a duty separate from the dictates of the State reaches back at least to the Hippocratic Oath. See generally S. Miles, *The Hippocratic Oath and the Ethics of Medicine* (2004). In the United States, there is a strong tradition of professional self-regulation, particularly with respect to the development of ethical rules. See generally R. Rotunda & J. Dzienkowski, *Legal Ethics: The Lawyer's Deskbook on Professional Responsibility* (2014); R. Baker, *Before Bioethics: A History of American Medical Ethics From the Colonial Period to the Bioethics Revolution* (2013). Dentists are no exception. The American Dental Association, for example, in an exercise of “the privilege and obligation of self-government,” has “call[ed] upon dentists to follow high ethical standards,” including “honesty, compassion, kindness, integrity, fairness and charity.” American Dental Association, *Principles of Ethics and Code of Professional Conduct* 3–4 (2012). State laws and institutions are sustained by this tradition when they draw upon the expertise and commitment of professionals.

Today's holding is not inconsistent with that idea. The Board argues, however, that the potential for money damages will discourage members of regulated occupations from participating in state government. Cf. *Filarsky v. Delia*, 566 U. S. ___, ___ (2012) (slip op., at 12) (warning in the context of civil rights suits that the “the most talented candidates will decline public engagements if they do not receive the same immunity enjoyed by their public employee counterparts”). But this case, which does not

present a claim for money damages, does not offer occasion to address the question whether agency officials, including board members, may, under some circumstances, enjoy immunity from damages liability. See *Goldfarb*, 421 U. S., at 792, n. 22; see also Brief for Respondent 56. And, of course, the States may provide for the defense and indemnification of agency members in the event of litigation.

States, furthermore, can ensure *Parker* immunity is available to agencies by adopting clear policies to displace competition; and, if agencies controlled by active market participants interpret or enforce those policies, the States may provide active supervision. Precedent confirms this principle. The Court has rejected the argument that it would be unwise to apply the antitrust laws to professional regulation absent compliance with the prerequisites for invoking *Parker* immunity:

“[Respondents] contend that effective peer review is essential to the provision of quality medical care and that any threat of antitrust liability will prevent physicians from participating openly and actively in peer-review proceedings. This argument, however, essentially challenges the wisdom of applying the antitrust laws to the sphere of medical care, and as such is properly directed to the legislative branch. To the extent that Congress has declined to exempt medical peer review from the reach of the antitrust laws, peer review is immune from antitrust scrutiny only if the State effectively has made this conduct its own.” *Patrick*, 486 U. S. at 105–106 (footnote omitted).

The reasoning of *Patrick v. Burget* applies to this case with full force, particularly in light of the risks licensing boards dominated by market participants may pose to the free market. See generally Edlin & Haw, *Cartels by Another Name: Should Licensed Occupations Face Antitrust Scrutiny?* 162 U. Pa. L. Rev. 1093 (2014).

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E

The Board does not contend in this Court that its anti-competitive conduct was actively supervised by the State or that it should receive *Parker* immunity on that basis.

By statute, North Carolina delegates control over the practice of dentistry to the Board. The Act, however, says nothing about teeth whitening, a practice that did not exist when it was passed. After receiving complaints from other dentists about the nondentists' cheaper services, the Board's dentist members—some of whom offered whitening services—acted to expel the dentists' competitors from the market. In so doing the Board relied upon cease-and-desist letters threatening criminal liability, rather than any of the powers at its disposal that would invoke oversight by a politically accountable official. With no active supervision by the State, North Carolina officials may well have been unaware that the Board had decided teeth whitening constitutes “the practice of dentistry” and sought to prohibit those who competed against dentists from participating in the teeth whitening market. Whether or not the Board exceeded its powers under North Carolina law, cf. *Omni*, 499 U. S., at 371–372, there is no evidence here of any decision by the State to initiate or concur with the Board's actions against the nondentists.

IV

The Board does not claim that the State exercised active, or indeed any, supervision over its conduct regarding nondentist teeth whiteners; and, as a result, no specific supervisory systems can be reviewed here. It suffices to note that the inquiry regarding active supervision is flexible and context-dependent. Active supervision need not entail day-to-day involvement in an agency's operations or micromanagement of its every decision. Rather, the question is whether the State's review mechanisms provide “realistic assurance” that a nonsovereign actor's anticom-

petitive conduct “promotes state policy, rather than merely the party’s individual interests.” *Patrick, supra*, at 100–101; see also *Ticor*, 504 U. S., at 639–640.

The Court has identified only a few constant requirements of active supervision: The supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it, see *Patrick*, 486 U. S., at 102–103; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy, see *ibid.*; and the “mere potential for state supervision is not an adequate substitute for a decision by the State,” *Ticor, supra*, at 638. Further, the state supervisor may not itself be an active market participant. In general, however, the adequacy of supervision otherwise will depend on all the circumstances of a case.

* * *

The Sherman Act protects competition while also respecting federalism. It does not authorize the States to abandon markets to the unsupervised control of active market participants, whether trade associations or hybrid agencies. If a State wants to rely on active market participants as regulators, it must provide active supervision if state-action immunity under *Parker* is to be invoked.

The judgment of the Court of Appeals for the Fourth Circuit is affirmed.

It is so ordered.

ALITO, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 13–534

**NORTH CAROLINA STATE BOARD OF DENTAL
EXAMINERS, PETITIONER *v.* FEDERAL
TRADE COMMISSION**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT**

[February 25, 2015]

JUSTICE ALITO, with whom JUSTICE SCALIA and JUSTICE THOMAS join, dissenting.

The Court’s decision in this case is based on a serious misunderstanding of the doctrine of state-action antitrust immunity that this Court recognized more than 60 years ago in *Parker v. Brown*, 317 U. S. 341 (1943). In *Parker*, the Court held that the Sherman Act does not prevent the States from continuing their age-old practice of enacting measures, such as licensing requirements, that are designed to protect the public health and welfare. *Id.*, at 352. The case now before us involves precisely this type of state regulation—North Carolina’s laws governing the practice of dentistry, which are administered by the North Carolina Board of Dental Examiners (Board).

Today, however, the Court takes the unprecedented step of holding that *Parker* does not apply to the North Carolina Board because the Board is not structured in a way that merits a good-government seal of approval; that is, it is made up of practicing dentists who have a financial incentive to use the licensing laws to further the financial interests of the State’s dentists. There is nothing new about the structure of the North Carolina Board. When the States first created medical and dental boards, well before the Sherman Act was enacted, they began to staff

them in this way.¹ Nor is there anything new about the suspicion that the North Carolina Board—in attempting to prevent persons other than dentists from performing teeth-whitening procedures—was serving the interests of dentists and not the public. Professional and occupational licensing requirements have often been used in such a way.² But that is not what *Parker* immunity is about. Indeed, the very state program involved in that case was unquestionably designed to benefit the regulated entities, California raisin growers.

The question before us is not whether such programs serve the public interest. The question, instead, is whether this case is controlled by *Parker*, and the answer to that question is clear. Under *Parker*, the Sherman Act (and the Federal Trade Commission Act, see *FTC v. Ticor Title Ins. Co.*, 504 U. S. 621, 635 (1992)) do not apply to state agencies; the North Carolina Board of Dental Examiners is a state agency; and that is the end of the matter. By straying from this simple path, the Court has not only distorted *Parker*; it has headed into a morass. Determining whether a state agency is structured in a way that militates against regulatory capture is no easy task, and there is reason to fear that today's decision will spawn confusion. The Court has veered off course, and therefore I cannot go along.

¹S. White, *History of Oral and Dental Science in America* 197–214 (1876) (detailing earliest American regulations of the practice of dentistry).

²See, e.g., R. Shrylock, *Medical Licensing in America* 29 (1967) (Shrylock) (detailing the deterioration of licensing regimes in the mid-19th century, in part out of concerns about restraints on trade); Gellhorn, *The Abuse of Occupational Licensing*, 44 U. Chi. L. Rev. 6 (1976); Shepard, *Licensing Restrictions and the Cost of Dental Care*, 21 J. Law & Econ. 187 (1978).

ALITO, J., dissenting

I

In order to understand the nature of *Parker* state-action immunity, it is helpful to recall the constitutional landscape in 1890 when the Sherman Act was enacted. At that time, this Court and Congress had an understanding of the scope of federal and state power that is very different from our understanding today. The States were understood to possess the exclusive authority to regulate “their purely internal affairs.” *Leisy v. Hardin*, 135 U. S. 100, 122 (1890). In exercising their police power in this area, the States had long enacted measures, such as price controls and licensing requirements, that had the effect of restraining trade.³

The Sherman Act was enacted pursuant to Congress’ power to regulate interstate commerce, and in passing the Act, Congress wanted to exercise that power “to the utmost extent.” *United States v. South-Eastern Underwriters Assn.*, 322 U. S. 533, 558 (1944). But in 1890, the understanding of the commerce power was far more limited than it is today. See, e.g., *Kidd v. Pearson*, 128 U. S. 1, 17–18 (1888). As a result, the Act did not pose a threat to traditional state regulatory activity.

By 1943, when *Parker* was decided, however, the situation had changed dramatically. This Court had held that the commerce power permitted Congress to regulate even local activity if it “exerts a substantial economic effect on interstate commerce.” *Wickard v. Filburn*, 317 U. S. 111, 125 (1942). This meant that Congress could regulate many of the matters that had once been thought to fall exclusively within the jurisdiction of the States. The new interpretation of the commerce power brought about an expansion of the reach of the Sherman Act. See *Hospital*

³See Handler, The Current Attack on the *Parker v. Brown* State Action Doctrine, 76 Colum. L. Rev. 1, 4–6 (1976) (collecting cases).

Building Co. v. Trustees of Rex Hospital, 425 U. S. 738, 743, n. 2 (1976) (“[D]ecisions by this Court have permitted the reach of the Sherman Act to expand along with expanding notions of congressional power”). And the expanded reach of the Sherman Act raised an important question. The Sherman Act does not expressly exempt States from its scope. Does that mean that the Act applies to the States and that it potentially outlaws many traditional state regulatory measures? The Court confronted that question in *Parker*.

In *Parker*, a raisin producer challenged the California Agricultural Prorate Act, an agricultural price support program. The California Act authorized the creation of an Agricultural Prorate Advisory Commission (Commission) to establish marketing plans for certain agricultural commodities within the State. 317 U. S., at 346–347. Raisins were among the regulated commodities, and so the Commission established a marketing program that governed many aspects of raisin sales, including the quality and quantity of raisins sold, the timing of sales, and the price at which raisins were sold. *Id.*, at 347–348. The *Parker* Court assumed that this program would have violated “the Sherman Act if it were organized and made effective solely by virtue of a contract, combination or conspiracy of private persons,” and the Court also assumed that Congress could have prohibited a State from creating a program like California’s if it had chosen to do so. *Id.*, at 350. Nevertheless, the Court concluded that the California program did not violate the Sherman Act because the Act did not circumscribe state regulatory power. *Id.*, at 351.

The Court’s holding in *Parker* was not based on either the language of the Sherman Act or anything in the legislative history affirmatively showing that the Act was not meant to apply to the States. Instead, the Court reasoned that “[i]n a dual system of government in which, under the Constitution, the states are sovereign, save only as Con-

ALITO, J., dissenting

gress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress." 317 U. S., at 351. For the Congress that enacted the Sherman Act in 1890, it would have been a truly radical and almost certainly futile step to attempt to prevent the States from exercising their traditional regulatory authority, and the *Parker* Court refused to assume that the Act was meant to have such an effect.

When the basis for the *Parker* state-action doctrine is understood, the Court's error in this case is plain. In 1890, the regulation of the practice of medicine and dentistry was regarded as falling squarely within the States' sovereign police power. By that time, many States had established medical and dental boards, often staffed by doctors or dentists,⁴ and had given those boards the authority to confer and revoke licenses.⁵ This was quintessential police power legislation, and although state laws were often challenged during that era under the doctrine of substantive due process, the licensing of medical professionals easily survived such assaults. Just one year before the enactment of the Sherman Act, in *Dent v. West Virginia*, 129 U. S. 114, 128 (1889), this Court rejected such a challenge to a state law requiring all physicians to obtain a certificate from the state board of health attesting to their qualifications. And in *Hawker v. New York*, 170 U. S. 189, 192 (1898), the Court reiterated that a law

⁴Shrylock 54–55; D. Johnson and H. Chaudry, Medical Licensing and Discipline in America 23–24 (2012).

⁵In *Hawker v. New York*, 170 U. S. 189 (1898), the Court cited state laws authorizing such boards to refuse or revoke medical licenses. *Id.*, at 191–193, n. 1. See also *Douglas v. Noble*, 261 U. S. 165, 166 (1923) (“In 1893 the legislature of Washington provided that only licensed persons should practice dentistry” and “vested the authority to license in a board of examiners, consisting of five practicing dentists”).

specifying the qualifications to practice medicine was clearly a proper exercise of the police power. Thus, the North Carolina statutes establishing and specifying the powers of the State Board of Dental Examiners represent precisely the kind of state regulation that the *Parker* exemption was meant to immunize.

II

As noted above, the only question in this case is whether the North Carolina Board of Dental Examiners is really a state agency, and the answer to that question is clearly yes.

- The North Carolina Legislature determined that the practice of dentistry “affect[s] the public health, safety and welfare” of North Carolina’s citizens and that therefore the profession should be “subject to regulation and control in the public interest” in order to ensure “that only qualified persons be permitted to practice dentistry in the State.” N. C. Gen. Stat. Ann. §90–22(a) (2013).
- To further that end, the legislature created the North Carolina State Board of Dental Examiners “as the agency of the State for the regulation of the practice of dentistry in th[e] State.” §90–22(b).
- The legislature specified the membership of the Board. §90–22(c). It defined the “practice of dentistry,” §90–29(b), and it set out standards for licensing practitioners, §90–30. The legislature also set out standards under which the Board can initiate disciplinary proceedings against licensees who engage in certain improper acts. §90–41(a).
- The legislature empowered the Board to “maintain an action in the name of the State of North Carolina to perpetually enjoin any person from . . . unlawfully practicing dentistry.” §90–40.1(a). It authorized the Board to conduct investigations and to hire legal

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counsel, and the legislature made any “notice or statement of charges against any licensee” a public record under state law. §§ 90–41(d)–(g).

- The legislature empowered the Board “to enact rules and regulations governing the practice of dentistry within the State,” consistent with relevant statutes. §90–48. It has required that any such rules be included in the Board’s annual report, which the Board must file with the North Carolina secretary of state, the state attorney general, and the legislature’s Joint Regulatory Reform Committee. §93B–2. And if the Board fails to file the required report, state law demands that it be automatically suspended until it does so. *Ibid.*

As this regulatory regime demonstrates, North Carolina’s Board of Dental Examiners is unmistakably a state agency created by the state legislature to serve a prescribed regulatory purpose and to do so using the State’s power in cooperation with other arms of state government.

The Board is not a private or “nonsovereign” entity that the State of North Carolina has attempted to immunize from federal antitrust scrutiny. *Parker* made it clear that a State may not “give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful.” *Ante*, at 7 (quoting *Parker*, 317 U. S., at 351). When the *Parker* Court disapproved of any such attempt, it cited *Northern Securities Co. v. United States*, 193 U. S. 197 (1904), to show what it had in mind. In that case, the Court held that a State’s act of chartering a corporation did not shield the corporation’s monopolizing activities from federal antitrust law. *Id.*, at 344–345. Nothing similar is involved here. North Carolina did not authorize a private entity to enter into an anticompetitive arrangement; rather, North Carolina created a state agency and gave that agency the power to regulate a particular subject affecting public health and

safety.

Nothing in *Parker* supports the type of inquiry that the Court now prescribes. The Court crafts a test under which state agencies that are “controlled by active market participants,” *ante*, at 12, must demonstrate active state supervision in order to be immune from federal antitrust law. The Court thus treats these state agencies like private entities. But in *Parker*, the Court did not examine the structure of the California program to determine if it had been captured by private interests. If the Court had done so, the case would certainly have come out differently, because California conditioned its regulatory measures on the participation and approval of market actors in the relevant industry.

Establishing a prorate marketing plan under California’s law first required the petition of at least 10 producers of the particular commodity. *Parker*, 317 U. S., at 346. If the Commission then agreed that a marketing plan was warranted, the Commission would “select a program committee *from among nominees chosen by the qualified producers.*” *Ibid.* (emphasis added). That committee would then formulate the proration marketing program, which the Commission could modify or approve. But even after Commission approval, the program became law (and then, automatically) only if it gained the approval of 65 percent of the relevant producers, representing at least 51 percent of the acreage of the regulated crop. *Id.*, at 347. This scheme gave decisive power to market participants. But despite these aspects of the California program, *Parker* held that California was acting as a “sovereign” when it “adopt[ed] and enforc[ed] the prorate program.” *Id.*, at 352. This reasoning is irreconcilable with the Court’s today.

III

The Court goes astray because it forgets the origin of the

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Parker doctrine and is misdirected by subsequent cases that extended that doctrine (in certain circumstances) to private entities. The Court requires the North Carolina Board to satisfy the two-part test set out in *California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, 445 U. S. 97 (1980), but the party claiming *Parker* immunity in that case was not a state agency but a private trade association. Such an entity is entitled to *Parker* immunity, *Midcal* held, only if the anticompetitive conduct at issue was both “clearly articulated” and “‘actively supervised by the State itself.’” 445 U. S., at 105. Those requirements are needed where a State authorizes private parties to engage in anticompetitive conduct. They serve to identify those situations in which conduct *by private parties* can be regarded as the conduct of a State. But when the conduct in question is the conduct of a state agency, no such inquiry is required.

This case falls into the latter category, and therefore *Midcal* is inapposite. The North Carolina Board is not a private trade association. It is a state agency, created and empowered by the State to regulate an industry affecting public health. It would not exist if the State had not created it. And for purposes of *Parker*, its membership is irrelevant; what matters is that it is part of the government of the sovereign State of North Carolina.

Our decision in *Hallie v. Eau Claire*, 471 U. S. 34 (1985), which involved Sherman Act claims against a municipality, not a State agency, is similarly inapplicable. In *Hallie*, the plaintiff argued that the two-pronged *Midcal* test should be applied, but the Court disagreed. The Court acknowledged that municipalities “are not themselves sovereign.” 471 U. S., at 38. But recognizing that a municipality is “an arm of the State,” *id.*, at 45, the Court held that a municipality should be required to satisfy only the first prong of the *Midcal* test (requiring a clearly articulated state policy), 471 U. S., at 46. That municipalities

are not sovereign was critical to our analysis in *Hallie*, and thus that decision has no application in a case, like this one, involving a state agency.

Here, however, the Court not only disregards the North Carolina Board's status as a full-fledged state agency; it treats the Board less favorably than a municipality. This is puzzling. States are sovereign, *Northern Ins. Co. of N. Y. v. Chatham County*, 547 U. S. 189, 193 (2006), and California's sovereignty provided the foundation for the decision in *Parker, supra*, at 352. Municipalities are not sovereign. *Jinks v. Richland County*, 538 U. S. 456, 466 (2003). And for this reason, federal law often treats municipalities differently from States. Compare *Will v. Michigan Dept. of State Police*, 491 U. S. 58, 71 (1989) ("[N]either a State nor its officials acting in their official capacities are 'persons' under [42 U. S. C.] §1983"), with *Monell v. City Dept. of Social Servs., New York*, 436 U. S. 658, 694 (1978) (municipalities liable under §1983 where "execution of a government's policy or custom . . . inflicts the injury").

The Court recognizes that municipalities, although not sovereign, nevertheless benefit from a more lenient standard for state-action immunity than private entities. Yet under the Court's approach, the North Carolina Board of Dental Examiners, a full-fledged state agency, is treated like a private actor and must demonstrate that the State actively supervises its actions.

The Court's analysis seems to be predicated on an assessment of the varying degrees to which a municipality and a state agency like the North Carolina Board are likely to be captured by private interests. But until today, *Parker* immunity was never conditioned on the proper use of state regulatory authority. On the contrary, in *Columbia v. Omni Outdoor Advertising, Inc.*, 499 U. S. 365 (1991), we refused to recognize an exception to *Parker* for cases in which it was shown that the defendants had

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engaged in a conspiracy or corruption or had acted in a way that was not in the public interest. *Id.*, at 374. The Sherman Act, we said, is not an anticorruption or good-government statute. 499 U. S., at 398. We were unwilling in *Omni* to rewrite *Parker* in order to reach the allegedly abusive behavior of city officials. 499 U. S., at 374–379. But that is essentially what the Court has done here.

III

Not only is the Court’s decision inconsistent with the underlying theory of *Parker*; it will create practical problems and is likely to have far-reaching effects on the States’ regulation of professions. As previously noted, state medical and dental boards have been staffed by practitioners since they were first created, and there are obvious advantages to this approach. It is reasonable for States to decide that the individuals best able to regulate technical professions are practitioners with expertise in those very professions. Staffing the State Board of Dental Examiners with certified public accountants would certainly lessen the risk of actions that place the well-being of dentists over those of the public, but this would also compromise the State’s interest in sensibly regulating a technical profession in which lay people have little expertise.

As a result of today’s decision, States may find it necessary to change the composition of medical, dental, and other boards, but it is not clear what sort of changes are needed to satisfy the test that the Court now adopts. The Court faults the structure of the North Carolina Board because “active market participants” constitute “a controlling number of [the] decisionmakers,” *ante*, at 14, but this test raises many questions.

What is a “controlling number”? Is it a majority? And if so, why does the Court eschew that term? Or does the Court mean to leave open the possibility that something less than a majority might suffice in particular circum-

stances? Suppose that active market participants constitute a voting bloc that is generally able to get its way? How about an obstructionist minority or an agency chair empowered to set the agenda or veto regulations?

Who is an “active market participant”? If Board members withdraw from practice during a short term of service but typically return to practice when their terms end, does that mean that they are not active market participants during their period of service?

What is the scope of the market in which a member may not participate while serving on the board? Must the market be relevant to the particular regulation being challenged or merely to the jurisdiction of the entire agency? Would the result in the present case be different if a majority of the Board members, though practicing dentists, did not provide teeth whitening services? What if they were orthodontists, periodontists, and the like? And how much participation makes a person “active” in the market?

The answers to these questions are not obvious, but the States must predict the answers in order to make informed choices about how to constitute their agencies.

I suppose that all this will be worked out by the lower courts and the Federal Trade Commission (FTC), but the Court’s approach raises a more fundamental question, and that is why the Court’s inquiry should stop with an examination of the structure of a state licensing board. When the Court asks whether market participants control the North Carolina Board, the Court in essence is asking whether this regulatory body has been captured by the entities that it is supposed to regulate. Regulatory capture can occur in many ways.⁶ So why ask only whether

⁶See, *e.g.*, R. Noll, *Reforming Regulation* 40–43, 46 (1971); J. Wilson, *The Politics of Regulation* 357–394 (1980). Indeed, it has even been

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the members of a board are active market participants? The answer may be that determining when regulatory capture has occurred is no simple task. That answer provides a reason for relieving courts from the obligation to make such determinations at all. It does not explain why it is appropriate for the Court to adopt the rather crude test for capture that constitutes the holding of today's decision.

IV

The Court has created a new standard for distinguishing between private and state actors for purposes of federal antitrust immunity. This new standard is not true to the *Parker* doctrine; it diminishes our traditional respect for federalism and state sovereignty; and it will be difficult to apply. I therefore respectfully dissent.

charged that the FTC, which brought this case, has been captured by entities over which it has jurisdiction. See E. Cox, "The Nader Report" on the Federal Trade Commission vii–xiv (1969); Posner, Federal Trade Commission, Chi. L. Rev. 47, 82–84 (1969).

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OFFICE OF THE ATTORNEY GENERAL
State of California

KAMALA D. HARRIS
Attorney General

OPINION	:	No. 15-402
	:	
of	:	September 10, 2015
	:	
KAMALA D. HARRIS	:	
Attorney General	:	
	:	
SUSAN DUNCAN LEE	:	
Deputy Attorney General	:	
	:	

THE HONORABLE JERRY HILL, MEMBER OF THE STATE SENATE, has requested an opinion on the following question:

What constitutes “active state supervision” of a state licensing board for purposes of the state action immunity doctrine in antitrust actions, and what measures might be taken to guard against antitrust liability for board members?

CONCLUSIONS

“Active state supervision” requires a state official to review the substance of a regulatory decision made by a state licensing board, in order to determine whether the decision actually furthers a clearly articulated state policy to displace competition with regulation in a particular market. The official reviewing the decision must not be an active member of the market being regulated, and must have and exercise the power to approve, modify, or disapprove the decision.

Measures that might be taken to guard against antitrust liability for board members include changing the composition of boards, adding lines of supervision by state officials, and providing board members with legal indemnification and antitrust training.

ANALYSIS

In *North Carolina State Board of Dental Examiners v. Federal Trade Commission*,¹ the Supreme Court of the United States established a new standard for determining whether a state licensing board is entitled to immunity from antitrust actions.

Immunity is important to state actors not only because it shields them from adverse judgments, but because it shields them from having to go through litigation. When immunity is well established, most people are deterred from filing a suit at all. If a suit is filed, the state can move for summary disposition of the case, often before the discovery process begins. This saves the state a great deal of time and money, and it relieves employees (such as board members) of the stresses and burdens that inevitably go along with being sued. This freedom from suit clears a safe space for government officials and employees to perform their duties and to exercise their discretion without constant fear of litigation. Indeed, allowing government actors freedom to exercise discretion is one of the fundamental justifications underlying immunity doctrines.²

Before *North Carolina Dental* was decided, most state licensing boards operated under the assumption that they were protected from antitrust suits under the state action immunity doctrine. In light of the decision, many states—including California—are reassessing the structures and operations of their state licensing boards with a view to determining whether changes should be made to reduce the risk of antitrust claims. This opinion examines the legal requirements for state supervision under the *North Carolina Dental* decision, and identifies a variety of measures that the state Legislature might consider taking in response to the decision.

¹ *North Carolina State Bd. of Dental Examiners v. F. T. C.* (2015) ___ U.S. ___, 135 S. Ct. 1101 (*North Carolina Dental*).

² See *Mitchell v. Forsyth* (1985) 472 U.S. 511, 526; *Harlow v. Fitzgerald* (1982) 457 U.S. 800, 819.

I. *North Carolina Dental* Established a New Immunity Standard for State Licensing Boards

A. *The North Carolina Dental* Decision

The North Carolina Board of Dental Examiners was established under North Carolina law and charged with administering a licensing system for dentists. A majority of the members of the board are themselves practicing dentists. North Carolina statutes delegated authority to the dental board to regulate the practice of dentistry, but did not expressly provide that teeth-whitening was within the scope of the practice of dentistry.

Following complaints by dentists that non-dentists were performing teeth-whitening services for low prices, the dental board conducted an investigation. The board subsequently issued cease-and-desist letters to dozens of teeth-whitening outfits, as well as to some owners of shopping malls where teeth-whiteners operated. The effect on the teeth-whitening market in North Carolina was dramatic, and the Federal Trade Commission took action.

In defense to antitrust charges, the dental board argued that, as a state agency, it was immune from liability under the federal antitrust laws. The Supreme Court rejected that argument, holding that a state board on which a controlling number of decision makers are active market participants must show that it is subject to “active supervision” in order to claim immunity.³

B. State Action Immunity Doctrine Before *North Carolina Dental*

The Sherman Antitrust Act of 1890⁴ was enacted to prevent anticompetitive economic practices such as the creation of monopolies or restraints of trade. The terms of the Sherman Act are broad, and do not expressly exempt government entities, but the Supreme Court has long since ruled that federal principles of dual sovereignty imply that federal antitrust laws do not apply to the actions of states, even if those actions are anticompetitive.⁵

This immunity of states from federal antitrust lawsuits is known as the “state action doctrine.”⁶ The state action doctrine, which was developed by the Supreme Court

³ *North Carolina Dental*, *supra*, 135 S.Ct. at p. 1114.

⁴ 15 U.S.C. §§ 1, 2.

⁵ *Parker v. Brown* (1943) 317 U.S. 341, 350-351.

⁶ It is important to note that the phrase “state action” in this context means something

in *Parker v. Brown*,⁷ establishes three tiers of decision makers, with different thresholds for immunity in each tier.

In the top tier, with the greatest immunity, is the state itself: the sovereign acts of state governments are absolutely immune from antitrust challenge.⁸ Absolute immunity extends, at a minimum, to the state Legislature, the Governor, and the state's Supreme Court.

In the second tier are subordinate state agencies,⁹ such as executive departments and administrative agencies with statewide jurisdiction. State agencies are immune from antitrust challenge if their conduct is undertaken pursuant to a "clearly articulated" and "affirmatively expressed" state policy to displace competition.¹⁰ A state policy is sufficiently clear when displacement of competition is the "inherent, logical, or ordinary result" of the authority delegated by the state legislature.¹¹

The third tier includes private parties acting on behalf of a state, such as the members of a state-created professional licensing board. Private parties may enjoy state action immunity when two conditions are met: (1) their conduct is undertaken pursuant to a "clearly articulated" and "affirmatively expressed" state policy to displace competition, and (2) their conduct is "actively supervised" by the state.¹² The

very different from "state action" for purposes of analysis of a civil rights violation under section 1983 of title 42 of the United States Code. Under section 1983, *liability* attaches to "state action," which may cover even the inadvertent or unilateral act of a state official not acting pursuant to state policy. In the antitrust context, a conclusion that a policy or action amounts to "state action" results in *immunity* from suit.

⁷ *Parker v. Brown*, *supra*, 317 U.S. 341.

⁸ *Hoover v. Ronwin* (1984) 466 U.S. 558, 574, 579-580.

⁹ Distinguishing the state itself from subordinate state agencies has sometimes proven difficult. Compare the majority opinion in *Hoover v. Ronwin*, *supra*, 466 U.S. at p. 581 with dissenting opinion of Stevens, J., at pp. 588-589. (See *Costco v. Maleng* (9th Cir. 2008) 522 F.3d 874, 887, *subseq. hrg.* 538 F.3d 1128; *Charley's Taxi Radio Dispatch Corp. v. SIDA of Haw., Inc.* (9th Cir. 1987) 810 F.2d 869, 875.)

¹⁰ See *Town of Hallie v. City of Eau Claire* (1985) 471 U.S. 34, 39.

¹¹ *F.T.C. v. Phoebe Putney Health Systems, Inc.* (2013) ___ U.S. ___, 133 S.Ct. 1003, 1013; see also *Southern Motor Carriers Rate Conference, Inc. v. U.S.* (1985) 471 U.S. 48, 57 (state policy need not compel specific anticompetitive effect).

¹² *Cal. Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.* (1980) 445 U.S. 97, 105 (*Midcal*).

fundamental purpose of the supervision requirement is to shelter only those private anticompetitive acts that the state approves as actually furthering its regulatory policies.¹³ To that end, the mere possibility of supervision—such as the existence of a regulatory structure that is not operative, or not resorted to—is not enough. “The active supervision prong . . . requires that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy.”¹⁴

C. State Action Immunity Doctrine After *North Carolina Dental*

Until the Supreme Court decided *North Carolina Dental*, it was widely believed that most professional licensing boards would fall within the second tier of state action immunity, requiring a clear and affirmative policy, but not active state supervision of every anticompetitive decision. In California in particular, there were good arguments that professional licensing boards¹⁵ were subordinate agencies of the state: they are formal, ongoing bodies created pursuant to state law; they are housed within the Department of Consumer Affairs and operate under the Consumer Affairs Director’s broad powers of investigation and control; they are subject to periodic sunset review by the Legislature, to rule-making review under the Administrative Procedure Act, and to administrative and judicial review of disciplinary decisions; their members are appointed by state officials, and include increasingly large numbers of public (non-professional) members; their meetings and records are subject to open-government laws and to strong prohibitions on conflicts of interest; and their enabling statutes generally provide well-guided discretion to make decisions affecting the professional markets that the boards regulate.¹⁶

Those arguments are now foreclosed, however, by *North Carolina Dental*. There, the Court squarely held, for the first time, that “a state board on which a controlling

¹³ *Patrick v. Burget* (1988) 486 U.S. 94, 100-101.

¹⁴ *Ibid.*

¹⁵ California’s Department of Consumer Affairs includes some 25 professional regulatory boards that establish minimum qualifications and levels of competency for licensure in various professions, including accountancy, acupuncture, architecture, medicine, nursing, structural pest control, and veterinary medicine—to name just a few. (See http://www.dca.gov/about_ca/entities.shtml.)

¹⁶ Cf. 1A Areeda & Hovenkamp, *supra*, ¶ 227, p. 208 (what matters is not what the body is called, but its structure, membership, authority, openness to the public, exposure to ongoing review, etc.).

number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal*'s active supervision requirement in order to invoke state-action antitrust immunity."¹⁷ The effect of *North Carolina Dental* is to put professional licensing boards "on which a controlling number of decision makers are active market participants" in the third tier of state-action immunity. That is, they are immune from antitrust actions as long as they act pursuant to clearly articulated state policy to replace competition with regulation of the profession, *and* their decisions are actively supervised by the state.

Thus arises the question presented here: What constitutes "active state supervision"?¹⁸

D. Legal Standards for Active State Supervision

The active supervision requirement arises from the concern that, when active market participants are involved in regulating their own field, "there is a real danger" that they will act to further their own interests, rather than those of consumers or of the state.¹⁹ The purpose of the requirement is to ensure that state action immunity is afforded to private parties only when their actions actually further the state's policies.²⁰

There is no bright-line test for determining what constitutes active supervision of a professional licensing board: the standard is "flexible and context-dependent."²¹ Sufficient supervision "need not entail day-to-day involvement" in the board's operations or "micromanagement of its every decision."²² Instead, the question is whether the review mechanisms that are in place "provide 'realistic assurance'" that the anticompetitive effects of a board's actions promote state policy, rather than the board members' private interests.²³

¹⁷ *North Carolina Dental*, *supra*, 135 S.Ct. at p. 1114; *Midcal*, *supra*, 445 U.S. at p. 105.

¹⁸ Questions about whether the State's anticompetitive policies are adequately articulated are beyond the scope of this Opinion.

¹⁹ *Patrick v. Burget*, *supra*, 486 U.S. at p. 100, citing *Town of Hallie v. City of Eau Claire*, *supra*, 471 U.S. at p. 47; see *id.* at p. 45 ("A private party . . . may be presumed to be acting primarily on his or its own behalf").

²⁰ *Patrick v. Burget*, *supra*, 486 U.S. at pp. 100-101.

²¹ *North Carolina Dental*, *supra*, 135 S.Ct. at p. 1116.

²² *Ibid.*

²³ *Ibid.*

The *North Carolina Dental* opinion and pre-existing authorities allow us to identify “a few constant requirements of active supervision”.²⁴

- The state supervisor who reviews a decision must have the power to reverse or modify the decision.²⁵
- The “mere potential” for supervision is not an adequate substitute for supervision.²⁶
- When a state supervisor reviews a decision, he or she must review the substance of the decision, not just the procedures followed to reach it.²⁷
- The state supervisor must not be an active market participant.²⁸

Keeping these requirements in mind may help readers evaluate whether California law already provides adequate supervision for professional licensing boards, or whether new or stronger measures are desirable.

II. Threshold Considerations for Assessing Potential Responses to *North Carolina Dental*

There are a number of different measures that the Legislature might consider in response to the *North Carolina Dental* decision. We will describe a variety of these, along with some of their potential advantages or disadvantages. Before moving on to those options, however, we should put the question of immunity into proper perspective.

²⁴ *Id.* at pp. 1116-1117.

²⁵ *Ibid.*

²⁶ *Id.* at p. 1116, citing *F.T.C. v. Ticor Title Ins. Co.* (1992) 504 U.S. 621, 638. For example, a passive or negative-option review process, in which an action is considered approved as long as the state supervisor raises no objection to it, may be considered inadequate in some circumstances. (*Ibid.*)

²⁷ *Ibid.*, citing *Patrick v. Burget*, *supra*, 486 U.S. at pp. 102-103. In most cases, there should be some evidence that the state supervisor considered the particular circumstances of the action before making a decision. Ideally, there should be a factual record and a written decision showing that there has been an assessment of the action’s potential impact on the market, and whether the action furthers state policy. (See *In the Matter of Indiana Household Moves and Warehousemen, Inc.* (2008) 135 F.T.C. 535, 555-557; see also Federal Trade Commission, Report of the State Action Task Force (2003) at p. 54.)

²⁸ *North Carolina Dental*, *supra*, 135 S.Ct. at pp. 1116-1117.

There are two important things keep in mind: (1) the loss of immunity, if it is lost, does not mean that an antitrust violation has been committed, and (2) even when board members participate in regulating the markets they compete in, many—if not most—of their actions do not implicate the federal antitrust laws.

In the context of regulating professions, “market-sensitive” decisions (that is, the kinds of decisions that are most likely to be open to antitrust scrutiny) are those that create barriers to market participation, such as rules or enforcement actions regulating the scope of unlicensed practice; licensing requirements imposing heavy burdens on applicants; marketing programs; restrictions on advertising; restrictions on competitive bidding; restrictions on commercial dealings with suppliers and other third parties; and price regulation, including restrictions on discounts.

On the other hand, we believe that there are broad areas of operation where board members can act with reasonable confidence—especially once they and their state-official contacts have been taught to recognize actual antitrust issues, and to treat those issues specially. Broadly speaking, promulgation of regulations is a fairly safe area for board members, because of the public notice, written justification, Director review, and review by the Office of Administrative Law as required by the Administrative Procedure Act. Also, broadly speaking, disciplinary decisions are another fairly safe area because of due process procedures; participation of state actors such as board executive officers, investigators, prosecutors, and administrative law judges; and availability of administrative mandamus review.

We are not saying that the procedures that attend these quasi-legislative and quasi-judicial functions make the licensing boards altogether immune from antitrust claims. Nor are we saying that rule-making and disciplinary actions are per se immune from antitrust laws. What we are saying is that, assuming a board identifies its market-sensitive decisions and gets active state supervision for those, then ordinary rule-making and discipline (faithfully carried out under the applicable rules) may be regarded as relatively safe harbors for board members to operate in. It may require some education and experience for board members to understand the difference between market-sensitive and “ordinary” actions, but a few examples may bring in some light.

North Carolina Dental presents a perfect example of a market-sensitive action. There, the dental board decided to, and actually succeeded in, driving non-dentist teeth-whitening service providers out of the market, even though nothing in North Carolina’s laws specified that teeth-whitening constituted the illegal practice of dentistry. Counter-examples—instances where no antitrust violation occurs—are far more plentiful. For example, a regulatory board may legitimately make rules or impose discipline to prohibit license-holders from engaging in fraudulent business practices (such as untruthful or

deceptive advertising) without violating antitrust laws.²⁹ As well, suspending the license of an individual license-holder for violating the standards of the profession is a reasonable restraint and has virtually no effect on a large market, and therefore would not violate antitrust laws.³⁰

Another area where board members can feel safe is in carrying out the actions required by a detailed anticompetitive statutory scheme.³¹ For example, a state law prohibiting certain kinds of advertising or requiring certain fees may be enforced without need for substantial judgment or deliberation by the board. Such detailed legislation leaves nothing for the state to supervise, and thus it may be said that the legislation itself satisfies the supervision requirement.³²

Finally, some actions will not be antitrust violations because their effects are, in fact, pro-competitive rather than anti-competitive. For instance, the adoption of safety standards that are based on objective expert judgments have been found to be pro-competitive.³³ Efficiency measures taken for the benefit of consumers, such as making information available to the purchasers of competing products, or spreading development costs to reduce per-unit prices, have been held to be pro-competitive because they are pro-consumer.³⁴

III. Potential Measures for Preserving State Action Immunity

A. Changes to the Composition of Boards

The *North Carolina Dental* decision turns on the principle that a state board is a group of private actors, not a subordinate state agency, when “a controlling number of decisionmakers are active market participants in the occupation the board regulates.”³⁵

²⁹ See generally *California Dental Assn. v. F.T.C.* (1999) 526 U.S. 756.

³⁰ See *Oksanen v. Page Memorial Hospital* (4th Cir. 1999) 945 F.2d 696 (*en banc*).

³¹ See *324 Liquor Corp. v. Duffy* (1987) 479 U.S. 335, 344, fn. 6.

³² 1A Areeda & Hovenkamp, *Antitrust Law, supra*, ¶ 221, at p. 66; ¶ 222, at pp. 67, 76.

³³ See *Allied Tube & Conduit Corp. v. Indian Head, Inc.* (1988) 486 U.S. 492, 500-501.

³⁴ *Broadcom Corp. v. Qualcomm Inc.* (3rd Cir. 2007) 501 F.3d 297, 308-309; see generally Bus. & Prof. Code, § 301.

³⁵ 135 S.Ct. at p. 1114.

This ruling brings the composition of boards into the spotlight. While many boards in California currently require a majority of public members, it is still the norm for professional members to outnumber public members on boards that regulate healing-arts professions. In addition, delays in identifying suitable public-member candidates and in filling public seats can result in de facto market-participant majorities.

In the wake of *North Carolina Dental*, many observers' first impulse was to assume that reforming the composition of professional boards would be the best resolution, both for state actors and for consumer interests. Upon reflection, however, it is not obvious that sweeping changes to board composition would be the most effective solution.³⁶

Even if the Legislature were inclined to decrease the number of market-participant board members, the current state of the law does not allow us to project accurately how many market-participant members is too many. This is a question that was not resolved by the *North Carolina Dental* decision, as the dissenting opinion points out:

What is a “controlling number”? Is it a majority? And if so, why does the Court eschew that term? Or does the Court mean to leave open the possibility that something less than a majority might suffice in particular circumstances? Suppose that active market participants constitute a voting bloc that is generally able to get its way? How about an obstructionist minority or an agency chair empowered to set the agenda or veto regulations?³⁷

Some observers believe it is safe to assume that the *North Carolina Dental* standard would be satisfied if public members constituted a majority of a board. The

³⁶ Most observers believe that there are real advantages in staffing boards with professionals in the field. The combination of technical expertise, practiced judgment, and orientation to prevailing ethical norms is probably impossible to replicate on a board composed entirely of public members. Public confidence must also be considered. Many consumers would no doubt share the sentiments expressed by Justice Breyer during oral argument in the *North Carolina Dental* case: “[W]hat the State says is: We would like this group of brain surgeons to decide who can practice brain surgery in this State. I don’t want a group of bureaucrats deciding that. I would like brain surgeons to decide that.” (*North Carolina Dental*, *supra*, transcript of oral argument p. 31, available at http://www.supremecourt.gov/oral_arguments/argument_transcripts/13-534_16h1.pdf (hereafter, Transcript).)

³⁷ *North Carolina Dental*, *supra*, 135 S.Ct. at p. 1123 (dis. opn. of Alito, J).

obvious rejoinder to that argument is that the Court pointedly did not use the term “majority;” it used “controlling number.” More cautious observers have suggested that “controlling number” should be taken to mean the majority of a quorum, at least until the courts give more guidance on the matter.

North Carolina Dental leaves open other questions about board composition as well. One of these is: Who is an “active market participant”?³⁸ Would a retired member of the profession no longer be a participant of the market? Would withdrawal from practice during a board member’s term of service suffice? These questions were discussed at oral argument,³⁹ but were not resolved. Also left open is the scope of the market in which a member may not participate while serving on the board.⁴⁰

Over the past four decades, California has moved decisively to expand public membership on licensing boards.⁴¹ The change is generally agreed to be a salutary one for consumers, and for underserved communities in particular.⁴² There are many good reasons to consider continuing the trend to increase public membership on licensing boards—but we believe a desire to ensure immunity for board members should not be the decisive factor. As long as the legal questions raised by *North Carolina Dental* remain unresolved, radical changes to board composition are likely to create a whole new set of policy and practical challenges, with no guarantee of resolving the immunity problem.

B. Some Mechanisms for Increasing State Supervision

Observers have proposed a variety of mechanisms for building more state oversight into licensing boards’ decision-making processes. In considering these alternatives, it may be helpful to bear in mind that licensing boards perform a variety of

³⁸ *Ibid.*

³⁹ Transcript, *supra*, at p. 31.

⁴⁰ *North Carolina Dental*, *supra*, 135 S.Ct. at p. 1123 (dis. opn. of Alito, J). Some observers have suggested that professionals from one practice area might be appointed to serve on the board regulating another practice area, in order to bring their professional expertise to bear in markets where they are not actively competing.

⁴¹ See Center for Public Interest Law, A Guide to California’s Health Care Licensing Boards (July 2009) at pp. 1-2; Shimberg, Occupational Licensing: A Public Perspective (1982) at pp. 163-165.

⁴² See Center for Public Interest Law, *supra*, at pp. 15-17; Shimberg, *supra*, at pp. 175-179.

distinct functions, and that different supervisory structures may be appropriate for different functions.

For example, boards may develop and enforce standards for licensure; receive, track, and assess trends in consumer complaints; perform investigations and support administrative and criminal prosecutions; adjudicate complaints and enforce disciplinary measures; propose regulations and shepherd them through the regulatory process; perform consumer education; and more. Some of these functions are administrative in nature, some are quasi-judicial, and some are quasi-legislative. Boards' quasi-judicial and quasi-legislative functions, in particular, are already well supported by due process safeguards and other forms of state supervision (such as vertical prosecutions, administrative mandamus procedures, and public notice and scrutiny through the Administrative Procedure Act). Further, some functions are less likely to have antitrust implications than others: decisions affecting only a single license or licensee in a large market will rarely have an anticompetitive effect within the meaning of the Sherman Act. For these reasons, it is worth considering whether it is less urgent, or not necessary at all, to impose additional levels of supervision with respect to certain functions.

Ideas for providing state oversight include the concept of a superagency, such as a stand-alone office, or a committee within a larger agency, which has full responsibility for reviewing board actions *de novo*. Under such a system, the boards could be permitted to carry on with their business as usual, except that they would be required to refer each of their decisions (or some subset of decisions) to the superagency for its review. The superagency could review each action file submitted by the board, review the record and decision in light of the state's articulated regulatory policies, and then issue its own decision approving, modifying, or vetoing the board's action.

Another concept is to modify the powers of the boards themselves, so that all of their functions (or some subset of functions) would be advisory only. Under such a system, the boards would not take formal actions, but would produce a record and a recommendation for action, perhaps with proposed findings and conclusions. The recommendation file would then be submitted to a supervising state agency for its further consideration and formal action, if any.

Depending on the particular powers and procedures of each system, either could be tailored to encourage the development of written records to demonstrate executive discretion; access to administrative mandamus procedures for appeal of decisions; and the development of expertise and collaboration among reviewers, as well as between the reviewers and the boards that they review. Under any system, care should be taken to structure review functions so as to avoid unnecessary duplication or conflicts with other agencies and departments, and to minimize the development of super-policies not

adequately tailored to individual professions and markets. To prevent the development of “rubber-stamp” decisions, any acceptable system must be designed and sufficiently staffed to enable plenary review of board actions or recommendations at the individual transactional level.

As it stands, California is in a relatively advantageous position to create these kinds of mechanisms for active supervision of licensing boards. With the boards centrally housed within the Department of Consumer Affairs (an “umbrella agency”), there already exists an organization with good knowledge and experience of board operations, and with working lines of communication and accountability. It is worth exploring whether existing resources and minimal adjustments to procedures and outlooks might be converted to lines of active supervision, at least for the boards’ most market-sensitive actions.

Moreover, the Business and Professions Code already demonstrates an intention that the Department of Consumer Affairs will protect consumer interests as a means of promoting “the fair and efficient functioning of the free enterprise market economy” by educating consumers, suppressing deceptive and fraudulent practices, fostering competition, and representing consumer interests at all levels of government.⁴³ The free-market and consumer-oriented principles underlying *North Carolina Dental* are nothing new to California, and no bureaucratic paradigms need to be radically shifted as a result.

The Business and Professions Code also gives broad powers to the Director of Consumer Affairs (and his or her designees)⁴⁴ to protect the interests of consumers at every level.⁴⁵ The Director has power to investigate the work of the boards and to obtain their data and records;⁴⁶ to investigate alleged misconduct in licensing examinations and qualifications reviews;⁴⁷ to require reports;⁴⁸ to receive consumer complaints⁴⁹ and to initiate audits and reviews of disciplinary cases and complaints about licensees.⁵⁰

⁴³ Bus. & Prof. Code, § 301.

⁴⁴ Bus. & Prof. Code, §§ 10, 305.

⁴⁵ See Bus. & Prof. Code, § 310.

⁴⁶ Bus. & Prof. Code, § 153.

⁴⁷ Bus. & Prof. Code, § 109.

⁴⁸ Bus. & Prof. Code, § 127.

⁴⁹ Bus. & Prof. Code, § 325.

⁵⁰ Bus. & Prof. Code, § 116.

In addition, the Director must be provided a full opportunity to review all proposed rules and regulations (except those relating to examinations and licensure qualifications) before they are filed with the Office of Administrative Law, and the Director may disapprove any proposed regulation on the ground that it is injurious to the public.⁵¹ Whenever the Director (or his or her designee) actually exercises one of these powers to reach a substantive conclusion as to whether a board's action furthers an affirmative state policy, then it is safe to say that the active supervision requirement has been met.⁵²

It is worth considering whether the Director's powers should be amended to make review of certain board decisions mandatory as a matter of course, or to make the Director's review available upon the request of a board. It is also worth considering whether certain existing limitations on the Director's powers should be removed or modified. For example, the Director may investigate allegations of misconduct in examinations or qualification reviews, but the Director currently does not appear to have power to review board decisions in those areas, or to review proposed rules in those areas.⁵³ In addition, the Director's power to initiate audits and reviews appears to be limited to disciplinary cases and complaints about licensees.⁵⁴ If the Director's initiative is in fact so limited, it is worth considering whether that limitation continues to make sense. Finally, while the Director must be given a full opportunity to review most proposed regulations, the Director's disapproval may be overridden by a unanimous vote of the board.⁵⁵ It is worth considering whether the provision for an override maintains its utility, given that such an override would nullify any "active supervision" and concomitant immunity that would have been gained by the Director's review.⁵⁶

⁵¹ Bus. & Prof. Code, § 313.1.

⁵² Although a written statement of decision is not specifically required by existing legal standards, developing a practice of creating an evidentiary record and statement of decision would be valuable for many reasons, not the least of which would be the ability to proffer the documents to a court in support of a motion asserting state action immunity.

⁵³ Bus. & Prof. Code, §§ 109, 313.1.

⁵⁴ Bus. & Prof. Code, § 116.

⁵⁵ Bus. & Prof. Code, § 313.1.

⁵⁶ Even with an override, proposed regulations are still subject to review by the Office of Administrative Law.

C. Legislation Granting Immunity

From time to time, states have enacted laws expressly granting immunity from antitrust laws to political subdivisions, usually with respect to a specific market.⁵⁷ However, a statute purporting to grant immunity to private persons, such as licensing board members, would be of doubtful validity. Such a statute might be regarded as providing adequate authorization for anticompetitive activity, but active state supervision would probably still be required to give effect to the intended immunity. What is quite clear is that a state cannot grant blanket immunity by fiat. “[A] state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful”⁵⁸

IV. Indemnification of Board Members

So far we have focused entirely on the concept of immunity, and how to preserve it. But immunity is not the only way to protect state employees from the costs of suit, or to provide the reassurance necessary to secure their willingness and ability to perform their duties. Indemnification can also go a long way toward providing board members the protection they need to do their jobs. It is important for policy makers to keep this in mind in weighing the costs of creating supervision structures adequate to ensure blanket state action immunity for board members. If the costs of implementing a given supervisory structure are especially high, it makes sense to consider whether immunity is an absolute necessity, or whether indemnification (with or without additional risk-management measures such as training or reporting) is an adequate alternative.

As the law currently stands, the state has a duty to defend and indemnify members of licensing boards against antitrust litigation to the same extent, and subject to the same exceptions, that it defends and indemnifies state officers and employees in general civil litigation. The duty to defend and indemnify is governed by the Government Claims Act.⁵⁹ For purposes of the Act, the term “employee” includes officers and uncompensated servants.⁶⁰ We have repeatedly determined that members of a board,

⁵⁷ See 1A Areeda & Hovenkamp, *Antitrust Law*, *supra*, 225, at pp. 135-137; e.g. *AI Ambulance Service, Inc. v. County of Monterey* (9th Cir. 1996) 90 F.3d 333, 335 (discussing Health & Saf. Code, § 1797.6).

⁵⁸ *Parker v. Brown*, *supra*, 317 U.S. at 351.

⁵⁹ Gov. Code, §§ 810-996.6.

⁶⁰ See Gov. Code § 810.2.

commission, or similar body established by statute are employees entitled to defense and indemnification.⁶¹

A. Duty to Defend

Public employees are generally entitled to have their employer provide for the defense of any civil action “on account of an act or omission in the scope” of employment.⁶² A public entity may refuse to provide a defense in specified circumstances, including where the employee acted due to “actual fraud, corruption, or actual malice.”⁶³ The duty to defend contains no exception for antitrust violations.⁶⁴ Further, violations of antitrust laws do not inherently entail the sort of egregious behavior that would amount to fraud, corruption, or actual malice under state law. There would therefore be no basis to refuse to defend an employee on the bare allegation that he or she violated antitrust laws.

B. Duty to Indemnify

The Government Claims Act provides that when a public employee properly requests the employer to defend a claim, and reasonably cooperates in the defense, “the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed.”⁶⁵ In general, the government is liable for an injury proximately caused by an act within the scope of employment,⁶⁶ but is not liable for punitive damages.⁶⁷

One of the possible remedies for an antitrust violation is an award of treble damages to a person whose business or property has been injured by the violation.⁶⁸ This raises a question whether a treble damages award equates to an award of punitive damages within the meaning of the Government Claims Act. Although the answer is not

⁶¹ E.g., 81 Ops.Cal.Atty.Gen. 199, 200 (1998); 57 Ops.Cal.Atty.Gen. 358, 361 (1974).

⁶² Gov. Code, § 995.

⁶³ Gov. Code, § 995.2, subd. (a).

⁶⁴ Cf. *Mt. Hawley Insurance Co. v. Lopez* (2013) 215 Cal.App.4th 1385 (discussing Ins. Code, § 533.5).

⁶⁵ Gov. Code, § 825, subd. (a).

⁶⁶ Gov. Code, § 815.2.

⁶⁷ Gov. Code, § 818.

⁶⁸ 15 U.S.C. § 15(a).

entirely certain, we believe that antitrust treble damages do *not* equate to punitive damages.

The purposes of treble damage awards are to deter anticompetitive behavior and to encourage private enforcement of antitrust laws.⁶⁹ And, an award of treble damages is automatic once an antitrust violation is proved.⁷⁰ In contrast, punitive damages are “uniquely justified by and proportioned to the actor’s particular reprehensible conduct as well as that person or entity’s net worth . . . in order to adequately make the award ‘sting’”⁷¹ Also, punitive damages in California must be premised on a specific finding of malice, fraud, or oppression.⁷² In our view, the lack of a malice or fraud element in an antitrust claim, and the immateriality of a defendant’s particular conduct or net worth to the treble damage calculation, puts antitrust treble damages outside the Government Claims Act’s definition of punitive damages.⁷³

C. Possible Improvements to Indemnification Scheme

As set out above, state law provides for the defense and indemnification of board members to the same extent as other state employees. This should go a long way toward reassuring board members and potential board members that they will not be exposed to undue risk if they act reasonably and in good faith. This reassurance cannot be complete, however, as long as board members face significant uncertainty about how much litigation they may have to face, or about the status of treble damage awards.

Uncertainty about the legal status of treble damage awards could be reduced significantly by amending state law to specify that treble damage antitrust awards are not punitive damages within the meaning of the Government Claims Act. This would put them on the same footing as general damages awards, and thereby remove any uncertainty as to whether the state would provide indemnification for them.⁷⁴

⁶⁹ *Clayworth v. Pfizer, Inc.* (2010) 49 Cal.4th 758, 783-784 (individual right to treble damages is “incidental and subordinate” to purposes of deterrence and vigorous enforcement).

⁷⁰ 15 U.S.C. § 15(a).

⁷¹ *Piscitelli v. Friedenberg* (2001) 87 Cal.App.4th 953, 981-982.

⁷² Civ. Code, §§ 818, 3294.

⁷³ If treble damages awards were construed as constituting punitive damages, the state would still have the option of paying them under Government Code section 825.

⁷⁴ Ideally, treble damages should not be available at all against public entities and public officials. Since properly articulated and supervised anticompetitive behavior is

As a complement to indemnification, the potential for board member liability may be greatly reduced by introducing antitrust concepts to the required training and orientation programs that the Department of Consumer Affairs provides to new board members.⁷⁵ When board members share an awareness of the sensitivity of certain kinds of actions, they will be in a much better position to seek advice and review (that is, active supervision) from appropriate officials. They will also be far better prepared to assemble evidence and to articulate reasons for the decisions they make in market-sensitive areas. With training and practice, boards can be expected to become as proficient in making and demonstrating sound market decisions, and ensuring proper review of those decisions, as they are now in making and defending sound regulatory and disciplinary decisions.

V. Conclusions

North Carolina Dental has brought both the composition of licensing boards and the concept of active state supervision into the public spotlight, but the standard it imposes is flexible and context-specific. This leaves the state with many variables to consider in deciding how to respond.

Whatever the chosen response may be, the state can be assured that *North Carolina Dental*'s "active state supervision" requirement is satisfied when a non-market-

permitted to the state and its agents, the deterrent purpose of treble damages does not hold in the public arena. Further, when a state indemnifies board members, treble damages go not against the board members but against public coffers. "It is a grave act to make governmental units potentially liable for massive treble damages when, however 'proprietary' some of their activities may seem, they have fundamental responsibilities to their citizens for the provision of life-sustaining services such as police and fire protection." (*City of Lafayette, La. v. Louisiana Power & Light Co.* (1978) 435 U.S. 389, 442 (dis. opn. of Blackmun, J.).)

In response to concerns about the possibility of treble damage awards against municipalities, Congress passed the Local Government Antitrust Act (15 U.S.C. §§ 34-36), which provides that local governments and their officers and employees cannot be held liable for treble damages, compensatory damages, or attorney's fees. (See H.R. Rep. No. 965, 2nd Sess., p. 11 (1984).) For an argument that punitive sanctions should never be levied against public bodies and officers under the Sherman Act, see 1A Areeda & Hovenkamp, *supra*, ¶ 228, at pp. 214-226. Unfortunately, because treble damages are a product of federal statute, this problem is not susceptible of a solution by state legislation.

⁷⁵ Bus. & Prof. Code, § 453.

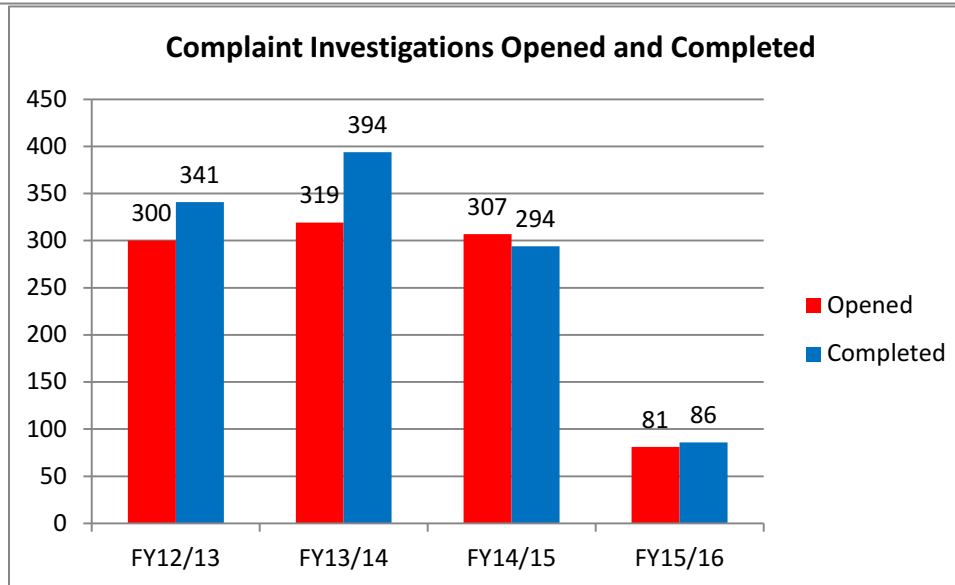
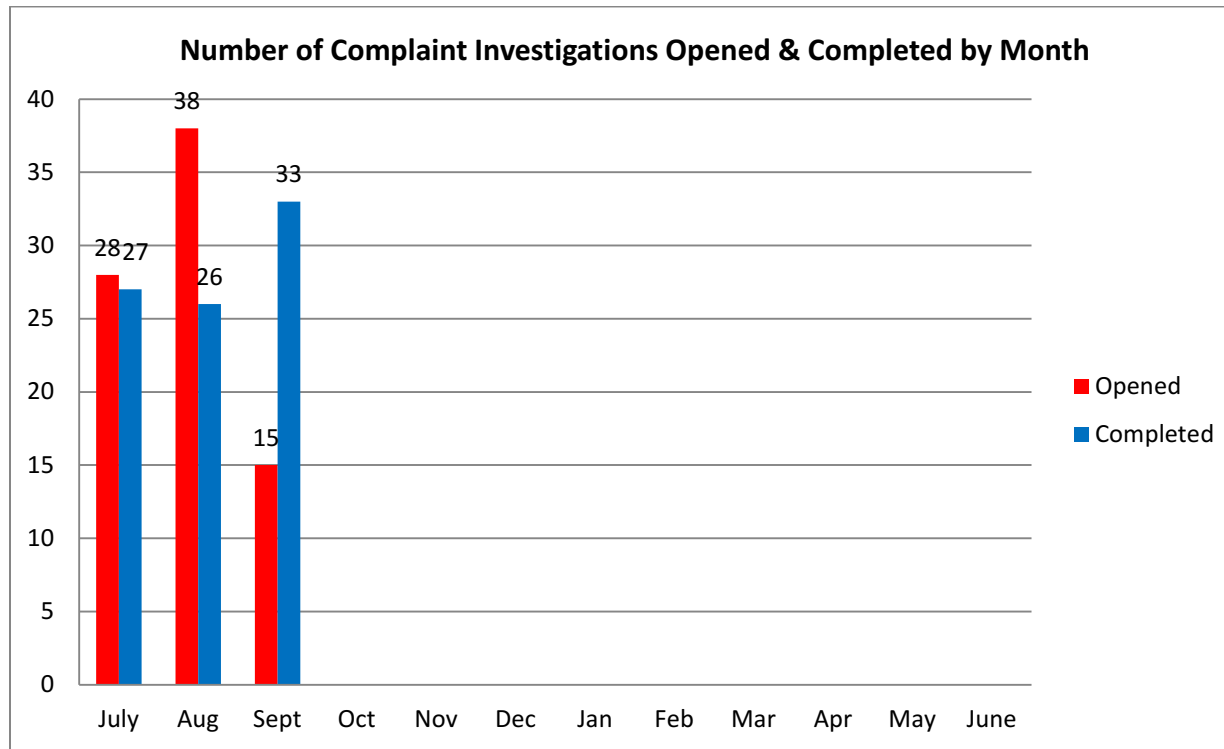
participant state official has and exercises the power to substantively review a board's action and determines whether the action effectuates the state's regulatory policies.

VI. Enforcement

A. Enforcement Statistical Report

PELS ENFORCEMENT PROGRAM

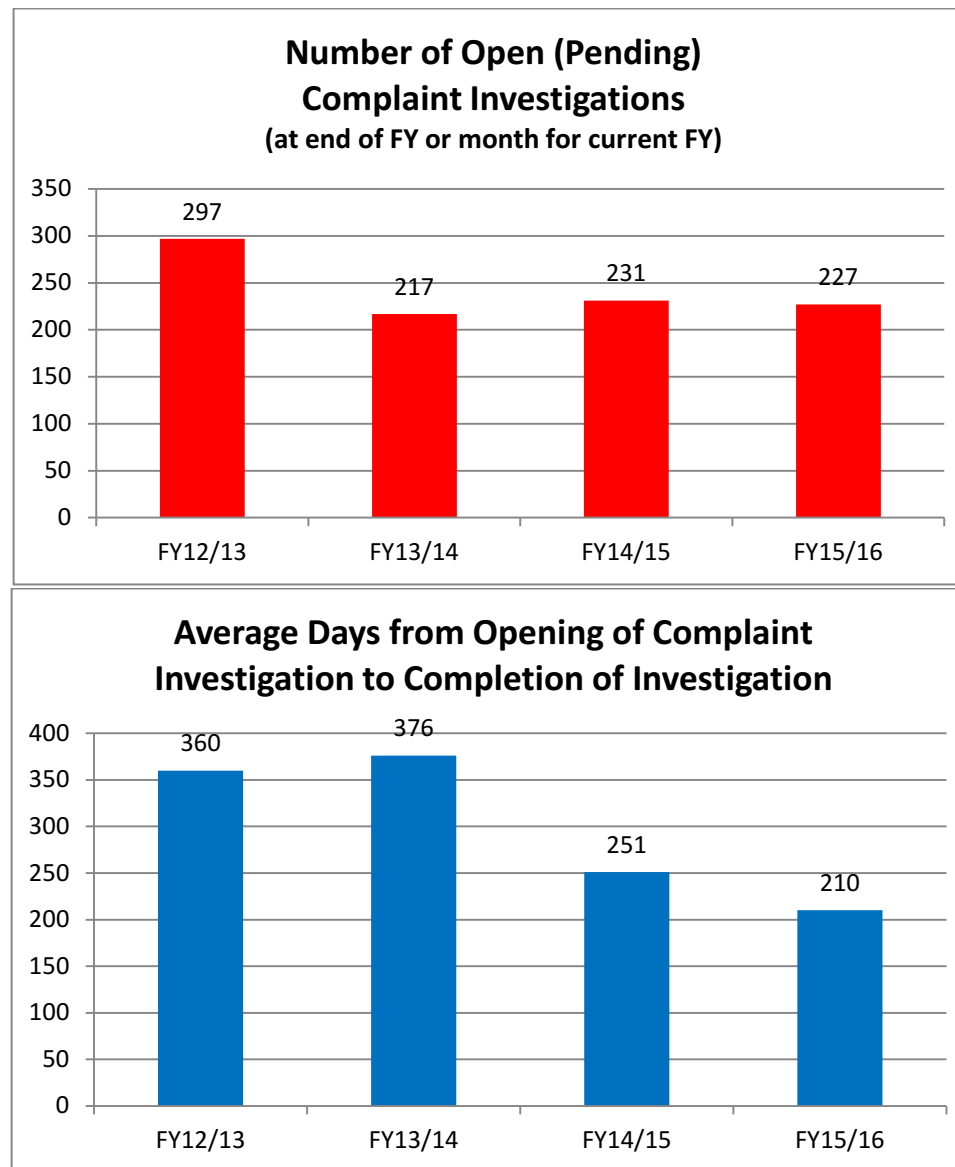
Complaint Investigation Phase



NOTE: FY15/16 statistics are through September 30, 2015

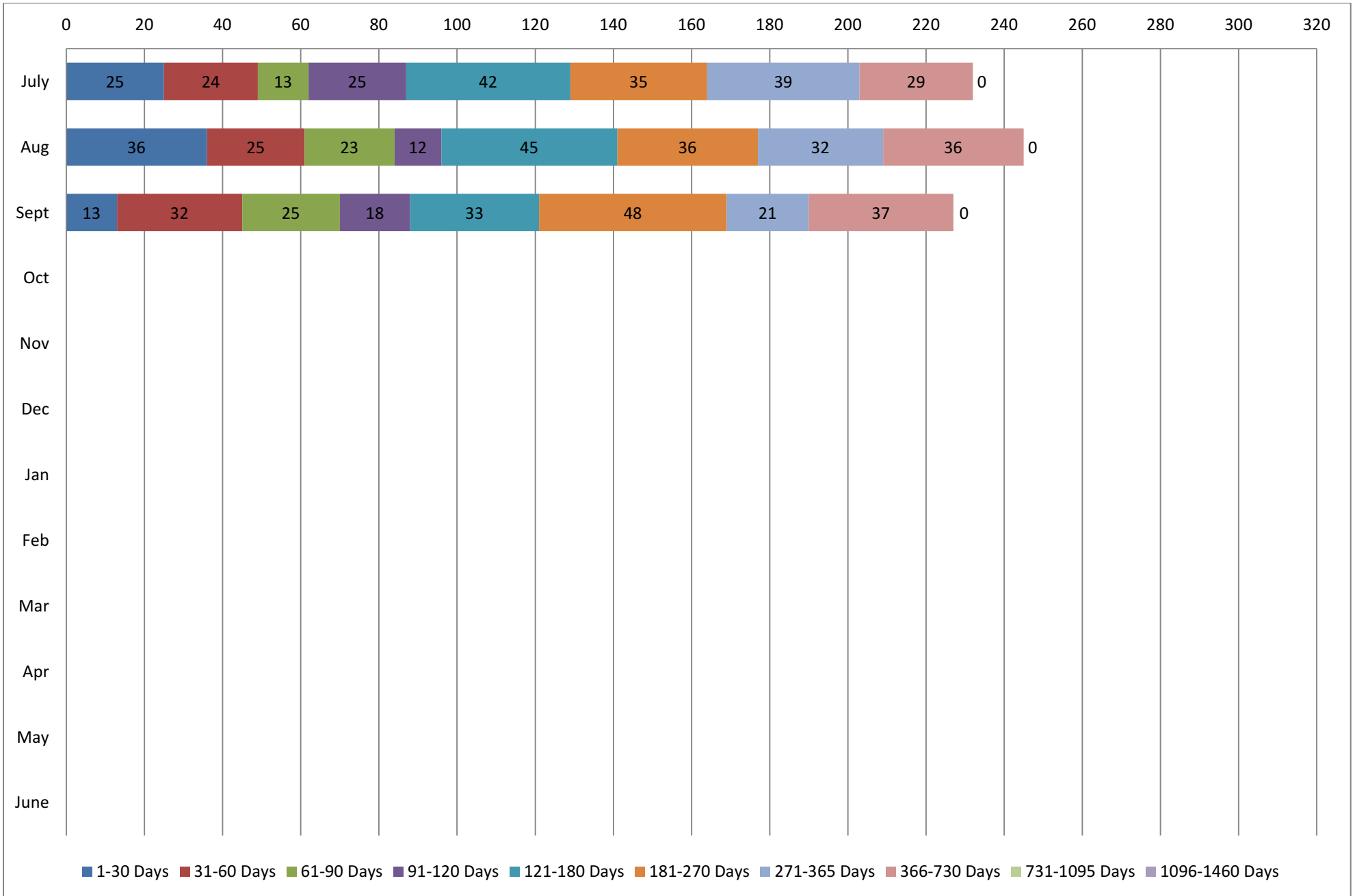
PELS ENFORCEMENT PROGRAM

Complaint Investigation Phase



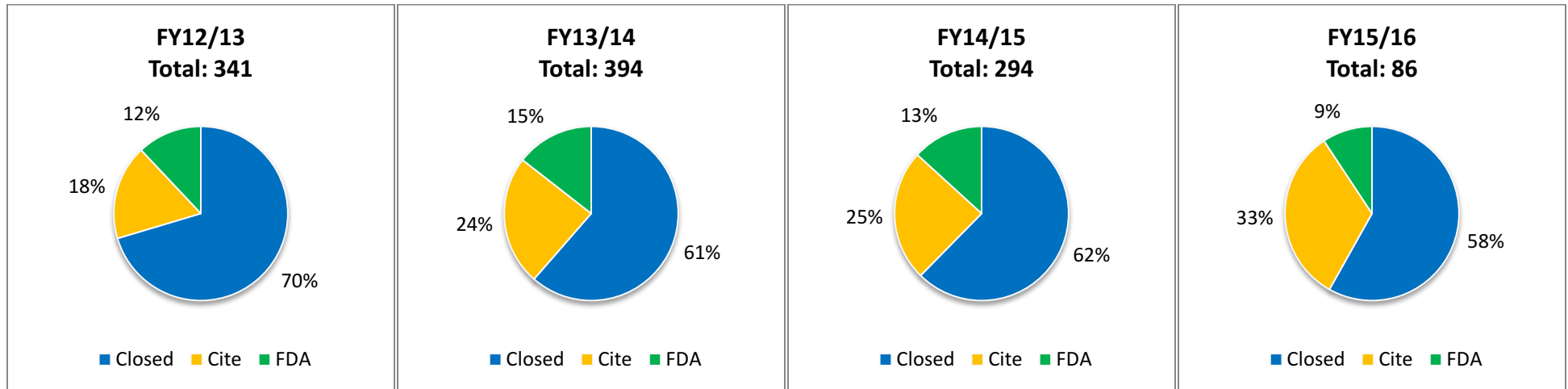
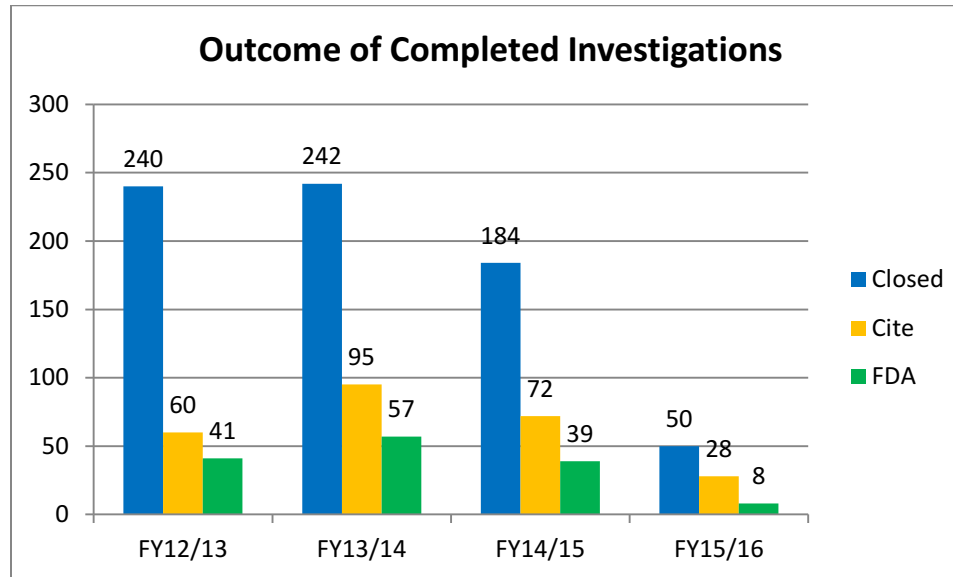
NOTE: FY15/16 statistics are through September 30, 2015

Aging of Open (Pending) Complaint Investigation Cases FY15/16



PELS ENFORCEMENT PROGRAM

Outcome of Completed Investigations



NOTE: FY15/16 statistics are through September 30, 2015

Closed = Closed with No Action Taken, includes the categories listed on the next page.

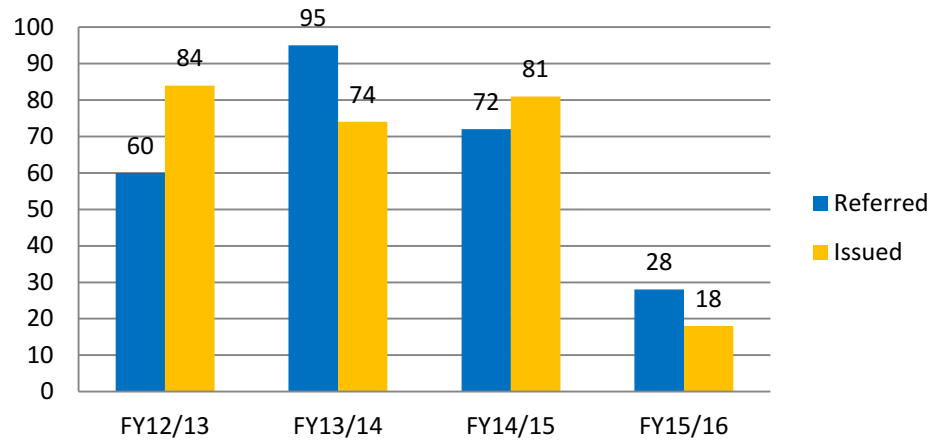
Cite = Referred for Issuance of Citation

FDA = Referred for Formal Disciplinary Action

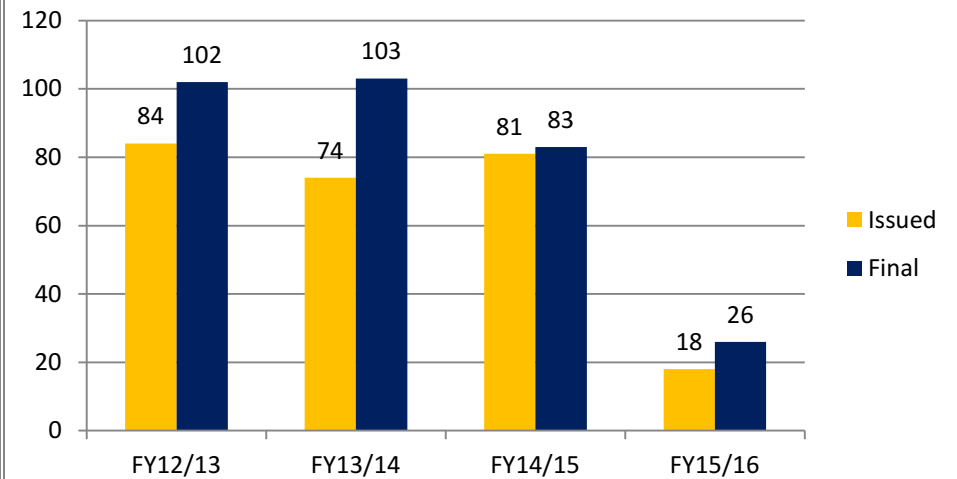
PELS ENFORCEMENT PROGRAM

Citations (Informal Enforcement Actions)

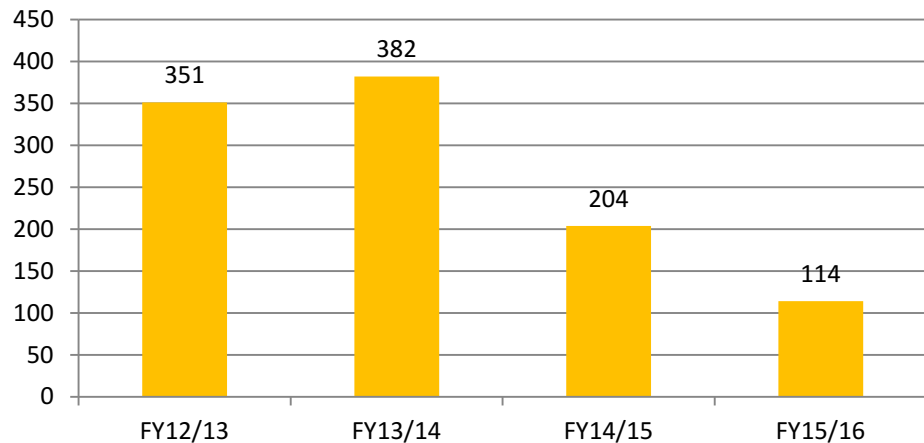
Number of Complaint Investigations Referred and Number of Citations Issued



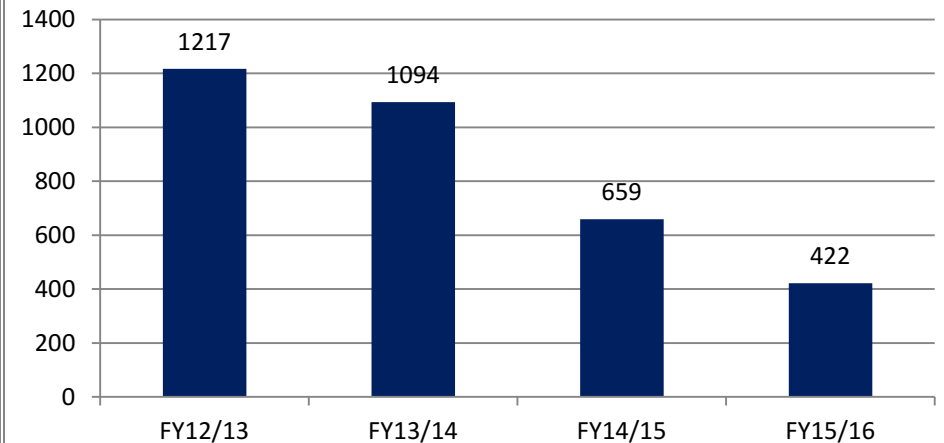
Number of Citations Issued and Final



Average Days Between Date of Issuance of Citation and Date Citation Becomes Final



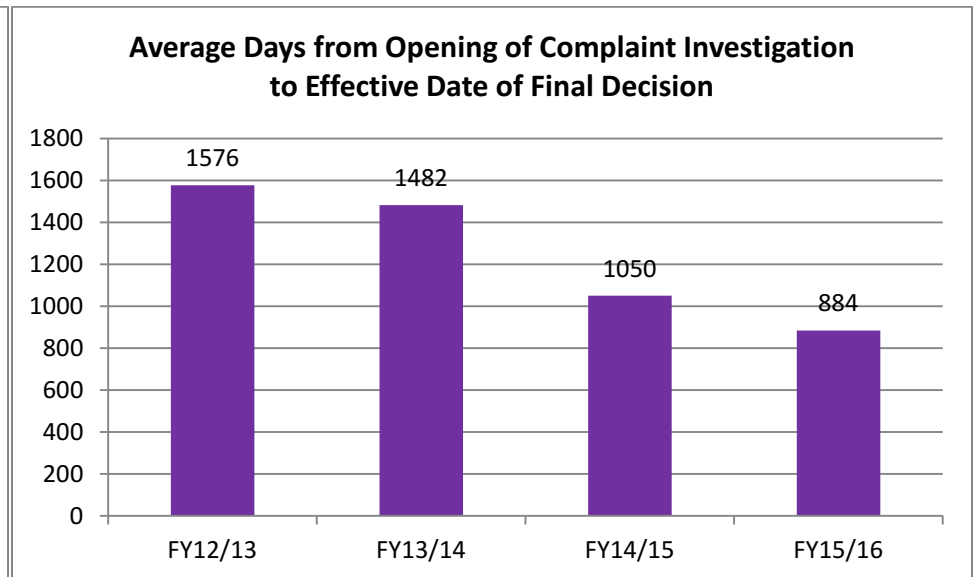
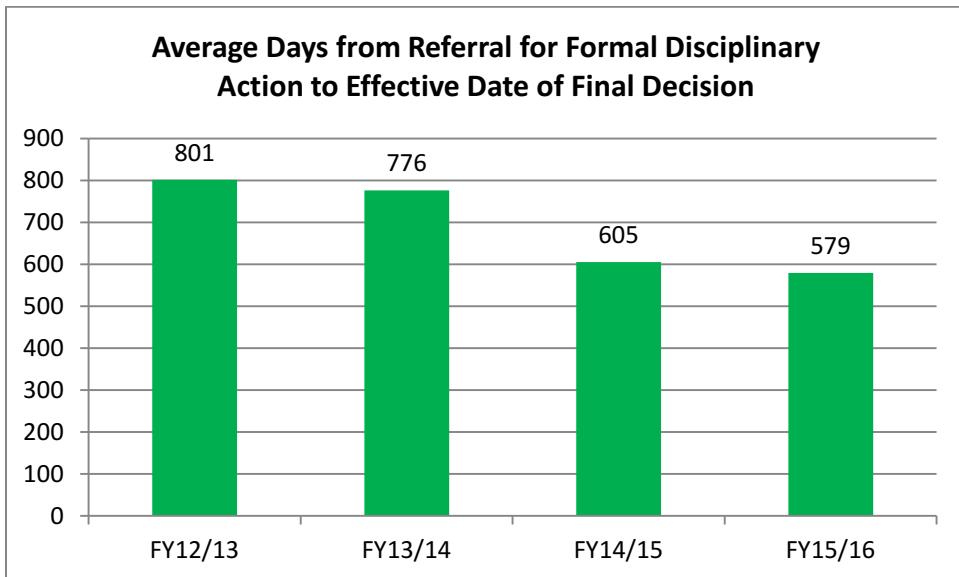
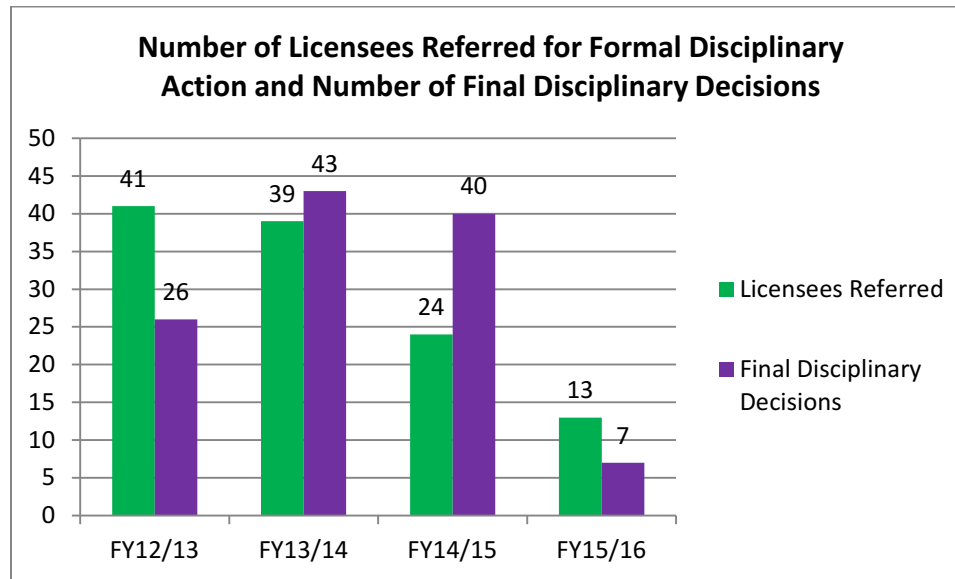
Average Days from Opening of Complaint Investigation to Date Citation Becomes Final



NOTE: FY15/16 statistics are through September 30, 2015

PELS ENFORCEMENT PROGRAM

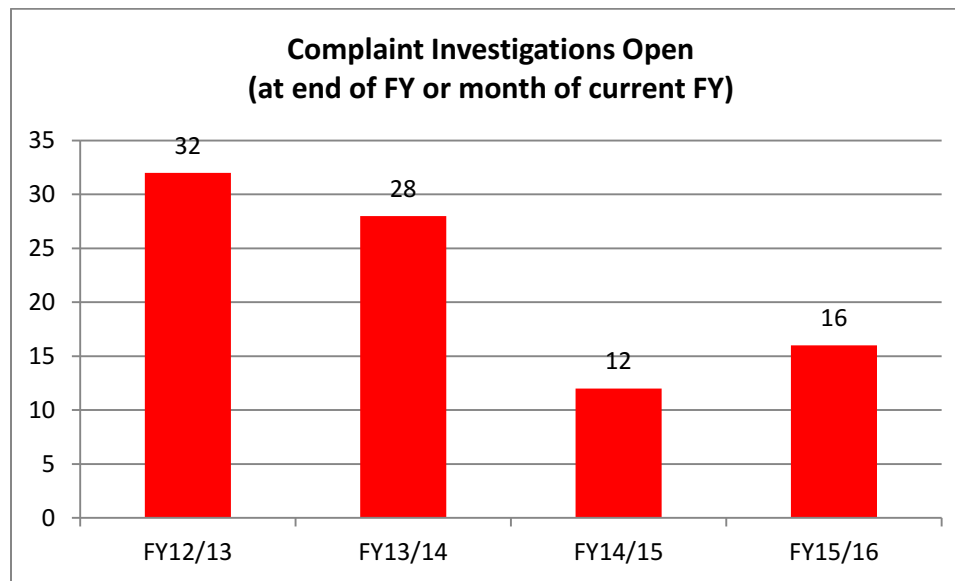
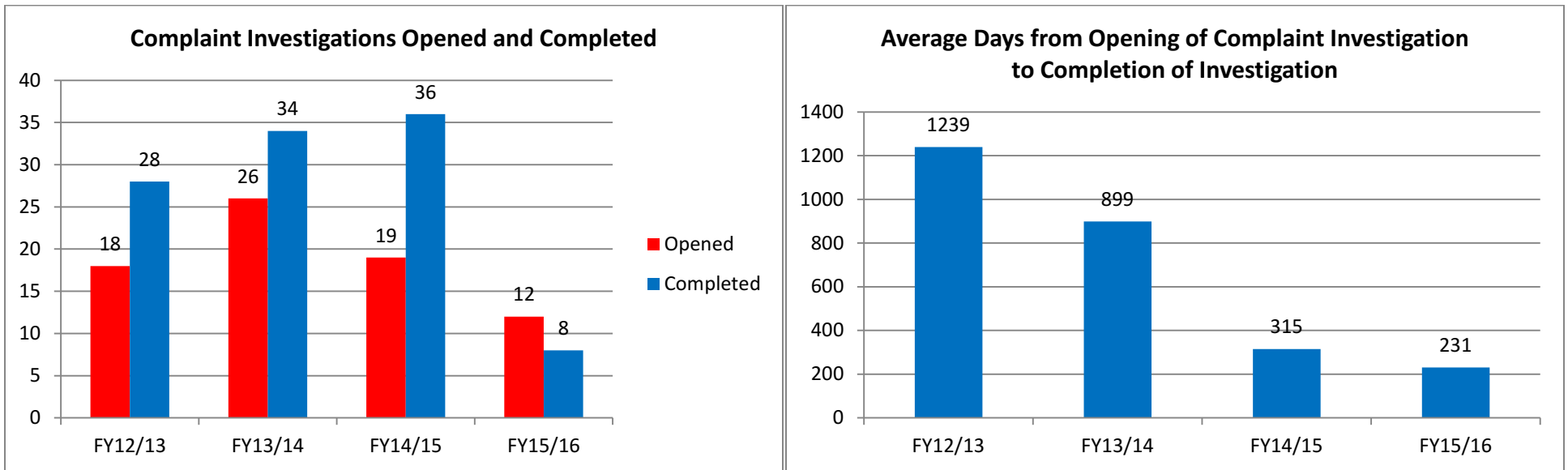
Formal Disciplinary Actions Against Licensees



NOTE: FY15/16 statistics are through September 30, 2015

G&G ENFORCEMENT PROGRAM

Complaint Investigation Phase

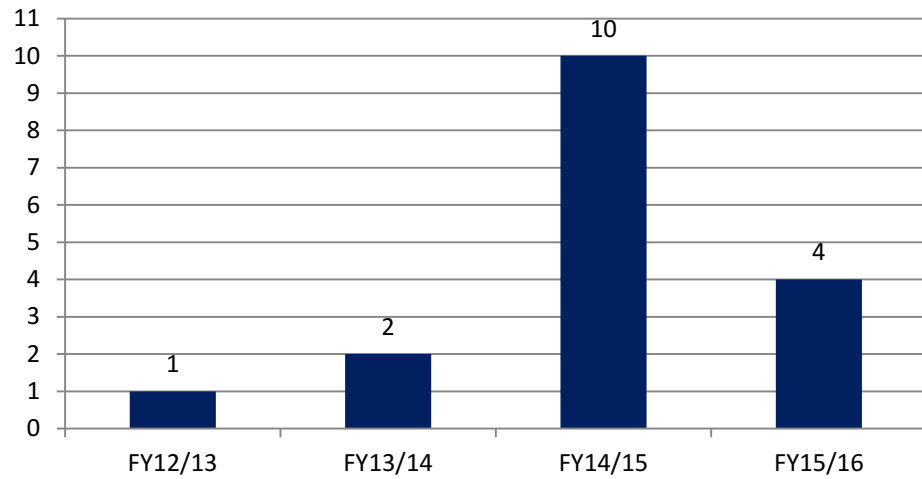


NOTE: FY15/16 statistics are through September 30, 2015

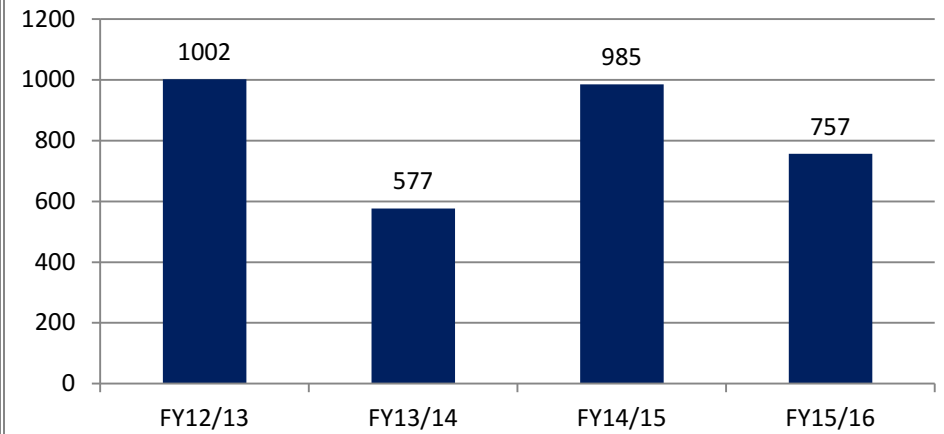
G&G ENFORCEMENT PROGRAM

Citations (Informal Enforcement Actions)

Number of Final Citations



Average Days from Opening of Complaint Investigation to Date Citation Becomes Final

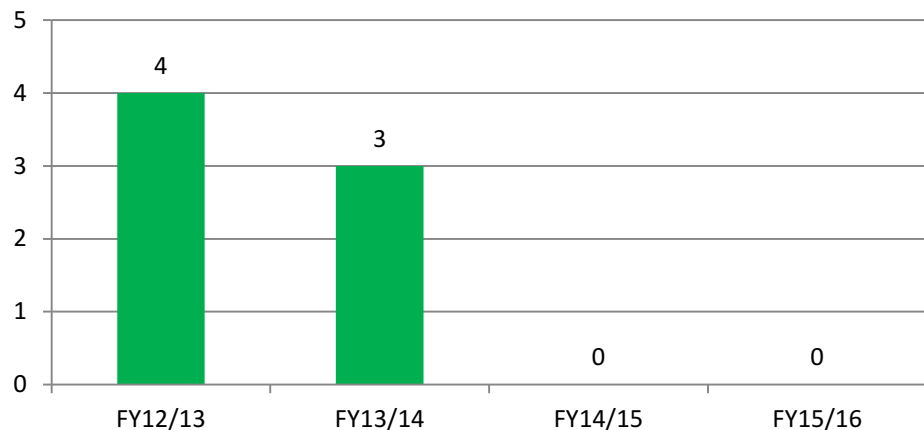


NOTE: FY15/16 statistics are through September 30, 2015

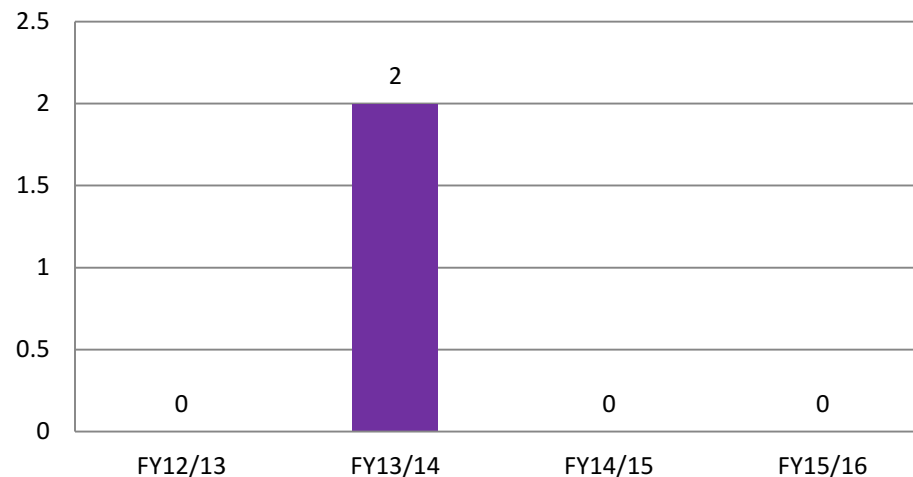
G&G ENFORCEMENT PROGRAM

Formal Disciplinary Actions against Licensees

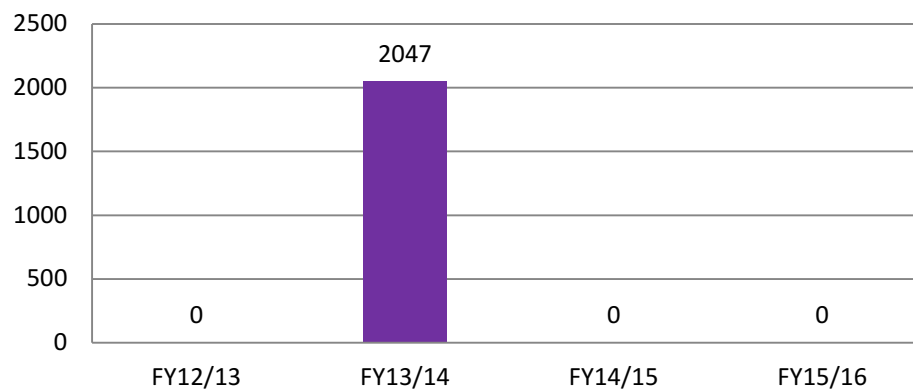
**Number of Licensees Referred for
Formal Disciplinary Action**



Number of Final Disciplinary Decisions



**Average Days from Initiation of Complaint
Investigation to Effective Date of Final
Disciplinary Decision**



NOTE: FY15/16 statistics are through September 30, 2015

VII. Exams/Licensing

- A. Fall 2015 Examination Update
- B. Plans for California State Specific Examinations
- C. Delinquent Reinstatement Requirements
- D. Credit for Overlapping Experience When Applying for Licensure or Certification

VII. B. Plans for California State Specific Examinations (Possible Action)

Fall 2010	First administration which required NCEES online registration First administration of NCEES Structural 16-hour exam.
Fall 2011	NCEES assumes administration responsibility for National exams in CA First CBT administration of CA state exam (Geotechnical)
Spring 2012	First CBT administration of CA Land Surveyor exam
Fall 2012	First CBT administration of CA Civil, Traffic, and CA Geologist/Geophysicist exams First administration of process which allowed EIT/LSIT candidates to register with NCEES and pass FE/FS exam prior to submitting application for certification
Jan. 2013	Board took action directing staff to "...move toward administering exams more often when fiscally and logistically possible no later than October 2014." Staff introduced the 5 year plan to convert the CA Civil exams to LOFT delivery on a year round basis
Fall 2014	Board begins administering CA PLS exam in fall totaling twice a year
Jan. 2014	NCEES first administers FE and FS examinations using CBT
Jan. 2014	Board begins administering CA Geotechnical Engineer examination on a year round cycle
<hr/>	
Oct. 2016	NCEES is scheduled to begin administering national PS exam year round by CBT
Jan. 2017	Board will begin administering CA Civil, Land Surveyor, Traffic Engineer exams year round by CBT
Jan. 2018	(anticipated) Board will begin administering CA Geologist and Geophysicists exams year round by CBT

DELINQUENT REINSTATEMENT REQUIREMENTS

The issue of granting delinquent reinstatement licenses to engineering and land surveying applicants has been discussed by the Board several times in the past. On January 1, 1995, legislation became effective that shortened the delinquency period from five to three years. Effective January 1, 2000, Board Rule 424.5 was substantially revised from its original form that was enacted in May 1995. The discussions have ranged from establishing a specific period of time beyond the three years during which the license could be reinstated, with any license beyond that period ineligible for reinstatement so that the former licensee would have to apply for a new license, to removing the provisions allowing for reinstatement altogether.

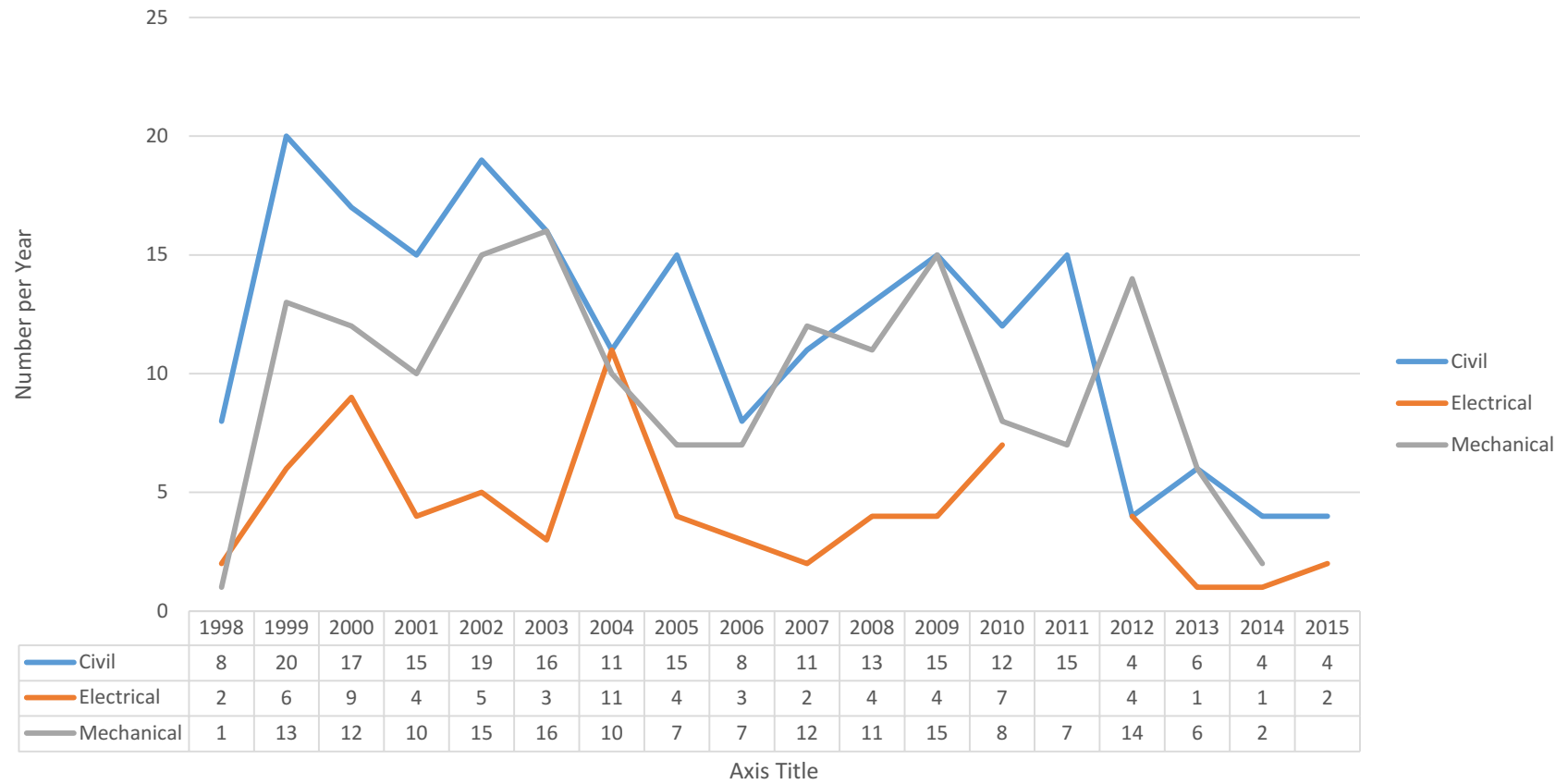
Attached are tables created on October 1, 2015, using data obtained from the Application Tracking System (ATS). The first table shows applications received per year by discipline, and a graph illustrating the same data follows. Not all applications received are completed, so this number is larger than those sent to the Board for approval. The second table shows those who have completed the reinstatement process and have had their license restored. As expected, this number is also less than the received applications in the first table & graph. Applicants do not complete the process for a number of reasons: some do not pay the required fees, take and pass the required exams, or simply decide to opt out. Both tables show a reduction in the number of reinstatement applications received by the Board in the last few years.

Unlike engineering and land surveying licenses, geologist and geophysicist licenses that are expired for more than five years cannot be reinstated. The former licensee must apply for a new license.

The statutes and regulations pertaining to delinquent licenses are included for reference.

	Yearly Reinstatement Applications																		
License	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Grand Total
Agricultural																	1		1
Chemical			3	3		1	1	1	2		1	1				1		2	16
Civil	8	20	17	15	19	16	11	15	8	11	13	15	12	15	4	6	4	4	213
Control System			1		1		1					3	1						7
Corrosion						1									1				2
Electrical	2	6	9	4	5	3	11	4	3	2	4	4	7		4	1	1	2	72
Fire Protection									1	1									2
Geotechnical	1																		1
Industrial		1	1			1					2				1				6
Land Surveyor		1	1		3	2			1	1				1					10
Manufacturing			1	1	1							1							4
Mechanical	1	13	12	10	15	16	10	7	7	12	11	15	8	7	14	6	2		166
Metallurgical										1								1	2
Nuclear															1				1
Petroleum			1	1	1					2									5
Quality						1	1												2
Safety	1			1										1					3
Structural		1	2	1		3		2		2									11
Traffic		1	1	1		1													4
Grand Total	13	43	49	37	45	45	35	29	22	32	31	39	28	24	25	14	8	9	528

Reinstatements by Discipline(Civil, Electrical and Mechanical)



	Licensed per Year																		
License	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Grand Total
Agricultural																	1		1
Chemical			2	3		1	1		2		1	1							11
Civil	8	16	12	13	12	8	7	10	7	6	7	9	9	9	2	2		2	139
Control System					1		1					1							3
Corrosion						1													1
Electrical	1	6	9	4	5	2	10	3	3	2	4	3	6		1		1	1	61
Fire Protection									1	1									2
Geotechnical	1																		1
Industrial		1	1			1					1								4
Land Surveyor		1	1		2				1	1									6
Manufacturing			1	1	1														3
Mechanical		12	11	7	14	16	9	7	6	12	6	10	7	3	10	5	1		136
Metallurgical										1									1
Petroleum				1	1					1									3
Quality						1													1
Safety	1			1										1					3
Structural		1	2	1		1		1		1									7
Traffic		1	1			1													3
Grand Total	11	38	40	31	36	32	28	21	20	25	19	24	22	13	13	7	3	3	386

Professional Engineers Act (Business and Professions Code section 6700, et seq.)

Section 6795.

Certificates of registration as a professional engineer, and certificates of authority, shall be valid for a period of two years from the assigned date of renewal. Biennial renewals shall be staggered on a quarterly basis. To renew an unexpired certificate, the certificate holder shall, on or before the date of expiration indicated on the renewal receipt, apply for renewal on a form prescribed by the board, and pay the renewal fee prescribed by this chapter.

Section 6795.1.

Within 60 to 90 days prior to the expiration of a certificate of registration or certificate of authority, the board shall mail to the registrant or authority holder a notice of the pending expiration. That notice shall include application forms for renewal. If there is no response by the expiration date, the board shall provide a second notice to the registrant's or authority holder's address.

Section 6796.

Except as otherwise provided in this article, certificates of registration as a professional engineer, and certificates of authority may be renewed at any time within three years after expiration on filing of application for renewal on a form prescribed by the board and payment of all accrued and unpaid renewal fees. If the certificate is renewed more than 60 days after its expiration, the certificate holder, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs.

The expiration date of a certificate renewed pursuant to this section shall be determined pursuant to Section 6795.

Section 6796.3.

Certificates of registration as a professional engineer, and certificates of authority to use the title "structural engineer," "soil engineer," or "consulting engineer" that are not renewed within three years after expiration may not be renewed, restored, reinstated, or reissued unless all of the following apply:

(a) The registrant or certificate holder has not committed any acts or crimes constituting grounds for denial of registration or of a certificate under Section 480.

(b) The registrant or certificate holder takes and passes the examination that would be required of him or her if he or she were then applying for the certificate for the first time, or otherwise establishes to the satisfaction of the board that, with due regard for the public interest, he or she is qualified to practice the branch of engineering in which he or she seeks renewal or reinstatement.

(c) The registrant or certificate holder pays all of the fees that would be required of him or her if he or she were then applying for the certificate for the first time. If the registrant or certificate holder has been practicing in this state with an expired or delinquent license and receives a waiver from taking the examination as specified in subdivision (b) then he or she shall pay all accrued and unpaid renewal fees.

The board may, by regulation, provide for the waiver or refund of all or any part of the application fee in those cases in which a certificate is issued without an examination pursuant to this section.

Professional Land Surveyors' Act (Business and Professions Code section 8700, et seq.)

Section 8801.

Licenses issued under this chapter expire every two years, if not renewed. Biennial renewals shall be staggered on a quarterly basis. To renew an unexpired license the license holder shall on or before the date of expiration indicated on the renewal receipt, apply for renewal on a form prescribed by the board, and pay the renewal fee prescribed by this chapter.

Section 8802.

Except as otherwise provided in this article, licenses issued under this chapter may be renewed at any time within three years after expiration on filing of application for renewal on a form prescribed by the board and payment of all accrued and unpaid renewal fees. If the license is renewed more than 30 days after its expiration, the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in effect through the date provided in Section 8801 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

Section 8803.

A license which is not renewed within three years after its expiration may not be renewed, restored, reissued, or reinstated thereafter, unless all of the following apply:

(a) The licensee has not committed any acts or crimes constituting grounds for denial of licensure under Section 480.

(b) The licensee pays all of the fees which would be required if applying for the license for the first time. If the registrant or certificate holder has been practicing in this state with an expired or delinquent license and receives a waiver from taking the examination as specified in subdivision (c) then he or she shall pay all accrued and unpaid renewal fees.

(c) The licensee takes and passes the examination which would be required if applying for the license for the first time, or otherwise establishes to the satisfaction of the board that, with due regard for the public interest, the licensee is qualified to engage in the practice of land surveying.

The board may, by appropriate regulation, authorize the waiver or refund of all or any part of the application fee in those cases in which a license is issued without an examination under this section.

**Board Rules Pertaining to Engineering and Land Surveying
(Title 16, California Code of Regulations section 400, et seq.)**

424.5. Reinstatement Requirements for Delinquent Applicants.

(a) A license which has not been renewed within the time required under Business and Professions Code section 6796.3 or 8803 is considered delinquent and, except as provided in subdivision (c), shall be reinstated if the applicant complies with the following:

(1) Submits evidence satisfactory to the Board that the applicant is qualified in the branch for which he or she is applying. This evidence shall consist of:

(A) A completed, typewritten application on a form as specified in Section 420 accompanied by the required application fee as specified in Section 407 (b)(1)-(4).

(B) Completed appropriate reference forms as specified in Sections 427.10, 427.20, or 427.30. The submission of a reference which states that the applicant is not technically qualified to be licensed shall be grounds for denial.

(2) Takes and passes the examination on the applicable state laws and board regulations as specified in Business and Professions Code section 6755.2 or 8741.1 .

(3) Takes and passes examinations on seismic principles and engineering surveying, if he or she is a civil engineering applicant whose initial registration was issued prior to January 1, 1988.

(4) Pays all accrued and unpaid renewal fees.

(5) Has not committed any acts or crimes constituting grounds for denial of licensure under Business and Professions Code section 480.

(b) An applicant who is unable to submit evidence satisfactory to the Board that he or she is qualified as provided in subdivision (a)(1) shall take and pass the appropriate second division examination or the appropriate title authority examination in addition to the requirements specified in subdivision (a)(2)- (5) prior to reinstatement of the delinquent license.

(c) Notwithstanding subdivisions (a) and (b), the Board may pursue action, including but not limited to revocation or suspension of the license pursuant to Business and Professions Code sections 6775, 6776, 8780, and 8781, issuance of a citation containing an order to pay an administrative fine pursuant to Sections 473 through 473.4, filing of criminal charges pursuant to Business and Professions Code sections 6787 and 8792, and denial of the application pursuant to Section 420, against the applicant if evidence obtained during an investigation reveals that the applicant has violated any provision of the Business and Professions Code, the California Code of Regulations, or other applicable laws and regulations related to the practices of professional engineering or professional land surveying during the period of delinquency, including, but not limited to, practicing or offering to practice with an expired or delinquent license.

(d) The application response timeframe is as specified in Section 470 (a).

(e) The Board's time period for processing an application from receipt of the initial application to the final decision regarding issuance or denial of licensure is as specified in Section 471.

As used in this section, "license" includes certificate of registration as a professional engineer, licensure as a professional land surveyor, and certificates of authority to use the title "structural engineer," "soil engineer," or "consulting engineer."

Geologist and Geophysicist Act (Business and Professions Code section 7800, et seq.)

Section 7880.

A certificate of registration as a geologist or as a specialty geologist or as a geophysicist or as a specialty geophysicist shall expire at 12 a.m. of the last day of the birth month of the certificate holder during the second year of a two-year term if not renewed. To renew an unexpired certificate, the certificate holder shall, on or before the date of expiration of the certificate, apply for renewal on a form prescribed by the board, and pay the renewal fee prescribed by this chapter.

For purposes of implementing the distribution of the renewal of registrations throughout the year, the board may establish a system of staggered certificate expiration dates and a pro rata formula for the payment of renewal fees by certificate holders affected by the implementation of the program.

Section 7881.

Except as otherwise provided in this article, certificates of registration as a geologist or as a geophysicist, or certified specialty certificates, may be renewed at any time within five years after expiration on filing an application for renewal on a form prescribed by the board and payment of all accrued and unpaid renewal fees. If the certificate is renewed more than 30 days after its expiration, the certificate holder, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which all renewal fees are paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the certificate shall continue in effect through the date provided in Section 7880 that next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

Section 7884.

Certificates of registration as a geologist or as a geophysicist or certified specialty certificates which are not renewed within five years after expiration may not be renewed, restored, reinstated, or reissued thereafter. The holder of such certificate may apply for and obtain a new certificate, however, if:

(a) He has not committed any acts or crimes constituting grounds for denial of licensure under Section 480.

(b) He takes and passes the examination, if any, which would be required of him if he were then applying for the certificate for the first time.

The board may, by regulation, provide for the waiver or refund of all or any part of the application fee in those cases in which a certificate is issued without an examination pursuant to the provisions of this section.

CREDIT FOR OVERLAPPING EXPERIENCE WHEN APPLYING FOR LICENSURE OR CERTIFICATION

Based on discussions at various meetings over the last year regarding how qualifying experience is credited/counted for applicants for licensure or certification, especially relating to how overlapping experience time periods are counted, the Board directed staff to provide the specific sections of the statutes (Business and Professions Code) and regulations (Title 16, California Code of Regulations) that address experience.

There are numerous sections in the statutes and regulations that address experience, from how many years are required to what constitutes qualifying experience to how the information regarding that experience is verified and conveyed to the Board. The statutes and their related regulations need to be reviewed and considered as a whole in determining what constitutes qualifying experience and how it is to be counted, as well as to determine if changes to any of the laws should be made to clarify the experience requirements. Therefore, staff has included all of the statutory and regulatory provisions that were found to contain references to qualifying experience requirements for licensure so that the Board can review all of the pertinent sections and determine what ones, if any, it wishes to discuss in more detail at future meetings, and what additional information, if any, it wishes staff to provide at future meetings. Also included are charts that provide a brief overview of the regulations and statutes that pertain to each professional license type.

Professional Engineers Act (Business and Professions Code section 6700, et seq.)

Section 6736. Title of structural engineer

No person shall use the title, "structural engineer," or any combination of these words or abbreviations thereof, unless he or she is a licensed civil engineer in this state and unless he or she has been found qualified as a structural engineer according to the rules and regulations established for structural engineers by the board.

Section 6736.1. Soil engineer, soils engineer, or geotechnical engineer

(a) No person shall use the title, "soil engineer," "soils engineer," or "geotechnical engineer," or any combination of these words or abbreviations thereof, unless he or she is a licensed civil engineer in this state and files an application to use the appropriate title with the board and the board determines the applicant is qualified to use the requested title.

(b) The board shall establish qualifications and standards to use the title "soil engineer," "soils engineer, or "geotechnical engineer." However, each applicant shall demonstrate a minimum of four years qualifying experience beyond that required for licensure as a civil engineer, and shall pass the examination specified by the board.

(c) For purposes of this section, "qualifying experience" means proof of responsible charge of soil engineering projects in at least 50 percent of the major areas of soil engineering, as determined by the board.

(d) Nothing contained in this chapter requires existing references to "soil engineering," "soils engineering," "geotechnical engineering," "soil engineer," "soils engineer," or "geotechnical engineer," in local agency ordinances, building codes, regulations, or policies, to mean that those activities or persons must be registered or authorized to use the relevant title or authority.

Section 6751. Qualifications

(a) The applicant for certification as an engineer-in-training shall comply with all of the following:

(1) Not have committed acts or crimes constituting grounds for denial of registration under Section 480.

(2) Successfully pass the first division of the examination. The applicant shall be eligible to sit for the first division of the examination after satisfactory completion of three years or more of postsecondary engineering education, three years or more of engineering experience, or a combination of postsecondary education and experience in engineering totaling three years.

The board need not verify the applicant's eligibility other than to require the applicant to sign a statement of eligibility on the application form.

(b) The applicant for registration as a professional engineer shall comply with all of the following:

(1) Not have committed acts or crimes constituting grounds for denial of registration under Section 480.

(2) Furnish evidence of six years or more of qualifying experience in engineering work satisfactory to the board evidencing that the applicant is competent to practice the character of engineering in the branch for which he or she is applying for registration, and successfully pass the second division of the examination.

(3) The applicant for the second division of the examination shall successfully pass the first division examination or shall be exempt therefrom.

Section 6751.2. Foreign applicants

The board may consider the professional experience and education acquired by applicants outside the United States which in the opinion of the board is equivalent to the

minimum requirements of the board established by regulation for professional experience and education in this state.

Section 6752. Civil engineer experience

An applicant for registration as a civil engineer must have gained his experience under the direction of a civil engineer legally qualified to practice.

Section 6753. Equivalents for experience; education; teaching

With respect to applicants for licensure as professional engineers, the board:

(a) Shall give credit as qualifying experience of four years, for graduation with an engineering degree from a college or university the curriculum of which has been approved by the board.

(b) May at its discretion give credit as qualifying experience up to a maximum of two years, for graduation with an engineering degree from a nonapproved engineering curriculum or graduation with an engineering technology degree in an approved engineering technology curriculum.

(c) May at its discretion give credit as qualifying experience of up to one-half year, for each year of successfully completed postsecondary study in an engineering curriculum up to a maximum of four years credit. A year of study shall be at least 32 semester units or 48 quarter units.

(d) May at its discretion give credit as qualifying experience not in excess of five years, for a postgraduate degree in a school of engineering with a board-approved undergraduate or postgraduate curriculum.

(e) May at its discretion give credit as qualifying experience for engineering teaching, not in excess of one year, if of a character satisfactory to the board.

The sum of qualifying experience credit for subdivision (a) to (e), inclusive, shall not exceed five years.

Section 6753.5. Experience in armed forces

All applicants shall be given equal credit for engineering experience in the armed forces of United States as with any other comparable engineering experience.

Section 6755. Examination requirements

(a) Examination duration and composition shall be designed to conform to the following general principle: The first division of the examination shall test the applicant's knowledge of appropriate fundamental engineering subjects, including mathematics and the basic sciences; the second division of the examination shall test the applicant's ability to apply his or her knowledge and experience and to assume responsible charge in the professional practice of the branch of engineering in which the applicant is being examined.

(b) The applicant for the second division of the examination shall have successfully passed the first division examination or shall be exempt therefrom.

(c) The board may by rule provide for a waiver of the first division of the examination for applicants whose education and experience qualifications substantially exceed the requirements of Section 6751.

(d) The board may by rule provide for a waiver of the second division of the examination for persons eminently qualified for registration in this state by virtue of their standing in the engineering community, their years of experience, and those other qualifications as the board deems appropriate.

Section 6757. Separate branches of engineering

Applicants who profess to be qualified in more than one branch of engineering shall be required to file an application for each branch in which they wish to be registered.

Section 6759. Comity applicants

The board, upon application therefor, on its prescribed form, and the payment of the fee fixed by this chapter, may issue a certificate of registration as a professional engineer, without written examination, to any person holding a certificate of registration issued to him or her by any state or country when the applicant's qualifications meet the requirements of this chapter and rules established by the board. The board shall not require a comity applicant to meet any requirement not required of California applicants. For purposes of this section, equivalent second division examinations shall be written examinations prepared by or administered by a state or territory either by single or combined branch at the level generally administered by the board to persons who passed or were exempted from the first division examination. Applicants who have passed an equivalent second division combined branch or a single branch examination in a branch not recognized for registration in California shall be registered in the branch in which their experience and education indicate the closest relationship.

Section 6762. Certification as professional engineer

Any applicant who has passed the second division examination and has otherwise qualified hereunder as a professional engineer, shall have a certificate of registration issued to him or her as a professional engineer in the particular branch for which he or she is found qualified.

Section 6763. Structural, soil, soils, geotechnical authority

Application for authority to use the title "structural engineer," "soil engineer," "soils engineer," or "geotechnical engineer" shall be made to the board on forms prescribed by it and shall be accompanied by the fee fixed by this chapter.

An applicant for authority to use the title "structural engineer," "soil engineer," "soils engineer," or "geotechnical engineer" who has passed the examination prescribed by the board, or an applicant for authority to use the title "soil engineer," "soils engineer," or "geotechnical engineer" whose application is submitted prior to July 1, 1986, and who has otherwise demonstrated that he or she is qualified, shall have a certificate of authority issued to him or her.

For purposes of this chapter, an authority to use the title "structural engineer," "soil engineer," "soils engineer," or "geotechnical engineer" is an identification of competence and specialization in a subspecialty of civil engineering and necessitates education or experience in addition to that required for registration as a civil engineer.

Professional Land Surveyors' Act (Business and Professions Code section 8700, et seq.)

Section 8741. Examination requirements and waivers

(a) The first division of the examination shall test the applicant's fundamental knowledge of surveying, mathematics, and basic science. The board may prescribe by regulation reasonable educational or experience requirements including two years of postsecondary education in land surveying, two years of experience in land surveying, or a combination of postsecondary education and experience in land surveying totaling two years for admission to the first division of the examination. Applicants registered by the board as a California civil engineer are exempt from this division of the examination.

The second division of the examination shall test the applicant's ability to apply his or her knowledge and experience and to assume responsible charge in the professional practice of land surveying.

(b) The applicant for the second division examination shall have successfully passed the first division examination, or shall be exempt therefrom. The applicant shall be thoroughly familiar with (1) the procedure and rules governing the survey of public lands as set forth in Manual of Surveying Instructions (2009), published by the federal Bureau of Land Management and (2) the principles of real property relating to boundaries and conveyancing.

(c) The board may by rule provide for a waiver of the first division of the examination for applicants whose education and experience qualifications substantially exceed the requirements of Section 8742.

(d) The board may by rule provide for a waiver of the second division of the examination and the assignment to a special examination for those applicants whose educational qualifications are equal to, and whose experience qualifications substantially exceed, those qualifications established under subdivision (c). The special examination may be either written or oral, or a combination of both.

Section 8741.1. Examination requirements

The second division of the examination for licensure as a land surveyor shall include an examination that incorporates a national examination for land surveying by a nationally recognized entity approved by the board, and a supplemental California specific examination. The California specific examination shall test the applicant's knowledge of the provisions of this chapter and the board's rules and regulations regulating the practice of professional land surveying in this state.

The board shall use the national examination on or before June 1, 2003. In the meantime, the board may continue to provide the current state-only second division examination and administer the test on the provisions of this chapter and board rules as a separate part of the second division examination for licensure as a land surveyor.

Section 8742. Education - experience requirements

(a) The educational qualifications and experience in land surveying, which an applicant for the second division examination shall possess, shall be not less than one of the following prescribed criteria:

(1) Graduation from a four-year curriculum with an emphasis in land surveying approved by the board or accredited by a national or regional accrediting agency recognized by the United States Office of Education at a postsecondary educational institution and two years of actual broad based progressive experience in land surveying, including one year of responsible field training and one year of responsible office training satisfactory to the board.

(2) Actual broad based progressive experience in land surveying for at least six years, including one year of responsible field training and one year of responsible office training satisfactory to the board.

(3) Registration as a civil engineer with two years of actual broad based progressive experience in land surveying satisfactory to the board.

(b) With respect to an applicant for a license as a land surveyor, the board shall count one year of postsecondary education in land surveying as one year of experience in land surveying up to a maximum of four years, provided the applicant has graduated from the course in land surveying and the curriculum in land surveying is approved by the board or is accredited by a regional or national accrediting agency recognized for the purpose by the United States Office of Education. Each year of study in an approved or an accredited course in land surveying without graduation shall be counted the same as one-half year of experience.

Each applicant claiming equivalent credit for education may be required to produce a complete transcript of all college level courses completed.

Until January 1, 2000, the board may, at its discretion, confer credit as experience in land surveying, not in excess of two years, for successfully passing the first division of the examination prescribed in Section 8741.

Section 8748. Licensure by comity or reciprocity

The board, upon application therefor, and the payment of the fee fixed by this chapter, may issue a land surveyor's license, without written examination, to any person who holds a valid land surveyor's license issued to him or her by any state or country when the applicant's qualifications meet the requirements of this chapter and rules established by the board.

**Board Rules Pertaining to Engineering and Land Surveying
(Title 16, California Code of Regulations section 400, et seq.)**

Section 420. Applications.

- (a) Applications for certification, for licensure, or for a certificate of authority shall be:
 - (1) Filed on a form prescribed by the executive officer and shall be typewritten.
 - (2) Filed at the office of the Board and accompanied by the required application fee.
 - (3) Made out properly in every respect and must contain full information.
 - (4) Subscribed and certified to "under penalty of perjury" as provided by Section 2015.5 of the Code of Civil Procedure.
- (b) An application made otherwise will not be accepted by the Board and it may be returned by the executive officer with a statement of the reason therefor.
- (c) Upon evaluation of the applicant's qualifications, his/her examination results and any other supporting data, his/her application will be either:
 - (1) Denied without prejudice, and the application fee retained by the Board for the Professional Engineers' Fund.
 - (2) Approved, and he/she will be granted the certification for which application was made.
- (d) The Board may request each applicant to provide the Board with a current photograph after an applicant has become licensed.

Section 421. Refile Application.

- (a) The executive officer may prescribe a short application form for use of those applicants who, failing an examination, apply within a reasonable period of time after the date of the examination previously failed, for re-examination. This application form may be known as a refile application form. The applicant and his application for re-examination shall be subject to the same provisions of the code and rules of the board, whenever applicable, as govern the filing of an original application.
- (b) The applicant for re-examination shall be assigned by the executive officer to the next scheduled examination for which his/her application qualifies him/her.

Section 424. Experience Requirements – Professional Engineers.

- (a) The engineering branches and title authorities described in Section 404, herein, overlap and some activities are common to two or more engineering branches and title authorities. The minimum number of years of qualifying experience in such overlapping engineering branches and title authorities may be used in securing licensure in any applicable engineering branch or title authority but cannot be used more than once. The only exception to this is experience credit for education. Qualifying education entitles a candidate to experience credit and this experience credit may be used again even though it has already been used to qualify for another examination.
- (b) An applicant for licensure as a professional engineer shall be granted credit towards the experience requirement, as stated in subdivision (a), for the following education curriculum:
 - (1) Four (4) years experience credit for graduation from an approved engineering curriculum.
 - (2) Two (2) years experience credit for graduation from a non-approved engineering curriculum or from an approved engineering technology curriculum.
 - (3) Five (5) years of experience credit for graduation from an approved cooperative work-study engineering curriculum.
 - (4) Five (5) years of experience credit for graduation from an approved post-graduate engineering curriculum.

(5) One-half (1/2) year of education credit for each year of study completed in an approved engineering curriculum that did not result in the awarding of a baccalaureate degree, except that the maximum of such experience shall be two (2) years.

"Life Experience Degrees" are not acceptable and will not be counted towards the education credit.

The additional actual work experience required to meet the six (6) years of experience requirement shall have been gained after graduation, except for cooperative work study experience and post-graduate education.

The sum of qualifying experience credit for education and engineering teaching experience shall not exceed five years.

(c) Qualifying experience is that experience satisfactory to the Board which has been gained while performing engineering tasks under the responsible charge of a person legally qualified to practice in an applicant's branch of engineering.

(1) For the purposes of this section, "legally qualified" means having an appropriate license as a professional engineer; or by being an employee of the Federal Government; or, except for civil engineers, by virtue of being an employee of a manufacturing, mining, public utility, research and development, or other industrial corporation; or by, except for civil engineers, holding an appropriate license as a contractor.

(2) Qualifying experience shall be computed on an actual time worked basis, but not to exceed forty hours per week.

(3) Applied engineering research is an engineering task for the purposes of determining qualifying experience.

(d) Computation of qualifying experience for licensure as a professional engineer or for authority to use the title "structural engineer" or "geotechnical engineer" shall be to the date of filing of the application; or it shall be to the final filing date announced for the examination if the application is filed within a period of thirty (30) days preceding the final filing date announced for such examination.

Section 424.5.Reinstatement Requirements for Delinquent Applicants.

(a) A license which has not been renewed within the time required under Business and Professions Code section 6796.3 or 8803 is considered delinquent and, except as provided in subdivision (c), shall be reinstated if the applicant complies with the following:

(1) Submits evidence satisfactory to the Board that the applicant is qualified in the branch for which he or she is applying. This evidence shall consist of:

(A)A completed, typewritten application on a form as specified in Section 420 accompanied by the required application fee as specified in Section 407 (b)(1)-(4).

(B)Completed appropriate reference forms as specified in Sections 427.10, 427.20, or 427.30. The submission of a reference which states that the applicant is not technically qualified to be licensed shall be grounds for denial.

(2) Takes and passes the examination on the applicable state laws and board regulations as specified in Business and Professions Code section 6755.2 or 8741.1 .

(3) Takes and passes examinations on seismic principles and engineering surveying, if he or she is a civil engineering applicant whose initial registration was issued prior to January 1, 1988.

(4) Pays all accrued and unpaid renewal fees.

(5) Has not committed any acts or crimes constituting grounds for denial of licensure under Business and Professions Code section 480.

(b) An applicant who is unable to submit evidence satisfactory to the Board that he or she is qualified as provided in subdivision (a)(1) shall take and pass the appropriate second division examination or the appropriate title authority examination in addition to the requirements specified in subdivision (a)(2)- (5) prior to reinstatement of the delinquent license.

(c) Notwithstanding subdivisions (a) and (b), the Board may pursue action, including but not limited to revocation or suspension of the license pursuant to Business and Professions Code sections 6775, 6776, 8780, and 8781, issuance of a citation containing an order to pay an administrative fine pursuant to Sections 473 through 473.4, filing of criminal charges pursuant to Business and Professions Code sections 6787 and 8792, and denial of the application pursuant to Section 420, against the applicant if evidence obtained during an investigation reveals that the applicant has violated any provision of the Business and Professions Code, the California Code of Regulations, or other applicable laws and regulations related to the practices of professional engineering or professional land surveying during the period of delinquency, including, but not limited to, practicing or offering to practice with an expired or delinquent license.

(d) The application response timeframe is as specified in Section 470 (a).

(e) The Board's time period for processing an application from receipt of the initial application to the final decision regarding issuance or denial of licensure is as specified in Section 471.

As used in this section, "license" includes certificate of registration as a professional engineer, licensure as a professional land surveyor, and certificates of authority to use the title "structural engineer," "soil engineer," or "consulting engineer."

Section 425. Experience Requirements - Professional Land Surveyors.

(a) An applicant for licensure as a professional land surveyor shall be granted credit towards the experience requirements contained in Sections 8741 and 8742 of the Code, for the following education curriculum:

(1) Four (4) years experience credit for graduation from an approved land surveying curriculum.

(2) Two (2) years experience credit for graduation from a non-approved land surveying curriculum.

(3) Five (5) years of experience credit for graduation from an approved cooperative work-study land surveying curriculum.

(4) One-half (1/2) year of education credit for each year of study completed in an approved land surveying curriculum that did not result in the awarding of a baccalaureate degree, except that the maximum of such experience shall be two (2) years. A year of study shall be at least 32 semester units or 48 quarter units, no less than 10 semester units or 15 quarter units of which shall be from classes clearly identified as being land surveying subjects.

"Life Experience Degrees" are not acceptable and will not be counted towards the education credit.

(b) All qualifying work experience in land surveying shall be performed under the responsible charge of a person legally authorized to practice land surveying. An applicant shall possess at least two years of actual responsible training experience in land surveying which shall involve at least four of the land surveying activities specified in subdivisions (a) - (g) and (k) - (n) of Section 8726 of the Code. Qualifying experience in activities specified in subdivision (a), (b), (m), and (n) of Section 8726 shall not exceed one year. Qualifying experience shall be computed on an actual time worked basis, but not to exceed forty hours per week.

(c) For purposes of Section 8742 of the Code, the term "responsible field training" experience may include, but is not limited to, the land surveying activities listed below. Under the responsible charge, direction, and review of a person legally authorized to practice land surveying, the applicant:

(1) Determines field survey methods and procedures, including selection of accuracy standards.

(2) Selects or verifies that the correct control monumentation is used to establish the designated survey datum(s) (horizontal and vertical) and selects on-the-ground locations for control monuments.

(3) Determines the relevance of monuments and physical field evidence for the purpose of establishing boundary and property lines.

(4) Reviews measurement observations for the determination of accuracy, completeness, and consistency.

(5) Reviews field notes and records for application of proper field survey procedures.

(6) Plans, performs, and reviews field checks and, based on such checks, determines if completed field surveys are accurate and sufficient.

(7) Searches for boundary and control monuments; assists in analyzing field evidence for locating boundary points and lines; identifies and describes such evidence; compares record data to found physical evidence; compares record data to measured data; documents discrepancies; assists in acquiring and documenting testimony regarding boundary locations; recommends boundary location and/or establishment; selects or verifies that the correct controlling monuments are used to locate or establish boundary points and lines; and prepares draft record documents.

(8) Coordinates the fieldwork necessary to prepare maps, plats, reports, descriptions, or other documents.

(9) Recommends when existing boundary monuments are to be replaced, selects the method(s) to be used for replacing and resetting monuments, and prepares field documentation of such work, including that necessary for Parcel Maps, Final Maps, Record of Survey Maps, and Corner Records.

(10) Functions as a party chief, chief of parties, or lead person in charge of field crew(s) in the performance of field surveys.

(11) Plans and performs field observations using Global Positioning System technology and determines if completed field surveys are accurate and sufficient in geodetic and land surveying applications.

(12) Performs surveys to facilitate the location or construction of infrastructure and fixed works of improvement.

The enumeration of the above tasks does not preclude the Board from awarding “responsible field training” credit for training of a similar character in other current or future land surveying activities not specifically enumerated herein. It is also understood that the listed tasks are only some of those that may be considered as responsible training, and that this list is not in any way intended to enumerate all of the tasks which may be performed by licensed Professional Land Surveyors.

(d) For purposes of Section 8742 of the Code, the term “responsible office training” experience may include, but is not limited to, the land surveying activities listed below. Under the responsible charge, direction, and review of a person authorized to practice land surveying, the applicant:

(1) Performs the planning and analysis necessary for the preparation of survey documents, such as Parcel Maps, Final Maps, Record of Survey Maps, Corner Records, legal descriptions, topographic maps, plat maps, lot line adjustments, annexations, and boundary line agreements.

(2) Reduces and evaluates field data.

(3) Develops procedures and systems for the collection, reduction, adjustment, and use of land surveying data.

(4) Prepares data to be used by field surveyors or field crews.

(5) Coordinates the processing of maps, plats, reports, descriptions, or other documents with local agencies, other licensed surveyors, or County Surveyors Offices.

(6) Coordinates the office work necessary to prepare maps, plats, reports, descriptions, or other documents.

(7) Coordinates survey and design efforts for improvement plans as required for sufficiency to enable proper location of improvements in the field.

(8) Researches public and private records to obtain survey and title data.

(9) Performs boundary analysis and determination using record descriptions, survey, and title data.

(10) Plans and coordinates the application of Global Positioning System technology for geodetic and land surveying applications.

(11) Plans, coordinates, performs, and reviews the entry of property boundary related geo-referenced data into an electronic database.

(12) Prepares topographic mapping utilizing photogrammetric methods.

The enumeration of the above tasks does not preclude the Board from awarding "responsible office training" credit for training of a similar character in other current or future land surveying activities not specifically enumerated herein. It is also understood that the listed tasks are only some of those that may be considered as responsible training, and that this list is not in any way intended to enumerate all of the tasks which may be performed by licensed professional land surveyors.

(e) Computation of qualifying experience for a license as a professional land surveyor shall be to the date of filing of the application, or it shall be to the final filing date announced for the examination if the application is filed within a period of thirty (30) days preceding the final filing date announced for such examination.

(f) An applicant for licensure as a land surveyor who holds a valid and unexpired license as a civil engineer is exempt from the application requirements of (subdivisions (b), (c), and (d) of this section provided he or she submits sufficient documentation that he or she has a minimum of two years of actual broad based progressive experience in land surveying as required by Business and Professions Code Section 8742(a)(3).

Section 426.10. Qualification Requirements for Structural Authority.

An applicant for authority to use the title "structural engineer" shall comply with all of the following requirements:

(a) The applicant shall hold an unexpired, valid California license as a civil engineer.

(b) The applicant shall submit evidence satisfactory to the Board that the applicant has been in responsible charge of structural engineering qualifying experience, as defined in Section 426.11 and/or Section 426.12, for a minimum of three years subsequent to the date of examination which was passed to gain California license as a civil engineer or as provided in Section 426.14.

Section 426.11. Qualifying Experience for Structural Authority.

"Structural Engineering qualifying experience" is defined as acceptable professional practice in responsible charge of structural engineering projects as related to buildings (or other structures) and shall include structural design experience in all areas as specified in subdivisions (a)-(f) below because the stability of a structure is dependent upon the interaction of the individual structural components as well as the structure as a whole:

(a) Common Construction Materials - Steel, Concrete, Wood and Masonry: A structural engineer shall have experience in the use of three of the four common construction materials of steel, concrete, wood, and masonry as they relate to the design, rehabilitation and/or investigation of buildings (or other structures);

(b) Determination of Lateral Forces: A structural engineer shall have experience regarding structural design to resist lateral forces;

(c) Selection of Framing Systems: A structural engineer shall have experience regarding the selection of framing systems, including the consideration of alternatives and the selection of an appropriate system for the interaction of structural components to support vertical and lateral loads;

(d) Selection of Foundation Systems: A structural engineer shall have experience in the selection of foundation systems, including the consideration of alternatives and the selection of an appropriate type of foundation system to support the structure;

(e) Application of Code Requirements: A structural engineer shall have experience in applying local, state and federal requirements relating to design loads, materials, and detailing; and

(f) Multi-story Buildings or Equivalent Multi-level Structures: A structural engineer shall have experience with the design and detailing for the transfer of forces between stories in multi-story buildings. A multi-story building is a building which is more than one story in height and which is not exempted pursuant to Section 6737.1 of the code.

Section 426.12. Experience for Checking Structural Plans.

The Board shall consider the following experience as structural engineering qualifying experience, in lieu of that experience defined in Section 426.11: Professional level employment performing the checking of structural engineering plans and calculations, when performed under the immediate supervision of, and certified to by, either a civil engineer who holds a valid California license with the authority to use the title "structural engineer" in this state or a Professional Engineer who is authorized to use the title "structural engineer" registered or licensed outside of this state but registered or licensed in a state which has a comity agreement with the State of California related to structural engineering. However, an applicant who applies for authority to use the title "structural engineer" under this section shall furnish the Board with a verification of employment from each employer which lists the name(s) of the immediate supervisor of the applicant during the period of employment used as qualifying experience under this section.

Section 426.13. Supplemental Evidence of Responsible Charge for Structural Authority.

(a) The board shall consider the following as supplemental evidence, if submitted for consideration, to assist in determining whether an applicant for structural authority possesses the requisite three (3) years of structural engineering qualifying experience at the level of responsible charge as required in Section 426.10 and defined in Sections 426.11 and 426.12:

(1) Project management experience:

(A) Coordination with other disciplines such as civil, electrical and mechanical engineers and/or architects;

(B) Production of construction document packages such as calculations, drawings and specifications; and,

(C) Supervision and/or coordination of staff.

(2) Field experience:

(A) Familiarity with techniques, methods and means of construction;

(B) Field observation of construction for compliance to drawings and specifications; and,

(C) Field investigation of existing structures for evaluation or forensic purposes.

(b) Notwithstanding subsections (a)(1) and (a)(2), other types of experience deemed equivalent to project management or field experience may be considered on a case-by-case basis to assist in determining whether an applicant possesses the three (3) years of structural engineering qualifying experience at the level of responsible charge as required in Section 426.10.

(c) Any experience submitted pursuant to this section shall not be considered as a substitute for the mandatory types of qualifying experience required by Section(s) 426.11 and/or 426.12.

Section 426.14. Experience for Structural Engineering Gained Out of State.

(a) The Board may consider an application for authority to use the title "structural engineer" from an applicant who does not possess three (3) years of qualifying experience subsequent to the date of the examination which was passed to gain licensure as a California civil engineer but who possesses experience equivalent to that provided in Section 426.11 based upon either:

(1) A minimum of three (3) years of structural engineering qualifying experience gained after the applicant's registration or licensure as civil engineer in another state.

(2) A minimum of three (3) years of structural engineering qualifying experience which was gained while exempt from licensure pursuant to Section 6739 of the Code or while employed or registered or licensed in another country. Such experience shall be in addition to the experience required for licensure as a civil engineer in this state.

(b) Applicants seeking approval of their structural engineering qualifying experience, pursuant to this section, shall file their application at least six months prior to the final filing deadline to be considered for the next scheduled examination. Applicants may be required to appear for an interview regarding their structural engineering qualifying experience.

Section 426.50. Qualification Requirements "Soil Engineer."

An applicant for authority to use the title "soil engineer" shall:

(a) Hold an unexpired, valid California license as a civil engineer.

(b) Submit evidence satisfactory to the Board that the minimum number of years of qualifying experience or education has been met as required in Sections 6736.1(b) and 6763 of the Code and as defined in Section 426.51, subsequent to the date of examination which was passed to gain licensure as a civil engineer. In addition, up to one year credit as qualifying experience in responsible charge will be given for possession of post graduate degree(s) from a Board approved school of engineering with major studies in soil engineering as listed in Section 426.51(c). Credit for post graduate degree(s) will not be given if it has already been applied to the experience requirement for civil engineering licensure.

Section 426.51. Qualifying Experience for "Soil Engineer."

"Qualifying experience" means responsible charge of soil engineering projects. Evidence shall be provided that the applicant has qualifying experience in the areas described in subdivisions (a), (c) and (e) and has demonstrated working knowledge in the areas described in subdivisions (a) through (e). At least one-half of the applicant's annual full-time professional practice shall be in soil engineering, except that a teacher of soil engineering and related courses at a board approved school of engineering will be given credit for applicable consulting work as a percentage of equivalent full-time work. Applicable consulting work shall be substantiated by references and project documents.

(a) Development of programs of geotechnical investigation which includes, but is not limited to:

(1) Communication with other design consultants to determine their geotechnical input needs;

(2) Performance of literature searches, site history analyses, etc., related to surface and subsurface conditions;

(3) Formulation or engineering evaluation of field exploration and laboratory testing programs to accomplish the scope of the investigation;

(4) Preparation or engineering evaluation of proposals.

(b) Performance of geotechnical field and laboratory studies which includes, but is not limited to:

(1) Direction and/or modification of field exploration programs, as required upon evaluation of the conditions being encountered;

(2) Classification and evaluation of subsurface conditions.

(3) Understanding the purposes for and being qualified to perform routine field and laboratory tests for:

(A) soil strength

(B) bearing capacity

(C) expansion properties

(D) consolidation characteristics

(E) soil collapse potential

(F) erosion potential

(G) compaction characteristics

(H) material acceptability for use in fill

(I) pavement support qualities

(J) freeze-thaw properties

(K) grain-size

(L) permeability/percolation properties

(c) Analysis of geotechnical data and engineering computations which includes, but is not limited to:

(1) Analysis of field and laboratory test results regarding:

(A) soil strength

(B) bearing capacity

(C) expansion properties

(D) consolidation characteristics

(E) soil collapse potential

(F) erosion potential

(G) compaction characteristics

(H) material acceptability for use in fill

(I) pavement support qualities

(J) freeze-thaw properties

(K) grain-size

(L) permeability/percolation properties

(M) ground water conditions

(N) soil dynamic properties

(2) Performance of computations using test results and available data regarding:

(A) bearing capacity

(B) foundation type, depth, dimensions

(C) allowable soil bearing pressures

(D) potential settlement

(E) slope stability

(F) retaining systems

(G) soil treatment

(H) dewatering/drainage

(I) floor support

(J) pavement design

(K) site preparation

(L) fill construction

(M) liquefaction potential

(N) ground response to seismic forces

- (O) ground water problems; seepage
- (P) underpinning
- (d) Performance or engineering evaluation of construction, postconstruction and site monitoring which includes, but is not limited to:
 - (1) Performance or supervision of geotechnical testing and observation of site grading;
 - (2) Analysis, design and evaluation of instrumentation programs to evaluate or monitor various phenomena in the field, such as settlement, slope creep, porewater pressures and ground water variations;
 - (3) Geotechnical observation during construction and/or installation, including but not limited to, spread foundations, drilled piers, piles, slurry walls, anchors, bulkheads, shoring, underpinning and subdrains;
 - (4) Engineering evaluation of soil related distress.
- (e) Preparation or engineering evaluation of geotechnical reports which includes, but is not limited to:
 - (1) Preparation of appropriate plans, logs, test results and other exhibits;
 - (2) Documentation of testing and observation;
 - (3) Preparation of written reports which present findings, conclusions and recommendations of the investigation;
 - (4) Preparation of specifications and guidelines for achieving the intent of subdivision (e)(3), above.

Section 427.10. References for Professional Engineers and Land Surveyors.

(a) To assist the Board in evaluating qualifications, each applicant for licensure as a professional engineer or a professional land surveyor shall submit completed reference forms from as many references as may be consistent with the length and character of the professional experience. Professional engineer applicants shall use the form entitled "Professional Engineer Engagement Record and Reference Form (PE09)(2010)," hereby incorporated by reference. Professional Land Surveyor applicants shall use the form entitled "Professional Land Surveyor Engagement Record and Reference Form (LS09)(2010)," hereby incorporated by reference. Professional land surveyor applicants may also use the form entitled "Log Book for Professional Land Surveyor Applicants (LB09)(2010)," hereby incorporated by reference, as an optional supplement to the "Professional Land Surveyor Engagement Record and Reference Form (LS09)(2010)."

(b) The applicant for licensure as a professional engineer or a professional land surveyor shall furnish not less than the number of references required hereafter:

(1) An applicant for a license as a professional land surveyor or as a professional engineer shall refer to not less than four persons who are authorized to practice in the discipline for which the applicant is applying and who have personal knowledge of the applicant's qualifying experience, none of whom is a relative either by birth or marriage.

(2) Nothing herein contained shall be construed to limit authority of the Board to seek such other information pertinent to the education and experience of the applicant as may be required to verify his or her qualifications. The Board may waive the requirement that only registered or licensed individuals give references for the applicants in disciplines other than civil engineering or land surveying when the applicants have no association with registered or licensed individuals in their work environment.

Section 427.20. Reference Requirements for "Soil Engineer."

(a) An applicant for authority to use the title "soil engineer" shall submit at least four completed reference forms from individuals who hold or held current, valid, unexpired California licenses as civil engineers during the time of the applicant's experience. None of the references

shall be related to the applicant by birth or marriage. At least two of these individuals shall be civil engineers who are or were actively engaged in the practice of "soil engineering." Each civil engineer providing a reference shall clearly indicate areas of personal knowledge of the applicant's qualifying experience. Reference forms completed by civil engineers registered or licensed outside of California, in lieu of or in addition to California references, will be considered; however, the Board may require additional information as specified in Section 427.20(d). Reference forms completed by civil engineers registered or licensed outside of the State of California shall be notarized. Information submitted by references is confidential.

(b) Notwithstanding Section 427(a), a reference form shall be submitted for each period of qualifying experience listed on the engagement record form for which the applicant desires credit.

(c) An applicant will be required to verify employment inclusive dates for each period of qualifying experience. Employment verification forms may be used for this purpose.

(d) Nothing contained in this section shall limit the authority of the Board to require that an applicant submit additional references, employment verifications and other information pertinent to education or experience to verify that the applicant has met the minimum qualifications as defined in Sections 6736.1(a) and (c) of the Code and Sections 426.50 and 426.51.

Section 427.30. References for Structural Authority.

(a) An applicant for authority to use the title "structural engineer" shall submit at least three completed reference forms, using the form entitled "Structural Engineer Engagement Record and Reference Form (SE09)(2010)," hereby incorporated by reference, from individuals who hold current, valid California licenses as civil engineers and who are authorized by the Board to use the title "structural engineer," or equivalent thereto, none of whom is related to the applicant by birth or marriage. Each reference shall have personal knowledge of the applicant's qualifying experience and shall have examined the applicant's work. It is preferred that at least one of the references has been a direct supervisor for a period of not less than six months.

(b) "Equivalent thereto" as used in this section, means a professional engineer who is authorized to use the title "structural engineer" in a state which has a comity agreement with this state related to "structural engineering."

Reference forms completed by a "structural engineer" registered outside of this state but registered or licensed in a state which has a comity agreement with the State of California shall be notarized.

(c) Nothing contained in this section shall limit the authority of the Board to require that an applicant submit additional references, employment verifications and other information pertinent to the applicant's education and/or experience to verify that the applicant meets the minimum qualifications as defined in Sections 426.10, 426.11, and/or 426.13.

Section 429. Application Appeal.

(a) An applicant who is notified by the board that his/her application has been denied may appeal to the board for re-evaluation of his/her application. An application appeal shall be filed with the board within 60 days after the date the denial notice has been mailed to him/her.

(b) An application appeal shall be made in writing and shall state the reason therefor. An appeal shall be supported by additional evidence, more references, affidavits, and supplemental information such that the board may be better informed of the applicant's qualifications.

(c) The executive officer may deny an application appeal which is not filed within the time period provided in paragraph (a) of this rule.

(d) The executive officer shall notify each applicant who appeals under this rule of the approval of his/her appeal, or the reason for its denial.

(e) When an application has been denied, the executive officer shall also notify the applicant that he or she has the right to hearing under the Administrative Procedure Act (Government Code Section 11500 et seq.), if he or she makes a written request for hearing within 60 days after service of the notice of denial.

Section 438. Waiver of Fundamentals Examination.

(a) An applicant for licensure as a professional engineer whose qualifications meet all requirements of the code and rules of the Board will be allowed to appear for only the second division of the written examination prescribed by Section 6755 of the Code if he or she meets one or more of the following requirements:

(1) Holds valid licensure as a professional engineer in another branch in California.

(2) Holds valid certification as an engineer-in-training in another state obtained by passing a written examination which normally requires a minimum of eight hours to complete and the content of the examination is designed to test the candidates knowledge of fundamental engineering subjects, including mathematics and the basic sciences.

(3) Is a graduate of an approved engineering curriculum and submits satisfactory evidence to the Board that he or she has fifteen (15) years or more of additional engineering work experience satisfactory to the Board that has been gained in addition to graduation, or any other education experience, and while performing engineering tasks under the direction of a person legally authorized to practice in an applicant's branch of engineering.

(4) Is a graduate of a non-approved engineering curriculum or an approved engineering technology curriculum and submits satisfactory evidence to the Board that he or she has seventeen (17) years or more of additional engineering work experience satisfactory to the Board that has been gained in addition to graduation, or any other education experience, and while performing engineering tasks under the direction of a person legally authorized to practice in an applicant's branch of engineering.

(5) Is a graduate of an approved engineering curriculum and an approved postgraduate engineering curriculum and submits satisfactory evidence to the Board that he or she has fourteen (14) years or more of additional engineering work experience satisfactory to the Board that has been gained in addition to graduation, or any other education experience, and while performing engineering tasks under the direction of a person legally authorized to practice in an applicant's branch of engineering.

(6) Is a graduate of a non-approved engineering curriculum or an approved engineering technology curriculum and an approved postgraduate engineering curriculum and submits satisfactory evidence to the Board that he or she has fourteen (14) years or more of additional engineering work experience satisfactory to the Board that has been gained in addition to graduation, or any other education experience, and while performing engineering tasks under the direction of a person legally authorized to practice in an applicant's branch of engineering.

(7) Is the holder of an earned doctorate in engineering from a department or program at a university or college where the undergraduate engineering curriculum in the same branch of engineering is an approved engineering curriculum; or is serving in a tenure-track faculty position in an approved engineering curriculum at the level of Assistant Professor or higher.

(b) An applicant for licensure as a land surveyor whose qualifications meet all requirements of the code and rules of the Board will be allowed to appear for only the second division of the written examination prescribed by Section 8741 of the Code if he or she meets one or more of the following requirements:

(1) Holds valid licensure as a professional civil engineer in California.

(2) Holds valid certification as an engineer-in-training obtained by passing a written examination which normally requires a minimum of eight hours to complete and the content of

the examination is designed to test the candidate's knowledge of fundamental engineering subjects including mathematics and the basic sciences.

(3) Is a graduate of an approved land surveying curriculum and submits satisfactory evidence to the Board that he or she has fifteen (15) years or more of additional land surveying work experience satisfactory to the Board that has been gained in addition to graduation, or any other education experience, and while performing land surveying tasks under the direction of a person legally authorized to practice land surveying.

(4) Is a graduate of a non-approved land surveying curriculum and submits satisfactory evidence to the Board that he or she has seventeen (17) years or more of additional land surveying work experience satisfactory to the Board that has been gained in addition to graduation, or any other education experience, and while performing land surveying tasks under the direction of a person legally authorized to practice in land surveying.

(5) Is a graduate of an approved land surveying curriculum and an approved post-graduate land surveying curriculum and submits satisfactory evidence to the Board that he or she has fourteen (14) years or more of additional land surveying work experience satisfactory to the Board that has been gained in addition to graduation, or any other education experience, and while performing land surveying tasks under the direction of a person legally authorized to practice in land surveying.

(6) Is a graduate of a non-approved land surveying curriculum and an approved post-graduate land surveying curriculum and submits satisfactory evidence to the Board that he or she has sixteen (16) years or more of additional land surveying work experience satisfactory to the Board that has been gained in addition to graduation, or any other education experience, and while performing land surveying tasks under the direction of a person legally authorized to practice in land surveying.

(7) Holds valid certification as a land surveyor-in-training in another state obtained by passing a written examination which normally requires a minimum of eight hours to complete and the content of the examination is designed to test the candidate's knowledge of fundamentals of land surveying including mathematics and the basic sciences.

(c) An applicant for a California certification as an engineer-in-training or a land surveyor-in-training who holds valid certification in another state obtained as in (a)(2) or (b)(7) above may be issued a California certificate.

Section 441. Authorization to Take Examination.

(a) After evaluating the qualifications of an applicant and establishing that person's eligibility for the examination, in accordance with the applicable laws and regulations administered by the board, the executive officer assigns the applicant to the next scheduled examination for which the applicant qualified.

(b) Any applicant who lacks the qualifications for admission to the examination required by Chapter 7 or 15 of the code and rules of the board shall be declared ineligible; the application shall be denied and the application fee may be partially refunded in accordance with the provisions of Sections 158, 6763.5 and 8748.5 of the code. The executive officer shall notify each applicant of the reason for denying the application.

(c) Notification of the applicant's assignment and authorization to take the examination and the location shall be postmarked at least 14 days prior to the examination date.

Geologist and Geophysicist Act (Business and Professions Code section 7800, et seq.)

Section 7841. Qualifications for registration as a geologist

An applicant for ~~registration~~ licensure as a geologist shall have all the following qualifications:

(a) Not have committed any acts or crimes constituting grounds for denial of licensure under Section 480.

(b) Graduation from a college or university with a major in geological sciences ~~from college or university or any other discipline that, in the opinion of the board, is relevant to geology.~~

(c) Have a documented record of a minimum of five years of professional geological experience of a character satisfactory to the board, demonstrating that the applicant is qualified to assume responsible charge of this work upon licensure as a geologist. This experience shall be gained under the supervision of a geologist or geophysicist licensed in this or any other state, or under the supervision of others who, in the opinion of the board, have the training and experience to have responsible charge of geological work. Professional geological work does not include routine sampling, laboratory work, or geological drafting.

Each year of undergraduate study in the geological sciences shall count as one-half year of training up to a maximum of two years, and each year of graduate study or research counts as a year of training.

Teaching in the geological sciences at college level shall be credited year for year toward meeting the requirement in this category, provided that the total teaching experience includes six semester units per semester, or equivalent if on the quarter system, of upper division or graduate courses.

Credit for undergraduate study, graduate study, and teaching, individually, or in any combination thereof, shall in no case exceed a total of three years towards meeting the requirement for at least five years of professional geological work as set forth above.

The ability of the applicant shall have been demonstrated by the applicant having performed the work in a responsible position, as the term "responsible position" is defined in regulations adopted by the board. The adequacy of the required supervision and experience shall be determined by the board in accordance with standards set forth in regulations adopted by it.

(d) Successfully pass a written examination that incorporates a national examination for geologists created by a nationally recognized entity approved by the board, and a supplemental California specific examination. The California specific examination shall test the applicant's knowledge of state laws, rules and regulations, and of seismicity and geology unique to practice within this state.

{Amended by Stats.2015, Ch. 428, effective January 1, 2016}

Section 7841.1. Qualifications for registration as a geophysicist

An applicant for ~~registration~~ licensure as a geophysicist shall have all of the following qualifications. This section shall not apply to applicants for ~~registration~~ licensure as geologists.

(a) Not have committed any acts or crimes constituting grounds for denial of licensure under Section 480.

(b) Meet one of the following educational requirements fulfilled at a school or university whose curricula meet criteria established by rules of the board.

(1) Graduation with a major in a geophysical science or any other discipline ~~which that,~~ in the opinion of the board, is relevant to geophysics.

(2) Completion of a combination of at least 30 semester hours, or the equivalent, in courses ~~which that,~~ in the opinion of the board, are relevant to geophysics. At least 24 semester hours, or the equivalent, shall be in the third or fourth year, or graduate courses.

(c) Have at least seven years of professional geophysical work ~~which that~~ shall include either a minimum of three years of professional geophysical work under the supervision of a professional geophysicist, except that prior to July 1, 1973, professional geophysical work shall qualify under this subdivision if it is under the supervision of a qualified geophysicist, or a minimum of five years' experience in responsible charge of professional geophysical work. Professional geophysical work does not include the routine maintenance or operation of geophysical instruments, or, even if carried out under the responsible supervision of a professional geophysicist, the routine reduction or plotting of geophysical observations.

Each year of undergraduate study in the geophysical sciences referred to in this section shall count as one-half year of training up to a maximum of two years, and each year of graduate study or research counts as a year of training.

Teaching in the geophysical sciences referred to in this section at a college level shall be credited year for year toward meeting the requirement in this category, provided that the total teaching experience includes six semester units per semester, or equivalent if on the quarter system, of third or fourth year or graduate courses.

Credit for undergraduate study, graduate study, and teaching, individually, or in any combination thereof, shall in no case exceed a total of four years towards meeting the requirements for at least seven years of professional geophysical work as set forth above.

The ability of the applicant shall have been demonstrated by his or her having performed the work in a responsible position, as the term "responsible position" is defined in regulations adopted by the board. The adequacy of the required supervision and experience shall be determined by the board in accordance with standards set forth in regulations adopted by it.

(d) Successfully pass a written examination.

{Amended by Stats.2015, Ch. 428, effective January 1, 2015}

Section 7841.2. Qualifications for certification as a geologist-in-training

An applicant for certification as a geologist-in-training shall comply with all of the following:

(a) Not have committed acts or crimes constituting grounds for denial of certification under Section 480.

(b) Successfully pass the Fundamentals of Geology examination. ~~The applicant shall be eligible to sit for the Fundamentals of Geology examination after graduation with a degree in a geological science from a college or university, the curriculum of which has been approved by the board.~~

(c) Graduation from a college or university with a major in geological sciences or any other discipline that, in the opinion of the board, is relevant to geology.

{Amended by Stats.2015, Ch. 428, effective January 1, 2015}

Section 7842. Qualifications for certification in a specialty in geology

An applicant for certification in a specialty in geology shall meet all of the requirements of Section 7841 and, in addition, his or her seven years of professional geological work shall include one of the following:

(a) A minimum of three years performed under the supervision of a geologist certified in the specialty for which the applicant is seeking certification or under the supervision of a licensed civil engineer if the applicant is seeking certification as an engineering geologist, except that prior to July 1, 1970, professional geological work shall qualify under this subdivision if it is performed under the supervision of a geologist qualified in the specialty for which the applicant is seeking certification or under the supervision of a licensed civil engineer if the applicant is seeking certification as an engineering geologist.

(b) A minimum of five years' experience in responsible charge of professional geological work in the specialty for which the applicant is seeking certification.

Section 7842.1. Qualifications for certification in a specialty of geophysics

An applicant for certification in a specialty in geophysics shall meet all of the requirements of Section 7841.1 and in addition, his seven years of professional geophysical work shall include one of the following:

(a) A minimum of three years performed under the supervision of a geophysicist, certified in the specialty for which he is seeking certification.

(b) A minimum of five years' experience in responsible charge of professional geophysical work in the specialty for which the applicant is seeking certification.

Section 7843. Qualifications for certification as a geologist-in-training

(a) An applicant for certification as a geologist-in-training shall, upon making a passing grade in the National Association of State Boards of Geology's Fundamentals of Geology examination be issued a certificate as a geologist-in-training. A renewal or other fee, other than the application fee, may not be charged for this certification. The certificate shall become invalid when the holder has qualified as a professional geologist as provided in Section 7841.

(b) A geologist-in-training certificate does not authorize the holder thereof to practice or offer to practice geology, in his or her own right, or to use the title specified in Section 7804.

(c) It is unlawful for anyone other than the holder of a valid geologist-in-training certificate issued under this chapter to use the title of "geologist-in-training" or any abbreviation of that title.

Section 7847. Comity applicants

The board, upon application therefor, on its prescribed form, and upon the payment of the application and registration fees fixed by this chapter, which fees shall be retained by the board, may issue a certificate of registration as a geologist or as a geophysicist to a person holding an equivalent certificate of registration as a geologist or as a geophysicist, issued to him by any state or country when the applicant's qualifications meet the other requirements of this chapter and the rules established by the board.

**Regulations Pertaining to Geology and Geophysics
(Title 16, California Code of Regulations section 3000, et seq.)**

Section 3023. Date of Education and Experience.

The qualifying education and experience for examination and registration as a geologist or geophysicist or certification as a specialty geologist or specialty geophysicist shall include the one hundred (100) days provided in Section 3021 for processing and acceptance of the application by the board prior to the date of the examination. The applicant shall promptly give written notice to the board in the event the applicant's work situation changes and the one hundred (100) days from the final filing date of the application to the examination date credited for qualifying education and experience, or the portion that is required for qualification, are not performed.

Section 3024. Abandoned Applications.

(a) In the absence of special circumstances, the board shall consider an application abandoned when:

(1) The applicant fails to submit a registration fee within 6 months of the date of the letter of notification that the application has been received and approved or

(2) The applicant fails to appear for a scheduled examination without obtaining a postponement from the board prior to the date of the examination or without scheduling to take the examination within the next two subsequent examinations as follows:

(A) An applicant for registration as a geologist shall obtain a postponement no later than fifty (50) days prior to the date of the examination.

(B) An applicant for registration as a geophysicist or certification as a specialty geologist or specialty geophysicist shall obtain a postponement no later than fifteen (15) days prior to the date of the examination, or

(3) The applicant fails to respond within 6 months of a board request for additional information concerning the applicant's educational background or professional geological or geophysical work experience.

(b) An applicant may be granted an emergency postponement not less than five days prior to such examination by the board for good cause.

(c) The application fee will be retained by the board when an application has been declared abandoned.

(d) In the event an applicant fails to appear for a scheduled examination without obtaining a postponement from the board, the board shall retain a portion of the examination fee as follows:

(1) For failure to appear as scheduled for two sections of the national examination the board shall retain \$75.00 of the examination fee.

(2) For failure to appear as scheduled for one section of the national examination, the board shall retain \$50.00 of the examination fee.

(3) For failure to appear as scheduled for an examination for registration as a geophysicist or certified engineering geologist or certified hydrogeologist, the Board shall retain \$25.00 of the examination fee.

Section 3031. Examination Required.

(a) Every applicant for registration as a geologist shall be required to take and pass examinations as provided in Section 7841(d) of the code or every applicant for registration as a geophysicist, or every applicant for certification in any specialty, shall be required to take and pass an examination as prescribed by the board except as provided in Section 7847 of the code.

(b) To be eligible for the geological examination, an applicant shall have completed at least five years of educational and work experience in professional geological work, as set forth in subdivisions (b) and (c) of Section 7841 of the code.

(1) Graduate study or research in geological sciences at a school or university whose geological curricula meet criteria established by rules of the board, shall be counted on a year-for-year basis in computing the experience requirements specified in Section 7841 of the code. A year of graduate study or research is defined as being a 12 calendar month period during which the candidate is enrolled in a full-time program of graduate study or research. Shorter periods will be prorated.

(2) An applicant shall not be eligible to earn credit for professional geological work performed under the supervision of a professional geologist or registered civil or petroleum engineer until the applicant has completed the educational requirements set forth in subdivision (b) of Section 7841 of the code.

(3) In no case will credit be given for professional geological work experience performed during the same time period when full-time graduate study or research is being done for which educational experience credit is being allowed. Part-time graduate study or research and part-time professional geological work experience will be prorated and combined on a 12 calendar month basis.

(c) To be eligible for the geophysical examination, an applicant shall have completed at least seven years of educational and work experience in professional geophysical work, as set forth in subdivisions (b) and (c) of Section 7841.1 of the code.

(1) Graduate study or research in geophysical related sciences at a school or university whose geophysical curricula meet criteria established by rules of the board, shall be counted on a year-for-year basis in computing the experience requirements specified in Section 7841.1 of the code. A year of graduate study or research is defined as being a 12 calendar month period during which the candidate is enrolled in a full-time program of graduate study or research. Shorter periods will be prorated.

(2) An applicant shall not be eligible to earn credit for professional geophysical work performed under the supervision of a professional geophysicist until the applicant has completed the educational requirements set forth in subdivision (b) of Section 7841.1 of the code.

(3) In no case will credit be given for professional geophysical work experience performed during the same time period when full-time graduate study or research is being done for which educational experience credit is being allowed. Part-time graduate study or research and part-time professional geophysical work experience will be prorated and combined on a 12 calendar month basis.

(d) Every applicant for registration as a geologist who obtains a passing score determined by a recognized criterion-referenced method of establishing the pass point in the California examination shall be deemed to have passed the California examination. Such a passing score may vary moderately with changes in test composition. This subsection shall become effective on December 1, 1998, and shall be repealed on December 31, 1999.

(e) Each applicant for registration as a geologist who obtains a passing score on the Fundamentals of Geology and Practice of Geology examinations created by the National Association of State Boards of Geology on or after November 1, 1996 and obtains a passing score as determined by a recognized criterion-referenced method of establishing the pass point in the California specific examination pursuant to Section 7841(d) shall be deemed to have passed the required examinations for licensure as a professional geologist in California. This subsection shall become effective on January 1, 2000.

(1) Candidates shall receive credit for obtaining a passing score on the Fundamentals of Geology examination, the Practice of Geology examination and the California

specific examination and shall be required to submit an application to retake and pass only those examinations previously failed.

(f) Every applicant for registration as a geophysicist or for certification in any specialty, who obtains a passing score determined by a recognized criterion-reference method of establishing the pass point in the California examination shall be deemed to have passed the California examination. Such a passing score may vary moderately with changes in test composition.

Section 3041. Specialty in Engineering Geology.

Only a professional geologist is eligible for certification in a specialty. Application may be submitted for both registration as a geologist and for certification in a specialty at the same time, but the applicant must be approved for registration as a geologist before being considered for certification in a specialty. The certification in a specialty is, in every case, dependent upon the approval of registration as a geologist.

(a) The specialty of "Engineering Geology" is hereby created as a division of the certification of registration as a geologist.

In addition to the provisions of Section 7842 of the Code, an applicant for certification in the specialty of "Engineering Geology" shall:

- (1) Be registered as a geologist in the State of California.
- (2) Have a knowledge of:
 - (A) Geology of the State of California.
 - (B) Geologic factors relating to Civil Engineering problems typically encountered in the State.
 - (C) Elementary soil and rock mechanics.
 - (D) Principles of grading codes and other pertinent regulations. (Appendix Chapter 33, 1997 Uniform Building Code).

Experience in engineering geology used to qualify for registration as a geologist may also be used to qualify for certification as an engineering geologist.

In addition to the above, an applicant shall submit three references from qualified engineering geologists, and may be required, in the board's discretion, to submit one or more engineering geology reports prepared mainly or wholly by the applicant.

Section 3042. Specialty in Hydrogeology.

(a) A specialty in "Hydrogeology" is hereby created as a division of the certification of registration as a geologist. The creation of the certification in hydrogeology is established to protect the health, safety and welfare of the people of the State of California.

(b) In addition to the provisions of section 7842 of the Code, an applicant for certification in the specialty of "hydrogeology" shall comply with the following:

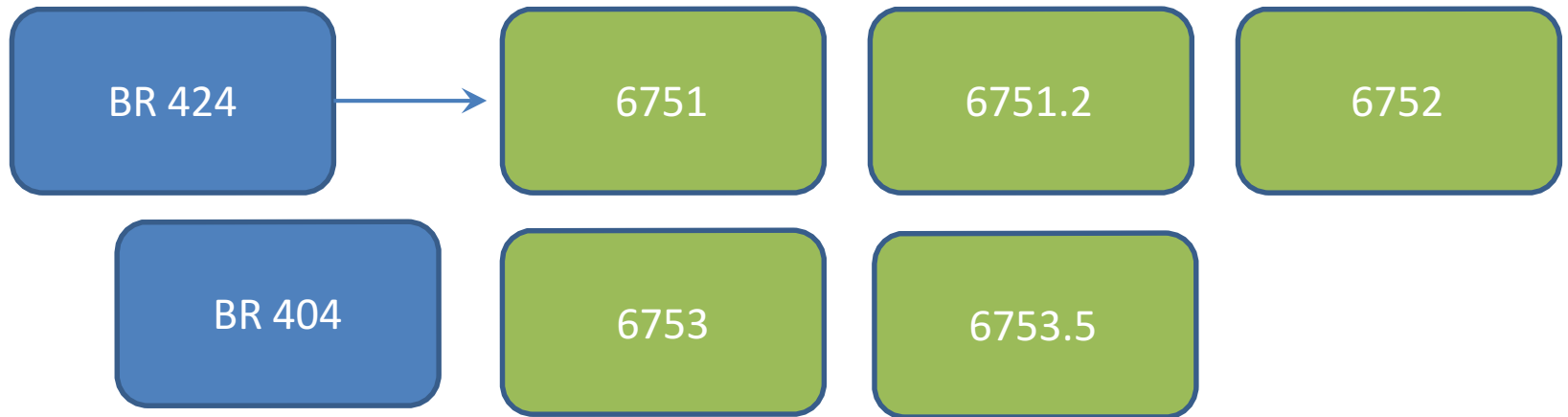
- (1) Be registered as a geologist in the State of California.
- (2) Have a knowledge of and experience in:
 - (A) Geology of the State of California.
 - (B) Geologic factors relating to the water resources of this State.
 - (C) Principles of groundwater hydraulics/hydrology and groundwater quality including the vadose zone.
 - (D) Applicable federal, state and local rules and regulations.
 - (E) Principles of water well, monitoring well, disposal well, and injection well construction.
 - (F) Elementary soil and rock mechanics in relation to groundwater, including the description of rock and soil samples from wells.
 - (G) Interpretation of borehole logs as they relate to porosity, hydraulic conductivity or fluid character.

(c) Experience in hydrogeology used to qualify for registration as a geologist may also be used to qualify for certification as a hydrogeologist.

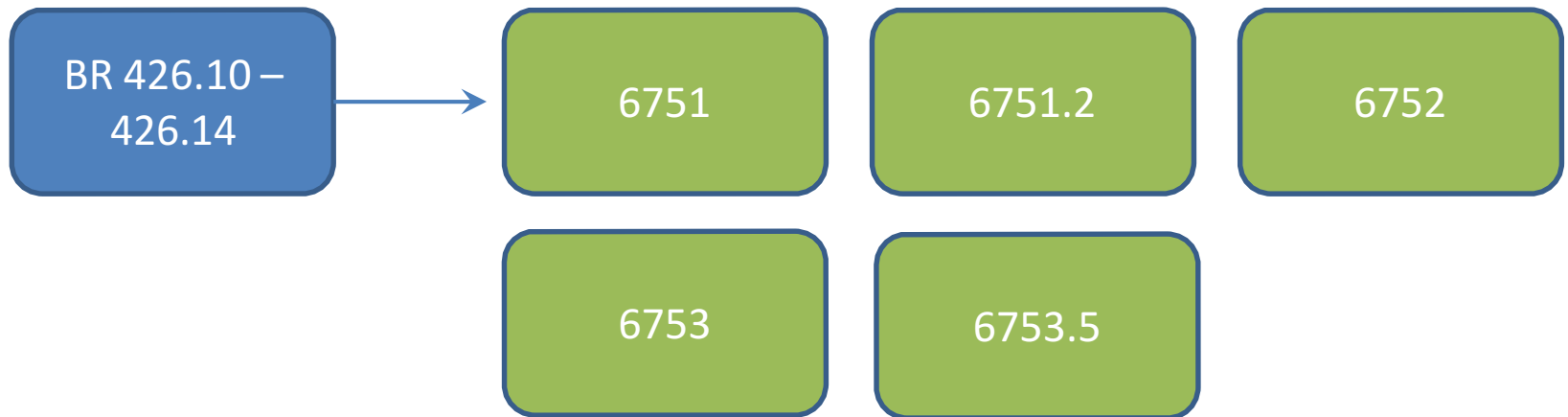
(d) An applicant for certification as a hydrogeologist shall submit, with the applicant's application, three (3) references from either certified hydrogeologists or professional geologists who have a minimum of five years' experience in responsible charge of hydrogeological work. An applicant may also be required to submit one or more hydrogeology reports which were prepared by the applicant or the applicant was closely associated with during its preparation.

(e) A civil engineer registered to practice engineering in this state, under Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, insofar as he or she practices civil engineering is exempt from the provisions for certification as a hydrogeologist.

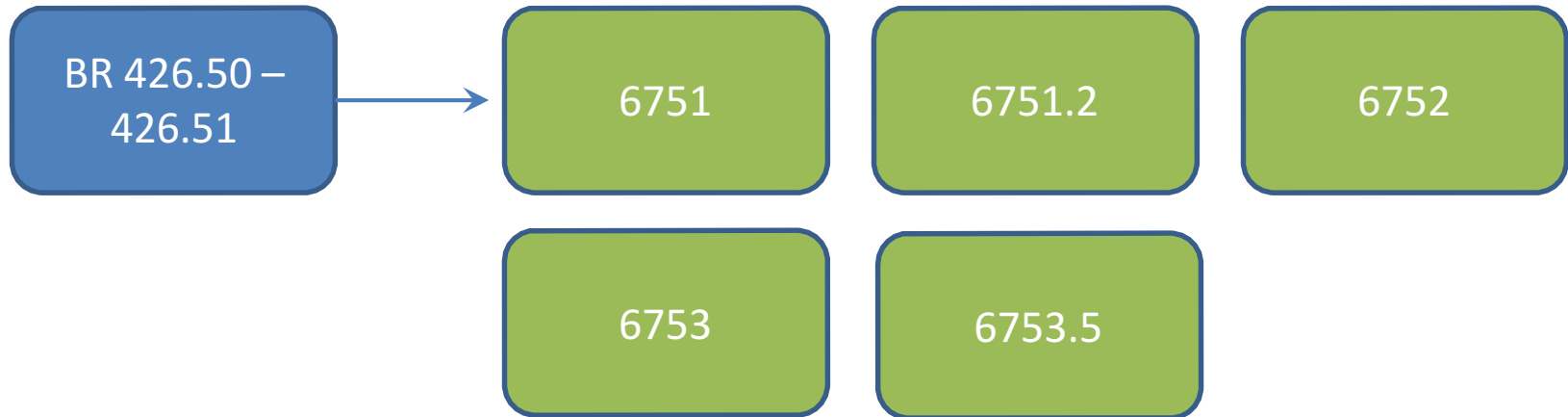
Professional Engineer



Structural Engineer



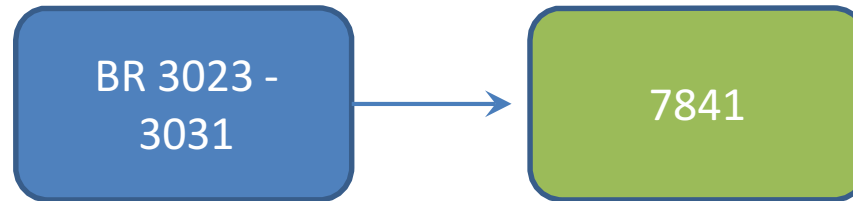
Geotechnical Engineer



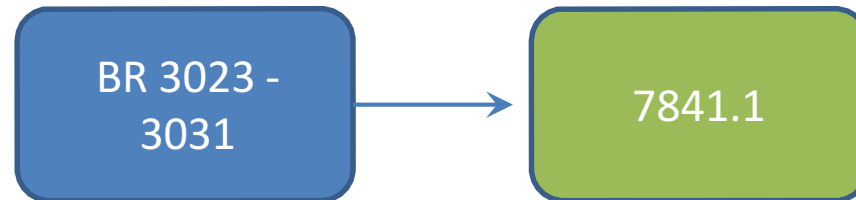
Professional Land Surveyor



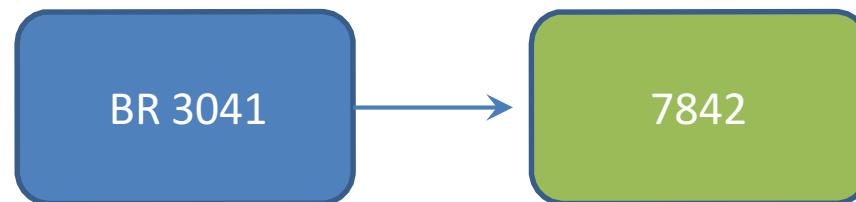
Professional Geologist



Professional Geophysicist



Certified Engineering Geologist & Certified Hydrogeologist



VIII. Approval of Delinquent Reinstatments

APPROVAL OF DELINQUENT REINSTATEMENTS

MOTION: Approve the following 3 and 5-year delinquent reinstatement applications.

CIVIL

MICHAEL DRINKWATER

Reinstate applicant's Civil License once he/she takes and passes the Board's Laws and Regulations Examination, and pays all delinquent and renewal fees.

PAMELA BURNS

Reinstate applicant's Civil License once he/she takes and passes the Board's Laws and Regulations Examination, and pays all delinquent and renewal fees.

RYAN FLANAGAN

Reinstate applicant's Civil License once he/she takes and passes the Board's Laws and Regulations Examination, and pays all delinquent and renewal fees.

CHEMICAL

LESA CARROL

Reinstate applicant's Chemical License once he/she takes and passes the Board's Laws and Regulations Examination, and pays all delinquent and renewal fees.

SEKHAR BHATTACHARJEE

Reinstate applicant's Chemical License once he/she takes and passes the Board's Laws and Regulations Examination, and pays all delinquent and renewal fees.

IX. Administration

A. FY 2015/16 Budget Summary

Fiscal Year (FY) 2015/16 Budget Overview:

The information provided below is a summary of the Engineers and Land Surveyors Board fund and the Geologists & Geophysicists Account. The data is based on approved Governor's Budget, projected expenditures & revenue, projections to year-end, applications received and renewals processed through September for the current FY 2015/16 and prior year FY 2014/15.

Engineers and Land Surveyors (PELS) Fund

Fiscal Month 3	FY 15/16	FY 14/15
Expenditures	\$2.7 Million	\$2.1 Million
Revenue	\$3.2 Million	\$3.4 Million
Applications	2,614	2,339
Renewals	28,392	24,467

Budget Allotment	\$9.59 Million
Projection to Year-End	\$7.88 Million
Surplus/Deficit	\$1.72 Million
Revenue (Year-End)	\$8.86 Million

Geologist and Geophysicists (GEO) Fund

Fiscal Month 3	FY 15/16	FY 14/15
Expenditures	\$319 Thousand	\$262Thousand
Revenue	\$257 Thousand	\$383 Thousand
Applications	84	159
Renewals	1,355	1,464

Budget Allotment	\$ 1.43 Million
Projection to Year-End	\$1.12 Million
Surplus/Deficit	\$310 Thousand
Revenue (Year-End)	\$1.03 Million

Overall, the Board is generating more revenue than allocated expenses and is projected to have a surplus at the end of the year. Please note: Renewals cycles are cyclical depending on the FY. Additionally, the application fluctuations is a result of filing dates.

0770 - Board for Prof. Engineers and Land Surveyors

Analysis of Fund Condition

prepared 10/23/15

(Dollars in Thousands)

BUDGET ACT 2015

***\$4.5 million GF loan outstanding**

	ACTUAL 2014-15	CY 2015-16	BUDGET ACT BY 2016-17
BEGINNING BALANCE	\$ 5,832	\$ 6,990	\$ 6,814
Prior Year Adjustment	-45	\$ -	\$ -
Adjusted Beginning Balance	\$ 5,787	\$ 6,990	\$ 6,814
REVENUES AND TRANSFERS			
Revenues:			
125600 Other regulatory fees	\$ 125	\$ 92	\$ 92
125700 Other regulatory licenses and permits	\$ 2,552	\$ 2,457	\$ 2,562
125800 Renewal fees	\$ 5,278	\$ 5,449	\$ 5,506
125900 Delinquent fees	\$ 59	\$ 59	\$ 60
141200 Sales of documents	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 15	\$ 15	\$ 1
150500 Interest Income from interfund loans	\$ 8	\$ -	\$ -
160400 Sale of fixed assets	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ 10	\$ 9	\$ 9
161400 Miscellaneous revenues	\$ 1	\$ 1	\$ 1
Totals, Revenues	\$ 8,048	\$ 8,082	\$ 8,231
Transfers from Other Funds			
FO0001 Proposed GF Loan Repayment per item 1110-011-0770, Budget Act of 2011	\$ 500	\$ -	\$ -
Totals, Revenues and Transfers	\$ 8,548	\$ 8,082	\$ 8,231
Totals, Resources	\$ 14,335	\$ 15,072	\$ 15,045
EXPENDITURES			
Disbursements:			
1110 Program Expenditures (State Operations)	\$ 7,336	\$ 9,968	\$ 9,916
8840 SCO (State Operations)	8	\$ -	\$ -
8880 Financial Information System for CA (State Operations)	\$ 1	\$ 18	\$ -
Estimated Surplus		\$ (1,728)	
Total Disbursements	\$ 7,344	\$ 8,258	\$ 10,034
FUND BALANCE			
Reserve for economic uncertainties	\$ 6,990	\$ 6,814	\$ 5,011
Months in Reserve	10.2	8.1	5.7

NOTES:

- ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ON-GOING.
- ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR BEGINNING IN BY+1
- ASSUMES INTEREST RATE AT 0.3%.
- REVENUE AND EXPENDITURES PROJECTED THROUGH FM 12.

0205 - Geology

Analysis of Fund Condition

prepared 10/23/15

(Dollars in Thousands)

BUDGET ACT 2015

	ACTUALS 2014-15	CY 2015-16	BUDGET ACT BY 2016-17
BEGINNING BALANCE	\$ 990	\$ 1,121	\$ 1,107
Prior Year Adjustment	\$ 97	\$ -	\$ -
Adjusted Beginning Balance	\$ 1,087	\$ 1,121	\$ 1,107
REVENUES AND TRANSFERS			
Revenues:			
125600 Other regulatory fees	\$ 7	\$ 6	\$ 6
125700 Other regulatory licenses and permits	\$ 275	\$ 265	\$ 237
125800 Renewal fees	\$ 801	\$ 817	\$ 816
125900 Delinquent fees	\$ 16	\$ 16	\$ 16
141200 Sales of documents	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 3	\$ 3	\$ 3
160400 Sale of fixed assets	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ -	\$ -	\$ -
161400 Miscellaneous revenues	\$ -	\$ -	\$ -
Totals, Revenues	\$ 1,102	\$ 1,107	\$ 1,078
Totals, Revenues and Transfers	\$ 1,102	\$ 1,107	\$ 1,078
Totals, Resources	\$ 2,189	\$ 2,228	\$ 2,185
EXPENDITURES			
Disbursements:			
1110 Program Expenditures (State Operations)	\$ 1,067	\$ 1,431	\$ 1,456
8840 FSCU (State Operations)	\$ -	\$ -	\$ -
8880 Financial Information System for CA (State Operations)	\$ 1	\$ -	\$ -
Estimated Surplus		\$ (310)	
Total Disbursements	\$ 1,068	\$ 1,121	\$ 1,456
FUND BALANCE			
Reserve for economic uncertainties	\$ 1,121	\$ 1,107	\$ 729
Months in Reserve	12.0	9.1	5.5

NOTES:

- A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED
- B. EXPENDITURE GROWTH PROJECTED AT 2% BEGINNING BY +1
- C. ASSUMES 0.3% GROWTH IN INCOME FROM SURPLUS MONEY

X. Executive Officer's Report

- A. Legislation and Regulation Workgroup Summary
- B. Personnel
- C. BreEZe Update
- D. ABET
- E. ASBOG
- F. NCEES
 - 1. 2016 Interim Zone Meeting
 - 2. Nomination of 2016/2017 NCEES President-Elect
- G. Outreach

Regulations

The Board is currently in the process of amending a number of our regulations.

1. Citations (472-473.4/3062-3063.4)

- Current location in-house, in progress.
 - Board approved initial rulemaking proposal March 8, 2012.
 - Revisions made following preliminary review by DCA; will need Board to reapprove at next meeting.

2. Exam Appeals Repeal (443, 444, 3063.1, 3037.1)

- Current location in-house, in progress.
 - Board approved initial rulemaking proposal March 7, 2013.
 - Staff reviewing to determine if revisions needed due to procedural changes; may need Board to reapprove.

3. Waiver of Fundamentals Exam (438(a)(2), (b)(2), & (b)(7))

- Current location DCA. Final rulemaking package is located at DCA budgets-updated October 27, 2015.
 - Board approved initial rulemaking proposal February 9, 2015.
 - Noticed to Office of Administrative Law (OAL) May 22, 2015, for 45 day Comment Period.
 - OAL Comment Period ended July 6, 2015.
 - Board approved final rulemaking package, July 16, 2015.
 - Final package sent to DCA final review August 8, 2015.

4. SE, GE qualifications/experience (426.10/426.14/426.50).

- Current location in-house, in progress.
 - Board approved initial rulemaking proposal February 13, 2014.

5. Corner Record (464(g)).

- Current location OAL. Noticed to OAL November 13, 2015- Comment Period ends December 28, 2015.
 - Board approved initial rulemaking proposal June 11, 2015.

XI. Technical Advisory Committees (TACs)

- A. Assignment of Items to TACs
- B. Appointment of TAC Members
- C. Reports from the TACs

XII. President's Report/Board Member Activities

XIII. Approval of Consent Items

A. Approval of the Minutes of the September 10, 2015 Board Meeting

DRAFT

**MINUTES OF THE BOARD FOR PROFESSIONAL ENGINEERS, LAND
SURVEYORS, AND GEOLOGISTS**

**Caltrans Building
1657 Riverside Drive
Redding, CA 96001**

September 10, 2015

Board Members Present:	Robert Stockton, President; Coby King, Vice President; Kathy Jones Irish; Eric Johnson; Betsy Mathieson; Mohammad Qureshi; Jerry Silva; and Patrick Tami
Board Members Absent:	Natalie Alavi; Asha Brooks; Chelsea Esquibias; Hong Beom Rhee; Karen Roberts
Board Staff Present:	Ric Moore (Executive Officer); Nancy Eissler (Assistant Executive Officer); Tiffany Criswell (Enforcement Manager); Celina Calderone (Board Liaison); Kara Williams (Budget Analyst); and Michael Santiago (Legal Counsel)

I. Roll Call to Establish a Quorum

President Stockton called the meeting to order at 9:06 a.m., and a quorum was not established.

II. Public Comment

No Public Comment

V. Enforcement

A. Enforcement Statistical Report

Ms. Criswell presented the Enforcement statistics through June 30, 2015. Ms. Criswell reported that over time they are showing a significant decrease in the average days cases are open. She also noted that there are no geologist/geophysicist related cases over one year old.

III. Legislation

A. Discussion of Legislation for 2015:

Ms. Williams reported on the following bills:

AB 320 This bill would add the title environmental engineer to statute which would then have to be defined in regulation. Adding a title act of environmental engineer to our regulation would be problematic due to overlap with civil engineering and geology which are both protected practices. Currently, AB 320 is held

under submission in the Senate Appropriations Committee. This bill was last amended July 8, 2015, and was voted on during the July meeting, and, therefore, it was not necessary for the Board to vote on it.

- AB 85** This bill would further specify the definition of state body as indicated in the Bagley-Keene open meeting Act. Currently this bill is on the assembly floor ordered to enrollment which means it is at the next phase for the Governor to sign. The bill was last amended April 15, 2015, and a position was taken at the previous Board meeting; therefore, there was no need to vote on it.

Mr. Silva arrived at 9:36 a.m., and a quorum was established.

- AB 12** This bill would require the Board to review and revise regulations and eliminate inconsistencies or outdated provisions by January 1, 2018. The Board would have to submit a report to the Governor and Legislature affirming the Board's compliance with these provisions. The bill is currently in Senate Appropriations Committee and is expected to be a two-year bill. Non-significant technical amendments were made August 19, 2015. Currently the Board has a watch position, and staff recommended the Board take a watch position on the bill as amended August 19, 2015.

MOTION:	Dr. Qureshi and Ms. Mathieson moved to take a watch position on AB 12 as amended August 19, 2015.
VOTE:	All Aye; Motion Carried

Member Name	Yes	No	Abstain	Absent	Recusal
Robert Stockton	X				
Coby King	X				
Natalie Alavi				X	
Asha Brooks				X	
Chelsea Esquibias				X	
Eric Johnson	X				
Kathy Jones Irish	X				
Betsy Mathieson	X				
Mohammad Qureshi	X				
Hong Beom Rhee				X	
Karen Roberts				X	
William Silva	X				
Patrick Tami	X				

AB 507 This bill would require DCA to submit an annual report to the Legislature and the Department of Finance on or before March 1, 2016 that includes the Department's plan for implementing the BreEZe system for phase III Boards and Bureaus. Currently, the bill is held in the Senate Business Professions Economic Development Committee. No significant technical amendments were made in the July 9, 2015 amendments. Staff recommends the Board take a watch position on the bill as amended July 9, 2015.

MOTION:	Vice-President King and Ms. Jones Irish moved to take a watch position on AB 507 as amended on July 9, 2015
VOTE:	All Aye; Motion Carried

Member Name	Yes	No	Abstain	Absent	Recusal
Robert Stockton	X				
Coby King	X				
Natalie Alavi				X	
Asha Brooks				X	
Chelsea Esquibias				X	
Eric Johnson	X				
Kathy Jones Irish	X				
Betsy Mathieson	X				
Mohammad Qureshi	X				
Hong Beom Rhee				X	
Karen Roberts				X	
William Silva	X				
Patrick Tami	X				

SB 209 This bill would require the Department of Conservation to offer continuing educational opportunities for lead agency employees to become certified by the Board. Additionally, this bill would revise the financial assurance to be submitted with the Annual Reports. The Board has taken a watch position as amended July 7, 2015. Board staff recommends taking a support position as amended September 2, 2015. Ms. Williams noted the amendments with the Board's name and the manner in which the licensees are identified were made as requested by the Board.

It was noted that the bill had been substantially amended on September 4, 2015. This item was continued until the afternoon to review the bill to determine if there are any changes that would affect the Board's position.

AB 177 This bill is the Board's Sunset bill that will extend the Board's Sunset date to January 1, 2020. It would also merge the Professional Engineers and Land Surveyors fund with the Geology and Geophysicist fund. AB 177 would authorize disciplinary action against licensees or certificate holders who fail or refuse to respond to requests from the Board to cooperate in investigations against themselves. This bill was amended September 8, 2015. The amendments were non-substantive language clean-up, and it has passed the Senate floor and has gone back to the Assembly to reconfirm the amendments.

MOTION:	Dr. Qureshi and Mr. Johnson moved to support AB 177 as amended on September 4, 2015.
VOTE:	All Aye; Motion Carried

Member Name	Yes	No	Abstain	Absent	Recusal
Robert Stockton	X				
Coby King	X				
Natalie Alavi				X	
Asha Brooks				X	
Chelsea Esquibias				X	
Eric Johnson	X				
Kathy Jones Irish	X				
Betsy Mathieson	X				
Mohammad Qureshi	X				
Hong Beom Rhee				X	
Karen Roberts				X	
William Silva	X				
Patrick Tami	X				

SB 284 This bill would extend the limited liability partnership provision in our statute to January 1, 2019. The laws have authorized engineers and land surveyors to operate a business as a limited liability partnership since 2010. This bill was signed by the Governor and chaptered on August 10, 2015

AB 181 (formerly SB 799)

This bill is now the omnibus bill in that it contains the language that was originally in SB 799 from the Senate Business, Professions, and Economic Development Committee. No language amendments were made. Ms. Williams anticipates it passing this year. Ms. Eissler indicated that Sections 6735 and 7818 are the exact language that appeared in SB 799. It was last amended September 4, 2015.

MOTION:	Vice-President King and Dr. Qureshi moved to Support AB 181 as amended September 4, 2015.
VOTE:	All Aye; Motion Carried

Member Name	Yes	No	Abstain	Absent	Recusal
Robert Stockton	X				
Coby King	X				
Natalie Alavi				X	
Asha Brooks				X	
Chelsea Esquibias				X	
Eric Johnson	X				
Kathy Jones Irish	X				
Betsy Mathieson	X				
Mohammad Qureshi	X				
Hong Beom Rhee				X	
Karen Roberts				X	
William Silva	X				
Patrick Tami	X				

B. Legislative Proposals for 2016

Mr. Tami suggested monitoring legislation on drones since it could affect some of the Board's regulated professions.

IV. Consideration of Rulemaking Proposals

Ms. Eissler reported that the Legislative and Regulatory Workgroup is working on regulatory proposals as listed in the agenda. The Board adopted the final language for Board Rule 438 at a previous meeting, and the final rulemaking file is being submitted to DCA and the Office of Administrative Law for approval. The workgroup is also preparing others for notice. Currently, there is nothing for the Board to act on. A more detailed update will be provided at the next meeting.

V. Exams/Licensing

A. Fall 2015 Examination Update

Mr. Moore reported that registration for NCEES exams closed as of September 3, 2015 for the fall administration. Staff has until September 17 to finalize approvals. Most approvals have been completed.

He added that there may be requests for action on how to move forward with examinations at the November meeting. The national surveying examination will be given on a continuous basis similar to that of the Fundamentals examinations beginning in the fall of 2016.

Oregon recently made legislative changes that went into effect July 1, 2015. They allow candidates to sit for the national exams before applying with their board. Once the candidate is successful with the national examination, they can apply for the state examination and licensure.

Mr. Moore noted that the state specific civil examinations will go year round starting in 2017.

B. Delinquent Reinstatement Requirements

Ms. Eissler noted that staff is currently reviewing the requirements and potential changes to the law and will provide a report at the November meeting.

C. Credit for Overlapping Experience When Applying for Licensure or Certification

Staff is currently collecting data to be presented at the November meeting.

VI. Approval of Delinquent Reinstatements

MOTION:	Vice-President King and Mr. Silva moved to approve the delinquent reinstatement applicants listed in the meeting materials agenda packet.
VOTE:	All Aye; Motion Carried

Member Name	Yes	No	Abstain	Absent	Recusal
Robert Stockton	X				
Coby King	X				
Natalie Alavi				X	
Asha Brooks				X	
Chelsea Esquibias				X	
Eric Johnson	X				
Kathy Jones Irish	X				
Betsy Mathieson	X				
Mohammad Qureshi	X				
Hong Beom Rhee				X	
Karen Roberts				X	
William Silva	X				
Patrick Tami	X				

VII. Administration

A. FY 2014/15 Budget Summary

Ms. Williams explained non-discretionary spending, which includes salaries, staff benefits, and pro-rata versus discretionary spending, which is general operating expenses, travel, training, and enforcement.

She noted the general fund loan repayment is currently at approximately \$4 million. With the proposed payment, the Board will have \$2.2 million still outstanding by year 2017-2018.

Ms. Williams reported on the PELS expenditures noting that much of the expenditures are with personnel services. She noted that with examination expenditures, there was more spent in Fiscal Year 2013-14 than in Fiscal Year 2014-15. Mr. Moore further explained that with the expertise they have gained, the examination staff is doing more development and calling on OPES and Prometric less often for their expertise.

65% of the PELS revenue is generated through renewals. Mr. Tami inquired if the Board collects licensee's ages. Mr. Moore indicated that as of late, the Board started collecting this information. Ms. Eissler explained that initially applicants were not required to provide their birthdate information; it slowly evolved to collecting just the month and day but no year. However, since the computer database system required entry of a full birthdate, the system defaulted to dates such as 11/11/11 if there was no entry in the old system or to the year of 1900 if there was no year. Currently, the month, day, and year is collected. Ms. Eissler added that many licensees retire from practice but maintain their license. As such, it is not possible to obtain accurate statistical data regarding aging of licensees in relationship to renewals.

As for the Geology Fund, Ms. Williams reported that during Fiscal Year 2013-2014 there was a definite increase in examination expenditures due to four occupational analyses that took place during that time. Similar to the PELS fund, 73% of the Geology revenue is generated through renewals.

B. FY 2015/16 Budget Introduction

Ms. Williams introduced the Governor's budget and projected expenditures.

VIII. Executive Officer's Report

A. Legislation and Regulation Workgroup Summary

Mr. Moore reported that the workgroup is currently working on rulemaking that the Board has authorized.

B. Personnel

Christopher Swift was hired as a permanent intermittent employee as the Board's receptionist. Mr. Moore advised that staff had just learned that former employee Lisa Chavez passed away unexpectedly. The Board members offered their condolences.

C. BreEZe Update

The focus is currently on Release II that should debut in early 2016. The Board has submitted a contract request and received a proposal to conduct a needs assessment which includes a business analysis. Staff is currently reviewing the proposal and contract with DCA.

D. ABET

Mr. Moore advised the Board that staff is currently recruiting for observers to attend the upcoming visits in October and November.

E. ASBOG

Laurie Racca and Betsy Mathieson will be attending the ASBOG Annual Meeting via teleconference.

F. NCEES

Several Board members and staff attended the NCEES Annual Meeting. Ms. Mathieson reported that it was an educational experience, and she has gained a better understanding of an organization that is so heavily relied upon by the Board.

Mr. Stockton proposed the Board submit a letter related to the experience and educational requirements for land surveying in the model law to be reviewed at the committee level.

Mr. Tami added there will be a Western Zone meeting in Anchorage, Alaska, in May 2016 and asked for support for his run for NCEES President-Elect.

G. Outreach

Ms. Racca reported on her outreach and recruitment efforts. She sent out recruitment letters to every geophysicist who resides in California to aide in the geophysicist exam development efforts. Ten expressed interest and eight are currently under contract. She added that there was one out of state geophysicist who expressed interest, and she will be consulting with the Board's legal counsel to determine if this could be a possibility on the condition this person facilitated their own travel. She is also receiving correspondence from geophysicists expressing both support and opposition for continuing licensure.

She continued that she had a successful outreach with the geology department at CSU Chico. While in Redding, she facilitated a brown bag presentation and met with three geologists. She has another presentation in conjunction with the November Board meeting at the Inland Empire Geological Society. She is also attempting to organize two additional student presentations during this time to maximize travel. She added that in January she will conduct a presentation with the Local Groundwater Resources Association meeting in Sacramento.

XII. Approval of Consent Items

(These items are before the Board for consent and will be approved with a single motion. Any item that a Board member wishes to discuss will be removed from the consent items and considered separately.)

A. Approval of the Minutes of the July 16, 2015, Board Meeting

MOTION:	Mr. Tami and Mr. Silva move to approve the July 16, 2015, minutes.
VOTE:	All Aye; Motion Carried

Member Name	Yes	No	Abstain	Absent	Recusal
Robert Stockton	X				
Coby King	X				
Natalie Alavi				X	
Asha Brooks				X	
Chelsea Esquibias				X	
Eric Johnson	X				
Kathy Jones Irish	X				
Betsy Mathieson	X				
Mohammad Qureshi	X				
Hong Beom Rhee				X	
Karen Roberts				X	
William Silva	X				
Patrick Tami	X				

X. Technical Advisory Committees (TACs)

A. Assignment of Items to TACs

No report given.

B. Appointment of TAC Members

No report given.

C. Reports from the TACs

President Stockton reported on the Joint Civil and Structural TAC meeting and indicated that it was very successful in that SEAOC received clear input from the joint TAC relating to significant structures. Mr. Moore anticipates that by the end of the calendar year there will be a more clear idea where SEAOC is heading with their proposal, and SEAOC will be searching for an author for their legislative proposal.

Dr. Qureshi announced the Traffic TAC is scheduled to meet in late October at the Board office.

IX. President's Report/Board Member Activities

Ms. Jones Irish reported that she attended a session in Irvine September 2, 2015 with Staff Registrar Susan Christ where Ms. Christ provided an extensive presentation on the application process and the experience required for licensure.

Mr. Stockton met with Senator Roth regarding the Board's opposition to SB 320.

Mr. King attended a Senate Appropriations Committee hearing and met with Assembly Business and Professions Committee staff to express the Board's support of AB 177.

II. Public Comment (Cont.)

Mr. DeWitt, representing ACEC, announced there will be a joint chapter meeting in Monterey on October 20, 2015, with CLSA.

X. Other Items Not Requiring Board Action

No report given.

XI. Closed Session – Personnel Matters, Examination Procedures and Results, Administrative Adjudication, and Pending Litigation (As Needed) [Pursuant to Government Code sections 11126(a) and (b), 11126(c)(1), 11126(c)(3), 11126 (e)(1), and 11126(e)(2)(B)(i)]

A. Civil Litigation

1. Thomas Lutge v. Board for Professional Engineers, Land Surveyors, and Geologists, Department of Consumer Affairs, Court of Appeal, Third Appellate District, Case No. C075779 (Sacramento Superior Court Case No. 34-2012-80001329-CU-WM-GDS)

XII. Open Session to Announce the Results of Closed Session

During Closed session the Board took action on two stipulations, a default decision, and a decision after rejection of a proposed decision and discussed civil litigation as noticed.

III. Legislation (Continued)

Discussion of Legislation for 2015:

SB 209

Ms. Eissler advised that since the latest revisions appear to be extensive, more time is needed to thoroughly review them. The bill is now a two-year bill, so it is not necessary for the Board to take a position on the most current version at this time. Mr. McMillan, representing CLSA, indicated that in section 2772 (c) (5) (F) the statement, *appropriately licensed* is included and in 2774 (b) 1 (c) land surveyors are not mentioned in the list of licensed professionals that would provide documents.

XIII. Adjourn

Meeting adjourned at 4:08 p.m.

PUBLIC PRESENT

Peter Thams

Jeff Steffan, CLSA

Frank Lehmann

Bob DeWitt, ACEC

Oscar Serrano, ASCE

Rob McMillan, CLSA

DRAFT

XIV. Other Items Not Requiring Board Action

A. 2016 Board Meeting Schedule

2016 Board for Professional Engineers, Land Surveyors, and Geologists

Board Meetings

January 2016						
S	M	T	W	T	F	S
31					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

February 2016						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29					

March 2016						
S	M	T	W	T	F	S
			1	2	3	4
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

April 2016						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

May 2016						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

June 2016						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

July 2016						
S	M	T	W	T	F	S
31					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

August 2016						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

September 2016						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

October 2016						
S	M	T	W	T	F	S
30	31					1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

November 2016						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

December 2016						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

Holidays	
1/1	New Year's
1/18	M. L. King, Jr. Day
2/15	President's Day
3/31	Cesar Chavez Day
5/30	Memorial Day
7/4	Independence Day
9/5	Labor Day
11/11	Veteran's Day
11/24-11/25	Thanksgiving Break
12/26	Christmas

Board Meeting Dates
January 14-15
March 3-4
April 28-29
June 23-24
August 18-19
October 13-14
December 8-9

Key		
BOARD MEETING	HOLIDAYS	MBA MTG
NCEES WZ	NCEES ANNUAL MTG	BOARD OF DIRECTORS

2016

XV. Closed Session – Personnel Matters, Examination Procedures and Results, Administrative Adjudication, and Pending Litigation (As Needed) [Pursuant to Government Code sections 11126(a) and (b), 11126(c)(1), 11126(c)(3), 11126 (e)(1), and 11126(e)(2)(B)(i)]

A. Civil Litigation

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2. Joseph Elfelt v. Board for Professional Engineers, Land Surveyors, and Geologists, Department of Consumer Affairs, Sacramento Superior Court Case No. 34-2015-80002130

XVI. Open Session to Announce the Results of Closed Session

XVII. Adjourn
