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

Thursday, June 25, 2020, beginning at 9:00 a.m.,

Teleconference Public Board Meeting
### BOARD MEETING

**JUNE 25, 2020**

**TELECONFERENCE**

**BOARD MEMBERS**

Fel Amistad, President; Steve Wilson, Vice President; Natalie Alavi; Alireza Asgari; Duane Friel; Andrew Hamilton; Kathy Jones Irish; Eric Johnson; Coby King; Asha Lang; Betsy Mathieson; Mohammad Qureshi; and Frank Ruffino

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>I.</td>
<td>Roll Call to Establish a Quorum</td>
</tr>
<tr>
<td>II.</td>
<td>Moment of Silence for Robert Alan Stockton</td>
</tr>
<tr>
<td>III.</td>
<td>Pledge of Allegiance</td>
</tr>
<tr>
<td>IV.</td>
<td>Public Comment for Items Not on the Agenda</td>
</tr>
<tr>
<td></td>
<td>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. Please see the last page of this Official Notice and Agenda for additional information regarding Public Comment.</td>
</tr>
<tr>
<td>V.</td>
<td>Consideration of Rulemaking Proposals</td>
</tr>
<tr>
<td>A.</td>
<td>Adoption of Rulemaking Proposal to Amend Title 16, California Code of Regulations sections 416 and 3060 (Substantial Relationship Criteria) and sections 418 and 3061 (Criteria for Rehabilitation) to Conform to Statutory Changes Made by AB 2138 (Chapter 995, Statutes of 2018) (Possible Action)</td>
</tr>
<tr>
<td>B.</td>
<td>Adoption of Rulemaking Proposal to Amend Title 16, California Code of Regulations sections 407 and 3005 (Fees); to Amend Title 16, California Code of Regulations section 410 (Certificates); and to Adopt to Title 16, California Code of Regulations section 3010 (Certificates) (Possible Action)</td>
</tr>
<tr>
<td>VI.</td>
<td>Administration</td>
</tr>
<tr>
<td>A.</td>
<td>Fiscal Year 2018/19 Budget Status</td>
</tr>
<tr>
<td>B.</td>
<td>Fiscal Year 2019/20 Budget Report</td>
</tr>
<tr>
<td>VII.</td>
<td>Legislation</td>
</tr>
<tr>
<td>A.</td>
<td>2020 Legislative Calendar</td>
</tr>
<tr>
<td>B.</td>
<td>Discussion of Legislation for 2020 (Possible Action)</td>
</tr>
<tr>
<td></td>
<td>AB 1263 Contracts: consumer services: consumer complaints.</td>
</tr>
<tr>
<td></td>
<td>AB 1616 Department of Consumer Affairs: boards: expunged convictions.</td>
</tr>
<tr>
<td></td>
<td>AB 2028 State agencies: meetings.</td>
</tr>
<tr>
<td></td>
<td>AB 2113 Refugees, asylees, and immigrants: professional licensing.</td>
</tr>
<tr>
<td></td>
<td>AB 2185 Professions and vocations: applicants licensed in other states: reciprocity.</td>
</tr>
<tr>
<td></td>
<td>AB 2549 Department of Consumer Affairs: temporary licenses.</td>
</tr>
<tr>
<td></td>
<td>AB 2631 License fees: military partners and spouses.</td>
</tr>
<tr>
<td></td>
<td>AB 3334 Professional Land Surveyors’ Act and Professional Engineers Act.</td>
</tr>
<tr>
<td></td>
<td>SB 865 Excavations: subsurface installations.</td>
</tr>
<tr>
<td></td>
<td>SB 878 Department of Consumer Affairs Licensing: applications: wait times.</td>
</tr>
<tr>
<td></td>
<td>SB 1057 Land.</td>
</tr>
</tbody>
</table>
## VIII. Enforcement

A. Enforcement Statistical Reports
   1. Fiscal Year 2019/20 Update

## IX. Exams/Licensing

A. Update on 2020 California State Examinations
B. Discussion on Alternate Ways to Administer State Examinations

## X. Executive Officer’s Report

A. Rulemaking Status Report
B. Update on Board’s Business Modernization Project
C. Personnel
D. ABET
E. Association of State Boards of Geology (ASBOG)
F. National Council of Examiners for Engineering and Surveying (NCEES)
G. Update on Outreach Efforts
   1. Discussion on Outreach Efforts During Pandemic
H. Review of Board’s Operating Procedures Related to President and Vice President Elections.

## XI. Technical Advisory Committees (TACs)

A. Assignment of Items to TACs (Possible Action)
B. Appointment of TAC Members (Possible Action)
C. TAC Appointment (Possible Action)
D. Reports from the TACs (Possible Action)

## XII. President’s Report/Board Member Activities

## XIII. Approval of Meeting Minutes (Possible Action)

A. Approval of the Minutes of the May 7, 2020, Board Meeting

## XIV. Discussion Regarding Proposed Agenda Items for Next Board Meeting

## XV. Closed Session – The Board will meet in Closed Session to discuss, as needed:

A. Personnel Matters [Pursuant to Government Code sections 11126(a) and (b)]
B. Examination Procedures and Results [Pursuant to Government Code section 11126(c)(1)]
C. Administrative Adjudication [Pursuant to Government Code section 11126(c)(3)]
D. Pending Litigation [Pursuant to Government Code section 11126(e)]

## XVI. Adjournment

Due to technological limitations, adjournment will not be broadcast. Adjournment will immediately follow Closed Session, and there will be no other items of business discussed.
I. Roll Call to Establish a Quorum
II. Moment of Silence for Robert Alan Stockton
III. Pledge of Allegiance
IV. Public Comment for Items Not on the Agenda

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. Please see the last page of this Official Notice and Agenda for additional information regarding Public Comment.
V. Consideration of Rulemaking Proposals

A. Adoption of Rulemaking Proposal to Amend Title 16, California Code of Regulations sections 416 and 3060 (Substantial Relationship Criteria) and sections 418 and 3061 (Criteria for Rehabilitation) to Conform to Statutory Changes Made by AB 2138 (Chapter 995, Statutes of 2018) (Possible Action)

B. Adoption of Rulemaking Proposal to Amend Title 16, California Code of Regulations sections 407 and 3005 (Fees); to Amend Title 16, California Code of Regulations section 410 (Certificates); and to Adopt to Title 16, California Code of Regulations section 3010 (Certificates) (Possible Action)
Approval and/or Adoption of Rulemaking Proposal to Amend
Title 16, California Code of Regulations
Sections 416 and 3060 (Substantial Relationship Criteria)
and Sections 418 and 3061 (Criteria for Rehabilitation)
to Conform to Statutory Changes Made by AB 2138 (Chapter 995, Stats.2018)

Background
In 2019, the Board approved proposed amendments to the regulations pertaining to the Substantial Relationship Criteria and the Criteria for Rehabilitation (Title 16, California Code of Regulations (16 CCR) sections 416 and 418 for professional engineers and professional land surveyors and in 16 CCR sections 3060 and 3061 for professional geologists and professional geophysicists) and directed staff to begin the rulemaking process. Amendments to these sections were necessitated by the amendments various sections of the Business and Professions Code (BPC) made by AB 2138 (Ch. 995, Stats. 2018). The statutory changes become operative on July 1, 2020, and the goal is to have the amendments to the related regulations become effective at the same time. The pre-notice review process required by the Department of Consumer Affairs (DCA) and Agency was recently completed, and the rulemaking documents were approved for publication by the Office of Administrative Law (OAL) to be noticed for the required 45-day public comment period.

Shortly after receiving the approval to notice the Board-approved proposal, the DCA Legal Office advised Board staff that OAL had recommended changes to the language as proposed by another DCA licensing entity in order to approve their rulemaking proposal. Since we had used nearly identical language, it was suggested that we should make similar changes. In reviewing the recommendations from OAL and the DCA Legal Office, Board staff determined that it was necessary to make changes to the originally-proposed language, although not the specific changes recommended by OAL. Staff realized that some of the originally-proposed language was not worded as clearly as it could have been to specifically relate to the Board’s laws and processes.

However, due to the timing of the approval of the originally-proposed language, the input from OAL and the DCA Legal Office, and the Board meeting schedule, it was too late to make the changes to be part of the 45-public comment period. The rulemaking process allows for the Board, on its own motion, to make changes to the noticed language and provide the public with a 15-day comment period on those changes. Since the goal is to have the regulations become effective on July 1, 2020, it was necessary to have the Board approve changes to the originally-proposed language at its March 12, 2020, meeting, which the Board did.

The original proposal was notice for a 45-day public comment period on March 13, 2020, and that comment period ended on April 27, 2020. The modified language, as approved by the Board at its March 2020 meeting, was noticed for the 15-day public comment period on April 29, 2020, and the comment period closed on May 15, 2020.
Two sets of comments were submitted by members of the public during the 45-day comment period. The Board reviewed those comments and the proposed responses at its May 7, 2020, meeting. The comments did not necessitate any further changes to the proposed language.

**Current Status and Next Steps**
One set of comments was submitted by a member of the public during the 15-day comment period. The comments are included for the Board’s review. Board staff, in consultation with the DCA Legal Office, does not believe that any changes need to be made to the proposal based on the comments. Therefore, staff recommends that, as part of the final rulemaking proposal, the Board reject the comments for the reasons explained on the pages entitled “Summary of Comments and Response to Comments.” (Providing an official response of either accepting or rejecting the comments, with explanatory reasons, is part of the final rulemaking process; the comments and responses are submitted to OAL as part of the rulemaking package that is reviewed.)

The final language with the proposed changes is included for the Board’s review. Language proposed to be added is shown in single underlined text. Language proposed to be deleted is shown in single strikethrough text.

**RECOMMENDED MOTION:**
With regard to the rulemaking proposal to amend Title 16, California Code of Regulations sections 416, 418, 3060, and 3061:  
- Adopt the proposed responses to the comments;  
- Adopt the final rulemaking proposal; and,  
- Delegate to the Executive Officer to finalize the rulemaking file.
Title 16, California Code of Regulations sections 416, 418, 3060, and 3061

Language proposed to be added is shown in single underlined text. Language proposed to be deleted is shown in single strikethrough text.

Section 416 of Division 5 of Title 16 of the California Code of Regulations is amended as follows:

416. Substantial Relationship Criteria.

(a) For the purpose of denial, suspension, or revocation of the certification of an engineer-in-training or a land surveyor-in-training or license of a professional engineer or a land surveyor pursuant to Section 141, Division 1.5 (commencing with Section 475), subdivision (a) of Section 6775, subdivision (a) of Section 6775.1, Section 6779, subdivision (e) of Section 8780, subdivision (a) of Section 8780.1, or Section 8783 of the Business and Professions Code, a crime, professional misconduct, or act shall be considered substantially related to the qualifications, functions, and duties of a professional engineer or land surveyor if, to a substantial degree, it evidences present or potential unfitness of a professional engineer or land surveyor to perform the functions authorized by his or her license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, those involving the following:

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the Board shall consider all of the following criteria:

(i) The nature and gravity of the offense.

(ii) The number of years elapsed since the date of the offense.

(iii) The nature and duties of a professional engineer or land surveyor.

(c) For purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, the following:

(1) For engineers-in-training and professional engineers, any violations of the provisions of the Professional Engineers Act or other state or federal laws governing the practice of professional engineering or aiding and abetting any person in such a violation;

(2) For land surveyors-in-training and professional land surveyors, any violations of the provisions of the Professional Land Surveyors’ Act or other state or federal laws governing the practice of land surveying or aiding and abetting any person in such a violation;

(3) A conviction of a crime arising from or in connection with the practice of professional engineering or land surveying.

Section 418 of Division 5 of Title 16 of the California Code of Regulations is amended as follows:

418. Criteria for Rehabilitation.

(a) When considering the denial of an application for certification as an engineer-in-training or a land surveyor-in-training, or for licensure as a professional engineer, or for licensure as a professional land surveyor, or for authority to use the title “structural engineer,” or for authority to use the title “geotechnical engineer,” under Section 480, Section 6779, or Section 8783 of the Code on the ground that the applicant has been convicted of a crime, the Board shall consider whether the applicant made a showing of rehabilitation if the applicant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Board shall consider the following criteria:

1. The nature and gravity of the crimes(s).
2. The length(s) of the applicable parole or probation period(s).
3. The extent to which the applicable parole or probation period(s) was shortened or lengthened and the reason(s) the period(s) was modified.
4. The terms or conditions of parole or probation and the extent to which they bear on the applicant’s rehabilitation.
5. The extent to which the terms or conditions of parole or probation were modified and the reason(s) for modification.

(b) When considering the denial of an application for certification as an engineer-in-training or a land surveyor-in-training, for licensure as a professional engineer or a professional land surveyor, or for authority to use the title “structural engineer” or “geotechnical engineer” under Section 480, Section 6779, or Section 8783 of the Code, if the Board determines that the applicant has not completed the criminal sentence at issue without a violation of parole or probation or did not make the showing of rehabilitation based on the criteria in subdivision (a) if the denial is based on the ground that the applicant has been convicted of a crime, or, if the denial is based on the ground that the applicant has been subject to formal discipline by another licensing board for professional misconduct, then the Board shall consider whether the applicant made a showing of rehabilitation by applying the following criteria in evaluating the applicant’s rehabilitation:

1. The nature and severity of the act(s), professional misconduct, or crime(s) under consideration as grounds for denial.
2. Evidence of any act(s), professional misconduct, or crime(s) committed prior to or subsequent to the act(s), professional misconduct, or crime(s) under consideration as grounds for denial which could also be considered as grounds for denial under Section 480 of the Code.
3. The time that has elapsed since commission of the act(s), professional misconduct, or crime(s) referred to in subdivision (1) or (2).
4. The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
(5) Any evidence of rehabilitation submitted by the applicant.

(6) Total criminal record.

(7) If applicable, evidence of expungement proceedings that the conviction has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code; evidence that the applicant has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code; or evidence of a comparable dismissal or expungement.

(8) The criteria in subdivision (a)(1)-(5), as applicable.

(b) (c) When considering the suspension or revocation of the certification of an engineer-in-training or a land surveyor-in-training, or the license of a professional engineer or a professional land surveyor, or the authority to use the title “structural engineer,” or the authority to use the title “geotechnical engineer” under Section 490, subdivision (a) of Section 6775, subdivision (a) of Section 6775.1, Section 6779, subdivision (e) of Section 8780, subdivision (a) of Section 8780.1, or Section 8783 of the Code on the ground that the license holder has been convicted of a crime, the Board shall consider whether the license holder made a showing of rehabilitation if the license holder completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Board shall consider the following criteria: the Board will consider the following criteria in evaluating the rehabilitation of such person and his or her present eligibility to retain his or her license:

1. The nature and gravity of the crimes(s).
2. The length(s) of the applicable parole or probation period(s).
3. The extent to which the applicable parole or probation period(s) was shortened or lengthened and the reason(s) the period(s) was modified.
4. The terms or conditions of parole or probation and the extent to which they bear on the license holder’s rehabilitation.
5. The extent to which the terms or conditions of parole or probation were modified and the reason(s) for modification.

(d) When considering the suspension or revocation of the certification of an engineer-in-training or a land surveyor-in-training, the license of a professional engineer or a professional land surveyor, or the authority to use the title “structural engineer” or “geotechnical engineer” under Section 490, subdivision (a) of Section 6775, subdivision (a) of Section 6775.1, Section 6779, subdivision (e) of Section 8780, subdivision (a) of Section 8780.1, or Section 8783 of the Code on the ground that the license holder has been convicted of a crime, if the Board determines that the license holder has not completed the criminal sentence at issue without a violation of parole or probation or did not make the showing of rehabilitation based on the criteria in subdivision (c), then the Board shall consider whether the license holder made a showing of rehabilitation by applying the following criteria in evaluating the license holder’s rehabilitation:

1. The nature and severity gravity of the act(s) or crime(s) under consideration as grounds for suspension or revocation.
2. Evidence of any act(s) or crime(s) committed prior to or subsequent to the act(s) or crime(s) under consideration as grounds for suspension or revocation which could also be considered as grounds for suspension or revocation under Section 490 of the Code.
(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
(4) The extent to which the licensee license holder has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the license holder.
(5) Any evidence of rehabilitation submitted by the licensee license holder.
(6) Total criminal record.
(7) If applicable, evidence of expungement proceedings that the conviction has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code; evidence that the license holder has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code; or evidence of a comparable dismissal or expungement.
(8) The criteria in subdivision (c)(1)-(5), as applicable.

(e) When considering a petition for reinstatement of the certification of an engineer-in-training or a land surveyor-in-training, or the license of a professional engineer or a professional land surveyor, or the authority to use the title “structural engineer,” or the authority to use the title “geotechnical engineer,” the Board shall evaluate evidence of rehabilitation submitted by the petitioner, including but not limited to the following:

(1) Educational courses, including college-level courses, seminars, and continuing professional development courses, completed after the effective date of the Board’s decision ordering revocation.
(2) Professional engineering or land surveying work done under the responsible charge of a licensee license holder in good standing or under the direction responsible charge of a person legally authorized to practice.
(3) Payment of restitution to the consumer(s) by the petitioner.
(4) Actual or potential harm to the public, client(s), employer(s), and/or employee(s) caused by the action(s) that led to the revocation or that could be caused by the reinstatement of the certificate, license, or authority.
(5) The criteria specified in subsection (b) subdivision (d)(1) through (7) (8), as applicable.
(6) Disciplinary history, other than criminal actions, after the revocation.
(7) Recognition by the petitioner of his or her own actions and/or behavior that led to the revocation.
(8) Correction of the petitioner’s actions and/or behavior that led to the revocation.

(f) As used in this section, “license” means certification as an engineer-in-training or a land surveyor-in-training, licensure as a professional engineer, licensure as a professional land surveyor, authority to use the title “structural engineer,” or authority to use the title “geotechnical engineer.”

Note: Authority cited: Sections 482, 6716, and 8710, Business and Professions Code. Reference: Sections 480, 481, 482, 488, 490, 6706.3, 6710, 6732, 6775, 6775.1, 6777, 6779, 6780, 8780, 8780.1, 8783, and 8784, and 8785, Business and Professions Code; and Section 1203.4, Penal Code.
Section 3060 of Division 29 of Title 16 of the California Code of Regulations is amended as follows:

3060. Substantial Relationship Criteria.

(a) For the purpose of denial, suspension, or revocation of the certification of a geologist-in-training or registration license of a geologist, specialty geologist, geophysicists, or specialty geophysicists pursuant to Section 141, Division 1.5 (commencing with Section 475), subdivision (b)(1) of Section 7860, subdivision (a) of Section 7860.1, or Section 7863 of the Business and Professions Code, a crime, professional misconduct, or act shall be considered substantially related to the qualifications, functions, and duties of a geologist, specialty geologist, geophysicists, or specialty geophysicists if to a substantial degree it evidences present or potential unfitness of such geologist or geophysicist to perform the functions authorized by his registration or her license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, the following:

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the Board shall consider all of the following criteria:

(1) The nature and gravity of the offense.
(2) The number of years elapsed since the date of the offense.
(3) The nature and duties of a professional geologist or geophysicist.

(c) For purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, the following:

(a) (1) Any violation of the provisions of Chapter 12.5 of Division 3 of the Business and Professions Code or other state or federal laws governing the practice of geology or geophysics or aiding and abetting any person in such a violation;
(2) A conviction of a crime arising from or in connection with the practice of geology or geophysics.


Section 3061 of Division 29 of Title 16 of the California Code of Regulations is amended as follows:

3061. Criteria for Rehabilitation.

(a) When considering the denial of an application for certification as a geologist-in-training or licensure as a professional geologist, a specialty geologist, or a professional geophysicist, or certification as a specialty geologist, a specialty geophysicist, or geologist-in-training under Section 480 or Section 7863 of the Code, on the ground that the applicant has been convicted of a crime, the Board shall consider whether the applicant made a showing of rehabilitation if the applicant completed the criminal sentence at issue without a violation of parole or probation. In making this
determination, the Board shall consider the following criteria: the Board, in evaluating the rehabilitation of the applicant and his or her present eligibility for such a license or certification, will consider the following criteria:

(1) The nature and gravity of the crimes(s).
(2) The length(s) of the applicable parole or probation period(s).
(3) The extent to which the applicable parole or probation period(s) was shortened or lengthened and the reason(s) the period(s) was modified.
(4) The terms or conditions of parole or probation and the extent to which they bear on the applicant’s rehabilitation.
(5) The extent to which the terms or conditions of parole or probation were modified and the reason(s) for modification.

(b) When considering the denial of an application for certification as a geologist-in-training or licensure as a professional geologist, specialty geologist, professional geophysicist, or specialty geophysicist under Section 480 or Section 7863 of the Code if the Board determines that the applicant has not completed the criminal sentence at issue without a violation of parole or probation or did not make the showing of rehabilitation based on the criteria in subdivision (a) if the denial is based on the ground that the applicant has been convicted of a crime, or, if the denial is based on the ground that the applicant has been subject to formal discipline by another licensing board for professional misconduct, then the Board shall consider whether the applicant made a showing of rehabilitation by applying the following criteria in evaluating the applicant’s rehabilitation:

(1) The nature and severity gravity of the act(s), professional misconduct, or crime(s) under consideration as grounds for denial.
(2) Evidence of any act(s), professional misconduct, or crime(s) committed prior to or subsequent to the act(s), professional misconduct, or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Code.
(3) The time that has elapsed since commission of the act(s), professional misconduct, or crime(s) referred to in subdivision (1) or (2).
(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
(5) Evidence, if any. Any evidence of rehabilitation submitted by the applicant.
(6) Total criminal record.
(7) If applicable, evidence of expungement proceedings that the conviction has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code; evidence that the applicant has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code; or evidence of a comparable dismissal or expungement.
(8) The criteria in subdivision (a)(1)-(5), as applicable.

(b) When considering the suspension or revocation of the certification of a geologist-in-training or the license of a professional geologist, a specialty geologist, a professional geophysicist, or certification of a specialty geologist, a specialty
geophysicist, or geologist-in-training under Section 490, subdivision (b)(1) of Section 7860, subdivision (a) of Section 7860.1, or Section 7863 of the Code on the ground that the license holder has been convicted of a crime, the Board shall consider whether the license holder made a showing of rehabilitation if the license holder completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Board shall consider the following criteria: the Board will consider the following criteria in evaluating the rehabilitation of such person and his or her present eligibility to retain his or her license:

1. The nature and gravity of the crimes(s).
2. The length(s) of the applicable parole or probation period(s).
3. The extent to which the applicable parole or probation period(s) was shortened or lengthened and the reason(s) the period(s) was modified.
4. The terms or conditions of parole or probation and the extent to which they bear on the license holder’s rehabilitation.
5. The extent to which the terms or conditions of parole or probation were modified and the reason(s) for modification.

(d) When considering the suspension or revocation of the certification of a geologist-in-training or the license of a professional geologist, a specialty geologist, a professional geophysicist, or a specialty geophysicist under Section 490, subdivision (b)(1) of Section 7860, subdivision (a) of Section 7860.1, or Section 7863 of the Code on the ground that the license holder has been convicted of a crime, if the Board determines that the license holder has not completed the criminal sentence at issue without a violation of parole or probation or did not make the showing of rehabilitation based on the criteria in subdivision (c), then the Board shall consider whether the license holder made a showing of rehabilitation by applying the following criteria in evaluating the license holder’s rehabilitation:

1. Nature The nature and severity gravity of the act(s) or offense(s) crime(s) under consideration as grounds for suspension or revocation.
2. Evidence of any act(s) crime(s) committed prior to or subsequent to the act(s) or offense(s) crime(s) under consideration as grounds for suspension or revocation under Section 490 of the Code.
3. The time that has elapsed since commission of the act(s) or offense(s) crime(s) referred to in subdivision (1) or (2).
4. The extent to which the licensee license holder has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the licensee license holder.
5. If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
6. Evidence, if any, Any evidence of rehabilitation submitted by the licensee license holder.
7. Total criminal record.
8. If applicable, evidence that the conviction has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code; evidence that the license holder has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code; or evidence of a comparable dismissal or expungement.
(8) The criteria in subdivision (c)(1)-(5), as applicable.

(5) (e) When considering a petition of reinstatement of the certification as a geologist-in-training, specialty geologist, or specialty geophysicist, or the license of a professional geologist or professional geophysicist, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, including, but not limited to, the following:

1. Educational courses, including college-level courses, seminars, and continuing professional development courses, completed after the effective date of the Board’s decision ordering revocation.

2. Professional geological or geophysical work done under the responsible charge of a licensee in good standing or under the direction of a person legally authorized to practice.

3. Payment of restitution to the consumer(s) by the petitioner.

4. Actual or potential harm to the public, client(s), employer(s), and/or employee(s) caused by the action(s) that led to the revocation or that could be caused by the reinstatement of the certificate, license, or authority.

5. The criteria specified in subdivision (d)(1) through (7), as applicable.

6. Disciplinary history, other than criminal actions, after the revocation.

7. Recognition by the petitioner of his or her own actions and/or behavior that led to the revocation.

8. Correction of the petitioner’s actions and/or behavior that led to the revocation.

(f) As used in this section, “license” means certification as a geologist-in-training or licensure as a professional geologist, a specialty geologist, a professional geophysicist, or a specialty geophysicist.

Summary of Comments and Response to Comments

Comments were received from David Woolley, Professional Land Surveyor. In his comments, Mr. Woolley requests that the Board hold a public hearing on the regulatory proposal, and he also provides comments relating to the proposal.

Board Response to Woolley Request for Public Hearing:
Pursuant to Government Code sections 11346.5(a)(17) and 11346.8(a), a member of the public may request that a hearing be held on a regulatory proposal if one is not initially scheduled. These laws require that such a request be submitted 15 days prior to the close of the 45-day public comment period. The 45-day public comment period for this proposal ended on April 27, 2020; therefore, a request for a hearing had to be submitted by April 13, 2020. Since Mr. Woolley did not submit his request for a hearing until May 14, 2020, it is not timely in accordance with the laws, and the Board will not hold a hearing.

Summary of Woolley Comment 1a:
Mr. Woolley comments that the regulations do not provide definitions for the terms “crime,” “professional misconduct,” and “act” as used in subdivision (a) of 16 CCR sections 416 and 3060. He questions who will determine what these terms mean and states his belief that the regulations provide too much latitude to Board staff to determine the definitions of the terms. Mr. Woolley further claims that failing to provide definitions of these terms violates applicants’ and licensees’ due process rights.

Board Response to Woolley Comment 1a:
Although the terms “crime” and “act” are used in existing regulations and are, therefore, not technically related to the proposed modifications, the Board has still considered the portion of this comment related to those terms.

The Board rejects this comment.

BPC section 481 requires the Board to “… develop criteria to aid it, when considering the denial, suspension, or revocation of a license, to determine whether a crime is substantially related to the qualifications, functions, or duties of the business or profession it regulates.” [Emphasis added.] Furthermore, BPC sections 480 and 490, as well as the specific BPC sections referenced in 16 CCR sections 416 and 3060, indicate that the Board may deny issuing a license or take disciplinary action against a license if the person has been convicted of a “crime” that is substantially related to the qualifications, functions, and duties of the profession. Additionally, BPC section 480 [as will become operative on July 1, 2020] provides certain limitations on the types of crimes that may be considered. 16 CCR sections 416 and 3060, which were originally adopted in accordance with BPC section 481 and are being amended to conform to the statutory changes being made of BPC sections 480 and 481, provide information as to what types of actions shall be considered “substantially related crimes.” For all of these
reasons, it is not necessary for the Board to provide a separate definition or a list of further examples of what is meant by the term “crime” in its regulations.

The Board is allowed to consider acts that may be the underlying basis of a conviction, as long the conviction has not been dismissed under certain specific sections of the Penal Code or a comparable dismissal or expungement. 16 CCR sections 416 and 3060 further limit what acts the Board may consider by specifying certain sections of the BPC under which the Board may deny issuing a license or take disciplinary action against a license and by indicating that the act must be substantially related to the qualifications, functions, and duties of the profession. 16 CCR sections 416 and 3060 provide information as to what types of actions will be considered as “substantially related acts.” For all of these reasons, it is not necessary for the Board to provide a separate definition or a list of further examples of what is meant by the term “act” in its regulations.

The phrase “professional misconduct” is used in statute, specifically in BPC section 480(a)(2) [as will become operative on July 1, 2020]. This section further narrows the type of “professional misconduct” that is at issue; it is “professional misconduct” that 1) “would have been cause for discipline before the board for which the present application is made,” and, 2) “is substantially related to the qualifications, functions, or duties of the business or profession.” Additionally, it is unnecessary to provide a definition of words used in regulations when the words as used have the same general definitions as provided in dictionaries. For example, the Merriam-Webster Dictionary includes “intentional wrongdoing” and “improper behavior” in its definition of “misconduct,” and Black’s Law Dictionary includes “a dereliction from duty, injurious to another, on the part of one employed in a professional capacity” in its definition. Furthermore, subdivision (c) of 16 CCR sections 416 and 3060 provide information as to what types of actions shall be considered “substantially related crimes, professional misconduct, or acts.” For all of these reasons, it is not necessary for the Board to provide a separate definition or a list of further examples of “professional misconduct” or “misconduct” in its regulations.

With regard to Mr. Woolley’s arguments regarding “due process,” his concerns with the definitions of terms are not a “due process” issue. If the Board denies issuing a license, the applicant has the right to appeal that denial by requesting a formal hearing that is conducted under the provisions of the Administrative Procedure Act (Chapters 4, 4.5, and 5 of Part 1 of Division 3 of Title 2 of the Government Code). Likewise, if the Board pursues disciplinary action against a license, the licensee has the right to a formal hearing that is conducted under the provisions of the Administrative Procedure Act.

Accordingly, the Board is making no changes to the proposed regulations in response to this comment.
Summary of Woolley Comment 1b:
Mr. Woolley comments that the regulations, by using only the terms “crime,” “professional misconduct,” or “act” do not specify that there must be a conviction of a crime in order for the Board to deny issuing a license or taking disciplinary action against a licensee. He also states that the phrase “… include, but are not limited to, the following …,” as used in subdivision (c) of 16 CCR sections 416 and 3060, is too broad and provides too much leeway to Board staff to include anything it wants to include. Mr. Woolley again states that this fails to provide due process for an applicant or licensee.

Board Response to Woolley Comment 1b:
The Board rejects this comment. As indicated in the Board Response to Woolley Comment 1a, 16 CCR sections 416 and 3060 indicate that they apply when the Board is considering denying to issue a license or taking disciplinary action against a licensee pursuant to certain specified BPC sections. The BPC sections that pertain to crimes require that there be a conviction in order for the Board to take action under those sections (see, for example, subdivision (a) of BPC section 6775, which states in pertinent part “… conviction of a crime …,” or subdivision (a) of BPC section 480, which states in pertinent part “… convicted of a crime …”). Furthermore, BPC section 481 requires the Board to “… develop criteria to aid it, when considering the denial, suspension, or revocation of a license, to determine whether a crime is substantially related to the qualifications, functions, or duties of the business or profession it regulates.” [Emphasis added.] 16 CCR sections 416 and 3060 address this criteria by indicating when a “crime” is considered “substantially related.” For all of these reasons, it is unnecessary to use the phrase “conviction of a crime” rather than the term “crime.”

The phrase “… include, but are not limited to, the following …” is existing language that has been included in 16 CCR sections 416 and 3060 since they were initially adopted in the 1970s. The Board is not proposing to change this phrase. As such, it does not convey any additional authority to the Board or its staff than already exists.

With regard to Mr. Woolley’s arguments regarding “due process,” as indicated in the Board Response to Woolley Comment 1a, his concerns with the definitions of terms are not a “due process” issue. If the Board denies issuing a license, the applicant has the right to appeal that denial by requesting a formal hearing that is conducted under the administrative adjudication provisions of the Administrative Procedure Act (Chapters 4, 4.5, and 5 of Part 1 of Division 3 of Title 2 of the Government Code). Likewise, if the Board pursues disciplinary action against a license, the licensee has the right to a formal hearing that is conducted under the provisions of the Administrative Procedure Act.

Accordingly, the Board is making no changes to the proposed regulations in response to this comment.
Summary of Woolley Comment 1c:
Mr. Woolley states that the inclusion of “the number of years elapsed since the date of the offense” in subdivision (b) of 16 CCR sections 416 and 3060 is vague and does not consider statutes of limitations. Mr. Woolley also asks how far back the Board will consider, whether any deference is given to statutes of limitations, and whether statutes of limitations were considered in the development of these regulations.

Board Response to Woolley Comment 1c:
The Board rejects this comment. By including reference to the number of years that have elapsed since the date of the offense as one of the items the Board must consider in determining the substantial relationship, the Board is implementing the new statutory requirements of BPC section 481 [as will become effective July 1, 2020]. In enacting new requirements for what boards must consider in determining the substantial relationship, the Legislature intentionally chose to include qualitative factors, such as the nature and gravity of the offense; the time that has elapsed since the offense occurred; and the nature and duties of the profession. If the intent of the Legislature was to require these be considered as quantitative factors, it would have specified the level of gravity or the exact number of years. The purpose of these regulations is to implement statute in the manner intended by the Legislature in enacting the statute. In this case, that intent is to allow the Board to consider qualitative factors, rather than quantitative factors.

With regard to Mr. Woolley’s reference to a statute of limitations, if that statute of limitations for a criminal offense has expired, then the crime would not be prosecuted. However, the Board could still consider the underlying act, giving due consideration to the factors specified in statute and regulation as to whether that act was substantially related. Furthermore, there is no statute of limitations that would bar the Board from taking disciplinary action against a licensee. Statutes of limitations pertaining to civil litigation, as referenced in the legal opinion Mr. Woolley included with his comments, have no bearing on this regulatory proposal.

For all of these reasons, it is unnecessary to specify a quantitative amount for “the number of years that have elapsed since the date of the offense” since it is intended to be a qualitative factor that must be considered. Accordingly, the Board is making no changes to the proposed regulations in response to this comment.

Summary of Woolley Comment 2:
Mr. Woolley reiterates his belief that the terms “crimes,” “professional misconduct,” and “acts” should be defined in the regulations, as he addressed in Comment 1a.

Board Response to Woolley Comment 2:
Insofar as Mr. Woolley raises no new issues in his Comment 2, the Board rejects this comment for the reasons described in Board Response to Woolley Comment 1a and is making no changes to the proposed regulations in response to this comment.
Summary of Woolley Comments 3 and 4:
Mr. Woolley states in Comment 3 that the proposed amendments broaden the authority of the Board and the Board’s Executive Officer and are, therefore, underground regulations. In Comment 4 (“Conclusion”), Mr. Woolley asks the Board to stop the process to amend its regulations as proposed.

Board Response to Woolley Comments 3 and 4:
The Board rejects these comments. Mr. Woolley is correct that regulations implement and make specific statute but cannot exceed the authority provided by statute. The proposed amendments to these regulations do not do that. They conform existing regulations regarding the substantial relationship criteria and the criteria for rehabilitation to amendments made to the enabling and authorizing statutes by AB 2138 and are consistent with the intent of the Legislature in enacting those statutes. In proposing to amend its regulations, the Board has followed, and is continuing to follow, the requirements of the Administrative Procedure Act (Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code) that govern the adoption and amendment of regulations by providing the public with written notices of the proposed changes with justifications for the changes, by allowing the public to submit comments on the proposal, and by considering and responding to those comments before taking final action to adopt the changes.

Accordingly, the Board is making no changes to the regulations in response to these comments, nor will it cease pursuing this regulatory proposal.
May 14, 2020

**VIA EMAIL AND CERTIFIED MAIL (RETURN RECEIPT)**

Nancy A. Eissler  
Assistant Executive Officer  
Board for Professional Engineers, Land Surveyors and Geologists  
2535 Capitol Oaks Drive, Suite 300  
Sacramento, California 95833  
Tel: (916) 263-2241  
Email: Nancy.Eissler@dca.ca.gov

**RE:** Objections and Request for Hearing Regarding:

1. Proposed Amendment of Section 416 of Division 5 of Title 16 of the California Code of Regulations

2. Proposed Amendment to Section 418 of Division 5 of Title 16 of the California Code of Regulations

3. Proposed Amendment to Section 3060 of Division 29 of Title 16 of the California Code of Regulations

4. Proposed Amendment to Section 3061 of Division 29 of Title 16 of the California Code of Regulations

Dear Ms. Eissler:

As a California Professional Land Surveyor, and as a California resident, I am writing to object to the proposed amendments to Sections 416 and 418 of Division 5 of Title 16 of the California Code of Regulations and Sections 3060 and 3061 of Division 29 of Title 16 of the California Code of Regulations for the reasons set forth below. Additionally, I am requesting a formal hearing on these amendments to discuss my objections and the objections of other citizens to these proposed amendments.

After reading the proposed amendments, it is clear to me that several factors and principles have not been properly and thoroughly considered by the individuals proposing these amendments and I fear that their passage will severely hurt the ability of the Board for Professional Engineers, Land Surveyors and Geologists staff (“Board Staff”) to manage licensee discipline while affording each individual the due process rights they are constitutionally guaranteed. In explaining the basis for my objections, I will point...
out some fundamental principles. Principles that the Board Staff have struggled with understanding in the past.

1. **In a Criminal Matter, A Person Is Innocent Until Proven Guilty in a Court of Law.**

It is a fundamental principal that a person is innocent until proven guilty in a *court of law* (not a Board hearing). Due process “requires the prosecution to prove every element charged in a criminal offense beyond a reasonable doubt.” *In re Winship* (1970) 397 U.S. 358, 364. If the jury is not properly instructed concerning the presumption of *innocence* until *proven guilty* beyond a reasonable doubt, a due process denial results. See *Middleton v. McNeil* (2004) 541 U.S. 433, 437. “Any jury instruction that ‘reduce[s] the level of proof necessary for the Government to carry its burden ... is plainly inconsistent with the constitutionally rooted presumption of innocence.’ ” *Cool v. United States* (1972) 409 U.S. 100, 104.

The Bill of Rights (the first 10 Amendments to the U.S. Constitution) sets forth rights of criminal defendants. For example, the Fourth Amendment protects persons against arbitrary and unreasonable governmental violations of privacy rights. *Id.* The Fifth and Fourteen Amendments’ Due Process Clauses guarantee basic procedural and substantive fairness to criminal defendants. *Id.* at 152. These two (2) U.S. Constitutional Amendments require that the federal government and the states observe due process before they deprive a person of life, liberty or property. *Id.* at 76. The Sixth Amendment entitles a defendant to a speedy trial by an impartial jury and guarantees to the defendant that they will be able to confront and cross-examine witnesses against them. *Id.* at 157.

a. **Board Proposed Amendments Mention “Crimes”, “Professional Misconduct” and “Acts” – None Are Defined.**

The fundamental legal protections mentioned above are simply not afforded to the licensee by the Board Staff in determining if a current licensee is guilty of a “crime” absent a conviction by a proper court of law. In all the proposed amendments, “crime” is not defined clearly. Is a “crime” only a conviction by a proper court of law? Is a “crime” determined by the Board? Who determines if a “crime” has been committed?

“Crime” is also not defined by the definitions contained in Section 404 of Division 5 of Title 16 of the California Code of Regulations. See Exhibit A.

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1 Procedural due process establishes the procedures that the government (federal or state) must follow when it takes life, liberty or property. *Id.* at 76. Their basic premise is that an individual is entitled to notice of the government action to be taken against him/her and some sort of fair trial or hearing before the action can occur. *Id.* Substantive due process has to do with social legislation in the early 20th Century such as freedom to contract and other economic rights into the liberty and property protected by the Fifth and Fourteenth Amendments. *Id.* A land surveyor’s professional license is “property.”

2 To consider a criminal act grounds for discipline, suspension or expulsion, a *conviction* is required. Cal. Bus. & Prof. Code § 490. Regarding a Board’s ability to suspend or revoke a license pursuant to California Business & Professions Code § 490, a “conviction” is defined as “a plea or verdict of guilty or a conviction following a plea of nolo contendere.” Cal. Bus. & Prof. Code § 490(c). “An action that a Board is permitted to take following the establishment of a conviction may be taken when
Similarly, the Board Staff uses the word “professional misconduct” without providing a proper definition for this term. “Professional misconduct” is not defined in Section 404 of Division 5 of Title 16 of the California Code of Regulations. See Exhibit A. Who determines “professional misconduct”? Is it a court of law? Is it a Board proceeding? What is the proceeding? Does it protect a licensee’s U.S. Constitutional rights? We do not know because this phrase is not clearly defined. As I have personally witnessed, the Board Staff will pursue an issue, costing a licensee tens of thousands of dollars, only to realize they have no case when a judge tosses it out pre-hearing.

A review of related regulations and California Business & Professions Code do not give a definition of “professional misconduct”. To afford licensees or potential licensee’s due process and other constitutional rights, “professional misconduct” must be defined clearly. Licensees and potential licensees are not attorneys with legal research skills. This term must be clearly defined in the proposed amendments to these regulations and the term must be consistently applied to protect all licensees. The Board Staff cannot assume the power to include the term “professional misconduct” without defining it. Allowing the Board Staff this latitude conveys too much power to the Board Staff, specifically Ricard Moore, and does not afford licensees’ due process and other Constitutional rights.

Finally, “act” is not defined in the context of “a crime, professional misconduct or act”. What is an “act” that could conclude with a licensee being denied a license, suspension of a license or revocation of a license? There is absolutely no definition of this term contained in these amendments. “Act” is not defined in Section 404 of Division 5 of Title 16 of the California Code of Regulations. See Exhibit A. The Board Staff cannot assume power to interpret the word “act” in this context without giving adequate notice of its meaning to the licensee. Again, this allows the Board Staff to much latitude to define this term as it pleases and denies licensees due process and other Constitutional rights.


The phrase “conviction of a crime” is crucial and the words “crimes”, “professional misconduct” and “acts” cannot substitute for the word conviction when talking about labeling someone as having committed a crime. Their due process rights would be cast aside. This is unconstitutional and would never hold up to a court challenge. However, when unconstitutional accusations are leveled against a licensee the licensee is required to hire counsel to protect these rights and defend against the misplaced allegations. Unfortunately, this has happened to licensees in the past. The proposed amendments’ inclusion of the terms “crimes”, “professional misconduct” and “acts” are wholly insufficient, vague and deny licensees due process. The amendments also allow the Board Staff an extraordinary amount of power in determining what is a “crime” without requiring a conviction. While “conviction of a crime”
appears in some places in the amendments, “crime”, “professional misconduct” and “acts” negate this phrase because these terms are not properly defined in the amendments.

Additionally, Section 416 (c) and Section 3060 (c) proposed amendments state:

“For the purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, the following” [emphasis added]

This language gives too much leeway to the Board Staff to include anything it wants to include. Again, this violates licensees’ due process rights because they are not given forewarning of what types of conduct could be subject to discipline. This is a further failing of these proposed amendments.

While proponents of these amendments may point to the similarities between the proposed language of “crimes and acts” and California Business & Professions Code § 480, there are significant differences. First, Section 480 deals with the denial of a license to a first time licensee who has less vested interest in his/her license than an existing licensee already earning a living in that profession. Secondly, Section 490 of the same Business & Professions Code requires conviction of a crime (not “crimes”, “professional misconduct” or “acts”) to suspend or revoke the license of a current licensee – thus reflecting a higher standard for existing licensees’ protection. Certainly, there is no language such as “but are not limited to” thereby opening this regulation to anything the Board Staff wants to include as a “crime”, “professional misconduct” or “act”. This is unacceptable.

c. The “Number of Years Elapsed Since Date of the Offense” Criteria Is Vague and Does Not Consider California Statutes of Limitations.

In the “Substantial Relationship Criteria” stated in Sections 416(b) and 3060(b), the proposed amendments state:

“In making the substantial relationship determination required under subdivision (a) for a crime, the Board shall consider the following criteria:

(2) The number of years elapsed since the date of the offense”

How many years back will the Board Staff consider? Is any deference given to the California statutes of limitations for causes of actions against licensees? As explained in the California Legislative Counsel’s Opinion dated April 29, 2008, entitled Statute of Limitations: Land Surveyors - #0806551, and authored by Sheila R. Mohan, Deputy Legislative Counsel, the statute of limitations issues related to professional land surveyors are complex and require analysis. See Exhibit B, copy of Legislative Counsel’s Opinion. Was any consideration given to the statute of limitations in drafting these proposed amendments? As stated, the proposed amendments are simply too vague in this regard. Additionally, a land surveyor’s error can rest undiscovered for years, sometimes decades, before being discovered. However, once discovered, the error sets the table for members of the public to be thrown into expensive litigation. The fact a survey was performed a number of years prior should be of no consideration in the disciplinary
process. To afford any weight or consideration as to when the error or violation occurred in time is a
disservice to the public the Board is charged with protecting.

2. **A Crime, Professional Misconduct or Act Must Substantially Relate to the Qualifications, Functions or Duties of the Professional for Whom the License Was Issued.**

As stated above, the “crimes”, “professional misconduct” and “acts” being considered by the Board and Board Staff must substantially relate to the qualifications, functions or duties of the business or profession for which the license was issued. This is true for existing licensees facing suspension or revocation (Cal. Bus. & Prof. Code § 490(a) and new applicants for licensure (Cal. Bus. & Prof. Code 480(B). Furthermore, Cal. Bus. & Prof. Code § 481 also requires that a “crime or act substantially relate to the qualifications, functions, or duties of the business or profession it regulates.” Again, the proposed language says “crimes”, “professional misconduct “ or “acts” without further definition. This is a huge mistake. To call this a mistake is being polite – it is unlikely a mistake because this has been reoccurring pattern.

3. **These Proposed Amendments Are “Underground Regulations”**.

These proposed amendments, adding of language to existing regulations, are not supposed to broaden the Executive Officer's authority – this can only be done by statute. In the law, regulations clarify and provide for processes to implement statutes passed by the Legislature and signed by the Governor. Regulations cannot give broadened authority to the Board’s Executive authority without authorization by statute. Allowing the Board to expand its authority with these proposed amendments amounts to improper “underground legislation”. According to the California Government Code § 11342.600:

> “Regulation means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it or to govern its procedure.” [emphasis added]

According to the California Office of Administrative Law:

> “State agencies, with few exceptions, are required to adopt regulations following the procedures established in the Administrative Procedures Act . . . If a state agency issues, utilizes, enforces, or attempts to enforce a rule without following the APA when it is required to, the rule is called an “underground regulation”. State agencies are prohibited from enforcing underground regulations” 3

4. **Conclusion.**

All these vague terms allow the Board Staff too much power in determining discipline for licensees. In the past, the Board and Board Staff has attempted to broaden its regulatory power without giving licensees

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3 [https://oal.ca.gov/underground_regulations/](https://oal.ca.gov/underground_regulations/)
proper definitions for terms contained in its proposed amendments. The vagueness of these terms allow the Board Staff to pick which licensees it will pursue for misconduct. This vagueness also allows the Board Staff to pick favorites when deciding discipline for licensees - a practice that I have witnessed and long opposed.

In closing, I caution all concerned not to allow the Board Staff authority to pursuing taking away licenses using vague terms and without the court’s protection. This is a mistake and personally, makes me wonder about the underlying motivations of the Board Staff in suggesting these proposed amendments. To this end, I am requesting a the proposed regulation process is stopped now. Also, I am requesting a hearing on the proposed changes if they are to move forward.

For all of these reasons, I object to these amendments and request a formal hearing to discuss and debate these issues further. If you have any questions about my request, please call me at (714) 403-6730.

Sincerely,

David E. Woolley, PLS

Enclosures

cc: Richard Moore
§ 404. Definitions. 16 CA ADC § 404

For the purpose of the rules and regulations contained in this chapter, the following terms are defined. No definition contained herein authorizes the practice of professional engineering as defined in the Professional Engineers Act.

(a) "ABET" means ABET, Inc., formerly known as the Accreditation Board for Engineering and Technology.

(b) "Agricultural engineering" is that branch of professional engineering which requires such education and experience as is necessary to understand and apply engineering principles to the design, construction, and use of specialized equipment, machines structures and materials relating to the agricultural industry and economy. It requires knowledge of the engineering sciences relating to physical properties and biological variables of foods and fibers; atmospheric phenomena as they are related to agricultural operations; soil dynamics as related to traction, tillage and plant-soil-water relationships; and human factors relative to safe design and use of agricultural machines. The safe and proper application and use of agricultural chemicals and their effect on the environment are also concerns of the agricultural engineers. The above definition of agricultural engineering shall not be construed to permit the practice of civil, electrical or mechanical engineering, nor professional forestry.

(c) "Approved Cooperative Work-Study Engineering Curriculum" refers to any curriculum under an ABET accredited cooperative work-study engineering program.

(d) "Approved Cooperative Work-Study Land Surveying Curriculum" refers to any curriculum under an ABET accredited cooperative work-study surveying program.

(e) "Approved Engineering Curriculum" refers to any curriculum under an ABET accredited engineering program leading to a baccalaureate degree in engineering.

(f) "Approved Engineering Technology Curriculum" refers to any curriculum under an ABET accredited engineering program leading to a four-year degree or a baccalaureate degree in technology.
§ 404. Definitions., 16 CA ADC § 404

(g) “Approved Land Surveying Curriculum” refers to any curriculum under an ABET accredited program leading to a baccalaureate degree.

(h) “Approved Post-Graduate Engineering Curriculum” refers to any curriculum under an ABET accredited engineering program leading to a master’s degree in engineering or to a post-graduate degree earned from an engineering program where the baccalaureate degree program is accredited by ABET.

(i) “Board” means the Board for Professional Engineers, Land Surveyors, and Geologists.

(j) “Chemical engineering” is that branch of professional engineering which embraces studies or activities relating to the development and application of processes in which chemical or physical changes of materials are involved. These processes are usually resolved into a coordinated series of unit physical operations and unit chemical processes. It is concerned with the research, design, production, operational, organizational, and economic aspects of the above. The above definition of chemical engineering shall not be construed to permit the practice of civil, electrical or mechanical engineering.

(k) “Civil engineer” refers to a person who holds a valid license in the branch of civil engineering, as defined in Section 6702 of the Code.

(l) “Civil engineering” is that branch of professional engineering as defined in Section 6731 of the Code.

(m) “Code” means the Business and Professions Code.

(n) “Consulting engineer” refers to any professional engineer who holds a valid license under the provisions of the code, or a person who possesses a valid authorization issued pursuant to Section 6732.2 of the Code, or a person who holds a valid exemption from provisions of the chapter as provided for in Sections 6704 and 6732.1 of the Code.

(o) “Control system engineering” is that branch of professional engineering which requires such education and experience as is necessary to understand the science of instrumentation and automatic control of dynamic processes; and requires the ability to apply this knowledge to the planning, development, operation, and evaluation of systems of control so as to insure the safety and practical operability of such processes. The above definition of control system engineering shall not be construed to permit the practice of civil, electrical, or mechanical engineering.

(p) “Corrosion engineering” is that branch of professional engineering which requires such education and experience as is necessary to understand the environmental corrosion behavior of materials; and requires the ability to apply this knowledge by recommending procedures for control, protection and cost effectiveness, resulting from the investigation of corrosion causes
or theoretical reactions. The above definition of corrosion engineering shall not be construed to permit the practice of civil, electrical, or mechanical engineering.

(q) "Electrical engineer" refers to a person who holds a valid license in the branch of electrical engineering, as defined in Section 6702.1 of the Code.

(r) "Electrical engineering" is that branch of professional engineering as defined in Section 6731.5 of the Code.

(s) "Engineer-in-training" refers to a person who has been granted a certificate as an "engineer-in-training" in accordance with Section 6756 of the Code.

(t) "Fire protection engineering" is that branch of professional engineering which requires such education and experience as is necessary to understand the engineering problems relating to the safeguarding of life and property from fire and fire-related hazards; and requires the ability to apply this knowledge to the identification, evaluation, correction, or prevention of present or potential fire and fire related panic hazards in buildings, groups of buildings, or communities, and to recommend the arrangement and use of fire resistant building materials and fire detection and extinguishing systems, devices, and apparatus in order to protect life and property. The above definition of fire protection engineering shall not be construed to permit the practice of civil, electrical, or mechanical engineering.

(u) For the sole purpose of investigating complaints and making findings thereon under Sections 6775 and 8780 of the Code, "incompetence" as used in Sections 6775 and 8780 of the Code is defined as the lack of knowledge or ability in discharging professional obligations as a professional engineer or land surveyor.

(v) "Industrial engineering" is that branch of professional engineering which requires such education and experience as is necessary to investigate, to design, and to evaluate systems of persons, materials and facilities for the purpose of economical and efficient production, use, and distribution. It requires the application of specialized engineering knowledge of the mathematical and physical sciences, together with the principles and methods of engineering analysis and design to specify, predict, and to evaluate the results to be obtained from such systems. The above definition of industrial engineering shall not be construed to permit the practice of civil, electrical, or mechanical engineering.

(w) "Land surveying" is that practice defined in Section 8726 of the Code.

(x) "Land surveyor" refers to a person who holds a valid license as a land surveyor, as defined in Section 8701 of the Code.

(y) "Land surveyor-in-training" refers to a person who has been granted a certificate as a "land surveyor-in-training" in
(z) "Manufacturing engineering" is that branch of professional engineering which requires such education and experience as is necessary to understand and apply engineering procedures in manufacturing processes and methods of production of industrial commodities and products; and requires the ability to plan the practices of manufacturing, to research and develop the tools, processes, machines, and equipment, and to integrate the facilities and systems for producing quality products with optimal expenditure. The above definition of manufacturing engineering shall not be construed to permit the practice of civil, electrical, or mechanical engineering.

(aa) "Mechanical engineer" refers to a person who holds a valid license in the branch of mechanical engineering, as defined in Section 6702.2 of the Code.

(bb) "Mechanical engineering" is that branch of professional engineering as defined in Section 6731.6 of the Code.

(cc) "Metallurgical engineering" is that branch of professional engineering, which requires such education and experience as is necessary to seek, understand and apply the principles of the properties and behavior of metals in solving engineering problems dealing with the research, development and application of metals and alloys; and the manufacturing practices of extracting, refining and processing of metals. The above definition of metallurgical engineering shall not be construed to permit the practice of civil, electrical, or mechanical engineering.

(dd) For the sole purpose of investigating complaints and making findings thereon under Sections 6775 and 8780 of the Code, "negligence" as used in Sections 6775 and 8780 of the Code is defined as the failure of a licensee, in the practice of professional engineering or land surveying, to use the care ordinarily exercised in like cases by duly licensed professional engineers and land surveyors in good standing.

(ee) "Non-Approved Engineering Curriculum" refers to any engineering program that has not been accredited by ABET.

(ff) "Non-Approved Land Surveying Curriculum" refers to any land surveying program that has not been accredited by ABET.

(gg) "Nuclear engineering" is that branch of professional engineering which requires such education and experience as is necessary to apply the principles of nuclear physics to the engineering utilization of nuclear phenomena for the benefit of mankind; it is also concerned with the protection of the public from the potential hazards of radiation and radioactive materials. Nuclear engineering is primarily concerned with interaction of radiation and nuclear particles with matter. Nuclear engineering requires the application of specialized knowledge of the mathematical and physical sciences, together with the principles and methods of engineering design and nuclear analysis to specify, predict and evaluate the behavior of systems involving nuclear reactions, and to ensure the safe, efficient operation of these systems, their nuclear products and by-products. Nuclear engineering encompasses, but is not limited to, the planning and design of the specialized equipment and process systems of...
nuclear reactor facilities; and the protection of the public from any hazardous radiation produced in the entire nuclear reaction process. These activities include all aspects of the manufacture, transportation and use of radioactive materials. The above definition of nuclear engineering shall not be construed to permit the practice of civil, electrical, or mechanical engineering.

(hh) “Petroleum engineering” is that branch of professional engineering which embraces studies or activities relating to the exploration, exploitation, location, and recovery of natural fluid hydrocarbons. It is concerned with research, design, production, and operation of devices, and the economic aspects of the above. The above definition of petroleum engineering shall not be construed to permit the practice of civil, electrical, or mechanical engineering.

(ii) “Professional engineer” refers to a person engaged in the practice of professional engineering as defined in Section 6701 of the Code.

(jj) “Professional engineering” within the meaning of this chapter comprises the following branches: agricultural engineering, chemical engineering, civil engineering, control systems engineering, corrosion engineering, electrical engineering, fire protection engineering, industrial engineering, manufacturing engineering, mechanical engineering, metallurgical engineering, nuclear engineering, petroleum engineering, quality engineering, safety engineering, and traffic engineering.

(kk) “Quality engineering” is that branch of professional engineering which requires such education and experience as is necessary to understand and apply the principles of product and service quality evaluation and control in the planning, development and operation of quality control systems, and the application and analysis of testing and inspection procedures; and requires the ability to apply metrology and statistical methods to diagnose and correct improper quality control practices to assure product and service reliability and conformity to prescribed standards. The above definition of quality engineering shall not be construed to permit the practice of civil, electrical, or mechanical engineering.

(ll) “Safety engineering” is that branch of professional engineering which requires such education and experience as is necessary to understand the engineering principles essential to the identification, elimination and control of hazards to people and property; and requires the ability to apply this knowledge to the development, analysis, production, construction, testing, and utilization of systems, products, procedures and standards in order to eliminate or optimally control hazards. The above definition of safety engineering shall not be construed to permit the practice of civil, electrical, or mechanical engineering.

(mm) “Soil engineer” refers to a civil engineer who holds a valid authorization to use the title “soil engineer,” as provided in Section 6736.1 of the Code.

(nn) “Soil engineering,” as it relates to the authorization to use the title “soil engineer,” is the investigation and engineering evaluation of earth materials including soil, rock, groundwater and man-made materials and their interaction with earth retention systems, structural foundations and other civil engineering works. The practice involves application of the principles of soil mechanics and the earth sciences, and requires a knowledge of engineering laws, formulas, construction techniques and performance evaluation of civil engineering works influenced by earth materials.
The terms “geotechnical engineer” and “soils engineer” are deemed to be synonymous with the term “soil engineer.”

(oo) “Structural engineer” refers to a civil engineer who holds a valid authorization to use the title “structural engineer,” as provided in Section 6736 of the Code.

(pp) “Structural engineering” for the purposes of structural authority is the application of specialized civil engineering knowledge and experience to the design and analysis of buildings (or other structures) which are constructed or rehabilitated to resist forces induced by vertical and horizontal loads of a static and dynamic nature. This specialized knowledge includes familiarity with scientific and mathematical principles, experimental research data and practical construction methods and processes. The design and analysis shall include consideration of stability, deflection, stiffness and other structural phenomena that affect the behavior of the building (or other structure).

(qq) “Traffic engineering” is that branch of professional engineering which requires such education and experience as is necessary to understand the science of measuring traffic and travel and the human factors relating to traffic generation and flow; and requires the ability to apply this knowledge to planning, operating, and evaluating streets and highways and their networks, abutting lands and interrelationships with other modes of travel, to provide safe and efficient movement of people and goods. The above definition of traffic engineering shall not be construed to permit the practice of civil, electrical, or mechanical engineering.


HISTORY

1. Editorial correction of subsection (z) (Register 75, No. 50). For prior history, see Register 75, No. 10.

2. New subsection (g-g) filed 2-10-76; effective thirtieth day thereafter (Register 76, No. 7).

3. Amendment of subsection (o) filed 1-12-77; effective thirtieth day thereafter (Register 77, No. 3).

4. Amendment of subsection (e) and repealer of subsection (g-g) filed 7-3-80; effective thirtieth day thereafter (Register 80, No. 27).

5. Amendment filed 8-10-83; effective thirtieth day thereafter (Register 83, No. 33).
§ 404. Definitions., 16 CA ADC § 404

6. Amendment filed 6-26-86; designated effective 7-1-86 (Register 86, No. 26).

7. Amendment of subsection (ff) filed 9-25-89; operative 10-25-89 (Register 89, No. 40).

8. Change without regulatory effect amending section and Note filed 4-19-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 17).

9. Amendment of subsection (k), new subsections (n) and (w), subsection relettering, amendment of newly designated subsection (u) and amendment of Note filed 3-13-2003; operative 4-12-2003 (Register 2003, No. 11).

10. Change without regulatory effect amending subsection (b) filed 2-23-2011 pursuant to section 100, title 1, California Code of Regulations (Register 2011, No. 8).

11. New subsections (a), (c)-(h) and (ee)-(ff), subsection relettering and amendment of Note filed 4-11-2011; operative 5-11-2011 (Register 2011, No. 15).

This database is current through 5/1/20 Register 2020, No. 18

16 CCR § 404, 16 CA ADC § 404
Dear Ms. Evans:

You have asked the following questions:

1. What are the applicable statutes of limitation that would apply to a cause of action for land surveyor services that are inaccurate or not performed to the ordinary standard of care in the land surveying profession, if the subject property is not otherwise physically improved or constructed upon?

2. Is there a maximum period of time, or statute of repose, after which a land surveyor may not be held liable for land surveyor services that are inaccurate or not performed to the ordinary standard of care in the land surveying profession, if the subject property is not otherwise physically improved or constructed upon?

By way of background, land surveyors are licensed pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code, to perform various services that locate and measure the size and dimensions of real property (see Sec. 8726, B.P.C). A licensed land surveyor is required to use a written contract when contracting to provide professional services to a client, subject to specified exemptions (Sec. 8759, B.P.C). These services may or may not result in any physical improvement to, or construction upon, the real property for which the land surveyor performs services, for example, lot-line adjustments or corner-records, but may result in a written document being produced by the surveyor and given to the client.

There is no special statute of limitations for damages to unimproved property. Rather, Chapter 3 (commencing with Section 335) of Title 2 of Part 2 of the Code of Civil
Procedure sets forth different statutes of limitation that may apply depending on the theory of recovery.

In this regard, Sections 335, 337, 338, and 339 provide, in pertinent part, as follows:

"335. The periods prescribed for the commencement of actions other than for the recovery of real property, are as follows:"

"337. Within four years: 1. An action upon any contract, obligation or liability founded upon an instrument in writing...

* * *

"338. Within three years:

* * *

"(b) An action for trespass upon or injury to real property.

* * *

"339. Within two years: 1. An action upon a contract, obligation or liability not founded upon an instrument of writing...

* * *

Thus, a cause of action based upon a written contract, such as a breach of contract, must be brought within four years (para. (1), Sec. 337). The claim accrues when the plaintiff discovers, or could have discovered through reasonable diligence, the injury and its cause (Angeles Chem. Co. v. Spencer & Jones (1996) 44 Cal.App.4th 112, 119). A cause of action based upon an oral contract must be brought within two years of the discovery of the loss or damage (Sec. 339). A cause of action to recover damages for injury to real property, for example, by negligence, must be brought within three years (subd. (b), Sec. 338). The claim commences to run when the plaintiff knows, or should have known, of the wrongful conduct at issue (Angeles Chem. Co. v. Spencer & Jones, supra, at p. 119).

In addition, statutes of repose set outside limits to liability for services performed in connection with the construction of an improvement to real property.

In this regard, Sections 337.1 and 337.15 provide, in pertinent part, as follows:

"337.1. (a) Except as otherwise provided in this section, no action shall be brought to recover damages from any person performing or furnishing the design, specifications, surveying, planning, supervision or observation of construction or construction of an improvement to real property more than four years after the substantial completion of such improvement for any of the following:

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1 All further section references are to the Code of Civil Procedure, unless otherwise specified.
(1) Any patent deficiency in the design, specifications, surveying, planning, supervision or observation of construction or construction of an improvement to, or survey of, real property:

(2) Injury to property, real or personal, arising out of any such patent deficiency; or

(3) Injury to the person or for wrongful death arising out of any such patent deficiency.

(b) If, by reason of such patent deficiency, an injury to property or the person or an injury causing wrongful death occurs during the fourth year after such substantial completion, an action in tort to recover damages for such an injury or wrongful death may be brought within one year after the date on which such injury occurred, irrespective of the date of death, but in no event may such an action be brought more than five years after the substantial completion of construction of such improvement.

(c) Nothing in this section shall be construed as extending the period prescribed by the laws of this state for the bringing of any action.

(d) The limitation prescribed by this section shall not be asserted by way of defense by any person in actual possession or the control, as owner, tenant or otherwise, of such an improvement at the time any deficiency in such an improvement constitutes the proximate cause of the injury or death for which it is proposed to bring an action.

(e) As used in this section, 'patent deficiency' means a deficiency which is apparent by reasonable inspection.

(f) Subdivisions (a) and (b) shall not apply to any owner-occupied single-unit residence.” (Emphasis added.)

“337.15. (a) No action may be brought to recover damages from any person, or the surety of a person, who develops real property or performs or furnishes the design, specifications, surveying, planning, supervision, testing, or observation of construction or construction of an improvement to real property more than 10 years after the substantial completion of the development or improvement for any of the following:

(1) Any latent deficiency in the design, specification, surveying, planning, supervision, or observation of construction or construction of an improvement to, or survey of, real property.

(2) Injury to property, real or personal, arising out of any such latent deficiency.

(b) As used in this section, 'latent deficiency' means a deficiency which is not apparent by reasonable inspection.

(c) As used in this section, 'action' includes an action for indemnity brought against a person arising out of that person's performance or furnishing of services or materials referred to in this section, except that a cross-complaint for
indemnity may be filed pursuant to subdivision (b) of Section 428.10 in an action which has been brought within the time period set forth in subdivision (a) of this section.

"(d) Nothing in this section shall be construed as extending the period prescribed by the laws of this state for bringing any action.

"(e) The limitation prescribed by this section shall not be asserted by way of defense by any person in actual possession or the control, as owner, tenant or otherwise, of such an improvement, at the time any deficiency in the improvement constitutes the proximate cause for which it is proposed to bring an action.

"(f) This section shall not apply to actions based on willful misconduct or fraudulent concealment.

"(g) The 10-year period specified in subdivision (a) shall commence upon substantial completion of the improvement, but not later than the date of one of the following, whichever first occurs:

"(1) The date of final inspection by the applicable public agency.

"(2) The date of recordarion of a valid notice of completion.

"(3) The date of use or occupation of the improvement.

"(4) One year after termination or cessation of work on the improvement.

"The date of substantial completion shall relate specifically to the performance or furnishing design, specifications, surveying, planning, supervision, testing, observation of construction or construction services by each profession or trade rendering services to the improvement." (Emphasis added.)

Thus, a cause of action to recover for damages to real property caused by a patent defect in the construction of an improvement to the property must be brought within four years after the substantial completion of the improvement (subd. (a), Sec. 337.1). Similarly, a cause of action to recover for damages to real property caused by a latent defect in the construction of an improvement to the property must be brought within 10 years after the substantial completion of the improvement (subd. (a), Sec. 337.15).

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1 This limitation, however, may not be asserted as a defense by any person in actual possession or control, as owner, tenant, or otherwise, of the improvement at the time a deficiency in the improvement causes injury or death, and does not apply to any owner-occupied single-unit residence (subds. (d) and (f), Sec. 337.1). The limitation may be extended to five years when the injury or wrongful death occurs during the fourth year after substantial completion (subd. (b), Sec. 337.1).

2 This limitation, however, may not be asserted as a defense by any person in actual possession or control, as owner, tenant, or otherwise, of the improvement at the time a deficiency in the improvement causes injury or death, and does not apply to actions based on willful misconduct or fraudulent concealment (subds. (e) and (f), Sec. 337.15). A cross-complaint for indemnity may (continued...)
The statutes of limitation and the statutes of repose are not mutually exclusive, and must both be considered in determining the viability of a claim. With regard to a claim based on a latent defect, the California Supreme Court has stated as follows:

"[A] suit to recover for a construction defect generally is subject to limitations periods of three or four years, depending on whether the theory is breach of warranty (§ 337, subd. 1 [four years: 'action upon any contract, obligation or liability founded upon an instrument in writing']) or tortious injury to property (§ 338, subds. (b), (c) ... [three years: trespass or injury to real or personal property]). However, these periods begin to run only when the defect would be discoverable by reasonable inspection. (Regents, supra, at p. 630.) On the other hand, 'section 337.15 ... imposed an absolute requirement that a suit ... to recover damages for a [latent] construction defect be brought within 10 years of the date of substantial completion of construction, regardless of the date of discovery of the defect.' (Regents, supra, at p. 631, fn. omitted.) 'The interplay between these statutes sets up a two-step process: (1) actions for a latent defect must be filed within three years ... or four years ... of discovery, but (2) in any event must be filed within ten years ... of substantial completion.' (North Coast Business Park v. Nielsen Construction Co. (1993) 17 Cal.App.4th 22, 27.)" (Lantzy v. Centex Homes (2003) 31 Cal.4th 363, 369-370, citing Regents of University of Cal. v. Hartford Acci. & Indem. Co. (1978) 21 Cal.3d 624, 630-631; hereafter Regents).

Thus, it is a two-step analysis in first determining whether any applicable statutes of limitation have run, and then whether the claim has been extinguished by the running of the period of repose.

The question that arises is whether the provision of land surveyor services, without any physical improvement to, or construction upon, the real property is an "improvement" for purposes of Sections 337.1 and 337.15. These statutes do not define "improvement." If something is physically constructed to completion on the property, it is likely safe to conclude that it is an improvement. However, at what point does the rendering of construction services, including land surveyor services, become an improvement for purposes of these statutes?

The term "improvement," as used in Section 337.15, has been given a very broad interpretation (Gaggero v. County of San Diego (2004) 124 Cal.App.4th 609, 615-618 (hereafter...continued)
Gaggero), in which the court held that a landfill constituted an improvement within the meaning of Section 337.15):

"As used in section 337.15 'an improvement' is in the singular and refers separately to each of the individual changes or additions to real property that qualifies as an 'improvement' irrespective of whether the change or addition is grading and filling, putting in curbs and streets, laying storm drains or of other nature." (Gaggero, supra, at p. 616, citing Liptak v. Diane Apartments, Inc. (1980) 109 Cal.App.3d 762, 771.)

Thus, the term "improvement" has been construed to refer separately to each of the individual changes or additions to real property. However, some language in Gaggero, which involved structural damage due to subsidence at a former county landfill, makes ambiguous the extension of its holding to property that is not physically improved or constructed upon:

"While the county's primary goal may not have been to obtain a profit from eventual sale of the landfill, in filling it, covering it and selling it, the county was engaged in making the real property suitable for further use by others. Section 337.15 and the cases which have interpreted it make it clear, in enacting the statute, the Legislature's unambiguous intention was to put a temporal limit on liability for individuals and entities engaged in these sorts of purposeful alterations to and transfers of real property." (Gaggero, supra, at p. 618).

Thus, the court in Gaggero identified physical changes to the land, "in making the real property suitable for further use by others," as part of the "purposeful alterations" that led the court to conclude that the landfill constituted an improvement within the meaning of Section 337.15.

Nonetheless, the case law makes it abundantly clear that the legislative intent in enacting Sections 337.1 and 337.15 was to limit liability exposure to a finite period of time for certain activities in association with making improvements to real property:

"It appears the Legislature enacted section 337.1 in 1967 in response to the construction industry's fear that it could face virtually unending liability due to the advent of discovery-based accrual rules for statutes of limitation. ... Thus, the purpose of section 337.1 was not to promote harmony among contractors during construction, but rather 'to prevent "uncertain liability extending indefinitely into the future."' ..." (Roger E. Smith, Inc. v. SHN Consulting Engineers & Geologists, Inc., supra, at pp. 646-647, citing Regents, supra, at p. 633, fn. 2).

"Numerous opinions have noted that the purpose of section 337.15 is to shield members of the construction industry from liability of indefinite duration for property damage caused by their work." (Industrial Risk Insurers v. Russ Engineering Co. (1991) 232 Cal.App.3d 1038, 1043).

"Section 337.15 clearly and unambiguously expresses a legislative intent to put a 10-year limit on latent deficiency liability exposure for 'any person' performing certain activities in making improvements to real property. Among
the activities covered by the statute are performing or furnishing the design or
specifications of the improvement.” (Gaggero, supra, at p. 617, citing
Magnuson-Hoyt v. County of Contra Costa (1991) 228 Cal.App.3d 139, 143-144.)

Because surveyor services are expressly included among the construction services
subject to Sections 337.1 and 337.15 (subd. (a), Sec. 337.1 and subd. (a), Sec. 337.15), it follows
that those services are among those for which the Legislature intended to limit liability
exposure to a finite period of time in enacting those statutes.

Moreover, while the statutes of limitation commence to run based on the discovery
of the loss or injury, as described above, the statutes of repose commence to run upon “the
substantial completion of the improvement” (Ibid.). Substantial completion has been
construed, for purposes of Section 337.15, to commence as to each profession on the date its
services to the improvement are substantially complete:

"[T]he last sentence of Code of Civil Procedure section 337.15, subdivision
(g) 'relates' the concept of substantial completion to services rendered to an
improvement, and it relates this concept 'specifically' to the services rendered by
'each' profession. ... [T]he reasonably plain meaning of this sentence is that the
limitations period commences as to each profession on the date its services to the
improvement are substantially complete.

***

"A defendant's services with respect to an improvement may be completed
well before the improvement itself is finished. If the limitations period does not
commence until substantial completion of the improvement, construction
industry members may be subject to liability for an indefinite time over 10 years
after the substantial completion of their work. We do not believe that this was
what the Legislature intended when it added subdivision (g) to the statute in

Thus, for purposes of Section 337.15, and consistent with the legislative intent to
limit liability to a finite period as described above, substantial completion commences as to each
profession on the date its services to the improvement are substantially complete.

It is critical to note that no court has addressed the particular fact pattern at issue in
this opinion, in which land surveyor services are performed on real property that is not
otherwise physically improved or constructed upon. Significantly, as set forth above, the courts
have repeatedly returned to legislative intent with each expansion of the statutes. In light of the
foregoing case law, we think it would be inconsistent with the Legislature's clear intent to limit
liability for construction services to a finite period, either four years or 10 years, if Sections
337.1 and 337.15 did not apply to land surveyor services as an improvement, even if there is no
other physical improvement to, or construction upon, the real property. However, we must
emphasize that the statutes on their face are not entirely clear, and that neither the statutes nor
the case law are dispositive.
If faced with the fact pattern at issue in this opinion, we think the better construction would be to find that land surveyor services in themselves, without additional physical improvements or construction services being rendered, would constitute an "improvement" for purposes of Sections 337.1 and 337.15.

Accordingly, we conclude that a cause of action for land surveyor services that are inaccurate or not performed to the ordinary standard of care in the land surveying profession, if the subject property is not otherwise physically improved or constructed upon, is subject to the two, three, and four year statutes of limitation described above, depending on the theory of recovery, but in any event, must be filed within four or 10 years of substantial completion of the services under the statutes of repose. Also, the maximum period of time for which a land surveyor may be held liable for land surveyor services that are inaccurate or not performed to the ordinary standard of care in the land surveying profession, if the subject property is not otherwise physically improved or constructed upon, is 4 or 10 years from the substantial completion of the services.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

By
Sheila R. Mohan
Deputy Legislative Counsel

SRM:ckt
Amend Sections 407, 410, and 3005 of Divisions 5 and 29 of Title 16 of the California Code of Regulations
Adopt Section 3010

The public comment period for the proposed amendments to sections 407, 410, and 3005 and adoption of section 3010 of Divisions 5 and 29 of Title 16 of the California Code of Regulations (CCR) has concluded.

The initial comment period for this rulemaking was from November 29, 2019, to January 14, 2020, and at a public hearing held on January 14, 2020. Two (2) comments were received. Two (2) additional comments were received after the conclusion of the initial 45-day comment period. All comments received are considered non-substantive.

On January 16, 2020, the Board issued an Extension of Public Comment Period from the notice to extend the public comment from January 16, 2020, to February 2, 2020. The modified text updated the date relating to renewal fees from January 1, 2020, to July 1, 2020. One (1) comment was received during the public comment period and considered non-substantive.

On June 4, 2020, the Board issued another Extension of Public Comment Period from the notice to extend public comment from June 4, 2020, to June 19, 2020. The modified text updated the date relating to renewal fees from July 1, 2020, to January 1, 2021. Six (6) comments were received. Some of the comments received do not pertain to the subject of the modifications proposed in this 15-day notice while the other comments refer to the policy of the proposed changes. The comments submitted do not require revision of the proposed language presented in the meeting materials.

Staff recommends that the Board vote to adopt the proposed regulatory changes and direct staff to finalize the rulemaking file.

PROPOSED MOTION

The Board adopts the amendments to Sections 407, 410, and 3005 and adopts Section 3010 of Divisions 5 and 29 of Title 16 of the CCR and directs staff to finalize the rulemaking file for submission to the Department of Consumer Affairs and the Office of Administrative Law.
407. Fees.

(a) All fees required by provisions of the code as implemented by the Board shall be transmitted by money order, bank draft, cash or check, payable to the Department of Consumer Affairs, at Sacramento.

(b) The following is the prescribed application fee for:

   (1) Authority to use the title “structural engineer” $125 $175
   (2) Authority to use the title “geotechnical engineer” $125 $175
   (3) Licensure as a professional engineer $125 $175
   (4) Licensure as a professional land surveyor $125 $175
   (5) Certification as an engineer-in-training or as a land surveyor-in-training $50 $75

(c) The following is the prescribed examination fee for state-specific examinations:

   (1) California Special Civil Seismic Principles $150 $175
   (2) California Special Civil Engineering Surveying $150 $175
   (3) Geotechnical Engineering $150 $175
   (4) California State-Specific Land Surveying $150 $175
   (5) Traffic Engineering $150 $175

(d) The two-year biennial renewal fee for a license that expires on or after January 1, 2020, January 1, 2021, shall be $115 $180. The two-year biennial renewal fee for a license that expires between October 1, 2005, and June 30, 2012, shall be $125.

(e) The fee for an examination appeal filed pursuant to rule 444 shall be $134.00.

(f) The fee for each retired license shall be $62.50; no $75. No renewal fee or other fee shall be charged for the retired license. (As used in this subdivision, "license" includes certificate of registration or license as a professional engineer, licensure as a professional land surveyor, and certificates of authority to use the titles "structural engineer," "geotechnical engineer," "soil engineer," "soils engineer," or "consulting engineer").

(g) Fees required under provisions of this rule transmitted through the United States mail shall be deemed filed on the date shown by the post office cancellation mark stamped on the envelope containing it, the fee or on the date mailed if satisfactory proof is made that mailing occurred on an earlier date.

(h) Renewal applications filed with the Board more than thirty (30) days after 12 midnight on the expiration date pursuant to the Professional Land Surveyors’ Act and more than sixty (60) days after 12 midnight on the expiration date pursuant to the Professional Engineers Act and not accompanied by the prescribed delinquent penalty fee equal to 50 percent of the renewal fee shall be returned by the executive officer with a statement of the reason therefor.
(g) The delinquency fee for renewal of a license is 50% of the renewal fee in effect on the date of reinstatement.

(h) Refund of fees submitted to the Board shall be made only as follows:

1. Any application fees or penalties imposed and collected illegally, by mistake, inadvertence, or error shall be refunded in full.

(i) As used in this section, “license” includes certificate of registration or license as a professional engineer, licensure as a professional land surveyor, and certificates of authority to use the titles “structural engineer,” “geotechnical engineer,” “soil engineer,” “soils engineer,” “consulting engineer,” or “photogrammetric surveyor.”


410. Certificates.

(a) Certificates and licenses will be issued in the order in which the applicants qualify.

(b) A duplicate of a certificate issued in accordance with Section 6765 of the Professional Engineers Act or Section 8749 of the Professional Land Surveyors’ Act shall be issued only to replace one lost, destroyed, or mutilated, upon a written request accompanied by a fee of $10 as prescribed in Section 407 and an affidavit verifying the loss, destruction, or mutilation of the previous certificate. The affidavit of lost, destroyed, or mutilated license must be submitted on a form provided by the Board.


3005. Fees.

(a) All fees required by provisions of the code and rules of the board shall be transmitted by money order, bank draft, or check, payable to the Department of Consumer Affairs.

(b) The following is the prescribed application fee for:

1. Licensure as a Professional Geologist or a Professional Geophysicist $250.00; $175
2. Certification as a specialty geologist or specialty geophysicist $250.00; $175
3. Certification as a geologist-in-training $75

(c) The following is the prescribed examination fee for:

1. The Practice of Geology national examination $250;
2. The California specific geologist examination $150; $175
3. The Fundamentals of Geology national examination $150; $200
4. Examination for licensure as a geophysicist $100.00; $175
5. Examination for certification as a specialty geologist or specialty geophysicist $100.00, $175

(d) The duplicate certificate fee $6.00 shall be $10.

(e) The following is the prescribed renewal fee for:
(1) Licensure as a geologist or a geophysicist $270.00;
(2) Certification as a specialty geologist or a specialty geophysicist $67.50.
(d) The two-year biennial renewal fee for a license that expires on or after January 1, 2020, July 1, 2020, January 1, 2021, shall be $180.
(e) The delinquency fee for renewal of licensure as a geologist or geophysicist or certification as a specialty geologist or specialty geophysicist a license is 50% of the renewal fee in effect on the last regular renewal date.
(f) When transmitted through the mail, fees
(f) Fees required under provisions of this rule transmitted through the United States mail shall be deemed filed on the date shown by the post office cancellation mark appearing on the envelope containing the fee or on the date mailed if satisfactory proof is made that mailing occurred on an earlier date.
(g) The fee for the retired license shall be $62.50 $75. No renewal fee or other fee shall be charged for the retired license. As used in this subdivision, “license” includes certificate of registration or license as a professional geologist, certificate of registration as a registered certified specialty geologist, and certificate of registration as a professional geophysicist.
(h) Refund of fees submitted to the Board shall be made only as follows:
(1) Any application fees or penalties imposed and collected illegally, by mistake, inadvertence, or error shall be refunded in full.
(i) As used in this section, “license” includes certificate of registration or license as a professional geologist, certificate of registration or license as a professional geophysicist, and certificate of registration or license as a registered certified specialty geologist or specialty geophysicist.


3010. Certificates.
(a) Certificates and licenses will be issued in the order in which the applicants qualify.
(b) A duplicate of a certificate issued in accordance with Section 7853 of the Geologist and Geophysicist Act shall be issued only to replace one lost, destroyed, or mutilated, upon a written request accompanied by a fee as prescribed in Section 3005 and an affidavit verifying the loss, destruction, or mutilation of the previous certificate. The affidavit of lost, destroyed, or mutilated license must be submitted on a form provided by the Board.

| 1 | Dave Cascadia Engineering | Thanks for your work on this, the fee increases seem completely reasonable and I have zero objection. I am curious what these fees go towards funding, can you let me know where I might find that information? |

**Response to Comment 1**

Although the question posed does not pertain to the subject of the modifications proposed in this 15-day notice, the Board is providing the following response. Information regarding operational support as a result of the funding provided by the regulatory fees are described in the Initial Statement of Reasons “ISOR”. All information pertaining to rulemaking proposals can be found on the Board’s website: www.bpelsg.ca.gov/about_us/rulemaking.shtml. An excerpt pulled from page 5 of the ISOR identifies “Under the Board’s internal accounting practices, the Licensing Unit is sustained by application fees, the Examination Unit is sustained by examination fees, and the Administration Unit, Enforcement Unit, Executive, and pro rata are sustained by renewal fees.”

| 2 | Alan W. Rasplicka | I received the attached notice and the proposed changes are not clear to me. The notice states that Changes that are the subject of this 15-day noticed public comment period are shown as additions in double-underlined italics and deletions in double-strikethrough italics. I did not see any double-underlined italics within the document. I did see some single underlined text with no italics that did not appear to be defined. Could you please help me understand what I am missing? If the document is incorrect, please revise and recirculate. |

**Board Response to Comment 2**

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

| 3 | Christine Jansen, PE | I would like to provide comments on the fee text changes. With our current economic climate and the unpredictable nature of the world right now, I believe these fee increase are extremely insensitive and poorly timed. I acknowledge that the resolution was proposed before the shutdown of our state, but the continuation of pursuit of these changes is not appropriate. Applicants are most often either still in |
college or have just graduate. If they’re lucky they’ve gotten a job and been able to maintain it through the shutdown. Most however are facing layoffs, reduced hours or reduced pay. This is similar for those of us who are facing renewal fees too. Due to all of the financial hardships, it is my opinion that this resolution should not be passed and the board should be more economically aware of their individuals they support and serve.

**Board Response to Comment 3**
Although the comments do not pertain to the subject of the modifications proposed in this 15-day notice, the Board is providing the following response. The Board rejects this comment. While the Board understands individuals may have financial concerns at this time, it is necessary for the Board to adjust its fees to maintain its operations. The Board anticipates the standardized fee structure proposed will foster an affordable path to licensure, align fees with the full cost of operational services, and set fees to facilitate the effective administration of the Board while meeting the needs of the public, applicants, and licensees.

<table>
<thead>
<tr>
<th>4</th>
<th>Randy R. Bick, PE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Email received June 5, 2020: Pursuant to my earlier phone voicemail message, should we send the Comments directly to you by way of US Mail or is attachments to an email addressed to you sufficient.</td>
<td></td>
</tr>
<tr>
<td>Email message received with attachments June 12, 2020: As a licensed Civil Engineer within the State of California for over 40 years, I believe the proposed bi-annual renewal fees are excessive considering they represent an increase of over 56% than last renewal. On the surface the fee increase amount appears to be somewhat arbitrary. In my opinion, as the State provides additional License Categories, and more and more professionals get licensed thru the State of California, the fees for renewals should actually go lower and not higher. Accordingly, I respectfully request the Board provide its rationale and methods in determining these fee increases, including all data driven comparisons to other States. For example, in the States of Washington and Florida charge $116 and $97.50, respectively for their biannual renewal fees.</td>
<td></td>
</tr>
</tbody>
</table>

**Board Response to Comment 4**
Although the comments do not pertain to the subject of the modifications proposed in this 15-day notice, the Board is providing the following response.
The Board rejects this comment. Detailed information regarding current costs, historical operational costs, and the proposed increase in fees are included in the Initial Statement of Reasons “ISOR”. All information pertaining to rulemaking proposals can be found on the Board’s website: www.bpelsg.ca.gov/about_us/rulemaking.shtml. While the Board understands individuals may have financial concerns at this time, it is necessary for the Board to adjust its fees to maintain its operations. The Board anticipates the standardized fee structure proposed will foster an affordable path to licensure, align fees with the full cost of operational services, and set fees to facilitate the effective administration of the Board while meeting the needs of the public, applicants, and licensees.

<table>
<thead>
<tr>
<th>5</th>
<th>Tyler Munzing, Director of Government Affairs, American Council of Engineering Companies, California</th>
</tr>
</thead>
<tbody>
<tr>
<td>Our Executive Committee had a conversation about the proposed Board fee increases. Some questions for you:</td>
<td></td>
</tr>
<tr>
<td>1. Do the current fees cover the Board’s current costs? We believe the answer to be no.</td>
<td></td>
</tr>
<tr>
<td>2. Does the Board currently operate at a loss relative to the revenues generated by fees? We believe the answer to be yes.</td>
<td></td>
</tr>
<tr>
<td>3. Do the proposed fee increases fix the above? If yes, for how long? If no, what is the remaining difference between anticipated costs and anticipated revenues?</td>
<td></td>
</tr>
<tr>
<td>4. Does the Board have a scholarship or reduced fee schedule for (primarily first-time applicants) experiencing financial hardships?</td>
<td></td>
</tr>
<tr>
<td>Thanks for all your help, we would like to work with you guys on this.</td>
<td></td>
</tr>
</tbody>
</table>

**Board Response to Comment 5**

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

Detailed information regarding current costs, historical operational costs, and the proposed increase in fees are included in the Initial Statement of Reasons “ISOR”. All information pertaining to rulemaking proposals can be found on the Board’s website: www.bpelsg.ca.gov/about_us/rulemaking.shtml. Excerpts pulled from the ISOR in response to the public comment are provided. The necessity for this proposed regulatory action is to standardize fees for services for all regulated professions and ensure future fiscal solvency for the Board. Analysis of the Fund Condition statement confirms the Board must implement budgetary adjustments to address dissimilar fees amongst all professions it regulates and protect the Fund from becoming insolvent as projected in Fiscal Year (FY) 2020-21. Analysis of the Board’s fund balance measured by Months in Reserve (MIR) projects that at the end of FY 2019-20, a
0.5-month reserve will exist. The Board’s budget will become insolvent in FY 2020-21 with a deficit of -$3.3 million and -3.1 MIR. (ISOR, page 2) The regulatory proposal “ensures future fiscal solvency for the Board and its operations, standardizes fees across all of the Board’s regulated professions, and provides an affordable path to licensure for all applicants.” (ISOR, page 11) Attachment III in the ISOR describes fee alternatives and Fund Condition Impact. Alternative 1 is the proposed structure the Board has identified that would provide fiscal solvency through FY 2023-24. The Board does not have a scholarship and has tried to ensure an affordable path to licensure for first-time applicants by reducing application fees. Table A in the ISOR identifies the average exam and application fee based on historical operational costs. The proposed fees amounts are lower than the averages to support an affordable path to licensure.

6 Hartford Engineering, Gerald D. Hartford, Jr., PE

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

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

On WHAT will the increase in fees be spent?

And why such an increased amount (56.5%)?

Raised fees merely indicate a higher taxation on professional services.

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

Board Response to Comment 6
Although the comment and questions posed do not pertain to the subject of the modifications proposed in this 15-day notice, the Board is providing the following response.

Information regarding the purpose, the history, and the necessity for the proposed regulatory fees are described in the Initial Statement of Reasons “ISOR”. All information pertaining to rulemaking proposals can be found on the Board’s website: www.bpelsg.ca.gov/about_us/rulemaking.shtml. Excerpts pulled from the ISOR in response to the public comment are provided. The necessity for this proposed regulatory action is to standardize fees for services for all regulated professions and ensure future fiscal solvency for the Board. (ISOR, page 2) Under the Board’s internal accounting practices, the Licensing
Unit is sustained by application fees, the Examination Unit is sustained by examination fees, and the Administration Unit, Enforcement Unit, Executive, and pro rata are sustained by renewal fees. (ISOR, page 5) While the changes in fees by percentage (-233% to 63%) vary drastically, standardizing fees across all regulated professions is based on the economic value provided by an affordable path to licensure, aligning fees with the full cost of operational services, and setting fees to facilitate the effective administration of the Board while meeting the needs of the public, applicants, and licensees. (ISOR, page 10)
VI. Administration
A. Fiscal Year 2018/19 Budget Status
B. Fiscal Year 2019/20 Budget Report
<table>
<thead>
<tr>
<th></th>
<th>4/12 Activity Log</th>
<th>FY 19-20 FM 1 Projections</th>
<th>FY 19-20 Projections to year end</th>
<th>% CHANGE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenue</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Applications/Licensing Fees</td>
<td>1,196,248</td>
<td>1,646,000</td>
<td>1,646,000</td>
<td>0%</td>
</tr>
<tr>
<td>2 Renewal fees</td>
<td>6,116,355</td>
<td>6,891,000</td>
<td>6,891,000</td>
<td>0%</td>
</tr>
<tr>
<td>3 Delinquent fees</td>
<td>48,633</td>
<td>88,000</td>
<td>88,000</td>
<td>0%</td>
</tr>
<tr>
<td>Other &amp; Reimbursements</td>
<td>68,720</td>
<td>140,000</td>
<td>140,000</td>
<td>0%</td>
</tr>
<tr>
<td>4 Interest</td>
<td>74,492</td>
<td>163,000</td>
<td>163,000</td>
<td>0%</td>
</tr>
<tr>
<td><strong>Total Revenue:</strong></td>
<td><strong>7,504,448</strong></td>
<td><strong>8,928,000</strong></td>
<td><strong>8,928,000</strong></td>
<td><strong>0%</strong></td>
</tr>
<tr>
<td><strong>Expense</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Personnel Services:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5 Salary &amp; Wages (Staff)</td>
<td>1,956,776</td>
<td>2,924,425</td>
<td>2,934,231</td>
<td>0%</td>
</tr>
<tr>
<td>Temp Help</td>
<td>88,479</td>
<td>123,785</td>
<td>139,627</td>
<td>13%</td>
</tr>
<tr>
<td>Statutory Exempt (EO)</td>
<td>89,056</td>
<td>135,526</td>
<td>133,998</td>
<td>-1%</td>
</tr>
<tr>
<td>Board Member Per Diem</td>
<td>6,100</td>
<td>10,000</td>
<td>10,000</td>
<td>0%</td>
</tr>
<tr>
<td>Overtime/Flex Elect/Lump Sum</td>
<td>725</td>
<td>0</td>
<td>900</td>
<td>100%</td>
</tr>
<tr>
<td>Staff Benefits</td>
<td>1,172,709</td>
<td>1,713,980</td>
<td>1,760,538</td>
<td>3%</td>
</tr>
<tr>
<td><strong>Total Personnel Services</strong></td>
<td><strong>3,313,845</strong></td>
<td><strong>4,907,716</strong></td>
<td><strong>4,979,294</strong></td>
<td><strong>1%</strong></td>
</tr>
<tr>
<td><strong>Operating Expense and Equipment:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Expense</td>
<td>51,411</td>
<td>67,000</td>
<td>80,000</td>
<td>19%</td>
</tr>
<tr>
<td>6 Printing</td>
<td>25,056</td>
<td>8,000</td>
<td>30,000</td>
<td>275%</td>
</tr>
<tr>
<td>Communication</td>
<td>15,592</td>
<td>44,000</td>
<td>25,000</td>
<td>-43%</td>
</tr>
<tr>
<td>Postage</td>
<td>0</td>
<td>50,000</td>
<td>26,310</td>
<td>-47%</td>
</tr>
<tr>
<td>Insurance</td>
<td>103</td>
<td>16,000</td>
<td>17,000</td>
<td>6%</td>
</tr>
<tr>
<td>Travel In State</td>
<td>35,346</td>
<td>60,000</td>
<td>50,000</td>
<td>-17%</td>
</tr>
<tr>
<td>Travel, Out-of-State</td>
<td>0</td>
<td>800</td>
<td>4,800</td>
<td>500%</td>
</tr>
<tr>
<td>Training</td>
<td>20</td>
<td>150</td>
<td>300</td>
<td>100%</td>
</tr>
<tr>
<td>Facilities Operations</td>
<td>248,250</td>
<td>416,004</td>
<td>410,000</td>
<td>-1%</td>
</tr>
<tr>
<td>7 C &amp; P Services - Interdept.</td>
<td>326,410</td>
<td>457,090</td>
<td>631,730</td>
<td>38%</td>
</tr>
<tr>
<td>8 C &amp; P Services - External</td>
<td>907,944</td>
<td>1,243,885</td>
<td>1,845,843</td>
<td>48%</td>
</tr>
<tr>
<td>9 DCA Pro Rata</td>
<td>1,184,247</td>
<td>1,579,000</td>
<td>1,615,000</td>
<td>2%</td>
</tr>
<tr>
<td>DOI - Investigations</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Interagency Services</td>
<td>10,861</td>
<td>27,000</td>
<td>21,000</td>
<td>-22%</td>
</tr>
<tr>
<td>Consolidated Data Center</td>
<td>20,760</td>
<td>22,000</td>
<td>31,000</td>
<td>41%</td>
</tr>
<tr>
<td>Information Technology</td>
<td>14,442</td>
<td>1,143,000</td>
<td>29,000</td>
<td>-97%</td>
</tr>
<tr>
<td>Equipment</td>
<td>10,533</td>
<td>0</td>
<td>120,234</td>
<td>100%</td>
</tr>
<tr>
<td>10 Other Items of Expense (ARF Deposit)</td>
<td>0</td>
<td>0</td>
<td>300,000</td>
<td>100%</td>
</tr>
<tr>
<td><strong>Total OE&amp;E</strong></td>
<td><strong>2,850,975</strong></td>
<td><strong>5,133,929</strong></td>
<td><strong>5,237,217</strong></td>
<td><strong>2%</strong></td>
</tr>
<tr>
<td><strong>Total Expense:</strong></td>
<td><strong>6,164,820</strong></td>
<td><strong>10,041,645</strong></td>
<td><strong>10,216,511</strong></td>
<td><strong>2%</strong></td>
</tr>
<tr>
<td><strong>Total Revenue:</strong></td>
<td><strong>7,504,448</strong></td>
<td><strong>8,928,000</strong></td>
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<td><strong>10,216,511</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Difference:</strong></td>
<td><strong>1,339,628</strong></td>
<td><strong>(1,113,645)</strong></td>
<td><strong>(1,288,511)</strong></td>
<td></td>
</tr>
</tbody>
</table>
Financial Statement Notes

1 **Applications/Licensing Fees** - The total amount collected for Application and Licensing Fees is $1,594,975 as of June 16, 2020.

2 **Renewal fees** - Renewal fees are not collected equally throughout the year. On average, the Board collects 75% of its renewal fees revenue in the first half of the fiscal year.

3 **Delinquent fees** - Approximately 90% of delinquent fee revenue is collected in the second half of the fiscal year.

4 **Interest** - Includes income from surplus money investments earned on money in the Board’s fund. The state treasury manages this money and the Board earns income based on the current interest rate.

5 **Salary & Wages (Staff)** - The projected expenditures for salaries and wages is due to the Board almost being fully staffed, additional merit salary adjustments, and new bargaining unit agreements. The Board has the following vacancies: 1.0 AGPA/SSA and 1.0 OA.

6 **Printing** - $25,000 in contract encumbrances in FI$Cal reports (EDD mailers such as Pamphlets, Leaflets, and Brochures). Board staff is working with DCA Budgets to identify contracts.

7 **C&P Services Interdepartmental** - Includes all contract services with other state agencies for examination services (Dept. of Conservation and Water Resources). This line item also now includes enforcement expenses for the Attorney General and the Office of Administrative Hearings.

8 **C&P Services External** - Includes all external contracts (examination development, exam site rental, expert consultant agreements, and credit card processing). This line also includes our executed agreements for our business modernization project (system developer, project management, oversight, and software license subscription services).

9 **DCA Pro Rata** - Includes distributed costs of programmatic and administrative services from DCA.

10 **Other Items of Expense (ARF Deposit)** - The Board has created an architectural revolving fund (ARF) to support tenant improvements throughout the office and the majority of costs will be new modular furniture procurement.
## Guide to Reading the Financial Statement

### Operating Expense and Equipment

<table>
<thead>
<tr>
<th>Description</th>
<th>FY 19-20 Activities Log</th>
<th>FY 19-20 FM1 Projections</th>
<th>Projections to Year End</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenue</strong></td>
<td></td>
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<td></td>
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<td></td>
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<td></td>
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<td>-94%</td>
</tr>
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<td>12,392</td>
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</tr>
<tr>
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<td>135,526</td>
<td>11,243</td>
<td>-92%</td>
</tr>
<tr>
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<td>10,000</td>
<td>10,000</td>
<td>0%</td>
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<td>3,313,845</td>
<td>4,907,716</td>
<td>1,967,366</td>
<td>-60%</td>
</tr>
</tbody>
</table>

### Object Description

- **Object Description**: Provides the name of the line item where our revenue and expenditures occur.
- **Percentage Change**: Provides a percentage reference on the difference between FM1 Projections and Projections to year end.
- **FM1 Projections**: Identifies the amount that BPELSG projected in July 2019 for FY 19-20.
- **Projections to year end**: Identifies amounts for revenue and expenditure projected for the current fiscal year, as of June 16, 2020.

### Revenue and Expenditures

- **Revenue**: This column is provided for reference and
- **Expenditures**: This column is provided for reference and
## Governor's Budget 2020-21

<table>
<thead>
<tr>
<th>PY 2018-19</th>
<th>CY 2019-20</th>
<th>Governor's Budget BY 2020-21</th>
<th>Governor's Budget BY + 1 2021-22</th>
</tr>
</thead>
<tbody>
<tr>
<td>BEGINNING BALANCE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prior Year Adjustment</td>
<td>$7,955</td>
<td>$6,907</td>
<td>$5,845</td>
</tr>
<tr>
<td>Adjusted Beginning Balance</td>
<td>$8,787</td>
<td>$6,907</td>
<td>$5,845</td>
</tr>
</tbody>
</table>

### Revenues and Transfers

<table>
<thead>
<tr>
<th>Item</th>
<th>PY 2018-19</th>
<th>CY 2019-20</th>
<th>Governor's Budget BY 2020-21</th>
<th>Governor's Budget BY + 1 2021-22</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delinquent fees</td>
<td>$75</td>
<td>$88</td>
<td>$128</td>
<td>$129</td>
</tr>
<tr>
<td>Renewal fees</td>
<td>$6,259</td>
<td>$6,891</td>
<td>$10,366</td>
<td>$11,623</td>
</tr>
<tr>
<td>Other regulatory fees</td>
<td>$100</td>
<td>$140</td>
<td>$127</td>
<td>$127</td>
</tr>
<tr>
<td>Other regulatory licenses and permits</td>
<td>$1,842</td>
<td>$1,646</td>
<td>$2,011</td>
<td>$2,017</td>
</tr>
<tr>
<td>Sales of documents</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
</tr>
<tr>
<td>Miscellaneous services to the public</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
</tr>
<tr>
<td>Sales of documents</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
</tr>
<tr>
<td>Interest Income from interfund loans</td>
<td>$24</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
</tr>
<tr>
<td>Income from surplus money investments</td>
<td>$194</td>
<td>$259</td>
<td>$259</td>
<td>$73</td>
</tr>
<tr>
<td>Sale of fixed assets</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
</tr>
<tr>
<td>Escheat of unclaimed checks and warrants</td>
<td>$22</td>
<td>$22</td>
<td>$22</td>
<td>$22</td>
</tr>
<tr>
<td>Miscellaneous revenues</td>
<td>$1</td>
<td>$1</td>
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<td><strong>Totals, Revenues</strong></td>
<td><strong>$8,517</strong></td>
<td><strong>$9,047</strong></td>
<td><strong>$12,914</strong></td>
<td><strong>$13,992</strong></td>
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### Transfers from Other Funds

<table>
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<tr>
<th>Item</th>
<th>PY 2018-19</th>
<th>CY 2019-20</th>
<th>Governor's Budget BY 2020-21</th>
<th>Governor's Budget BY + 1 2021-22</th>
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<tbody>
<tr>
<td>Revenue Transfer from Geology/General Fund</td>
<td>$-</td>
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<tr>
<td>Proposed GF Loan Repayment per item</td>
<td>$800</td>
<td>$-</td>
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|**Totals, Revenues and Transfers** | **$9,317** | **$9,047** | **$12,914** | **$13,992** |

|**Totals, Resources** | **$18,104** | **$15,954** | **$18,759** | **$19,033** |

### Expeditures

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<tr>
<th>Item</th>
<th>PY 2018-19</th>
<th>CY 2019-20</th>
<th>Governor's Budget BY 2020-21</th>
<th>Governor's Budget BY + 1 2021-22</th>
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<tbody>
<tr>
<td>Department of Consumer Affairs (State Operations)</td>
<td>$10,346</td>
<td>$10,216</td>
<td>$12,874</td>
<td>$13,260</td>
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<tr>
<td>Financial Information System for CA (State Operations)</td>
<td>$1</td>
<td>$1</td>
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<tr>
<td>Supplemental Pension Payments (State Operations)</td>
<td>$98</td>
<td>$209</td>
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<td>Statewide Admin. (State Operations)</td>
<td>$752</td>
<td>$819</td>
<td>$635</td>
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<tr>
<td>Less funding provided by General Fund (State Operations)</td>
<td>$-</td>
<td>$-</td>
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<tr>
<td><strong>Total Disbursements</strong></td>
<td><strong>$11,197</strong></td>
<td><strong>$10,109</strong></td>
<td><strong>$13,718</strong></td>
<td><strong>$14,104</strong></td>
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### Fund Balance

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<th>Governor's Budget BY 2020-21</th>
<th>Governor's Budget BY + 1 2021-22</th>
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<tr>
<td>Reserve for economic uncertainties</td>
<td>$6,907</td>
<td>$5,845</td>
<td>$5,041</td>
<td>$4,929</td>
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| Months in Reserve | 8.2 | 5.1 | 4.3 | 4.1 |
VII. Legislation

A. 2020 Legislative Calendar
B. Discussion of Legislation for 2020 (Possible Action)
   AB 1263 Contracts: consumer services: consumer complaints.
   AB 1616 Department of Consumer Affairs: boards: expunged convictions.
   AB 2028 State agencies: meetings.
   AB 2113 Refugees, asylees, and immigrants: professional licensing.
   AB 2185 Professions and vocations: applicants licensed in other states: reciprocity.
   AB 2549 Department of Consumer Affairs: temporary licenses.
   AB 2631 License fees: military partners and spouses.
   AB 3334 Professional Land Surveyors’ Act and Professional Engineers Act.
   SB 865 Excavations: subsurface installations.
   SB 878 Department of Consumer Affairs Licensing: applications: wait times.
   SB 1057 Land.
### JANUARY

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*Holiday schedule subject to Senate Rules committee approval.*

### DEADLINES

**Jan. 1** Statutes take effect (Art. IV, Sec. 8(c)).

**Jan. 6** Legislature Reconvenes (J.R. 51(a)(4)).

**Jan. 10** Budget must be submitted by Governor (Art. IV, Sec. 12(a)).

**Jan. 17** 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. 20** Martin Luther King, Jr. Day.

**Jan. 24** Last day for any committee to hear and report to the floor bills introduced in that house in the odd-numbered year (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 (Art. IV, Sec. 10(c)), (J.R. 61(b)(3)).

**Feb. 17** Presidents’ Day.

**Feb. 21** Last day for bills to be introduced (J.R. 61(b)(4)), (J.R. 54(a)).

**Mar. 16** Legislature in recess, ACR 189, Resolution Chapter 15, Statutes of 2020

**Mar. 27** Cesar Chavez Day observed

**May 11** Senate Reconvenes

**May 25** Memorial Day

**May 29** Last day for policy committees to hear and report to fiscal committees fiscal bills introduced in their house (J.R. 61(b)(5)).
### JUNE

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- **June 5** Last day for policy committees to hear and report to the floor non-fiscal bills introduced in their house (J.R. 61(b)(6)). Last day for policy committees to meet prior to June 8 (J.R. 61(b)(7)).
- **June 15** Budget Bill must be passed by midnight (Art. IV, Sec. 12(c)(3)).
- **June 19** 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 29 (J.R. 61(b)(9)).
- **July 2** Summer Recess begins upon adjournment provided Budget Bill has been passed (J.R. 51(b)(2)).
- **July 3** Independence Day observed.
- **July 13** Legislature reconvenes from Summer Recess (J.R. 51(b)(2)).
- **July 31** Last day for policy committees to hear and report fiscal bills to fiscal committees (J.R. 61(b)(13)).

### JULY

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- **July 3** Summer Recess begins upon adjournment provided Budget Bill has been passed (J.R. 51(b)(2)).
- **July 3** Independence Day observed.
- **July 3** Legislature reconvenes from Summer Recess (J.R. 51(b)(2)).
- **July 31** Last day for policy committees to hear and report fiscal bills to fiscal committees (J.R. 61(b)(13)).

### AUGUST

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- **August 7** Last day for policy committees to meet and report bills (J.R. 61(b)(14)).
- **Aug. 14** Last day for fiscal committees to meet and report bills (J.R. 61(b)(15)).
- **Aug. 17 – 31** Floor Session only. No committees, other than conference and Rules committees, may meet for any purpose (J.R. 61(b)(16)).
- **Aug. 31** Last day to amend bills on the Floor (J.R. 61(b)(17)).
- **Aug. 31** Last day for each house to pass bills, except bills that take effect immediately or bills in Extraordinary Session (Art. IV, Sec. 10(c)), (J.R. 61(b)(18)). Final recess begins upon adjournment (J.R. 51(b)(3)).

*Holiday schedule subject to Senate Rules committee approval.

### IMPORTANT DATES OCCURRING DURING FINAL RECESS

#### 2020

- **Sept. 30** Last day for Governor to sign or veto bills passed by the Legislature before Sept. 1 and in the Governor’s possession on or after Sept. 1 (Art. IV, Sec. 10(b)(2)).
- **Nov. 3** General Election
- **Nov. 30** Adjournment Sine Die at midnight (Art. IV, Sec. 3(a)).
- **Dec. 7** 12 m. convening of 2021-22 Regular Session (Art. IV, Sec. 3(a)).

#### 2021

- **Jan. 1** Statutes take effect (Art. IV, Sec. 8(c)).
- **Jan. 4** Legislature reconvenes (JR 51(a)(1)).
Summary of Legislation

AB 1263  Contracts: consumer services: consumer complaints.  (Low)
3/12/2020 – Support, as amended 1/6/2020
* 6/25/2020 – No action needed

AB 1616 Department of Consumer Affairs: boards: expunged convictions.  (Low)
3/12/2020 – Watch, as amended 1/6/2020
* 6/25/2020 – No action needed

AB 2028 State agencies: meetings.  (Aguiar-Curry)
3/12/2020 – Watch (there should be some exceptions for matters that are urgent or have changed within the 10-day notice period)
5/7/2020 – Oppose Unless Amended to include exceptions for budgetary, legislative, and regulatory matters
* 6/25/2020 – Action needed – recommend changing to WATCH since bill was amended on 6/4/2020

AB 2113 Refugees, asylees, and immigrants: professional licensing.  (Low)
3/12/2020 – Watch
* 6/25/2020 – No action needed

AB 2185 Professions and vocations: applicants licensed in other states: reciprocity.  (Patterson & Gallagher)
3/12/2020 – Oppose unless Amended to exempt BPELSG because our existing statutes provide the correct balance between the need for comity/reciprocity licensure and the need to protect the health, safety, welfare, and property of the public.
5/7/2020 – Watch, as amended 3/16/2020
* 6/25/2020 – Action needed – recommend changing to OPPOSE UNLESS AMENDED since bill was amended on 5/13/2020

AB 2549 Department of Consumer Affairs: temporary licenses.  (Salas)
3/12/2020 – No action taken
* 6/25/2020 – No action needed

AB 2631 License fees: military partners and spouses.  (Cunningham)
3/12/2020 – Watch (authorized change in Board’s position to Oppose if the bill is amended to require waiver of “any and all fees associated with obtaining a license”; concerned with pass through fees.)
* 6/25/2020 – No action needed
AB 3334 Professional Land Surveyors’ Act. (Chen)
3/12/2020 – Watch (directed staff to work with the author and sponsor on any proposed amendments in order to address the concerns previously expressed by the Board relating to SB 556)
* 6/25/2020 – Action needed – recommend changing to OPPOSE UNLESS AMENDED since bill was amended on 5/11/2020

SB 865 Excavations: subsurface installations. (Hill)
3/12/2020 – Watch (directed staff to work with the author, sponsors, and Dig Safe Board staff to determine the actual intent of this amendment and to assist them with developing language that would more appropriately reflect that used with GIS systems and would address any issues relating to compliance with the Professional Land Surveyors’ Act)
* 6/25/2020 – Action needed – recommend changing to OPPOSE UNLESS AMENDED since bill was amended on 6/2/2020

SB 878 Department of Consumer Affairs Licensing: applications: wait times. (Jones)
3/12/2020 – Watch
* 6/25/2020 – No action needed

SB 1057 Land. (Jones)
3/12/2020 – Oppose unless Amended to remove amendments to Section 8726 (Board is requesting bill be amended because it believes it needs more time to review, through its LSTAC, the definition of cadastral surveying and what definition, if any, would be appropriate to be included in Section 8726)
5/7/2020 – Oppose unless Amended to change definition of “cadastral surveying” to that used by the Bureau of Land Management
* 6/25/2020 – No action needed
AB 1263 (Low, D-Cupertino)
Contracts: consumer services: consumer complaints.

Status: 1/30/2020 – In Senate. Read first time. To Committee on Rules for Assignment.
Location: 6/17/2020 – Senate Rules Committee
Amended: 1/6/2020
Board Position: Support, as amended 1/6/2020 (as of 3/12/2020)
Board Staff Analysis: 6/17/2020

Bill Summary: Assembly Bill (AB) 1263, as amended January 6, 2020, would add Section 1670.8.5 to the Civil Code. This new section would prohibit the inclusion in a contract or a proposed contract involving the provision of a consumer service by a licensee regulated by a licensing board of a provision limiting the consumer’s ability to file a complaint with that board or to participate in the board’s investigation of the licensee. The section would also contain a statement that any waiver of the provisions of this section is contrary to public policy and void and unenforceable. The section would further provide that a violation of it would subject the licensee to disciplinary action by the licensing board.

Staff Comment: This bill is sponsored by the author, Assembly Member Evan Low, who serves as the Chair of the Assembly Business and Professions Committee. Assembly Member Low states

“Existing law has already been enacted with the intent to prohibit non-disparagement clauses in consumer contracts. This bill has been introduced [because] companies providing professional services are nevertheless seeking to restrict their customer’s authority to make substantiated complaints to regulatory boards through refund agreements and other contracts. This bill would expressly prohibit these provisions in any contract governing the provision of professional services that are subject to licensure and oversight by the state.”

Section 143.5 of the Business and Professions Code prohibits a licensee from including a provision in a settlement of a civil action that would prohibit the other party from contacting, filing a complaint, or cooperating with the Department of Consumer Affairs or a licensing board regarding the licensee or requiring the other party to withdraw a complaint that has already been filed. This bill would add a similar restriction on the inclusion of a similar provision in contracts.

Staff Recommendation: No action needed at this time.

Laws: An act to add Section 1670.8.5 to the Civil Code, relating to business regulation.
An act to add Chapter 1.6 (commencing with Section 1939.60) to Title 5 of Part 4 of Division 3 of the Civil Code, to add Article 5.1 (commencing with Section 11629.6) to Chapter 1 of Part 3 of Division 2 of, and to repeal Section 11580.24 of, the Insurance Code, and to amend Sections 11752, 11754, and 11760 of the Vehicle Code, Section 1670.8.5 to the Civil Code, relating to business regulation.

LEGISLATIVE COUNSEL’S DIGEST


Existing law regulates the formation and enforcement of contracts, including what constitutes an unlawful contract. Under existing law, a contract is unlawful if it is contrary to an express provision of law, contrary to the policy of express law, though not expressly prohibited, or otherwise contrary to good morals.

Existing law regulates licensees who are subject to the jurisdiction of a state licensing entity, including the State Bar of California, the Department of Real Estate, the Department of Consumer Affairs, or any other state agency that issues a license, certificate, or registration authorizing a person to engage in a business or profession.

This bill would prohibit a contract or proposed contract involving the provision of a consumer service by a licensee regulated by a
licensing board from including a provision limiting the consumer’s ability to file a complaint with that board or to participate in the board’s investigation into the licensee. The bill would specify that a waiver of these provisions is contrary to public policy and is void and unenforceable. The bill would provide that a violation of these provisions by a licensee constitutes unprofessional conduct subject to discipline by the licensee’s regulatory board.

Existing law defines a personal vehicle sharing program as a legal entity qualified to do business in the state that is engaged in the business of facilitating the sharing of private passenger vehicles for noncommercial use by individuals within the state.

This bill would rename “personal vehicle sharing program” to “peer-to-peer car sharing program” and would require specified disclosures to be made in a peer-to-peer car sharing contract. This bill would authorize a peer-to-peer car sharing program to only enter into a contract with a licensed driver, as specified. The bill would make a peer-to-peer car sharing program responsible for any equipment that is to be installed in a vehicle to facilitate car sharing transactions. The bill would authorize airports to regulate access and use by peer-to-peer car sharing vehicles. The bill would also require peer-to-peer car sharing programs and participants to be insured, as specified.


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

SECTION 1. Section 1670.8.5 is added to the Civil Code, to read:

1670.8.5. (a) A contract or proposed contract involving the provision of a consumer service by a licensee regulated by a licensing board shall not include a provision limiting the consumer’s ability to file a complaint with that board or to participate in the board’s investigation into the licensee.

(b) Any waiver of the provisions of this section is contrary to public policy, and is void and unenforceable.

(c) For purposes of this section, the following terms apply:

(1) “Consumer service” means any service which is obtained for use primarily for personal, family, or household purposes.

(2) “Licensing board” means any entity contained in Section 101 of the Business and Professions Code, the State Bar of
California, the Department of Real Estate, or any other state agency that issues a license, certificate, or registration authorizing a person to engage in a business or profession.

(d) Violation of this section by a licensee shall constitute unprofessional conduct subject to discipline by the licensee’s licensing board.

SECTION 1. Chapter 1.6 (commencing with Section 1939.60) is added to Title 5 of Part 4 of Division 3 of the Civil Code, to read:

Chapter 1.6. Peer-to-Peer Car Sharing Programs

1939.60. This chapter may be cited as the Peer to Peer Car Sharing Program Act.

1939.61. As used in this chapter, the following terms have the following meanings:

(a) “Car sharing delivery period” means the period of time during which a shared vehicle is being delivered to the location where the car sharing start time will commence, if applicable, as documented by the governing car sharing program agreement.

(b) “Car sharing period” means the period of time from the commencement of the car sharing delivery period or, if there is no car sharing delivery period, from the car sharing start time, through the car sharing termination time.

(c) “Car sharing program agreement” means the terms and conditions applicable to a shared vehicle owner and a shared vehicle driver that govern the use of a shared vehicle through a peer to peer car sharing program.

(d) “Car sharing start time” means the time when the shared vehicle driver takes control of the shared vehicle at or after the time the reservation of a shared vehicle is scheduled to begin as documented in the records of a peer to peer car sharing program.

(e) “Car sharing termination time” means the time when the shared vehicle is returned to the location designated by the shared vehicle owner through a peer to peer car sharing program, and the earliest of one of the following occurs:

(1) The intent to terminate the use of the shared vehicle is verifiably communicated by the shared vehicle driver to the shared vehicle owner using the peer to peer car sharing program.
(2) The shared vehicle owner or the shared vehicle owner’s authorized designee takes possession and control of the shared vehicle.

(3) The period of time established for the use of a shared vehicle in the governing car sharing program agreement expires.

(f) “Peer-to-peer car sharing” means the authorized use of a vehicle by an individual other than the vehicle’s owner through a peer to peer car sharing program.

(g) “Peer-to-peer car sharing program” means a business platform that connects vehicle owners with licensed drivers to enable the sharing of vehicles for financial consideration. “Peer to peer car sharing program” does not mean car rental agency.

(h) “Shared vehicle” means a vehicle that is available for sharing through a peer-to-peer car sharing program.

(i) “Shared vehicle driver” means a person who is authorized to drive a shared vehicle by the shared vehicle owner under a car sharing program agreement.

(j) “Shared vehicle owner” means the registered owner of a vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car sharing program.

1939.62. Each car sharing program agreement made in the state shall disclose to the shared vehicle owner and the shared vehicle driver all of the following:

(a) Any right of the peer-to-peer car sharing program to seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss sustained by the peer to peer car sharing program resulting from a breach of the terms and conditions of the car sharing program agreement.

(b) That an automobile liability insurance policy issued to the shared vehicle owner for the shared vehicle or to the shared vehicle driver does not provide a defense or indemnification for any claim asserted by the peer to peer car sharing program.

(c) That the peer to peer car sharing program’s insurance coverage on the shared vehicle owner and the shared vehicle driver, required pursuant to Article 5.1 (commencing with Section 11629.6) to Chapter 1 of Part 3 of Division 2 of the Insurance Code, is in effect only during each car sharing period and that, for any use of the shared vehicle by the shared vehicle driver after the
ear-sharing termination time, the shared vehicle driver and the
shared vehicle owner may not be covered.

(d) The amounts of the daily rate, additional mandatory charges,
fees, and, if applicable, any insurance or protection plan costs that
are charged to the shared vehicle owner or the shared vehicle
driver.

(e) That the shared vehicle owner’s motor vehicle liability
insurance may not provide coverage for a shared vehicle.

(f) An emergency telephone number for customer service
inquiries, including requests for emergency roadside assistance.

1939.63. A peer-to-peer car sharing program shall disclose the
daily rate, charges, fees, and costs when providing a quote and
shall not require any other fees or charges to be paid as a condition
of using the shared vehicle.

1939.64. (a) A peer-to-peer car sharing program shall only
enter into a car sharing program agreement with a shared vehicle
driver who is at least 18 years of age and who provides
documentation of either of the following documents:

(1) A valid, unexpired California driver’s license that authorizes
the driver to operate a vehicle of the same class as the shared
vehicle.

(2) A valid, unexpired driver’s license issued by the state or
country of the shared vehicle driver’s residence that authorizes the
driver in that state or country to drive a vehicle of the same class
as the shared vehicle.

1939.65. A peer-to-peer car sharing program shall have sole
responsibility for any equipment that is installed in or on the
vehicle to facilitate the car sharing transaction, and shall agree to
indemnify and hold harmless the shared vehicle owner for any
damage to or theft of the equipment during the sharing period not
caus[...]

1939.66. (a) Notwithstanding any other law, a commercial
airport authority is authorized to regulate access to an airport and
set access fees for peer-to-peer car sharing programs. If required,
a peer to peer car sharing program shall obtain a permit or other
written authorization from the airport operator prior to facilitating
the sharing of vehicles at that airport.
(b) This section does not affect the authority of any political subdivision of the state to regulate access to an airport it owns or operates and to set access fees or requirements for a peer-to-peer car sharing program.

SEC. 2. Section 11580.24 of the Insurance Code is repealed.

SEC. 3. Article 5.1 (commencing with Section 11629.6) is added to Chapter 1 of Part 3 of Division 2 of the Insurance Code, to read:

    Article 5.1. Peer-to-Peer Car Sharing Programs

    11629.6. For purposes of this article, the definitions set forth in Section 1939.61 of the Civil Code shall apply.

    11629.61. (a) A peer-to-peer car sharing program shall assume the liability of a shared vehicle owner for any property damage to the shared vehicle or any bodily injury or property damage to third parties or uninsured and underinsured motorist or personal injury protection losses during the car sharing period in an amount stated in the peer-to-peer car sharing program agreement which amount may not be less than those set forth in Section 16056 of the Vehicle Code. In addition, a peer-to-peer car sharing program shall also assume liability for the shared vehicle.

    The assumption of liability does not apply if the shared vehicle owner makes an intentional or fraudulent material misrepresentation to the peer-to-peer car sharing program before the car sharing period in which the loss occurred:

    (b) A peer-to-peer car sharing program shall ensure that, during each car sharing period, the shared vehicle owner and the shared vehicle driver are insured under a motor vehicle liability insurance policy that provides insurance coverage in amounts no less than ________.

    (c) The insurance described in subdivision (b) may be satisfied by motor vehicle liability insurance maintained by any of the following:

    (1) The shared vehicle owner.

    (2) The shared vehicle driver.

    (3) The peer-to-peer car sharing program.

    (4) Any combination of the above.

    (d) The peer to peer car sharing program shall assume primary liability for a claim when it is, in whole or in part, providing the
insurance required under subdivision (b) and both of the following are true:

(1) A dispute exists as to who was in control of the shared motor vehicle at the time of the loss.

(2) The peer-to-peer car sharing program does not have available, did not retain, or fails to provide the information required pursuant to Section 11629.65.

(e) If a peer-to-peer car sharing program assumes liability for a claim pursuant to subdivision (d), and it is later determined that the shared motor vehicle's owner was in control of the shared motor vehicle at the time of the loss, the shared motor vehicle's insurer shall indemnify the car sharing program to the extent of its obligation, if any, under the applicable insurance policy.

(f) If the insurance described in subdivision (c) maintained by a shared vehicle owner or shared vehicle driver has lapsed or does not provide the required coverage, insurance maintained by the peer to peer car sharing program shall provide the coverage required pursuant to subdivision (b) beginning with the first dollar of a claim and shall have the duty to defend such a claim.

(g) Coverage under an automobile insurance policy maintained by the peer-to-peer car sharing program shall not be dependent on a personal automobile insurer first denying a claim nor shall a personal automobile insurance policy be required to first deny a claim.

(h) This article does not limit either of the following:

(1) The liability of a peer-to-peer car sharing program for any act or omission of the peer to peer car sharing program itself that results in injury to any person as a result of the use of a shared vehicle through a peer-to-peer car sharing program.

(2) The ability of a peer-to-peer car sharing program to, by contract, seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss sustained by the peer to peer car sharing program resulting from a breach of the terms and conditions of the car sharing program agreement.

11629.62.—Before a shared vehicle is made available for car sharing on the peer-to-peer car sharing program, the peer-to-peer car sharing program shall notify the shared vehicle owner that, if the shared vehicle has a lien against it, the use of the shared vehicle through a peer-to-peer car sharing program, including use without
physical damage coverage, may violate the terms of the contract with the lienholder.

11629.63. An authorized insurer that writes motor vehicle liability insurance may exclude any and all coverage and the duty to defend or indemnify for any claim afforded under a shared vehicle owner's personal motor vehicle liability insurance policy. This article does not invalidate or limit an exclusion contained in a motor vehicle liability insurance policy, including any insurance policy in use or approved for use that excludes coverage for motor vehicles made available for rent, sharing, or hire or for any business use.

11629.64. A motor vehicle insurer may not deny, cancel, void, terminate, rescind, or nonrenew a policy of personal private passenger automobile liability insurance of a shared vehicle owner solely on the basis that vehicle covered under the policy has been made available for sharing through a peer-to-peer car sharing program.

11629.65. A peer-to-peer car sharing program shall collect and verify records pertaining to the use of a vehicle, including, but not limited to, times used, fees paid by the shared vehicle driver, and revenues received by the shared vehicle owner and provide that information upon request to the shared vehicle owner, the shared vehicle owner's insurer, or the shared vehicle driver's insurer to facilitate a claim coverage investigation. The peer-to-peer car sharing program shall retain the records for not less than five years unless a longer retention period is otherwise required by law.

11629.66. A motor vehicle insurer that defends or indemnifies a claim involving a shared vehicle that is excluded under the terms of its policy shall have the right to seek contribution against the motor vehicle insurer of the peer-to-peer car sharing program if both of the following are true:
   (a) The claim is made against the shared vehicle owner or the shared vehicle driver for loss or injury that occurs during the car sharing period;
   (b) Coverage for peer-to-peer vehicle sharing is excluded under the terms of its policy.

11629.67. A peer-to-peer car sharing program shall, for each vehicle that it facilitates the use of, provide the registered owner of the vehicle with a Department of Motor Vehicles Form REG 5085 or other suitable proof of compliance with the insurance
requirements of this section and the requirements of the California
Financial Responsibility Law in Section 1656.2 of the Vehicle
Code, a copy of which shall be maintained in the vehicle by the
vehicle’s registered owner during any time when the vehicle is
operated by any person other than the vehicle’s owner pursuant to
a peer-to-peer car sharing program.

SEC. 4. Section 11752 of the Vehicle Code is amended to read:
11752. As used in this article, the following definitions apply:
(a) The term “dealer” has the same meaning as in Section 285.
(b) (1) A “manufacturer’s recall” is a recall conducted pursuant
to Sections 30118 to 30120, inclusive, of Title 49 of the United
States Code.
(2) A manufacturer’s recall does not include a service campaign
or emission recall when the vehicle manufacturer or the National
Highway Traffic Safety Administration has not issued a recall
notice to owners of affected vehicles, pursuant to Section 30118
of Title 49 of the United States Code.
(c) A “peer-to-peer car sharing program” has the same meaning
as defined in Section 1939.61 of the Civil Code.
(d) A “recall database” is a database from which an individual
may obtain vehicle identification number (VIN) specific
manufacturer’s recall information relevant to a specific vehicle.
(1) For a vehicle manufacturer that is not subject to the
regulations adopted pursuant to Section 31301 of the federal
Moving Ahead for Progress in the 21st Century Act (Public Law
112-141), a recall database is one of the following:
(A) The recall data on a vehicle manufacturer’s internet website
for a specific vehicle’s line make.
(B) The recall data in a vehicle manufacturer’s internal system
that provides information to its franchisees on vehicles subject to
recall.
(C) The recall data in subparagraph (A) or (B) that is contained
in a commercially available vehicle history system.
(2) For a vehicle manufacturer that is subject to the regulations
adopted pursuant to Section 31301 of the federal Moving Ahead
for Progress in the 21st Century Act (Public Law 112-141), a recall
database shall include, at a minimum, the recall information
required pursuant to Section 573.15 of Title 49 of the Code of
Federal Regulations.
(e) A “recall database report” is a report, specific to a vehicle that is identified by its VIN, containing information obtained from a recall database.

(f) A “rental car company” is a person or entity in the business of renting passenger vehicles to the public in California.

SEC. 5. Section 11754 of the Vehicle Code is amended to read:

11754. (a) No later than 48 hours after receiving a notice of a manufacturer’s recall, or sooner if practicable, a dealer or rental car company with a motor vehicle fleet of 34 or fewer loaner or rental vehicles shall not loan, rent, or offer for loan or rent a vehicle subject to that recall until the recall repair has been made.

(b) If a recall notification indicates that the remedy for the recall is not immediately available and specifies actions to temporarily repair the vehicle in a manner to eliminate the safety risk that prompted the recall, the dealer or rental car company, after having the repairs completed, may loan or rent the vehicle. Once the remedy for the vehicle becomes available to the dealer or rental car company, the dealer or rental car company shall not loan or rent the vehicle until the vehicle has been repaired.

(c) As soon as practicable but not more than 48 hours after a vehicle is subject to a manufacturer’s recall, as defined in subdivision (b) of Section 11752, and a recall notice has been issued by the manufacturer and appears in the recall database provided by the National Highway Traffic Safety Administration pursuant to Section 573.15 of Title 49 of the Code of Federal Regulations, or not more than 48 hours after the peer-to-peer car sharing program receives notification of a manufacturer’s recall by a third party with which the peer to peer car sharing program contracts to provide notification of active recalls, a peer-to-peer car sharing program shall not facilitate or otherwise arrange for transportation with that vehicle until after any recall notices for that vehicle no longer appear in the recall database provided by the National Highway Traffic Safety Administration.

(d) The changes to this section made by Chapter 591 of the Statutes of 2018 do not apply in any manner to litigation pending as of January 1, 2019.

(e) This section does not affect the determination of whether or not a company is a rental car company or whether or not a company is a peer-to-peer car sharing company.

SEC. 6. Section 11760 of the Vehicle Code is amended to read:
11760. (a) This article does not create any legal duty upon the dealer, rental car company, peer-to-peer car sharing program, or department related to the accuracy, errors, or omissions contained in a recall database report or any legal duty to provide information added to a recall database after the dealer, rental car company, peer-to-peer car sharing program, or department obtained the recall database report pursuant to Sections 11754 and 11758.

(b) The changes to this section made by Chapter 591 of the statutes of 2018 shall not apply in any manner to litigation that is pending as of January 1, 2019.

(c) This section does not affect the determination of whether or not a company is a rental car company or whether or not a company is a peer-to-peer car sharing program.
AB 1616 (Introduced by Low, D-Cupertino; Coauthor: Eduardo Garcia, D-Coachella)

Department of Consumer Affairs: boards: expunged convictions.

Status:  1/30/2020 – In Senate.  Read first time.  To Committee on Rules for Assignment.
Location:  6/17/2020 – Senate Rules Committee
Amended:  1/6/2020
Board Position:  Watch, as amended 1/6/2020 (as of 3/12/2020)
Board Staff Analysis:  6/17/2020

Bill Summary: Assembly Bill (AB) 1616, as amended January 6, 2020, would add Section 493.5 to the Business and Professions Code. This new section would require a board within the Department of Consumer Affairs (DCA) that has posted on its website that a person’s license was revoked because the person was convicted of a crime to, within six months of receiving the expungement order for the underlying offense from the person, post notification of the expungement order on the website if the person applies for licensure or is relicensed, or remove the initial posting regarding the revocation if the person is not currently licensed and does not reapply for licensure. The bill also provides that the person shall pay the board a fee in an amount to be determined by DCA that does not exceed the reasonable cost of administering this section.

Staff Comment: This bill is sponsored by Assembly Member Low, one of the authors. According to Assembly Member Low

“[This bill] is designed to reduce employment barriers for people with previous criminal records who have been rehabilitated and whose conviction has been dismissed, or expunged, through the judicial process. Under current law, individuals who have successfully rehabilitated may continue to face stigma and barriers to find employment. Although they are intent on positively contributing to society by finding employment and self-sufficiency, state records may not reflect an expungement that was granted by the courts. [This bill] allows individuals who were formerly licensed through the state of California to appropriately reflect the record of their rehabilitation as granted by the judicial branch, and improve their opportunity to seek meaningful employment.”

DCA, based on information from the boards, provided information regarding the fiscal effect to the Assembly Committee on Appropriations. DCA indicated that the costs were unknown but would likely be in the range of the low tens of thousands of dollars to the low hundreds of thousands of dollars to the board to post notifications of expungements on their websites.

Staff Recommendation: No action needed at this time.

Laws: An act to add Section 493.5 to the Business and Professions Code, relating to professions and vocations.
ASSEMBLY BILL No. 1616

Introduced by Assembly Member Low
(Coauthor: Assembly Member Eduardo Garcia)

February 22, 2019

An act to amend Section 10295.6 of the Insurance Code, relating to insurance; add Section 493.5 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL’S DIGEST


Existing law establishes the Department of Consumer Affairs, which is composed of various boards, and authorizes a board to suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. Existing law, the Medical Practice Act, provides for the licensure and regulation of the practice of medicine by the Medical Board of California and requires the board to post certain historical information on current and former licensees, including felony and certain misdemeanor convictions. Existing law also requires the Medical Board of California, upon receipt of a certified copy of an expungement order from a current or former licensee, to post notification of the expungement order and the date thereof on its internet website.

Revised 1-23-20—See last page.
This bill would require a board within the department that has posted on its internet website that a person’s license was revoked because the person was convicted of a crime to, within 6 months of receiving the expungement order for the underlying offense from the person, post notification of the expungement order and the date thereof on the board’s internet website if the person applies for licensure or is relicensed, or remove the initial posting on its internet website that the person’s license was revoked if the person is not currently licensed and does not reapply for licensure, as specified. The bill would require a person to pay a fee, to be determined by the department, to the board for the cost of administering the bill’s provisions.

Existing law regulates classes of insurance, including life insurance, and prescribes certain requirements governing the payment of an accelerated death benefit under a life insurance policy. Existing law authorizes an accelerated death benefit to be added to a life insurance policy to provide for the advance payment of a part of the death proceeds if a qualifying event, including a terminal or chronic illness, occurs. Existing law prohibits an accelerated death benefit from being effective more than 30 days following the effective date of the policy provision, rider, endorsement, or certificate.

This bill would authorize the effective period of an accelerated death benefit to be extended to not more than 60 days following the effective date of the policy provision, rider, endorsement, or certificate.


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

SECTION 1. Section 493.5 is added to the Business and Professions Code, to read:

493.5. (a) A board within the department that has posted on its internet website that a person’s license was revoked because the person was convicted of a crime, upon receiving from the person a certified copy of an expungement order granted pursuant to Section 1203.4 of the Penal Code for the underlying offense, shall, within six months of receiving the expungement order, unless it is otherwise prohibited by law, or by other terms or conditions, do either of the following:
(1) If the person reapplies for licensure or has been relicensed, post notification of the expungement order and the date thereof on its internet website.

(2) If the person is not currently licensed and does not reapply for licensure, remove the initial posting on its internet website that the person’s license was revoked.

(b) A person described in subdivision (a) shall pay to the board a fee in an amount to be determined by the department that does not exceed the reasonable cost of administering this section. The fee shall be deposited by the board into the appropriate fund and shall be available only upon appropriation by the Legislature.

(c) For purposes of this section “board” means an entity listed in Section 101.

(d) If any provision in this section conflicts with Section 2027, Section 2027 shall prevail.

SECTION 1. Section 10295.6 of the Insurance Code is amended to read:

10295.6. (a) If a policyholder or certificate holder requests an acceleration of death benefits, the insurer shall send a statement to the policyholder or certificate holder and irrevocable beneficiary showing any effect that the payment of the accelerated death benefit would have on the policy’s cash value, accumulation account, death benefit, premium, policy loans, and policy liens. The statement shall disclose that receipt of accelerated death benefit payments may adversely affect the recipient’s eligibility for Medicaid or other government benefits or entitlements. In addition, receipt of an accelerated death benefit payment may be taxable and assistance should be sought from a personal tax adviser. If a previous disclosure statement becomes invalid as a result of an acceleration of the death benefit, the insurer shall send a revised disclosure statement to the policyholder or certificate holder and irrevocable beneficiary.

(b) The accelerated death benefit shall be effective not more than 60 days following the effective date of the policy provision, rider, endorsement, or certificate.

(c) If the insurer charges a separate premium for the accelerated death benefit, then the insurer may also offer a waiver of premium benefit as defined in subdivision (a) of Section 10271.1. At the time the waiver of the accelerated death benefit premium benefit
is claimed, the insurer shall explain any continuing premium requirement to keep the underlying policy in force.

(d) An insurer shall not unfairly discriminate among insureds with different qualifying events covered under the policy or among insureds with similar qualifying events covered under the policy. An insurer shall not apply further conditions on the payment of the accelerated death benefits other than those conditions specified in the accelerated death benefit.

(e) No later than one month after payment of an accelerated death benefit, the insurer shall provide the policyholder or certificate holder with a report of any accelerated death benefits paid out during the prior month, an explanation of any changes to the policy or certificate, death benefits, and cash values on account of the benefits being paid out, and the amount of the remaining benefits that may be accelerated at the end of the prior month. The insurer may use a calendar month or policy or certificate month.

(f) The conversion benefit available to group certificate holders on termination of employment pursuant to paragraph (2) of subdivision (a) of Section 10209 shall include a benefit comparable to the accelerated death benefit. This requirement may be satisfied by an individual policy or certificate. This requirement, subject to the approval of the commissioner, may be satisfied by arrangement with another insurer to provide the required coverage.

(g) If payment of an accelerated death benefit results in a pro rata reduction in cash value, the payment may be applied toward repaying a portion of the loan equal to a pro rata portion of any outstanding policy loans if disclosure of the effect of acceleration upon any remaining death benefit, cash value or accumulation account, policy loan, and premium payments, including a statement of the possibility of termination of any remaining death benefit, is provided to the policyholder or certificate holder. The policyholder or certificate holder shall provide written consent authorizing any other arrangement for the repayment of outstanding policy loans:
REVISIONS:
Heading—Line 2.
AB 2028 (Aguiar-Curry, D-Napa)
State agencies: meetings.

Status: 6/9/2020 – In Senate. Read first time. To Committee on Rules for assignment.
Location: 6/17/2020 – Senate Committee on Rules
Introduced: 1/30/2020
Amended: 6/4/2020
Board Position: Oppose Unless Amended (as of 5/7/2020)
Board Staff Analysis: 6/17/2020

Bill Summary: Existing law, the Bagley-Keene Open Meeting Act, requires that all meetings of a state body, as defined, be open and public and that all person be permitted attend any meeting of a state body, except as otherwise provided in the act. Existing law also requires the state body to provide notice of the meeting, including specified information and a specific agenda of the meeting, as provided, to any person who requests that notice in writing and to make that notice available on the internet at least 10 days in advance of the meeting. Additionally, existing law requires a state body to provide an opportunity for members of the public to directly address the state body on each agenda item; however, existing laws provides an exemption from this requirement for, among other things, an agenda item that has already been considered by a committee composed exclusively of members of the state body at a public meeting where members of the public were afforded an opportunity to address the committee on the item.

This bill would require that the notice of the meeting also include all writings or materials provided for the meeting to a member of the state body by the staff of a state agency, board, or commission or by another member of the state body that are in connection with a matter subject to discussion or consideration at the meeting. These writings or materials would be required to be made available on the internet at least 10 days in advance of the meeting and to any person who requests that notice in writing. A state body would be allowed to distribute or discuss writings or materials at a meeting of the state body only if it had complied with this provision. These requirements would not apply to writings or materials prepared for a matter to be discussed in closed session. This bill would also delete the exemption relating to public comment, thus providing the public with an opportunity to address the state body on any agenda item, even if the public had already had an opportunity to address it at a public meeting of a committee of the state body.

Staff Comment: The “writings or materials” referred to in this bill are what this Board refers to as the “meeting materials.” The meeting materials prepared by staff are provided to the Board members and posted on the Board’s website approximately seven days (one week) before the meeting. If new or updated information becomes available after the meeting materials packet is distributed, the new information is distributed to the Board members and made available to the public, either by posting on the Board’s website if time allows or by having them available as handouts at the meeting. Current law requires that writings, as defined, that are distributed to members of the state body prior to or during a meeting pertaining to an item to be considered during the meeting be made available for public inspection at the meeting if prepared by the state body or a member of the state body. The Department of Consumer Affairs’ Legal Office has previously indicated that this means any written materials the Board will review or discuss at a
meeting must be made available to the public at any time prior to the Board’s discussion, which allows for handouts of updated information to be provided at meetings. This bill would require that any writings or materials that are to be reviewed or discussed by the Board members at a meeting be made available to the public at least 10 days prior to the meeting, which would preclude the opportunity for new or updated information to be provided to the Board within that 10-day period.

At its March 12, 2020, meeting, the Board took a position of “Watch” on this bill. However, the Board does believe there should be exceptions for matters that are urgent or have changed within the 10-day notice period.

At its May 7, 2020, meeting, the Board took a position of “Oppose Unless Amended” and requested that the bill be amended to exempt materials relating to budgetary, legislative, and regulatory matters.

The bill was amended on June 4, 2020, to change the 10-day posting of materials requirement to be “…the same day as the dissemination of the writings and materials to members of the state body, or at least 48 hours in advance of the meeting, whichever is earlier.” Additionally, a provision was added that indicates if the materials “…are related to legislation that is before the Legislature in a current legislative session, a state body is entitled to post online, and shall provide upon request, additional materials related to that active legislation with additional time-sensitive information as it becomes available after the deadlines in this subdivision. The state body shall make clear what date the new or changed writings or materials are posted and, when applicable, what changes have been made in materials already posted.”

Staff believes that the changes made to the bill in the June 4, 2020, version sufficiently address the Board’s concerns by allowing all materials to be posted online at the same time they are distributed to the Board Members or 48 hours in advance of the meeting, whichever is earlier, and by allowing updated information relating to current legislation to be posted after those deadlines. As such, staff believes the Board no longer needs to oppose the bill and ask for further amendments but should continue to watch the bill.

**Staff Recommendation:** Staff recommends that the Board take a position of “Watch” on AB 2028, as amended June 4, 2020.

**Laws:** An act to amend Sections 11125 and 11125.7 of the Government Code, relating to public meetings.
An act to amend Sections 11125 and 11125.7 of the Government Code, relating to public meetings.

LEGISLATIVE COUNSEL’S DIGEST

AB 2028, as amended, Aguiar-Curry. State agencies: meetings.

Existing law, 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 any meeting of a state body, except as otherwise provided in that act. Existing law requires the state body to provide notice of its meeting, including specified information and a specific agenda of the meeting, as provided, to any person who requests that notice in writing and to make that notice available on the internet at least 10 days in advance of the meeting.

This bill would, except for closed sessions, require that this notice include all writings or materials provided for the noticed meeting to a member of the state body by staff of a state agency, board, or commission, or another member of the state body, that are in connection with a matter subject to discussion or consideration at the meeting. The bill would require these writings and materials to be made available on the internet website, and to people who so request in writing, on the same day as they are provided to members of the state body or at least 48 hours in advance of the meeting, whichever is earlier. The bill would provide that a state body may only distribute or
discuss these writings or materials at a meeting of the state body if it has complied with these requirements. The bill would except writings or materials relating to matters to be discussed in a closed session from its requirements and would authorize a state body to post and provide additional time-sensitive materials related to certain active legislation, as specified, as they become available, after the prescribed deadlines. The bill would specify that its provisions do not authorize a state body to remove writings and materials from an internet website.

Existing law requires that a state body provide an opportunity for members of the public to directly address the body on each agenda item. Existing law exempts from this requirement, among other things, an agenda item that has already been considered by a committee composed exclusively of members of the state body at a public meeting where members of the public were afforded an opportunity to address the committee on the item.

This bill would delete this exception, thereby making the requirement to provide an opportunity to address the state body applicable to an agenda item for which the public had an opportunity to address it at a public meeting of a committee of the state body.


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

SECTION 1. The Legislature finds and declares the following:

(a) The Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) (hereafter “Bagley-Keene”) was intended to implement Section 3 of Article I of the California Constitution, which states in part, “The people have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.”

(b) Bagley-Keene was written to protect public meetings and public notice and to ensure the transparency of actions taken by state agencies, boards, and commissions.

(c) Californians have the right to participate in state body deliberations. This includes the public’s ability to comment on all agenda items discussed at a meeting of the state body, regardless
of whether an item has been discussed previously in a committee
of the state body.
(d) The purpose of public notice is so that state bodies give the
public adequate time for review of the substance of a state body
meeting and for comment.
(e) Public notice must also include any writings or materials
provided by a state body’s staff or by a member of the state body
to other members of the state body for a noticed meeting of the
body held at least 10 days prior to the meeting.
(f) Bagley-Keene affirms these rights by stating in Section 11120
of the Government Code, “The people of this state do not yield
their sovereignty to the agencies which serve them. The people,
in delegating authority, do not give their public servants the right
to decide what is good for the people to know and what is not good
for them to know. The people insist on remaining informed so that
they may retain control over the instruments they have created.”

SEC. 2. Section 11125 of the Government Code is amended
to read:
11125. (a) The state body shall provide notice of its meeting
to any person who requests that notice in writing. Notice shall be
given and also made available on the internet website at least 10
days in advance of the meeting, and shall include the name,
address, and telephone number of any person who can provide
further information prior to the meeting, but need not include a
list of witnesses expected to appear at the meeting. The written
notice shall additionally include the address of the internet website
where notices required by this article are made available.
(b) The notice of a meeting of a body that is a state body shall
include a specific agenda for the meeting, containing a brief
description of the items of business to be transacted or discussed
in either open or closed session. A brief general description of an
item generally need not exceed 20 words. A description of an item
to be transacted or discussed in closed session shall include a
citation of the specific statutory authority under which a closed
session is being held. No item shall be added to the agenda
subsequent to the provision of this notice, unless otherwise
permitted by this article.
(c) (1) Except as otherwise provided in paragraph (4), any
notice provided pursuant to subdivision (a) shall include all
writings or materials provided for the noticed meeting to a member
of the state body by the staff of a state agency, board, or
commission, or another member of the state body, that are in
connection with a matter subject to discussion or consideration at
the meeting.

(2) The writings or materials described in paragraph (1) shall
be made available on the internet at least 10 days in advance of
the meeting, website, and to any person who requests that notice
in writing, the writings or materials in writing, on the same day
as the dissemination of the writings and materials to members of
the state body, or at least 48 hours in advance of the meeting,
whichever is earlier.

(3) A state body may distribute or discuss writings or materials
described in paragraph (1) at a meeting of the state body only if it
has complied with this subdivision.

(4) This subdivision does not apply to writings or materials
prepared for a matter to be discussed in a closed session of the
state body.

(5) If the writings or materials described in paragraph (1) on
an agenda for discussion at a meeting of the state body are related
to legislation that is before the Legislature in a current legislative
session, a state body is entitled to post online, and shall provide
upon request, additional materials related to that active legislation
with additional time-sensitive information as it becomes available
after the deadlines in this subdivision. The state body shall make
clear what date the new or changed writings or materials are
posted and, when applicable, what changes have been made in
materials already posted.

(6) This subdivision does not authorize state bodies to remove
any of the writings or materials described in paragraph (1) from
the internet website.

(d) Notice of a meeting of a state body that complies with this
section shall also constitute notice of a meeting of an advisory
body of that state body, provided that the business to be discussed
by the advisory body is covered by the notice of the meeting of
the state body, provided that the specific time and place of the
advisory body’s meeting is announced during the open and public
state body’s meeting, and provided that the advisory body’s
meeting is conducted within a reasonable time of, and nearby, the
meeting of the state body.
(e) A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings. In addition, at the state body’s discretion, a person may request, and may be provided, notice of only those meetings of a state body at which a particular subject or subjects specified in the request will be discussed.

(f) A request for notice of more than one meeting of a state body shall be subject to the provisions of Section 14911.

(g) The notice shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by any person with a disability. The notice shall include information regarding how, to whom, and by when a request for any disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires these aids or services in order to participate in the public meeting.

SEC. 3. Section 11125.7 of the Government Code is amended to read:

11125.7. (a) Except as otherwise provided in this section, the state body shall provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body’s discussion or consideration of the item. Every notice for a special meeting at which action is proposed to be taken on an item shall provide an opportunity for members of the public to directly address the state body concerning that item prior to action on the item. In addition, the notice requirement of Section 11125 shall not preclude the acceptance of testimony at meetings, other than emergency meetings, from members of the public if no action is taken by the state body at the same meeting on matters brought before the body by members of the public.

(b) The state body may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public comment on particular issues and for each individual speaker.

(c) (1) Notwithstanding subdivision (b), when a state body limits time for public comment the state body shall provide at least twice the allotted time to a member of the public who utilizes a
translator to ensure that non-English speakers receive the same
opportunity to directly address the state body.

(2) Paragraph (1) shall not apply if the state body utilizes
simultaneous translation equipment in a manner that allows the
state body to hear the translated public testimony simultaneously.

(d) The state body shall not prohibit public criticism of the
policies, programs, or services of the state body, or of the acts or
omissions of the state body. Nothing in this subdivision shall confer
any privilege or protection for expression beyond that otherwise
provided by law.

(e) This section is not applicable to any of the following:

(1) Closed sessions held pursuant to Section 11126.

(2) Decisions regarding proceedings held pursuant to Chapter
5 (commencing with Section 11500), relating to administrative
adjudication, or to the conduct of those proceedings.

(3) Hearings conducted by the California Victim Compensation
Board pursuant to Sections 13963 and 13963.1.

(4) Agenda items that involve decisions of the Public Utilities
Commission regarding adjudicatory hearings held pursuant to
Chapter 9 (commencing with Section 1701) of Part 1 of Division
1 of the Public Utilities Code. For all other agenda items, the
commission shall provide members of the public, other than those
who have already participated in the proceedings underlying the
agenda item, an opportunity to directly address the commission
before or during the commission’s consideration of the item.
AB 2113 (Introduced by Assembly Member Low, D-Cupertino; Coauthors: Assembly Members Carrillo, D-Los Angeles; Chiu, D-San Francisco; Medina, D-Riverside; Blanca Rubio, D-West Covina; and Gonzalez, D-San Diego) Refugees, asylees, and immigrants: professional licensing.

Location: 6/17/2020 – Senate Committee on Rules
Introduced: 2/6/2020
Amended: 5/4/2020 (Revised 6/4/2020 as to the co-authors)
Board Position: Watch (as of 5/7/2020)
Board Staff Analysis: 6/17/2020

Bill Summary: This bill would add Section 135.4 to the Business and Professions Code. This new section would require that a board within the Department of Consumer Affairs “shall expedite, and may assist, the initial licensure process” for applicants who supply satisfactory evidence that they have been admitted to the United States as a refugee or granted political asylum under specified provisions of the United States Code or who have a special immigrant visa (SIV) that has been granted a status under specified provisions of the Public Law.

Staff Comment: Existing Section 115.4 of the Business and Professions Code uses this same “shall expedite, and may assist, the initial licensure process” for applicants who were honorably discharged from active duty military service. Existing Section 115.5 of the Business and Professions Code states “shall expedite the initial licensure process” for applicants who are spouses or domestic partners of active duty military members. Under these sections, the applicants must still meet all of the requirements for licensure specified in the applicable licensing act.

This bill would provide for the same expedited licensure process for refugees, individuals granted political asylum, and individuals with an SIV. As with the provisions of law pertaining to former military members and military spouses, applicants under this provision would still have to meet all of the requirements for licensure specified in the Professional Engineers Act, the Professional Land Surveyors’ Act, and the Geologist and Geophysicist Act.

AB 2113 was amended on May 4, 2020, to add a subdivision that specifically states “(b) Nothing in this section shall be construed as changing existing licensure requirements. A person applying for expedited licensure under subdivision (a) shall meet all applicable statutory and regulatory licensure requirements.” This amendment does not alter the process or have any effect on how the Board would handle applications under this section of law; it simply makes it clear that anyone apply under this section must still meet all licensure requirements. As such, there is no need for the Board to take any action on this bill.

Staff Recommendation: No action needed at this time.

Laws: An act to add Section 134.5 to the Business and Professions Code, relating to professions and vocations.
ASSEMBLY BILL No. 2113

Introduced by Assembly Member Low
(Coauthors: Assembly Members Carrillo, Chiu, Medina, and Blanca Rubio; Blanca Rubio, and Gonzalez)

February 6, 2020

An act to add Section 135.4 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL’S DIGEST

AB 2113, as amended, Low. Refugees, asylees, and immigrants: professional licensing.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law prohibits an entity within the department from denying licensure to an applicant based upon their citizenship or immigration status.

This bill, notwithstanding any other law, would require a board within the department to expedite, and authorize it to assist, the initial licensure process for an applicant who supplies satisfactory evidence to the board that they are a refugee, have been granted political asylum, or have a special immigrant visa, as specified. The bill would authorize a board to adopt regulations necessary to administer these provisions.

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

SECTION 1. Section 135.4 is added to the Business and Professions Code, to read:

135.4. (a) Notwithstanding any other law, a board within the department shall expedite, and may assist, the initial licensure process for an applicant who supplies satisfactory evidence to the board that they have been admitted to the United States as a refugee under Section 1157 of Title 8 of the United States Code, have been granted political asylum by the Secretary of Homeland Security or the Attorney General of the United States pursuant to Section 1158 of Title 8 of the United States Code, or they have a special immigrant visa (SIV) that has been granted a status under Section 1244 of Public Law 110-181, under Public Law 109-163, or under Section 602(b) of Title VI of Division F of Public Law 111-8.

(b) Nothing in this section shall be construed as changing existing licensure requirements. A person applying for expedited licensure under subdivision (a) shall meet all applicable statutory and regulatory licensure requirements.

(c) A board may adopt regulations necessary to administer this section.

REVISIONS:

Heading—Lines 2 and 3.
AB 2185 (Patterson, R-Fresno, and Gallagher, R-Chino)
Professions and vocations: applicants licensed in other states: reciprocity.

Status: 5/14/2020 – Re-referred to Assembly Committee on Business and Professions after amendment.
Location: 6/17/2020 – Assembly Committee on Business and Professions
Introduced: 2/11/2020
Amended: 5/14/2020
Board Position: Watch, as amended 3/16/2020 (as of 5/7/2020)
Board Staff Analysis: 6/17/2020

Bill Summary: This bill would add Section 117 to the Business and Professions Code. This new section would require boards within the Department of Consumer Affairs to issue a license to an applicant if the applicant meets all of the following requirements:

1. The person is either (a) a resident of California, or (b) is married to or in a domestic partnership or other legal union with an active duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active duty military orders.
2. The person is licensed in good standing in another state in the discipline and practice level for which the person is applying.
3. The person has held the license and has practiced in the licensed filed in the other state for at least three of the last five years.
4. The person has not had any disciplinary actions imposed against their license and has not had a license in the discipline for which the person is applying revoked or suspended in any other state.
5. The person submits verification that they have satisfied all education, work, examination, and other requirements for licensure in the other state in which the person holds the license in good standing.
6. The person would not be denied licensure under any provision of the Business and Professions Code, including, but not limited to, disqualification for criminal history relating to the license sought.
7. The person pays all applicable fees for licensure.
8. If required by the Board, the person has passed a California jurisprudence and ethics examination or other examination otherwise required for applicants by the board on the statutes and regulations relating to the license.

This bill also provides that this new section shall not supersede any other reciprocity agreement, compact membership, or statute that provides reciprocity for a person who holds a valid license in another state.

Staff Comment: The Board’s three licensing acts contain provisions that address the requirements for individuals applying for licensure in California who hold a license in the same discipline in another state (Business and Professions Code sections 6759, 7847, and 8748). These existing provisions require that the applicant hold a current license in another state or country and meet all of the qualifications for licensure specified in the statutes and regulations, which are generally the same as items 2 and 4-8 specified above in the new section. However, the Board’s existing sections of law do not require that the applicant be a resident of California or a military spouse nor do they require the applicant to have practiced in the other state for three of the last five years. As such, this new section would actually add more requirements to an applicant than the Board’s laws currently impose. The new section would provide that it would not supersede existing statutes that provide for reciprocity; therefore, the Board’s existing laws would still apply.
At its March 12, 2020, meeting, the Board took a position of Oppose Unless Amended to exempt the Board because the Board’s existing statutes provide the correct balance between the need for comity/reciprocity licensure and the need to protect the health, safety, welfare, and property of the public.

This bill was amended on March 16, 2020, to remove the provision that it would apply to all residents; as such, the bill now only applies to military spouses. Additionally, a provision was added to the bill that states, “This section shall not apply to the Board of Registered Nursing, any board that has a mandatory license portability requirement in statute, and any board that currently authorizes license portability as a component of qualifying for licensure in this state.” According to the author’s staff, the intent of this new language is to exempt any board that already provides for “license portability,” such as through comity or reciprocity. Since our Board already provides for licensure through comity, this new language would exempt the Board. As such, it is likely not necessary for the Board to seek an amendment to be specifically exempted. At its May 7, 2020, meeting, the Board changed its position to “Watch” based on the amendments made on March 16, 2020.

The bill was amended on May 13, 2020. The amendments removed the provisions that would allow the Board to require the applicants to take and pass any state-specific examinations beyond those dealing with California jurisprudence or ethics or and changed the definition of “license portability” in such a way as to remove the ability of the Board to require that applicants meet any state-specific licensure requirements as long as the license issued by the other state is in good standing and was issued based on “…requirements deemed similar to the standards required for licensure in this state….”

AB 2185 was scheduled to be heard in the Assembly Business and Professions Committee on May 21, 2020. The Committee released its analysis of the bill on May 18, and the analysis raised several policy concerns with the bill. Subsequently, the bill was withdrawn from consideration prior to the hearing and is not currently scheduled to be heard.

Staff concurs with the concerns raised in the Assembly Committee analysis, which is included for the Board’s reference. Staff believes the latest amendments take away the Board’s ability to ensure that individuals seeking licensure in California are appropriately qualified to practice professional engineering, land surveying, geology, or geophysics with due regard to the protection of the health, safety, welfare, and property of the people of California. As such, staff is recommending that the Board take an “Oppose Unless Amended” position on this bill to exempt the Board because the Board’s existing statutes provide the correct balance between the need for comity/reciprocity licensure and the need to protect the health, safety, welfare, and property of the public.

**Staff Recommendation:** Staff recommends the Board take a position of OPPOSE UNLESS AMENDED on AB 2185, as amended May 13, 2020 to exempt the Board because the Board’s existing statutes provide the correct balance between the need for comity/reciprocity licensure and the need to protect the health, safety, welfare, and property of the public.

**Laws:** An act to add Section 117 to the Business and Professions Code, relating to professions and vocations.
An act to add Section 117 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL’S DIGEST

AB 2185, as amended, Patterson. Professions and vocations: applicants licensed in other states: reciprocity.

Existing law establishes the Department of Consumer Affairs, which is composed of boards that license and regulate various professions and vocations to ensure that certain businesses and professions that have potential impact upon the public health, safety, and welfare are adequately regulated. Existing law makes a violation of some of those licensure provisions a crime.

Existing law authorizes certain boards, for purposes of reciprocity, to waive examination or other requirements and issue a license to an applicant who holds a valid license in another state and meets specified other requirements, including, among others, a license to practice veterinary medicine.

This bill, with exceptions, would require each board within the department to issue a license to an applicant in the discipline for which the applicant applies if the person meets certain requirements, including, but not limited to, that the person is married to, or is in a domestic partnership or other legal union with, an active duty member of the
Armed Forces of the United States, who is assigned to a duty station in this state, the person currently holds a license in good standing in another state in the discipline and practice level and with the same scope of practice for which the person applies, the person has held the license and has practiced in the licensed field in another state or jurisdiction for at least 3 of the last 5 years, and the person pays all applicable fees and complies with any applicable surety bond and insurance requirements. By expanding the applicants who are authorized to be licensed and who may be prosecuted for a violation of those licensure provisions constituting a crime, the bill would impose a state-mandated 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 117 is added to the Business and Professions Code, to read:

117. (a) Notwithstanding any law, each board within the department shall issue a license in the discipline for which the applicant applies if the applicant meets all of the following requirements:

1. The person is married to, or is in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.

2. The person currently holds a license in good standing in another state in the discipline and practice level and with the same scope of practice for which the person is applying.

3. The person has held the license and has practiced in the licensed field in another state or jurisdiction for at least three of the last five years.

4. The person has not had any disciplinary actions imposed against their license and has not had a license in the discipline for...
which the person is applying revoked or suspended in any other state.

(5) The person submits verification that they have satisfied all education, work, examination, and other requirements for gained licensure in the other state in which the person holds a license in good standing and those requirements are similar to the standards required for licensure in this state, and holds that license in good standing, and those requirements are deemed similar to the standards required for licensure in this state by the appropriate licensing board.

(6) The person would not be denied licensure under any other provision of this code, including, but not limited to, disqualification for criminal history relating to the license sought.

(7) The person pays all applicable fees for licensure and complies with any applicable surety bond and insurance requirements.

(8) If required by the board, the person has passed a California jurisprudence and ethics examination or other examination otherwise required for applicants by the board on the statutes and regulations relating to the license.

(b) This section shall not supersede any other reciprocity agreement, compact membership, or statute that provides reciprocity for a person who holds a valid license in another state.

(c) This section shall not apply to the Board of Registered Nursing, Nursing or any other board that currently authorizes license portability as a component of qualifying for licensure in this state, and the Board of Behavioral Sciences or any other board that has a mandatory license portability requirement in statute, and any board that currently authorizes license portability as a component of qualifying for licensure in this state.

(d) Notwithstanding any law, the fees, fines, penalties, or other money received by a board pursuant to this section shall not be continuously appropriated and shall be available only upon appropriation by the legislature.

SEC. 2. 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.
SUBJECT: Professions and vocations: applicants licensed in other states: reciprocity.

SUMMARY: Requires each board within the Department of Consumer Affairs (DCA) to issue a license to any applicant who is the spouse or partner of an active duty member of the Armed Forces if the applicant is licensed in another state.

EXISTING LAW:

1) Establishes the DCA within the Business, Consumer Services, and Housing Agency. (Business and Professions Code (BPC) § 100)

2) Requires that any licensee or registrant of any board, commission, or bureau within the DCA whose license expired while the licensee or registrant was on active duty as a member of the California National Guard or the United States Armed Forces, may, upon application, reinstate their license or registration without examination or penalty. (BPC § 114)

3) Requires every board within the DCA to waive the renewal fees, continuing education requirements, and other renewal requirements as determined by the board, for any licensee or registrant called to active duty as a member of the United States Armed Forces or the California National Guard. (BPC § 114.3)

4) Requires every board within the DCA to inquire in its license applications if the applicant is serving in, or has previously served in, the military, and if a board’s governing law authorizes veterans to apply military experience and training towards licensure requirements, to post information on the board’s website about the ability of veteran applicants to apply military experience and training towards licensure requirements. (BPC § 114.5)

5) Requires a board under the DCA to expedite, and states that the board may assist, the initial licensure process for an applicant who supplies satisfactory evidence to the board that the applicant has served as an active duty member of the Armed Forces of the United States and was honorably discharged. (BPC § 115.4)

6) Requires a board under the DCA to expedite the licensure process for an applicant who is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders; and who holds a current license in another state, district, or territory of the United States in the profession or vocation for which they are seeking a license from the board. (BPC § 115.5)

7) Requires seven boards within the DCA to grant temporary licenses to applicants who are married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces and who holds a current, active, and unrestricted license in another state. (BPC § 115.6)
THIS BILL:

1) Requires every board within the DCA to issue a license to an applicant who meets all of the following requirements:

   a) The applicant is married to, or is in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active duty military orders.

   b) The applicant currently holds a license in good standing in another state in the discipline and practice level and with the same scope of practice for which the person is applying.

   c) The applicant has held the license and has practiced in the licensed field in another state or jurisdiction for at least three of the last five years.

   d) The applicant has not had any disciplinary actions imposed against their license and has not had a license in the discipline for which the person is applying revoked or suspended in any other state.

   e) The applicant submits verification that they have gained licensure in the other state and holds that license in good standing, and those requirements are deemed similar to the standards required for licensure in this state by the appropriate licensing board.

   f) The applicant would not be denied licensure under any other provision of the law, including, but not limited to, disqualification for criminal history relating to the license.

   g) The applicant pays all applicable fees for licensure and complies with any applicable surety bond and insurance requirements.

   h) If required by the board, the applicant has passed a California jurisprudence and ethics examination otherwise required for applicants by the board on the statutes and regulations relating to the license.

FISCAL EFFECT: Unknown; this bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by the R Street Institute. According to the author:

AB 2185 will be a significant help to our military community and their licensed spouses. By offering licensure by endorsement to these individuals, it will ease the already stressful and costly process of moving to a new state. This will help military spouses get to work and stay in work, rather than being unemployed or underemployed when stationed in California because of licensing delays and difficulties.

Background.

According to the National Conference of State Legislatures (NCSL), there are approximately 478,963 active duty military spouses or partners living in the United States today. In recognition of the tremendous sacrifices made by both military service members and their families, policymakers have routinely pursued opportunities to help provide these individuals with
economic opportunity. In recent years, this has included examination of the potential to remove barriers to entry into professions and vocations requiring licensure in California through the DCA.

The Syracuse University Institute for Veterans and Military Families found that up to 35 percent of military spouses are employed in fields requiring licensure. Because each state possesses its own licensing regime for professional occupations, military family members are required to obtain a new license each time they move states, with one-third of military spouses reportedly moving four or more times while their partner is active duty. Because of the barriers encountered by military family members who seek to relocate their licensed work to a new state, it is understood that continuing to work in their field is often challenging if not impossible.

Currently, statute provides for several accommodations of both military family license applicants. Boards are required to expedite licensure for the spouses and partners of active duty military. Statute also provides that temporary licenses be provided to military spouses and partners in a handful of occupations and professions. Specifically, the following licenses may be granted temporarily to military family members pending determination that the applicant qualifies for a permanent license:

1) Registered nurses licensed by the Board of Registered Nursing.

1) Vocational nurse licenses issued by the Board of Vocational Nursing and Psychiatric Technicians of the State of California.

2) Psychiatric technician licenses issued by the Board of Vocational Nursing and Psychiatric Technicians of the State of California.

3) Speech-language pathologist licenses issued by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.

4) Audiologist licenses issued by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.

5) Veterinarian licenses issued by the Veterinary Medical Board.

6) All licenses issued by the Board for Professional Engineers, Land Surveyors, and Geologists.

7) All licenses issued by the Medical Board of California.

8) All licenses issued by the Podiatric Medical Board of California.

These temporary licenses are available to applicants who supply evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders. The applicants are required to hold a current, active, and unrestricted license that confers upon the applicant the authority to practice, in another state, district, or territory of the United States, the profession or vocation for which the applicant seeks a temporary license from the board.
To qualify for temporary licensure, the military family member submits an application to the board that includes a signed affidavit attesting to the fact that the applicant meets all of the requirements for the temporary license and that the information submitted in the application is accurate, to the best of the applicant’s knowledge. The application also includes written verification from the applicant’s original licensing jurisdiction stating that the applicant’s license is in good standing in that jurisdiction. The applicant may not have committed an act in any jurisdiction that would have constituted grounds for denial, suspension, or revocation of the license, and the applicant cannot have been disciplined by a licensing entity in another jurisdiction or have been the subject of an unresolved complaint, review procedure, or disciplinary proceeding conducted by a licensing entity in another jurisdiction.

Under this bill, applicants who are the spouses or partners of active duty members of the military would be able to obtain any license issued by a board under the DCA (except for the Board of Registered Nursing or the Board of Behavioral Sciences) if they possess a license in another state and meet other requirements. This license would be full and permanent. Boards would be authorized to require the applicant to pass a California jurisprudence and ethics examination otherwise required for applicants by the board on the statutes and regulations relating to the license.

**Current Related Legislation.** AB 3045 (Gray) would similarly require regulatory boards to grant licenses to applicants who are either honorably discharged veterans or are the spouse or partner of an active duty member of the Armed Forces in cases where the applicant holds a current, active, and unrestricted license in another state. *This bill is pending in the Assembly Committee on Business and Professions.*

**Prior Related Legislation.** SB 1226 (Correa, Chapter 657, Statutes of 2014) requires the DCA to expedite applications from honorable discharged veterans and allows in-lieu course requirements for private security officers.

AB 1904 (Block, Chapter 399, Statutes of 2012) provides for the expedited licensure of military spouses.

**ARGUMENTS IN SUPPORT:**

The **R Street Institute** is the sponsor of this bill. According to the R Street Institute, “the state ought not to impose the additional hurdle of requiring qualified military spouses to navigate the costly, time-consuming and bureaucratic process of earning a license from scratch. AB 2185 offers a simple fix that will in no way endanger public safety, but will help those who are on the front lines of the nation’s defenses avoid financial hardship.”

**ARGUMENTS IN OPPOSITION:**

The **California Landscape Contractors Association** (CLCA) opposes this bill. According to the CLCA, “CLCA is concerned that your bill will result in out-of-state contractors not being fully informed of California laws and business practices. These requirements are covered in DCA license exams which your bill will waive. CLCA believes that for the DCA to successfully execute its mission to protect Californians from bad actors, all licenses should be subject to the same educational and testing requirements to ensure that laws and required business practices are fully complied with.”
POLICY ISSUE(S) FOR CONSIDERATION:

Under current law, certain boards are required to grant temporary licenses to applicants who are the spouses or partners of active servicemembers. During the 12 months that the temporary license grants practice privileges, the applicant is expected to complete the permanent license process. Meanwhile, statute requires all boards to expedite the licensure process for this population.

This bill would go much further than what has already been implemented for certain boards under the DCA. In addition to being a full, permanent license, the licensure granted under the bill would require only that the license held in another state be “deemed similar to the standards required for licensure in this state by the appropriate licensing board.” This term is vague and could arguably result in applicants who received a license in a board with a significantly lower fitness threshold becoming licensed in California, thus bypassing public protections.

The bill also requires that the license held in another state provide “the same scope of practice for which the person is applying.” Professional scope of practice is a dynamic and complex topic and each state often possesses numerous nuances and unique provisions when it comes to what activities a professional is authorized to engage in. Absent extensive discussions with the boards under the DCA, it is unlikely that this bill can be clearly and thoughtfully implemented in the manner intended. It may be advisable to defer this bill’s discussion to the future to ensure that appropriate policies are effectuated as the state continues to work to support military families.

REGISTERED SUPPORT:

R Street Institute (Sponsor)
Beale Military Liaison Council
California Association for Health Services at Home
California Chiropractic Association
California Defense Community Alliance
City of Monterey
City of Salinas
San Diego Military Advisory Council
United States Department of Defense (if amended)
Western Electrical Contractors Association

REGISTERED OPPOSITION:

California Landscape Contractor’s Association

Analysis Prepared by: Robert Sumner / B. & P. / (916) 319-3301
AB 2549 (Salas, D-Bakersfield; co-author: Gonzalez, D-San Diego)
Department of Consumer Affairs: temporary licenses.

Location: 6/17/2020 – Senate Committee on Rules
 Introduced: 2/19/2020
Amended: 5/18/2020 (Revised 6/4/2020 as to co-author)
Board Position: No position (as of 5/7/2020)
Board Staff Analysis: 6/17/2020

Bill Summary: This bill would amend Sections 115.6 and 5132 of the Business and Professions Code. Existing Section 115.6 requires that certain boards within the Department of Consumer Affairs issue a temporary license for certain license types if the applicant meets the requirements specified in the section. All licenses issued by this Board are included. This bill would add other license types regulated by the Dental Board of California, the Dental Hygiene Board of California, the California State Board of Pharmacy, and the California Board of Accountancy. [Section 5132 relates specifically to the California Board of Accountancy.]

Staff Comment: This bill does not make any changes to the provisions of existing law that apply to this Board and the license types it regulates. This bill is being brought to the Board’s attention for informational purposes.

This bill was amended on March 12, 2020, to include additional boards and to indicate that the temporary license must be issued within 30 days of the applicant meeting all the requirements specified in the statute. It would also provide that the temporary license would become a standard license 12 months after issuance if the applicant meets all the requirements for licensure. For the licenses issued by this Board, there are no differences between the requirements for a temporary license and for a standard license. If we were to receive applications under this section, we would issue a “standard” license initially.

The bill was again amended on May 18, 2020, to require boards to submit to the Department of Consumer Affairs for approval draft regulations as necessary to administer this section by January 1, 2022, and to adopt the regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Additionally, a subdivision was added to indicate that this section would not apply to a board that has a process by which an out-of-state applicant in good standing who meets the requirements to be considered a military spouse is able to receive expedited, temporary authorization to practice while meeting state-specific requirements for at least one year.

Neither of the amendments made in the May 18, 2020, version of the bill affect the Board. The Board’s existing statutes and regulations, along with the provisions of this statute, are sufficient for the Board to administer this section; as such, it is not necessary for the Board to adopt additional regulations. Furthermore, the Board does not have its own sections of law relating to issuing a temporary license to military spouses and follows the provisions of this section.

Staff Recommendation: No action needed at this time.

Laws: An act to amend Sections 115.6 and 5132 of the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.
An act to amend Sections 115.6 and 5132 of the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.

LEGISLATIVE COUNSEL’S DIGEST

AB 2549, as amended, Salas. Department of Consumer Affairs: temporary licenses.

Under existing law, the Department of Consumer Affairs, which is under the control of the Director of Consumer Affairs, is comprised of various boards, as defined, that license and regulate various professions and vocations. Existing law requires a board within the department to issue, after appropriate investigation, certain types of temporary licenses to an applicant if the applicant meets specified requirements, including that the applicant supplies evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders and the applicant holds a current, active, and unrestricted license that confers upon the applicant the authority to practice, in another state, district, or territory of the United States, the profession or vocation for which the applicant seeks a temporary license from the
board. Existing law authorizes a board to adopt regulations necessary to administer these provisions.

This bill would expand that requirement to issue temporary licenses to include licenses issued by the Veterinary Medical Board, the Dental Board of California, the Dental Hygiene Board of California, the California State Board of Pharmacy, the State Board of Barbering and Cosmetology, the Board of Psychology, the California Board of Occupational Therapy, the Physical Therapy Board of California, and the California Board of Accountancy. The bill would require a board to issue a temporary license within 30 days of receiving the required documentation. The bill would specifically direct revenues from fees for temporary licenses issued by the California Board of Accountancy to be credited to the Accountancy Fund, a continuously appropriated fund. By establishing a new source of revenue for a continuously appropriated fund, the bill would make an appropriation. The bill would require a temporary license to be converted to a standard license if, within 12 months of issuance, the applicant demonstrates having met all of the requirements for a standard license or submits documents demonstrating that the requirements to obtain the out-of-state license were substantially equivalent to the requirements for a standard license as determined by the board in order to protect the public. The bill would require a board to adopt regulations necessary to administer these provisions and to publish regulations on its internet website and in application materials by January 1, 2022. The bill would exempt from these provisions a board that has a process in place by which an out-of-state licensed applicant in good standing who is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States is able to receive expedited, temporary authorization to practice while meeting state-specific requirements for a period of at least one year.


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

1 SECTION 1. Section 115.6 of the Business and Professions
2 Code is amended to read:
3 115.6. (a) A—Except as provided in subdivision (h), a board
4 within the department shall, after appropriate investigation, issue
the following eligible temporary licenses to an applicant within
30 days of receiving the required documentation pursuant to
meeting the requirements set forth in subdivision (c):

(1) Registered nurse license by the Board of Registered Nursing.
(2) Vocational nurse license issued by the Board of Vocational
Nursing and Psychiatric Technicians of the State of California.
(3) Psychiatric technician license issued by the Board of
Vocational Nursing and Psychiatric Technicians of the State of
California.
(4) Speech-language pathologist license issued by the
Speech-Language Pathology and Audiology and Hearing Aid
Dispensers Board.
(5) Audiologist license issued by the Speech-Language
Pathology and Audiology and Hearing Aid Dispensers Board.
(6) All licenses issued by the Veterinary Medical Board.
(7) All licenses issued by the Board for Professional Engineers,
Land Surveyors, and Geologists.
(8) All licenses issued by the Medical Board of California.
(9) All licenses issued by the Podiatric Medical Board of
California.
(10) All licenses issued by the Dental Board of California.
(11) All licenses issued by the Dental Hygiene Board of
California.
(12) All licenses issued by the California State Board of
Pharmacy.
(13) All licenses issued by the State Board of Barbering and
Cosmetology.
(14) All licenses issued by the Board of Psychology.
(15) All licenses issued by the California Board of Occupational
Therapy.
(16) All licenses issued by the Physical Therapy Board of
California.
(17) All licenses issued by the California Board of Accountancy.

Revenues from fees for temporary licenses issued under this
paragraph shall be credited to the Accountancy Fund in accordance
with Section 5132.

(b) The board may conduct an investigation of an applicant for
purposes of denying or revoking a temporary license issued
pursuant to this section. This investigation may include a criminal
background check.
(c) An applicant seeking a temporary license pursuant to this section shall meet the following requirements:

1. The applicant shall supply evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.

2. The applicant shall hold a current, active, and unrestricted license that confers upon the applicant the authority to practice, in another state, district, or territory of the United States, the profession or vocation for which the applicant seeks a temporary license from the board.

3. The applicant shall submit an application to the board that shall include a signed affidavit attesting to the fact that the applicant meets all of the requirements for the temporary license and that the information submitted in the application is accurate, to the best of the applicant’s knowledge. The application shall also include written verification from the applicant’s original licensing jurisdiction stating that the applicant’s license is in good standing in that jurisdiction.

4. The applicant shall not have committed an act in any jurisdiction that would have constituted grounds for denial, suspension, or revocation of the license under this code at the time the act was committed. A violation of this paragraph may be grounds for the denial or revocation of a temporary license issued by the board.

5. The applicant shall not have been disciplined by a licensing entity in another jurisdiction and shall not be the subject of an unresolved complaint, review procedure, or disciplinary proceeding conducted by a licensing entity in another jurisdiction.

6. The applicant shall, upon request by a board, furnish a full set of fingerprints for purposes of conducting a criminal background check.

(d) A temporary license issued pursuant to this section may be immediately terminated upon a finding that the temporary licenseholder failed to meet any of the requirements described in subdivision (c) or provided substantively inaccurate information that would affect the person’s eligibility for temporary licensure. Upon termination of the temporary license, the board shall issue a notice of termination that shall require the temporary
licenseholder to immediately cease the practice of the licensed profession upon receipt.

(e) An applicant seeking a temporary license as a civil engineer, geotechnical engineer, structural engineer, land surveyor, professional geologist, professional geophysicist, certified engineering geologist, or certified hydrogeologist pursuant to this section shall successfully pass the appropriate California-specific examination or examinations required for licensure in those respective professions by the Board for Professional Engineers, Land Surveyors, and Geologists.

(f) A temporary license issued pursuant to this section shall expire 12 months after issuance, upon issuance of an expedited license pursuant to Section 115.5, a license by endorsement, or upon denial of the application for expedited licensure by the board, whichever occurs first.

(g) A temporary license issued pursuant to this section shall be converted to a standard license if, within 12 months of issuance, the applicant demonstrates having met all of the requirements for a standard license or submits documents demonstrating that the requirements to obtain the out-of-state license were substantially equivalent to the requirements for a standard license as determined by the board in order to protect the public.

(h) A board shall adopt submit to the department for approval draft regulations necessary to administer this section and shall publish these regulations on its internet website and in application materials by January 1, 2022. These regulations shall be adopted pursuant to the Administrative Procedure Act (Chapter 3.5 commencing with Section 11340) of Part I of Division 3 of Title 2 of the Government Code).

(h) This section shall not apply to a board that has a process in place by which an out-of-state licensed applicant in good standing who is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States is able to receive expedited, temporary authorization to practice while meeting state-specific requirements for a period of at least one year.

SEC. 2. Section 5132 of the Business and Professions Code is amended to read:
5132. (a) All moneys received by the board under this chapter from any source and for any purpose and from a temporary license issued under Section 115.6 shall be accounted for and reported monthly by the board to the Controller and at the same time the moneys shall be remitted to the State Treasury to the credit of the Accountancy Fund.

(b) The secretary-treasurer of the board shall, from time to time, but not less than once each fiscal year, prepare or have prepared on their behalf, a financial report of the Accountancy Fund that contains information that the board determines is necessary for the purposes for which the board was established.

(c) The report of the Accountancy Fund, which shall be published pursuant to Section 5008, shall include the revenues and the related costs from examination, initial licensing, license renewal, citation and fine authority, and cost recovery from enforcement actions and case settlements.

REVISIONS:

Heading—Line 2.
AB 2631 (Introduced by Assembly Member Cunningham, R-San Luis Obispo; Coauthors: Assembly Members Boerner Horvath, D-Carlsbad; Fong, R-Bakersfield; Lackey, R-Palmdale; and Mayes, I-Rancho Mirage Senators Jones, R-El Cajon; and Wilk, R-Lancaster)
License fees: military partners and spouses.

Status: 3/2/2020 – Referred to Assembly Committee on Business and Professions.
Location: 6/17/2020 – Assembly Committee on Business and Professions
 Introduced: 2/20/2020
Board Position: Watch; authorized change to Oppose Unless Amended if bill is amended to require waiver of “any and all fees associated with obtaining a license” (as of 3/12/2020)
Board Staff Analysis: 6/17/2020

Bill Summary: Existing Section 115.5 of the Business and Professions Code requires that a board within the Department of Consumer Affairs expedite the licensure process for an applicant who is married to or in a domestic partnership or other legal union with an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders and who holds a current license in another state, district, or territory in the profession in which the applicant seeks a license. This bill would amend Section 115.5 to specify that a board shall not charge such an applicant an initial or original license fee.

Staff Comment: The Board charges applicants an application fee that covers the costs of processing the application and issuing the license once the applicant meets all of the qualifying requirements for licensure. The applicants also pay separate examination fees, either to the Board or to the examination vendor, that cover the costs of developing, maintaining, and administering the examination. The Board does not charge an initial or original license fee.

In prior legislative sessions, there have been bills introduced that would have required boards to waive initial application fees and initial license fees for active duty military and military spouses. However, due to concerns with the wording in the bills versus the different application/licensure processes and terminology regarding fees employed by the different boards, the bills did not pass. Although this bill currently refers to “an initial or original license fee,” which the Board does not charge, staff believes it would be prudent for the Board to have an official position of Watch on this bill in case it should be amended to include fees the Board does charge.

At its March 12, 2020, meeting, the Board took a position of “Watch” on this bill. However, the Board also authorized a change to “Oppose Unless Amended” if the bill is amended to require the Board to waive “any and all fees associated with obtaining a license” because the Board is concerned with who would be responsible for paying pass-through fees, such as those owed to the Department of Justice to conduct criminal background checks or ASBOG for the national geology examinations.

Staff Recommendation: No action needed at this time.

Laws: An act to amend Section 115.5 of the Business and Professions Code, relating to professions and vocations.
An act to amend Section 115.5 of the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL’S DIGEST

AB 2631, as introduced, Cunningham. License fees: military partners and spouses.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law provides for the issuance of reciprocal licenses in certain fields where the applicant, among other requirements, has a license to practice within that field in another jurisdiction, as specified. Existing law requires a board within the department to expedite the licensure process for an applicant who holds a current license in another jurisdiction in the same profession or vocation and who supplies satisfactory evidence of being married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active duty military orders.

This bill would prohibit a board from charging an initial or original license fee to an applicant who meets these expedited licensing requirements.
The people of the State of California do enact as follows:

SECTION 1. Section 115.5 of the Business and Professions Code is amended to read:

115.5. (a) A board within the department shall expedite the licensure process for an applicant who meets both of the following requirements:

1. Supplies evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.

2. Holds a current license in another state, district, or territory of the United States in the profession or vocation for which the applicant seeks a license from the board.

(b) A board shall not charge an applicant who meets the requirements in subdivision (a) an initial or original license fee.

(c) A board may adopt regulations necessary to administer this section.
AB 3334 (Chen, R-Brea)
Professional Land Surveyors' and Professional Engineers Acts

Status: 5/12/2020 – Re-referred to Assembly Committee on Business and Professions after amendment.
Location: 6/17/2020 – In Assembly Business and Professions Committee.
Introduced: 2/21/2020
Amended: 5/11/2020
Board Position: Oppose Unless Amended, as amended 5/4/2020 (as of 5/7/2020)
Board Staff Analysis: 6/17/2020

Bill Summary: This bill would amend Section 8726 of the Business and Professions Code, which is the section that defines land surveying. The amendments in the introduced version of the bill are non-substantive.

Staff Comment: According to the author’s office, this is a spot bill; the intent is to amend the bill to include update the definition due to technological changes in the field. The author’s staff advised that the California and Nevada Civil Engineers and Land Surveyors Association (CELSA) is the sponsor.

In January, Board staff was advised that Senator Richard Pan had decided not to move forward with Senate Bill 556, which was the bill co-sponsored by CELSA that would have added a requirement for land surveying businesses to obtain registration; the Board was opposed to this policy concept and to SB 556. Subsequently, representatives from CELSA reached out to Board staff to advise that they planned to move forward with amending Section 8726, which had been proposed in earlier versions of SB 556. The representatives indicated they plan to develop language that will clarify the definition of land surveying and would like to work with the Board and staff in developing language that would address the concerns the Board had previously expressed when definitional language was included in SB 556. We indicate our willingness to continue working with them based on the previous input and direction from the Board. We also conveyed this willingness to work on the bill to the author’s staff, which was graciously accepted.

At its March 12, 2020, meeting, the Board took a position of “Watch” on AB 3334, as introduced, and directed staff to work with the author and sponsor on any proposed amendments in order to address the concerns previously expressed by the Board regarding SB 556. Board staff has had preliminary discussions with the sponsor.

AB 3334 was amended on May 4, 2020. This version proposes to amend Section 6731.1, which contains the definition of that portion of civil engineering referred to as “engineering surveying”; Section 8726, which contains the definition of land surveying; and Section 8729, which deals with land surveying businesses.

The proposed changes to Sections 6731.1 and 8726 are very similar to ones proposed in various versions of SB 556. At the time, the Board had concerns with the wording and confusion that could be caused in determining what constitutes the practices of engineering surveying and land surveying. However, the Board believed its concerns could be addressed with some amendments and had directed Board staff to work with the sponsors. SB 556 was then amended to remove the definitional sections, so the changes recommended by Board staff did not have the opportunity to be fully discussed. In current discussions between Board staff and CELSA, CELSA has indicated they are willing to consider presenting further amendments to the author to address the concerns with the language as amended into AB 3334.
The change proposed to Section 8729 in AB 3334 would remove the subdivision that allows for non-land surveying businesses to contract with someone legally authorized to perform land surveying. This subdivision is often misread and, therefore, misinterpreted, as allowing non-land surveying businesses to offer (contract for) land surveying services and then hire or sub-contract with a person legally authorized to perform land surveying. This misinterpretation seems to be at the heart of the concerns of CELSA, and many others, relating to unlicensed individuals operating businesses through which they offer land surveying services. As such, staff believes this amendment would help to reduce the confusion over who may offer land surveying services.

The bill was again amended on May 11, 2020, to address nearly all of the Board’s concerns. However, there is one issue still remaining. The Board had requested that the term “remote sensing” and the definition of “remote sensing” be removed from subdivision (b) of Sections 6731.1 and 8726. CELSA indicated that it was not yet ready to remove the term and associated definition but was willing to continue discussing the Board’s concerns with their inclusion in the definitions of engineering surveying and land surveying.

The bill was going to be heard at the end of May in the Assembly Business and Professions Committee. However, due to continuing concerns from the Board and other interested parties, CELSA and the author decided to pull the bill from the hearing. It is unknown if the bill will be moving forward this legislative session; if it does not, CELSA has indicated they hope to introduce it again next session.

Although the vast majority of the Board’s requested changes were made when the bill was amended on May 11, 2020, staff is still recommending that the Board take a position of “Oppose Unless Amended” on AB 3334, as amended May 11, 2020, and request that the term “remote sensing” and the definition of “remote sensing” be removed from subdivision (b) of Sections 6731.1 and 8726. Since CELSA has indicated a willingness to work with the Board on further amendments, and there is a possibility that the bill might be amended and heard prior to the August 2020 Board Meeting, staff also recommends that the Board delegate to Board Members Steve Wilson, PE, PLS, and Andrew Hamilton the authority to change the Board’s position on the bill should it be amended to address the Board’s concerns prior to the next Board meeting.

**Staff Recommendation:** Staff recommends the Board take a position of “Oppose Unless Amended” on AB 3334, as amended May 11, 2020, and request that the term “remote sensing” and the definition of “remote sensing” be removed from subdivision (b) of Sections 6731.1 and 8726. Staff further recommends the Board delegate to Board Members Steve Wilson, PE, PLS, and Andrew Hamilton the authority to change the Board’s position on the bill should it be amended to address the Board’s concerns prior to the next Board meeting.

**Laws:** An act to amend Sections 6731.1, 6738, 6787, 8726, 8729, and 8792 of the Business and Professions Code, relating to professions and vocations.
ASSEMBLY BILL No. 3334

Introduced by Assembly Member Chen

February 21, 2020

An act to amend Sections 6731.1, 6738, 6787, 8726, and 8729 of the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL’S DIGEST

AB 3334, as amended, Chen. Professional Land Surveyors’ Act and Professional Engineers Act.

(1) The Professional Engineers Act and the Professional Land Surveyors’ Act provide for the licensure and regulation of professional engineers and land surveyors by the Board for Professional Engineers, Land Surveyors, and Geologists. Under those acts, a land surveyor includes a person who engages in specified practices, and civil engineering is defined to include a person who locates, relocates, establishes, reestablishes, or retraces the alignment or elevation for any of the fixed works embraced within the practice of civil engineering, as defined, determines the configuration or contour of the earth’s surface, or the position of fixed objects above, on, or below the surface of the earth by applying the principles of mathematics or photogrammetry, or engages in geodetic or cadastral surveying, as defined.

This bill would include within the practices that subject a person to those acts, with regard to the practice of identifying the alignment location, alignment, or elevation for any exterior location of buildings,
as defined, or building control lines through the use of mathematics or
measurements, reference points, or lines that control the location,
alignment, or elevation for the construction of those buildings or other
of the fixed works embraced within the practice of civil engineering.

engineering, laying out the reference points or lines through the use of
mathematical or physical measurements. The bill would expand the
practice of land surveying and civil engineering to include determining
the benthic surface below water bodies and the measuring for volumetric
calculations of earthwork. The bill, with respect to the practice of
making determinations regarding the position of objects, would expand
that practice to include such a determination made by applying the
principles of mathematics, photogrammetry, mathematics or the use of
photogrammetric methods or remote sensing, as defined. The bill would
further revise that practice so that the determination regarding the
position of objects is made regarding either manmade or natural fixed
objects, instead of fixed objects. The bill would modify the definition
of geodetic surveying for purposes of the Professional Land Surveyors’
Act to mean performing surveys by using techniques or methods of
3-dimensional geospatial data acquisitions, and make conforming
changes to that effect.

(2) The Professional Land Surveyors’ Act provides that it does not
prevent an individual or business engaged in any line of endeavor,
other than the practice of land surveying, from employing or contracting
with a licensed land surveyor or a licensed civil engineer to perform
the respective land surveying services incidental to the conduct of
business. The Professional Engineers Act provides that it does not
prevent an individual or business engaged in any line of endeavor other
than the practice of civil, electrical, or mechanical engineering from
employing or contracting with a licensed civil, electrical, or mechanical
engineer to perform the respective engineering services incidental to
the conduct of business.

This bill would delete that provision. those provisions and make
conforming changes.

(3) Existing law makes any violation of the Professional Engineers
Act or the Professional Land Surveyors’ Act a misdemeanor.

By expanding the scope of practices subject to the Professional
Engineers Act and the Professional Land Surveyors’ Act, the 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.


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

SECTION 1. Section 6731.1 of the Business and Professions Code is amended to read:

6731.1. Civil engineering also includes the practice or offer to practice, either in a public or private capacity, all of the following:

(a) (1) Locates, relocates, establishes, reestablishes, retraces, or lays out the alignment or elevation for any exterior location of buildings or building control lines through the use of mathematical or physical measurements, reference points, or lines that control out, through the use of mathematical or physical measurements, the reference points or lines for the location, alignment, or elevation for the construction of those buildings or other of any of the fixed works embraced within the practice of civil engineering, as described in Section 6731.

(2) For purposes of this subdivision, “buildings” means the exterior location of the building or building control lines and does not limit building contractors or others from layout of items based on the grid lines or building corners set by a licensed surveyor.

(b) (1) Determines the configuration or contour of the earth’s surface, the benthic surface below water bodies, the measuring for volumetric calculations of earthwork, or the position of manmade or natural fixed objects above, on, or below the surface of the earth by applying the principles of mathematics or by using photogrammetric methods or remote sensing.

(2) For purposes of this subdivision, “remote sensing” means the detecting, collection, processing, and analysis of data that will determine the dimensions of physical objects, or otherwise using various acquisition methods intended to or resulting in the determination of the configuration or contour of the earth’s surface,
or the position of fixed objects above, on, or below the surface of
the earth.
(c) Creates, prepares, or modifies electronic or computerized
data in the performance of the activities described in subdivisions
(a) and (b).
(d) Renders a statement regarding the accuracy of maps or
measured survey data pursuant to subdivisions (a), (b), and (c).

SEC. 2. Section 6738 of the Business and Professions Code,
as amended by Section 1 of Chapter 150 of the Statutes of 2018,
is amended to read:
6738. (a) This chapter does not prohibit one or more civil,
electrical, or mechanical engineers from practicing or offering to
practice, within the scope of their license, civil (including
gеotechnical and structural), electrical, or mechanical engineering
as a sole proprietorship, partnership, limited liability partnership,
firm, or corporation (hereinafter called business), if all of the
following requirements are met:
1. A civil, electrical, or mechanical engineer currently licensed
in this state is an owner, partner, or officer in charge of the
engineering practice of the business.
2. All civil, electrical, or mechanical engineering services are
performed by, or under the responsible charge of, a professional
engineer licensed in the appropriate branch of professional
engineering.
3. If the business name of a California engineering business
contains the name of any person, then that person shall be licensed
as a professional engineer, a licensed land surveyor, a licensed
architect, or a geologist registered under the Geologist and
Geophysicist Act (Chapter 12.5 (commencing with Section 7800)).
Any offer, promotion, or advertisement by the business that
contains the name of any individual in the business, other than by
use of the name of an individual in the business name, shall clearly
and specifically designate the license or registration discipline of
each individual named.
(b) An out-of-state business with a branch office in this state
shall meet the requirements of subdivision (a) and shall have an
owner, partner, or officer who is in charge of the engineering work
in the branch in this state, who is licensed in this state, and who is
physically present at the branch office in this state on a regular
basis. However, the name of the business may contain the name
of any person not licensed in this state if that person is appropriately registered or licensed in another state. Any offer, promotion, or advertisement that contains the name of any individual in the business, other than by use of the names of the individuals in the business name, shall clearly and specifically designate the license or registration discipline of each individual named.

(c) The business name of a California engineering business may be a fictitious name. However, if the fictitious name includes the name of any person, the requirements of paragraph (3) of subdivision (a) shall be met.

(d) A person not licensed under this chapter may also be a partner or an officer of a civil, electrical, or mechanical engineering business if the requirements of subdivision (a) are met. Nothing in this section shall be construed to permit a person who is not licensed under this chapter to be the sole owner of a civil, electrical, or mechanical engineering business, unless otherwise exempt under this chapter.

(e) This chapter does not prevent an individual or business engaged in any line of endeavor other than the practice of civil, electrical, or mechanical engineering from employing or contracting with a licensed civil, electrical, or mechanical engineer to perform the respective engineering services incidental to the conduct of business.

(f) This section shall not prevent the use of the name of any business engaged in rendering civil, electrical, or mechanical engineering services, including the use by any lawful successor or survivor, that lawfully was in existence on December 31, 1987. However, the business is subject to paragraphs (1) and (2) of subdivision (a).

(g) A business engaged in rendering civil, electrical, or mechanical engineering services may use in its name the name of a deceased or retired person provided all of the following conditions are satisfied:

1. The person’s name had been used in the name of the business, or a predecessor in interest of the business, prior to and after the death or retirement of the person.
(2) The person shall have been an owner, partner, or officer of the business, or an owner, partner, or officer of the predecessor in interest of the business.

(3) The person shall have been licensed as a professional engineer, or a land surveyor, or an architect, or a geologist, (A) by the appropriate licensing board if that person is operating a place of business or practice in this state, or (B) by the applicable state board if no place of business existed in this state.

(4) The person, if retired, has consented to the use of the name and does not permit the use of the name in the title of another professional engineering business in this state during the period of the consent. However, the retired person may use his or her name as the name of a new or purchased business if it is not identical in every respect to that person’s name as used in the former business.

(5) The business shall be subject to the provisions of paragraphs (1) and (2) of subdivision (a).

(g) This section does not affect the provisions of Sections 6731.2 and 8726.1.

(h) A current organization record form shall be filed with the board for all businesses engaged in rendering civil, electrical, or mechanical engineering services.

(i) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

SEC. 3. Section 6738 of the Business and Professions Code, as amended by Section 2 of Chapter 150 of the Statutes of 2018, is amended to read:

6738. (a) This chapter does not prohibit one or more civil, electrical, or mechanical engineers from practicing or offering to practice within the scope of their license civil (including geotechnical and structural), electrical, or mechanical engineering as a sole proprietorship, partnership, firm, or corporation (hereinafter called business), if all of the following requirements are met:

(1) A civil, electrical, or mechanical engineer currently licensed in this state is an owner, partner, or officer in charge of the engineering practice of the business.
(2) All civil, electrical, or mechanical engineering services are performed by, or under the responsible charge of, a professional engineer licensed in the appropriate branch of professional engineering.

(3) If the business name of a California engineering business contains the name of any person, then that person shall be licensed as a professional engineer, a licensed land surveyor, a licensed architect, or a geologist registered under the Geologist and Geophysicist Act (Chapter 12.5 (commencing with Section 7800)). Any offer, promotion, or advertisement by the business that contains the name of any individual in the business, other than by use of the name of an individual in the business name, shall clearly and specifically designate the license or registration discipline of each individual named.

(b) An out-of-state business with a branch office in this state shall meet the requirements of subdivision (a) and shall have an owner, partner, or officer who is in charge of the engineering work in the branch in this state, who is licensed in this state, and who is physically present at the branch office in this state on a regular basis. However, the name of the business may contain the name of any person not licensed in this state if that person is appropriately registered or licensed in another state. Any offer, promotion, or advertisement that contains the name of any individual in the business, other than by use of the names of the individuals in the business name, shall clearly and specifically designate the license or registration discipline of each individual named.

(c) The business name of a California engineering business may be a fictitious name. However, if the fictitious name includes the name of any person, the requirements of paragraph (3) of subdivision (a) shall be met.

(d) A person not licensed under this chapter may also be a partner or an officer of a civil, electrical, or mechanical engineering business if the requirements of subdivision (a) are met. Nothing in this section shall be construed to permit a person who is not licensed under this chapter to be the sole owner of a civil, electrical, or mechanical engineering business, unless otherwise exempt under this chapter.

(e) This chapter does not prevent an individual or business engaged in any line of endeavor other than the practice of civil,
electrical, or mechanical engineering from employing or contracting with a licensed civil, electrical, or mechanical engineer to perform the respective engineering services incidental to the conduct of business.

(e) This section shall not prevent the use of the name of any business engaged in rendering civil, electrical, or mechanical engineering services, including the use by any lawful successor or survivor, that lawfully was in existence on December 31, 1987. However, the business is subject to paragraphs (1) and (2) of subdivision (a).

(f) A business engaged in rendering civil, electrical, or mechanical engineering services may use in its name the name of a deceased or retired person provided all of the following conditions are satisfied:

1. The person’s name had been used in the name of the business, or a predecessor in interest of the business, prior to and after the death or retirement of the person.
2. The person shall have been an owner, partner, or officer of the business, or an owner, partner, or officer of the predecessor in interest of the business.
3. The person shall have been licensed as a professional engineer, or a land surveyor, or an architect, or a geologist, (A) by the appropriate licensing board if that person is operating a place of business or practice in this state, or (B) by the applicable state board if no place of business existed in this state.
4. The person, if retired, has consented to the use of the name and does not permit the use of the name in the title of another professional engineering business in this state during the period of the consent. However, the retired person may use their name as the name of a new or purchased business if it is not identical in every respect to that person’s name as used in the former business.
5. The business shall be subject to the provisions of paragraphs (1) and (2) of subdivision (a).

(g) This section does not affect the provisions of Sections 6731.2 and 8726.1.
(h) A current organization record form shall be filed with the board for all businesses engaged in rendering civil, electrical, or mechanical engineering services.

(i) This section shall become operative on January 1, 2026.

SEC. 4. Section 6787 of the Business and Professions Code is amended to read:

6787. A person who does any of the following is guilty of a misdemeanor:

(a) Unless the person is exempt from licensure under this chapter, practice or offer to practice civil, electrical, or mechanical engineering in this state according to the provisions of this chapter without legal authorization.

(b) Present or attempt to file as the person’s own the certificate of licensure of a licensed professional engineer unless they are the person named on the certificate of licensure.

(c) Give false evidence of any kind to the board, or to any board member, in obtaining a certificate of licensure.

(d) Impersonate or use the seal, signature, or license number of a licensed professional engineer.

(e) Use an expired, suspended, surrendered, or revoked license.

(f) Represent themselves as, or uses the title of, a licensed or registered civil, electrical, or mechanical engineer, or any other title whereby that person could be considered as practicing or offering to practice civil, electrical, or mechanical engineering in any of its branches, unless they are correspondingly qualified by licensure as a civil, electrical, or mechanical engineer under this chapter.

(g) Unless appropriately licensed, manage, or conduct a place of business from which civil, electrical, or mechanical engineering work is solicited, performed, or practiced, except as authorized pursuant to subdivision (e) of Section 6738 and Section 8726.1.

(h) Use the title, or any combination of that title, of “professional engineer,” “licensed engineer,” “registered engineer,” or the branch titles specified in Section 6732, or the authority titles specified in Sections 6736 and 6736.1, or “engineer-in-training,” or makes use of any abbreviation of that title that might lead
to the belief that the person is a licensed engineer, is authorized
to use the titles specified in Section 6736 or 6736.1, or holds a
certificate as an engineer-in-training, without being licensed,
authorized, or certified as required by this chapter.

(i) **Uses** the title “consulting engineer” without being
licensed as required by this chapter or without being authorized
to use that title pursuant to legislation enacted at the 1963, 1965
or 1968 Regular Session.

(j) **Violates** any provision of this chapter.

**SEC. 2.**

**SEC. 5.** Section 8726 of the Business and Professions Code is
amended to read:

8726. A person, including any person employed by the state
or by a city, county, or city and county within the state, practices
land surveying within the meaning of this chapter who, either in
a public or private capacity, does or offers to do any one or more
of the following:

(a) (1) Locates, relocates, establishes, reestablishes, retraces,
or lays out the alignment or elevation for any exterior location of
buildings or building control lines through the use of mathematics
or measurements, reference points, or lines that control
out, through
the use of mathematical or physical measurements, the reference
points or lines for the location, alignment, or elevation for the
construction of those buildings or other of any of the fixed works
embraced within the practice of civil engineering, as described in
Section 6731.

(2) For purposes of this subdivision, “buildings” means the
exterior location of the building or building control lines and does
not limit building contractors or others from layout of items based
on the grid lines or building corners set by a licensed surveyor.

(b) (1) Determines the configuration or contour of the earth’s
surface, the benthic surface below water bodies, the measuring for
volumetric calculations of earthwork, or the position of manmade
or natural fixed objects above, on, or below the surface of the earth
by applying the principles of mathematics, photogrammetry,
mathematics or by using photogrammetric methods or remote
sensing.

(2) For purposes of this subdivision, “remote sensing” means
the detecting, collection, processing, and analysis of data that will
determine the dimensions of physical objects, or otherwise using
various acquisition methods intended to or resulting in the
determination of the configuration or contour of the earth’s surface,
or the position of fixed objects above, on, or below the surface of
the earth.

(c) Locates, relocates, establishes, reestablishes, or retraces any
property line or boundary of any parcel of land, right-of-way,
easement, or alignment of those lines or boundaries.

(d) Makes any survey for the subdivision or resubdivision of
any tract of land. For the purposes of this subdivision, the term
“subdivision” or “resubdivision” shall be defined to include, but
not be limited to, the definition in the Subdivision Map Act
(Division 2 (commencing with Section 66410) of Title 7 of the
Government Code) or the Subdivided Lands Law (Chapter 1
(commencing with Section 11000) of Part 2 of Division 4).

(e) By the use of the principles of land surveying determines
the position for any monument or reference point which marks a
property line, boundary, or corner, or resets, or replaces any
monument or reference point.

(f) Geodetic surveying or cadastral surveying. As used in this
chapter, geodetic surveying means performing surveys, by using
techniques or methods of three-dimensional geospatial data
acquisition in which account is taken of the figure and size of the
earth to determine or predetermine the horizontal or vertical
positions of fixed objects thereon or related thereto, geodetic
control points, monuments, or stations for use in the practice of
land surveying or for stating the geospatial establishment of
three-dimensional positions of fixed objects, geodetic control
points, monuments, or stations by California Coordinate System
coordinates in accordance with Chapter 1 (commencing with
Section 8801) of Division 8 of the Public Resources Code.

(g) Determines the information shown or to be shown on any
map or document prepared or furnished in connection with any
one or more of the functions described in subdivisions (a) to (f),
inclusive.

(h) Indicates, in any capacity or in any manner, by the use of
the title “land surveyor” or by any other title or by any other
representation that the person practices or offers to practice land
surveying in any of its branches.

(i) Procures or offers to procure land surveying work for
themselves or others.
(j) Manages, or conducts as manager, proprietor, or agent, any place of business from which land surveying work is solicited, performed, or practiced.

(k) Coordinates the work of professional, technical, or special consultants in connection with the activities authorized by this chapter.

(l) Determines the information shown or to be shown within the description of any deed, trust deed, or other title document prepared for the purpose of describing the limit of real property in connection with any one or more of the functions described in subdivisions (a) to (f), inclusive.

(m) Creates, prepares, or modifies electronic or computerized data in the performance of the activities described in subdivisions (a), (b), (c), (d), (e), (f), (k), and (l).

(n) Renders a statement regarding the accuracy of maps or measured survey data.

Any department or agency of the state or any city, county, or city and county that has an unregistered person in responsible charge of land surveying work on January 1, 1986, shall be exempt from the requirement that the person be licensed as a land surveyor until the person currently in responsible charge is replaced.

The review, approval, or examination by a governmental entity of documents prepared or performed pursuant to this section shall be done by, or under the direct supervision of, a person authorized to practice land surveying.

SEC. 3.

SEC. 6. Section 8729 of the Business and Professions Code, as amended by Section 3 of Chapter 150 of the Statutes of 2018, is amended to read:

8729. (a) This chapter does not prohibit one or more licensed land surveyors or civil engineers licensed in this state prior to 1982 (hereinafter called civil engineers) from practicing or offering to practice, within the scope of their licensure, land surveying as a sole proprietorship, partnership, limited liability partnership, firm, or corporation (hereinafter called business), if the following conditions are satisfied:

(1) A land surveyor or civil engineer currently licensed in the state is an owner, partner, or officer in charge of the land surveying practice of the business.
(2) All land surveying services are performed by or under the responsible charge of a land surveyor or civil engineer.

(3) If the business name of a California land surveying business contains the name of a person, then that person shall be licensed by the board as a land surveyor or licensed by the board in any year as a civil engineer. Any offer, promotion, or advertisement by the business that contains the name of any individual in the business, other than by use of the name of the individual in the business name, shall clearly and specifically designate the license discipline of each individual named.

(b) An out-of-state business with a branch office in this state shall meet the requirements of subdivision (a) and shall have an owner, partner, or officer who is in charge of the land surveying work in this state, who is licensed in this state, and who is physically present at the branch office in this state on a regular basis. However, the name of the business may contain the name of a person not licensed in this state, if that person is appropriately licensed or registered in another state. Any offer, promotion, or advertisement that contains the name of any individual in the business, other than by use of the name of the individual in the business name, shall clearly and specifically designate the license or registration discipline of each individual named.

(c) The business name of a California land surveying business may be a fictitious name. However, if the fictitious name includes the names of any person, the requirements of paragraph (3) of subdivision (a) shall be met.

(d) A person not licensed under this chapter or licensed as a civil engineer in this state prior to 1982 may also be a partner or an officer of a land surveying business if the conditions of subdivision (a) are satisfied. Nothing in this section shall be construed to permit a person who is not licensed under this chapter or licensed as a civil engineer in this state prior to 1982 to be the sole owner or office of a land surveying business, unless otherwise exempt under this chapter.

(e) This section shall not prevent the use of the name of any business engaged in rendering land surveying services, including the use by any lawful successor or survivor, that lawfully was in existence on June 1, 1941. However, the business is subject to the provisions of paragraphs (1) and (2) of subdivision (a).
(f) A business engaged in rendering land surveying services may use in its name the name of a deceased or retired person if the following conditions are satisfied:

1. The person’s name had been used in the name of the business, or a predecessor in interest of the business, prior to the death or retirement of the person.
2. The person shall have been an owner, partner, or officer of the business, or an owner, partner, or officer of the predecessor in interest of the business.
3. The person shall have been licensed as a land surveyor or a civil engineer by the board, if operating a place of business or practice in this state, or by an applicable state board in the event no place of business existed in this state.
4. The person, if retired, has consented to the use of the name and does not permit the use of the name in the title of another land surveying business in this state during the period of that consent, except that a retired person may use their name as the name of a new or purchased business, if that business is not identical in every respect to that person’s name as used in the former business.
5. The business shall be subject to paragraphs (1) and (2) of subdivision (a).

(g) This section does not affect Sections 6731.2 and 8726.1.

(h) A current organization record form shall be filed with the board for all businesses engaged in rendering professional land surveying services.

(i) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

SEC. 4. Section 8729 of the Business and Professions Code, as amended by Section 4 of Chapter 150 of the Statutes of 2018, is amended to read:

8729. (a) This chapter does not prohibit one or more licensed land surveyors or civil engineers licensed in this state prior to 1982 (hereinafter called civil engineers) from practicing or offering to practice within the scope of their licensure, land surveying as a sole proprietorship, partnership, firm, or corporation (hereinafter called business), if the following conditions are satisfied:

1. A land surveyor or civil engineer currently licensed in the state is an owner, partner, or officer in charge of the land surveying practice of the business.
(2) All land surveying services are performed by or under the responsible charge of a land surveyor or civil engineer.

(3) If the business name of a California land surveying business contains the name of a person, then that person shall be licensed by the board as a land surveyor or licensed by the board in any year as a civil engineer. Any offer, promotion, or advertisement by the business that contains the name of any individual in the business, other than by use of the name of the individual in the business name, shall clearly and specifically designate the license discipline of each individual named.

(b) An out-of-state business with a branch office in this state shall meet the requirements of subdivision (a) and shall have an owner, partner, or officer who is in charge of the land surveying work in this state, who is licensed in this state, and who is physically present at the branch office in this state on a regular basis. However, the name of the business may contain the name of a person not licensed in this state, if that person is appropriately licensed or registered in another state. Any offer, promotion, or advertisement that contains the name of any individual in the business, other than by use of the name of the individual in the business name, shall clearly and specifically designate the license or registration discipline of each individual named.

(c) The business name of a California land surveying business may be a fictitious name. However, if the fictitious name includes the names of any person, the requirements of paragraph (3) of subdivision (a) shall be met.

(d) A person not licensed under this chapter or licensed as a civil engineer in this state prior to 1982 may also be a partner or an officer of a land surveying business if the conditions of subdivision (a) are satisfied. Nothing in this section shall be construed to permit a person who is not licensed under this chapter or licensed as a civil engineer in this state prior to 1982 to be the sole owner or officer of a land surveying business, unless otherwise exempt under this chapter.

(e) This section shall not prevent the use of the name of any business engaged in rendering land surveying services, including the use by any lawful successor or survivor, that lawfully was in existence on June 1, 1941. However, the business is subject to the provisions of paragraphs (1) and (2) of subdivision (a).
(f) A business engaged in rendering land surveying services may use in its name the name of a deceased or retired person if the following conditions are satisfied:

1. The person’s name had been used in the name of the business, or a predecessor in interest of the business, prior to the death or retirement of the person.

2. The person shall have been an owner, partner, or officer of the business, or an owner, partner, or officer of the predecessor in interest of the business.

3. The person shall have been licensed as a land surveyor or a civil engineer by the board, if operating a place of business or practice in this state, or by an applicable state board in the event no place of business existed in this state.

4. The person, if retired, has consented to the use of the name and does not permit the use of the name in the title of another land surveying business in this state during the period of that consent, except that a retired person may use their name as the name of a new or purchased business, if that business is not identical in every respect to that person’s name as used in the former business.

5. The business shall be subject to paragraphs (1) and (2) of subdivision (a).

(g) This section does not affect Sections 6731.2 and 8726.1.

(h) A current organization record form shall be filed with the board for all businesses engaged in rendering professional land surveying services.

(i) This section shall become operative on January 1, 2026.

SEC. 8. Section 8792 of the Business and Professions Code is amended to read:

8792. A person who does any of the following is guilty of a misdemeanor:

(a) Unless the person is exempt from licensure under this chapter, practices, or offers to practice, land surveying in this state without legal authorization.

(b) Presents as their own the license of a professional land surveyor unless they are the person named on the license.

(c) Attempts to file as their own any record of survey under the license of a professional land surveyor.

(d) Gives false evidence of any kind to the board, or to any board member, in obtaining a license.
(e) Impersonates or uses the seal, signature, or license number of a professional land surveyor or who uses a false license number.

(f) Uses an expired, suspended, surrendered, or revoked license.

(g) Represents themselves as, or uses the title of, professional land surveyor, or any other title whereby that person could be considered as practicing or offering to practice land surveying, unless the person is correspondingly qualified by licensure as a land surveyor under this chapter.

(h) Uses the title, or any combination of that title, of “professional land surveyor,” “licensed land surveyor,” “land surveyor,” or the titles specified in Sections 8751 and 8775, or “land surveyor-in-training,” or who makes use of any abbreviation of that title that might lead to the belief that the person is a licensed land surveyor or holds a certificate as a land surveyor-in-training, without being licensed or certified as required by this chapter.

(i) Unless appropriately licensed, manages, or conducts as manager, proprietor, or agent, any place of business from which land surveying work is solicited, performed, or practiced, except as authorized pursuant to Section 6731.2 and subdivision (e) of Section 8729. 6731.2.

(j) Violates any provision of this chapter.

SEC. 9. 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.
SB 865 (Hill, D-San Mateo)
Excavations: subsurface installations.

**Status:** 6/10/2020 – Read second time; ordered to third reading.
**Location:** 6/17/2020 – Senate Floor; Senate Third Reading File for 6/18/2020.
**Introduced:** 1/17/2020
**Amended:** 6/2/2020
**Board Position:** Watch (as of 3/12/2020)
**Board Staff Analysis:** 6/17/2020

**Bill Summary:** Existing law, the Dig Safe Act of 2016, created the California Underground Facilities Safe Excavation Board within the Office of the State Fire Marshall. This bill would provide that the board is also known as the “Dig Safe Board.” The act requires the Dig Safe Board to perform various duties relating to the protection of subsurface installations and generally requires an operator of a subsurface installation to become a member of, participate in, and share in the costs of, a regional notification center. The act also requires certain records of notifications to a center and certain other records on subsurface installations to be maintained in specified manners for specified periods of time. This bill would require that, commencing January 1, 2021, all new subsurface installations be tagged with GIS coordinates and maintained as permanent records of the operator. [The bill makes other changes that do not impact this Board.]

**Staff Comment:** This bill was brought to Board staff’s attention because of an inquiry regarding the wording proposed to be added to Section 4216.3 of the Government Code. The new language, which would be added to subparagraph (4) of subdivision (a) [shown on pages 9 and 10 of the bill], reads “Commencing January 1, 2021, all new subsurface installations shall be tagged with GIS coordinates and maintained as permanent records of the operator.” We were asked if performing this task would constitute the practice of land surveying since work with Geographic Information Systems (GIS) may involve acts which fall within the defined area of practice of land surveying. In reviewing the bill, staff became concerned with the proposed wording because the phrase “tagged with GIS coordinates” is not typical terminology used with GIS systems nor is it clear as to exactly what is meant by this term, how the coordinates would be captured in the field, whether statements of accuracy would be expected, or how the captured coordinates will subsequently be relied upon in terms of accuracy. Staff believes this wording could cause confusion about what work is to be done and who must perform that work. Staff has developed a proactive working relationship with staff at the Dig Safe Board since its creation, and we believe we could be of assistance in developing appropriate wording.

At its March 12, 2020, meeting, the Board took a position of “Watch” on SB 865 and directed staff to work with the author, sponsors, and Dig Safe Board staff to determine the actual intent of this amendment and to assist them with developing language that would more appropriately reflect that used with GIS systems and would address any issues relating to compliance with the Professional Land Surveyors’ Act. Board staff has offered our assistance to the Dig Safe Board staff, and they have advised they will be in contact with us regarding the bill.
Board staff has had the opportunity to discuss SB 865 with the Author’s staff, the Executive Officer of the Dig Safe Board, and representatives from the various dig alert organizations. They advised that their intent is to require the utility owners/operators to capture accurate coordinates of newly installed subsurface utilities at the time of installation for the purposes of recording and relying upon those coordinates to “locate and mark” the locations in the event of future excavations nearby. We provided information on what would be involved in meeting that intent and that capturing coordinates in the manner in which they described would be required to be performed by, or under the responsible charge, of an individual legally authorized to practice land surveying. The parties indicated they appreciated our input and would consider amending the bill to provide clarification.

The bill was amended on June 2, 2020, but the amendments do not pertain to the Board’s concerns with the phrase “tagged with GIS coordinates.” This bill has now advanced to the Senate floor. As such, Board staff recommends the Board take a position of “Oppose Unless Amended” on SB 865, as amended June 2, 2020, and request that appropriate language be included to clarify the intent to capture accurate coordinates that would be relied upon to locate and mark subsurface utilities and to indicate that such work would have to be done by, or under the responsible charge of, individuals legally authorized to practice land surveying.

**Staff Recommendation:** Staff recommends the Board take a position of OPPOSE UNLESS AMENDED on SB 865, as amended June 2, 2020, and request that appropriate language be included to clarify the intent to capture accurate coordinates that would be relied upon to locate and mark subsurface utilities and to indicate that such work would have to be done by, or under the responsible charge of, individuals legally authorized to practice land surveying.

**Laws:** An act to amend Sections 4216, 4216.1, 4216.2, 4216.3, 4216.4, 4216.6, 4216.12, and 4216.17 of the Government Code, relating to excavations.
SB 865, as amended, Hill. Excavations: subsurface installations.

Existing law, the Dig Safe Act of 2016, creates the California Underground Facilities Safe Excavation Board within the Office of the State Fire Marshal. The act subjects the board to review by the appropriate policy committees of the Legislature.

This bill would provide that the board is also known as the “Dig Safe Board” and would make conforming changes to references in the act. The bill would require the board, on and after January 1, 2022, to be within the Office of Energy Infrastructure Safety within the Natural Resources Agency, as established pursuant to the California Energy Infrastructure Safety Act. The bill would require policy committee review at least once every 3 years.

The act requires the board to perform various duties relating to the protection of subsurface installations. The act generally requires an operator of a subsurface installation to become a member of, participate in, and share in the costs of, a regional notification center. The act requires a record of all notifications by an excavator or operator to the regional notification center to be maintained for a period of not less than 3 years and available for inspection as specified. The act requires
an operator to maintain certain records on subsurface installations. The act establishes prescribed notification procedures for an excavator who discovers or damages a subsurface installation.

This bill would require a regional notification center to include 2 excavator representatives on its board. The bill would require a regional notification center to provide notification records to the board quarterly and provide notifications of damage to the board within 5 business days of receipt at the regional notification center. The bill would require that, commencing January 1, 2021, all new subsurface installations, except for specified oil and gas flowlines 3 inches or less in diameter that are located within the administrative boundaries of an oil field, be tagged with GIS coordinates and maintained as permanent records of the operator. The bill would revise the procedures for notification on discovering or causing damage to expand cases subject to a requirement to call “911” emergency services. In all cases, the excavator would be required to notify the regional notification center within 2 hours of discovering or causing damage.

The act subjects any operator or excavator who violates the act to a civil penalty. The act authorizes enforcement by certain entities, including specified agencies following a recommendation of the board against contractors, telephone corporations, gas corporations, electrical corporations, water corporations, operators of hazardous liquid pipeline facilities, and local agencies, as specified. The act authorizes the board to enforce its provisions on prescribed persons not subject to enforcement by the specified agencies, commencing on July 1, 2020.

This bill would also authorize enforcement of the act by the specified agencies through their own investigations. The bill would authorize the board to collect penalties imposed on persons subject to its jurisdiction.

The act requires the board, upon appropriation by the Legislature, to grant the use of the moneys in the Safe Energy Infrastructure and Excavation Fund to fund prescribed public education and outreach programs designed to promote excavation safety around subsurface installations.

This bill would delete those education and outreach program provisions and, instead, require the board, for violations that are neither egregious nor persistent, to offer violators the option of completing an educational course in lieu of paying a fine. The bill would make moneys in the fund available to the board to fund the educational course, subject to appropriation by the Legislature.
The people of the State of California do enact as follows:

SECTION 1. Section 4216 of the Government Code is amended to read:

4216. As used in this article, the following definitions apply:

(a) “Active subsurface installation” means a subsurface installation currently in use or currently carrying service.

(b) “Board” means the California Underground Facilities Safe Excavation Board, also known as the “Dig Safe Board.”

(c) “Area of continual excavation” means a location where excavation is part of the normal business activities of agricultural operations and flood control facilities.

(d) “Delineate” means to mark in white the location or path of the proposed excavation using the guidelines in Appendix B of the “Guidelines for Excavation Delineation” published in the most recent version of the Best Practices guide of the Common Ground Alliance. If there is a conflict between the marking practices in those guidelines and other provisions of this article, this article shall control. “Delineation” also includes physical identification of the area to be excavated using alternative marking methods, including, but not limited to, flags, stakes, whiskers, or a combination of these methods, if an excavator makes a determination that standard delineation may be misleading to those persons using affected streets and highways, or be misinterpreted as a traffic or pedestrian control, and the excavator has contacted the regional notification center to advise the operators that the excavator will physically identify the area to be excavated using alternative marking methods.

(e) “Electronic positive response” means an electronic response from an operator to the regional notification center providing the status of an operator’s statutorily required response to a ticket.

(f) (1) “Emergency” means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.

(2) “Unexpected occurrence” includes, but is not limited to, a fire, flood, earthquake or other soil or geologic movement, riot,
accident, damage to a subsurface installation requiring immediate repair, or sabotage.

(g) “Excavation” means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of tools, equipment, or explosives in any of the following ways: grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing and driving, or any other way.

(h) Except as provided in Section 4216.8, “excavator” means any person, firm, contractor or subcontractor, owner, operator, utility, association, corporation, partnership, business trust, public agency, or other entity that, with their own employees or equipment, performs any excavation.

(i) “Hand tool” means a piece of equipment used for excavating that uses human power and is not powered by any motor, engine, hydraulic, or pneumatic device.

(j) “High priority subsurface installation” means high-pressure natural gas pipelines with normal operating pressures greater than 415kPA gauge (60psig), petroleum pipelines, pressurized sewage pipelines, high-voltage electric supply lines, conductors, or cables that have a potential to ground of greater than or equal to 60kv, or hazardous materials pipelines that are potentially hazardous to workers or the public if damaged.

(k) “Inactive subsurface installation” means either of the following:

(1) The portion of an underground subsurface installation that is not active but is still connected to the subsurface installation, or to any other subsurface installation, that is active or still carries service.

(2) A new underground subsurface installation that has not been connected to any portion of an existing subsurface installation.

(l) “Legal excavation start date and time” means two working days, not including the date of notification, unless the excavator specifies a later date and time, which shall not be more than 14 calendar days from the date of notification. For excavation in an area of continual excavation, “legal excavation start date and time” means two working days, not including the date of notification, unless the excavator specifies a later date and time, which shall not be more than six months from the date of notification.
(m) “Local agency” means a city, county, city and county, school district, or special district.
(n) (1) “Locate and field mark” means to indicate the existence of any owned or maintained subsurface installations by using the guidelines in Appendix B of the “Guidelines for Operator Facility Field Delineation” published in the most recent version of the Best Practices guide of the Common Ground Alliance and in conformance with the uniform color code of the American Public Works Association. If there is a conflict between the marking practices in the guidelines and this article, this article shall control.
(2) “Locate and field mark” does not require an indication of the depth.
(o) “Operator” means any person, corporation, partnership, business trust, public agency, or other entity that owns, operates, or maintains a subsurface installation. For purposes of Section 4216.1, an “operator” does not include an owner of real property where subsurface installations are exclusively located if they are used exclusively to furnish services on that property and the subsurface facilities are under the operation and control of that owner.
(p) “Qualified person” means a person who completes a training program in accordance with the requirements of Section 1509 of Title 8 of the California Code of Regulations Injury and Illness Prevention Program, that meets the minimum locators training guidelines and practices published in the most recent version of the Best Practices guide of the Common Ground Alliance.
(q) “Regional notification center” means a nonprofit association or other organization of operators of subsurface installations that provides advance warning of excavations or other work close to existing subsurface installations, for the purpose of protecting those installations from damage, removal, relocation, or repair.
(r) “State agency” means every state agency, department, division, bureau, board, or commission.
(s) “Subsurface installation” means any underground pipeline, conduit, duct, wire, or other structure, except nonpressurized sewerlines, nonpressurized storm drains, or other nonpressurized drain lines.
(t) “Ticket” means an excavation location request issued a number by the regional notification center.
(u) “Tolerance zone” means 24 inches on each side of the field marking placed by the operator in one of the following ways:

1. Twenty-four inches from each side of a single marking, assumed to be the centerline of the subsurface installation.
2. Twenty-four inches plus one-half the specified size on each side of a single marking with the size of installation specified.
3. Twenty-four inches from each outside marking that graphically shows the width of the outside surface of the subsurface installation on a horizontal plane.

(v) “Working day” for the purposes of determining excavation start date and time means a weekday Monday through Friday, from 7:00 a.m. to 5:00 p.m., except for federal holidays and state holidays, as defined in Section 19853, or as otherwise posted on the internet website of the regional notification center.

SEC. 2. Section 4216.1 of the Government Code is amended to read:

4216.1. (a) Every operator of a subsurface installation, except the Department of Transportation, shall become a member of, participate in, and share in the costs of, a regional notification center. Operators of subsurface installations who are members of, participate in, and share in, the costs of a regional notification center, including, but not limited to, the Underground Service Alert—Northern California or the Underground Service Alert—Southern California are in compliance with this section and Section 4216.9. A regional notification center shall not charge a fee to a person for notifying the regional notification center to obtain a ticket or to renew a ticket.

(b) A regional notification center shall include on its board two excavator representatives.

SEC. 3. Section 4216.2 of the Government Code is amended to read:

4216.2. (a) Before notifying the appropriate regional notification center, an excavator planning to conduct an excavation shall delineate the area to be excavated. If the area is not delineated, an operator may, at the operator’s discretion, choose not to locate and field mark until the area to be excavated has been delineated.

(b) Except in an emergency, an excavator planning to conduct an excavation shall notify the appropriate regional notification center of the excavator’s intent to excavate at least two working days, and not more than 14 calendar days, before beginning that
excavation. The date of the notification shall not count as part of
the two-working-day notice. If an excavator gives less notice than
the legal excavation start date and time and the excavation is not
an emergency, the regional notification center will take the
information and provide a ticket, but an operator has until the legal
evacuation start date and time to respond. However, an excavator
and an operator may mutually agree to a different notice and start
date. The contact information for operators notified shall be
available to the excavator.

(c) When the excavation is proposed within 10 feet of a high
priority subsurface installation, the operator of the high priority
subsurface installation shall notify the excavator of the existence
of the high priority subsurface installation to set up an onsite
meeting prior to the legal excavation start date and time or at a
mutually agreed upon time to determine actions or activities
required to verify the location and prevent damage to the high
priority subsurface installation. As part of the meeting, the
excavator shall discuss with the operator the method and tools that
will be used during the excavation and the information the operator
will provide to assist in verifying the location of the subsurface
installation. The excavator shall not begin excavating until after
the completion of the onsite meeting.

(d) Except in an emergency, every excavator covered by Section
4216.8 planning to conduct an excavation on private property that
does not require an excavation permit may contact the appropriate
regional notification center if the private property is known, or
reasonably should be known, to contain a subsurface installation
other than the underground facility owned or operated by the
excavator. Before notifying the appropriate regional notification
center, an excavator shall delineate the area to be excavated. Any
temporary marking placed at the planned excavation location shall
be clearly seen, functional, and considerate to surface aesthetics
and the local community. An excavator shall check if any local
ordinances apply to the placement of temporary markings.

(e) The regional notification center shall provide a ticket to the
person who contacts the center pursuant to this section and shall
notify any member, if known, who has a subsurface installation
in the area of the proposed excavation. A ticket shall be valid for
28 days from the date of issuance. If work continues beyond 28
days, the excavator shall renew the ticket either by accessing the
center’s internet website or by calling “811” by the end of the 28th day.

(f) A record of all notifications by an excavator or operator to the regional notification center shall be maintained for a period of not less than three years. The record shall be available for inspection by the excavator and any member, or their representative, during normal working hours and according to guidelines for inspection as may be established by the regional notification centers. A regional notification center shall provide notification records to the board quarterly and shall provide notifications of damage to the board within five business days of receipt at the regional notification center.

(g) Unless an emergency exists, an excavator shall not begin excavation until the excavator receives a response from all known operators of subsurface installations within the delineated boundaries of the proposed area of excavation pursuant to subdivision (a) of Section 4216.3 and until the completion of any onsite meeting, if required by subdivision (c).

(h) If a site requires special access, an excavator shall request an operator to contact the excavator regarding that special access or give special instructions on the location request.

(i) If a ticket obtained by an excavator expires but work is ongoing, the excavator shall contact the regional notification center and get a new ticket and wait a minimum of two working days, not including the date of the contact, before restarting excavation. All excavation shall cease during the waiting period.

SEC. 4. Section 4216.3 of the Government Code is amended to read:

4216.3. (a) (1) (A) Unless the excavator and operator mutually agree to a later start date and time, or otherwise agree to the sequence and timeframe in which the operator will locate and field mark, an operator shall do one of the following before the legal excavation start date and time:

(i) Locate and field mark within the area delineated for excavation and, where multiple subsurface installations of the same type are known to exist together, mark the number of subsurface installations.

(ii) To the extent and degree of accuracy that the information is available, provide information to an excavator where the operator’s active or inactive subsurface installations are located.
(iii) Advise the excavator it operates no subsurface installations in the area delineated for excavation.

(B) An operator shall mark newly installed subsurface installations in areas with continuing excavation activity.

(C) An operator shall indicate with an “A” inside a circle the presence of any abandoned subsurface installations, if known, within the delineated area. The markings are to make an excavator aware that there are abandoned subsurface installations within that delineated work area.

(2) Only a qualified person shall perform subsurface installation locating activities.

(3) A qualified person performing subsurface installation locating activities on behalf of an operator shall use a minimum of a single-frequency utility locating device and shall have access to alternative sources for verification, if necessary.

(4) An operator shall amend, update, maintain, and preserve all plans and records for its subsurface installations as that information becomes known. If there is a change in ownership of a subsurface installation, the records shall be turned over to the new operator. Commencing January 1, 2017, records on abandoned subsurface installations, to the extent that those records exist, shall be retained.

Commencing January 1, 2021, all new subsurface installations shall be tagged with GIS coordinates and maintained as permanent records of the operator. This paragraph shall not apply to oil and gas flowlines three inches or less in diameter that are located within the administrative boundaries of an oil field as designated by the Geologic Energy Management Division. For purposes of this paragraph, the following terms have the following meanings:

(A) “Flowline” means any pipeline that connects an oil, gas, or natural gas liquids well with a gathering line or header.

(B) “Gathering line” means a pipeline that transports liquid hydrocarbons between any of the following: multiple wells, a testing facility, a treating and production facility, a storage facility, or a custody transfer facility.

(C) “Header” means a chamber from which liquid or gas is distributed to or from smaller pipelines.

(b) If the field marks are no longer reasonably visible, an excavator shall renotify the regional notification center with a
request for remarks that can be for all or a portion of the
excavation. Excavation shall cease in the area to be remarked. If
the delineation markings are no longer reasonably visible, the
excavator shall redelineate the area to be remarked. If remarks are
requested, the operator shall have two working days, not including
the date of request, to remark the subsurface installation. If the
area to be remarked is not the full extent of the original excavation,
the excavator shall delineate the portion to be remarked and provide
a description of the area requested to be remarked on the ticket.
The excavator shall provide a description for the area to be
remarked that falls within the area of the original location request.
(c) (1) (A) On and after January 1, 2021, every operator shall
supply an electronic positive response through the regional
notification center before the legal excavation start date and time.
Upon a showing of good cause by an operator, the board may
extend the time by which the operator is required to comply with
this requirement. The board shall not grant an extension beyond
December 31, 2021. The board shall determine which facts or
circumstances constitute good cause.
(B) The regional notification center shall make the responses
required by subparagraph (A) available to the excavator.
(2) The regional notification centers shall annually report to the
board regarding their continual technological development in their
roles of facilitating communication between excavators and
operators in a manner that enhances safety, accountability, and
efficiency.
(d) (1) On or before January 1, 2021, the board shall adopt
regulations to implement subparagraph (A) of paragraph (1) of
subdivision (c). The initial adoption, amendment, or repeal of a
regulation authorized by this section is deemed to address an
emergency, for purposes of Sections 11346.1 and 11349.6, and
the board is hereby exempted for that purpose from the
requirements of subdivision (b) of Section 11346.1. After the initial
adoption, amendment, or repeal of an emergency regulation
pursuant to this section, the board shall not request approval from
the Office of Administrative Law to readopt the regulation as an
emergency regulation pursuant to Section 11346.1.
(2) It is the intent of the Legislature, in authorizing the deviations
in this section from the requirements and procedures of Chapter
3.5 (commencing with Section 11340) of Part 1 of Division 3 of
Title 2, to authorize the board to expedite the exercise of its power to implement regulations as its unique operational circumstances require.

(e) The excavator shall notify the appropriate regional notification center of the failure of an operator to identify subsurface installations pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (a), or subdivision (b). The notification shall include the ticket issued by the regional notification center. The regional notification center shall maintain a record of all notifications received pursuant to this subdivision for a period of not less than three years. The record shall be available for inspection pursuant to subdivision (f) of Section 4216.2.

(f) If an operator or local agency knows that it has a subsurface installation embedded or partially embedded in the pavement that is not visible from the surface, the operator or local agency shall contact the excavator before pavement removal to communicate and determine a plan of action to protect that subsurface installation and excavator.

SEC. 5. Section 4216.4 of the Government Code is amended to read:

4216.4. (a) (1) Except as provided in paragraph (2), if an excavation is within the tolerance zone of a subsurface installation, the excavator shall determine the exact location of the subsurface installations in conflict with the excavation using hand tools before using any power-driven excavation or boring equipment within the tolerance zone of the subsurface installations. In all cases the excavator shall use reasonable care to prevent damaging subsurface installations.

(2) (A) An excavator may use a vacuum excavation device to expose subsurface installations within the tolerance zone if the operator has marked the subsurface installation, the excavator has contacted any operator whose subsurface installations may be in conflict with the excavation, and the operator has agreed to the use of a vacuum excavation device. An excavator shall inform the regional notification center of the excavator’s intent to use a vacuum excavation device when obtaining a ticket.

(B) An excavator may use power-operated or boring equipment for the removal of any existing pavement only if there is no known subsurface installation contained in the pavement.
(C) Beginning July 1, 2020, an excavator may use power-operated or boring equipment, as determined by the board, prior to determining the exact location of subsurface installations. The board shall adopt regulations to implement this paragraph on or before July 1, 2020.

(3) An excavator shall presume all subsurface installations to be active, and shall use the same care around subsurface installations that may be inactive as the excavator would use around active subsurface installations.

(b) If the exact location of the subsurface installation cannot be determined by hand excavating in accordance with subdivision (a), the excavator shall request the operator to provide additional information to the excavator, to the extent that information is available to the operator, to enable the excavator to determine the exact location of the installation. If the excavator has questions about the markings that an operator has placed, the excavator may contact the notification center to send a request to have the operator contact the excavator directly. The regional notification center shall provide the excavator with the contact telephone number of the subsurface installation operator.

(c) (1) An excavator discovering or causing damage to a subsurface installation that results in an emergency shall do the following:

(A) The excavator shall immediately call “911” emergency services.

(B) After calling “911” emergency services, the excavator shall immediately notify the subsurface installation operator. The excavator may contact the regional notification center to obtain the contact information of the subsurface installation operator. If the operator is unknown and the damage or discovery of damage occurs outside the working hours of the regional notification center, the excavator may follow the instructions provided by the regional notification center through its internet website or the telephone line recorded message.

(C) Within two hours of discovering or causing damage, the excavator shall notify the regional notification center.

(2) An excavator discovering or causing any damage to a subsurface installation, including all breaks, leaks, nicks, dents, gouges, grooves, or other damage to subsurface installation lines, conduits, coatings, or cathodic protection, shall do the following:
(A) The excavator shall immediately notify the subsurface installation operator. The excavator may contact the regional notification center to obtain the contact information of the subsurface installation operator. If the operator is unknown and the damage or discovery of damage occurs outside the working hours of the regional notification center, the excavator may follow the instructions provided by the regional notification center through its internet website or the telephone line recorded message.

(B) Within two hours of discovering or causing damage, the excavator shall notify the regional notification center.

(d) Each excavator, operator, or locator shall communicate with each other and respect the appropriate safety requirements and ongoing activities of the other parties, if known, at an excavation site.

SEC. 6. Section 4216.6 of the Government Code is amended to read:

4216.6. (a) (1) Any operator or excavator who negligently violates this article is subject to a civil penalty in an amount not to exceed ten thousand dollars ($10,000).

(2) Any operator or excavator who knowingly and willfully violates any of the provisions of this article is subject to a civil penalty in an amount not to exceed fifty thousand dollars ($50,000).

(3) Except as otherwise specifically provided in this article, this section is not intended to affect any civil remedies otherwise provided by law for personal injury or for property damage, including any damage to subsurface installations, nor is this section intended to create any new civil remedies for those injuries or that damage.

(4) This article shall not be construed to limit any other provision of law granting governmental immunity to state or local agencies or to impose any liability or duty of care not otherwise imposed by law upon any state or local agency.

(b) An action may be brought by the Attorney General, the district attorney, or the local or state agency that issued the permit to excavate, for the enforcement of the civil penalty pursuant to this section in a civil action brought in the name of the people of the State of California. If penalties are collected as a result of a civil suit brought by a state or local agency for collection of those civil penalties, the penalties imposed shall be paid to the general fund of the agency. If more than one agency is involved in
enforcement, the penalties imposed shall be apportioned among them by the court in a manner that will fairly offset the relative costs incurred by the state or local agencies, or both, in collecting these fees.

c) This article may also be enforced by the following agencies, either following a recommendation of the Dig Safe Board that the agency shall act to accept, amend, or reject, or through the agency’s own investigations, as follows:

(1) The Registrar of Contractors of the Contractors’ State License Board shall enforce this article on contractors, as defined in Article 2 (commencing with Section 7025) of Chapter 9 of Division 3 of the Business and Professions Code, and telephone corporations, as defined in Section 234 of the Public Utilities Code, when acting as a contractor, as defined in Article 2 (commencing with Section 7025) of Chapter 9 of Division 3 of the Business and Professions Code. Nothing in this section affects the Public Utilities Commission’s existing authority over a public utility.

(2) The Public Utilities Commission shall enforce this article on gas corporations, as defined in Section 222 of the Public Utilities Code, and electrical corporations, as defined in Section 218 of the Public Utilities Code, and water corporations, as defined in Section 241 of the Public Utilities Code.

(3) The Office of the State Fire Marshal shall enforce this article on operators of hazardous liquid pipeline facilities, as defined in Section 60101 of Chapter 601 of Subtitle VIII of Title 49 of the United States Code.

(d) A local governing board may enforce this article on local agencies under the governing board’s jurisdiction.

(e) Commencing July 1, 2020, the Dig Safe Board shall enforce this article on persons other than those listed in subdivisions (c) and (d). The board shall not initiate an enforcement action pursuant to this subdivision for a violation that occurred prior to July 1, 2020. As the enforcing body for persons other than those listed in subdivisions (c) and (d), the board may collect any monetary penalties imposed upon those persons.

(f) Moneys collected as a result of penalties imposed pursuant to subdivisions (c) and (e) shall be deposited into the Safe Energy Infrastructure and Excavation Fund.

(g) Statewide information provided by operators and excavators regarding incident events shall be compiled and made available
in an annual report by regional notification centers and posted on
the internet websites of the regional notification centers and shall
be made available to the board upon request.
(h) For purposes of subdivision (g), the following terms have
the following meanings:
(1) “Incident event” means the occurrence of excavator
downtime, damages, near misses, and violations.
(2) “Statewide information” means information submitted by
operators and excavators using the California Regional Common
Ground Alliance’s Virtual Private Damage Information Reporting
Tool. Supplied data shall comply with the Damage Information
Reporting Tool’s minimum essential information as listed in the
most recent version of the Best Practices guide of the Common
Ground Alliance.
SEC. 7. Section 4216.12 of the Government Code is amended
to read:
4216.12. (a) The Dig Safe Board is hereby created under, and
shall be assisted by the staff of, the Office of the State Fire Marshal
until January 1, 2022. On and after January 1, 2022, the board shall
be within the Office of Energy Infrastructure Safety within the
Natural Resources Agency pursuant to Part 7.3 (commencing with
Section 15470) of Division 3 of Title 2.
(b) The board shall perform the following tasks:
(1) Coordinate education and outreach activities that encourage
safe excavation practices, as described in Section 4216.17.
(2) Develop standards, as described in Section 4216.18.
(3) Investigate possible violations of this article, as described
in Section 4216.19.
(4) Enforce this article to the extent authorized by subdivision
e of Section 4216.6.
(c) Notwithstanding any other law, on and after January 1, 2020,
the board shall be subject to review by the appropriate policy
committees of the Legislature at least once every three years.
SEC. 8. Section 4216.17 of the Government Code is amended
to read:
4216.17. (a) The board shall annually convene a meeting for
the following purposes:
(1) To understand the existing needs for education and outreach,
including to those groups with the highest awareness and education
needs, including, but not limited to, homeowners.
To facilitate discussion on how to coordinate existing education and outreach efforts with state and local government agencies, California operators, regional notification centers, and trade associations that fund outreach and education programs that encourage safe excavation practices.

(b) In addition to state and local government agencies, California operators, regional notification centers, and trade associations that fund outreach and education programs that encourage safe excavation practices, the meeting pursuant to subdivision (a) shall include representatives of groups that may be the target of those outreach and education efforts.

(c) For violations that are neither egregious nor persistent, the board shall offer violators the option of completing an educational course in lieu of paying a fine. To develop the programming for the educational option, the board may contract with a third party or create the curriculum itself.

(d) Upon appropriation by the Legislature, moneys in the Safe Energy Infrastructure and Excavation Fund shall be available to the board to fund the educational course developed pursuant to subdivision (c).
SB 878 (Jones, R-El Cajon)
Department of Consumer Affairs Licensing: applications: wait times.

Location: 6/17/2020 – Senate Committee on Appropriations.
Introduced: 1/22/2020
Board Position: Watch (as of 3/12/2020)
Board Staff Analysis: 6/17/2020

Bill Summary: This bill would add Section 139.5 to the Business and Professions Code. This new section would require boards within the Department of Consumer Affairs to do both of the following:

1. Prominently display the current timeframe for processing initial and renewal license applications on its internet website.
2. With respect to the information displayed on the website, specify the average timeframe for each license category.

Staff Comment: It is not clear what is meant by “current.” Does it mean the data must be updated whenever an application or renewal is processed? Or does it mean on a daily or weekly (or some other time period) basis? It is also not clear how the “average timeframe” referenced in the second provision is different from the “current timeframe” in the first provision. While the goal of providing information to the applicants, licensees, and the public regarding how long it takes to process applications and renewals is laudable, it would be difficult to meet the requirements of this bill without further clarification of the terms used.

Until such time as the Board’s new IT system is fully implemented, tracking and compiling this data would have to be done manually, which would create additional workload for staff.

At its March 12, 2020, meeting, the Board took a position of “Watch” on SB 878 to see if further clarification of the terms in the bill is provided when the bill is heard in Committee.

As is standard procedure with any legislation that could have a fiscal impact on the Board, we provided information indicating that there could a significant fiscal impact to the Board if we were required to produce the specified information more often than the current annual report because of the significant manual work involved at this time. Board staff has recently had discussions with both the Author’s staff and the consultant for the Senate Appropriations Committee regarding this determination and our other concerns with the bill. We explained that we have concerned with the terminology used in the bill, as well as with the fiscal and workload impacts to the Board because of the confusion that could be caused by the terminology and because of the manual work we would have to do to obtain the data since our current IT systems cannot be relied upon to provide accurate data. We also explained that obtaining the data will become much less burdensome once our new IT system is fully implemented for all types of applications and license renewals, which we anticipate will be sometime in 2021. Both the Author’s staff and the Committee consultant were open to considering amendments to the bill to clarify the terminology used, which would
help to alleviate some of the fiscal impact the Board could face in complying with these new requirements. Board staff believes the Board should not change its position from “Watch” at this time and continue to allow Board staff to work with the Author’s office on possible amendments.

**Staff Recommendation:** No action needed at this time.

**Laws:** An act to add Section 139.5 to the Business and Professions Code, relating to professions and vocations.
An act to add Section 139.5 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL’S DIGEST

SB 878, as introduced, Jones. Department of Consumer Affairs Licensing: applications: wait times.
Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs.
This bill would require each board within the department that issues licenses to prominently display the current timeframe for processing initial and renewal license applications on its internet website, as provided.

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

SECTION 1. Section 139.5 is added to the Business and Professions Code, to read:
139.5. Each board, as defined in section 22, within the department that issues a license shall do both of the following:
(a) Prominently display the current timeframe for processing initial and renewal license applications on its internet website.
(b) With respect to the information displayed on the website, specify the average timeframe for each license category.
SB 1057 (Jones, R-El Cajon)
Land.

Status: 5/12/2020 – Referral to Senate Committee on Governance and Finance rescinded due to shortened 2020 Legislative calendar.
Location: 6/17/2020 – Senate Committee on Business, Professions and Economic Development.
Introduced: 2/18/2020
Board Position: Oppose Unless Amended (as of 5/7/2020)
Board Staff Analysis: 6/17/2020

Bill Summary: This bill would amend Sections 8726, 8764, and 8780 of the Business and Professions Code; these sections are part of the Professional Land Surveyors’ Act, which is under this Board’s authority to enforce. The bill would also amend Sections 4529 and 66452.5 of the Government Code.

Section 8726 defines land surveying. It currently contains a subdivision that indicates that a person practices land surveying if they do or offer to do “geodetic or cadastral surveying”; that subdivision also provides a definition of “geodetic surveying,” as that phrase is used in the Professional Land Surveyors’ Act. There is no specific definition of “cadastral surveying” provided. This bill would add a definition of “cadastral surveying,” as that phrase is used in the Professional Land Surveyors’ Act. This bill would also reletter and renumber the subdivisions and subparagraphs in Section 8726 and make conforming changes.

Section 8764 specifies what information must be shown on a Record of Survey. It currently includes a subdivision that indicates “any other data necessary for the intelligent interpretation of the various items and locations of the points, lines, and areas shown, or convenient for the identification of the survey or surveyor, as may be determined by the civil engineer or land surveyor preparing the record of survey.” This bill would add the phrase “in graphic or narrative form” after “any other data” so that the provision would read “any other data, in graphic or narrative form, ….” This bill would also reletter and renumber the subdivisions and subparagraphs in Section 8764.

Section 8780 authorizes the Board to investigate complaints against licensees and to take disciplinary action against licensees on certain grounds, as specified. One of the subdivisions states “Any negligence or incompetence in his or her practice of land surveying.” This bill would separate this provision into two separate provisions: one would include negligence, and the other would include incompetence. This bill would also reletter and renumber the subdivisions and subparagraphs in Section 8780 and make grammatical changes.

Government Code section 4529 relates to the qualifications based selection (QBS) process. Government Code section 66452.5 is part of the Subdivision Map Act. The changes proposed to these sections do not impact the Board’s regulation of the practice of land surveying.
Staff Comment:
Section 8726
This bill proposes to add the following as the definition of “cadastral surveying:”

“Cadastral surveying means a survey that creates, marks, defines, retraces, or reestablishes the boundaries and subdivision of the public land of the United States, or any other field survey of a cadaster that is a public record, survey, or map of the extent and ownership of land.”

The Bureau of Land Management (BLM) provides the following information on its website regarding cadastral surveys:

The BLM’s Cadastral Survey Program provides one of the oldest and most fundamental functions of the U.S. Government. Originating with the Land Ordinance of 1785, cadastral surveys create, define, mark, and re-establish the boundaries and subdivisions of the public lands of the United States. (The word “cadastral” is derived from cadastre, meaning a public record, survey, or map of the value, extent, and ownership of land as a basis of taxation.) These surveys provide public land managers and the public with essential information needed to correctly determine ownership rights and privileges and facilitate good land management decisions.

The proposed definition seems to be a combination of the BLM’s definitions of “cadastral surveying” and “cadastre” (or “cadaster”).

There appears to be a grammatical issue between the first and second clauses of the definition. The first clause says “cadastral surveying means a survey …,” while the second clause says “… or [cadastral surveying] means any other field survey ….” The phrase “any other” refers back to the first clause and its reference to “a survey”; however, the second clause contains the word “field” that the first clause does not. If the intent is that the surveys that constitute cadastral surveying be field surveys, then the word “field” would need to be added to the first clause. However, if the intent is to make a distinction between types of surveys (one that is not a field survey and one that is), then the phrase “any other field survey” in the second clause would need to be changed to “a field survey.”

The Board needs to determine if it believes the definition of “cadastral surveying,” as currently written, is appropriate and necessary. For example, is it necessary to include a definition of “cadastral surveying” in the law, or is the term sufficiently understood in the profession without a specified definition? Is the definition as written clear and understandable, or will it cause confusion within the profession? Does the definition expand or contract the existing scope of practice, and if it does either, is that appropriate for the protection of the health, safety, welfare, and property of the public?

Section 8764
Since current law does not specify in what form the “any other data” referenced in Section 8764 must be shown, staff believes the law already allows for the data to be shown in graphic or narrative form.
Section 8780
Staff has heard that there are concerns with the law including both negligence and incompetence in the same subdivision, even with the word “or,” because it gives some people the impression that the subject of an investigation, citation, or formal disciplinary action has committed both negligence and incompetence. Changing Section 8780 so that negligence and incompetence are in separate subdivisions would not change the Board’s ability to investigate complaints or take action against licensees for either or both.

At its March 12, 2020, meeting, the Board took a position of Oppose Unless Amended to remove Section 8726 from the bill. The Board took this position because it is concerned with the definition of “cadastral surveying” as written in the bill and believes that more time should be allowed for the Board, likely through its Land Surveying Technical Advisory Committee (LSTAC) to discuss the definition. Staff relayed this position to the sponsors and discussed the concerns with the confusing nature of the definition as presented in the bill. While the sponsors did not seem inclined to want to remove Section 8726 from the bill, they did indicate that they were willing to have further discussions regarding the wording of the definition.

At its May 7, 2020, meeting, the Board voted to take an “Oppose Unless Amended” position on SB 1057 and request that the definition of “cadastral surveying,” as proposed in the bill, be amended to use language that more closely matches the definition provided by the Bureau of Land Management (BLM). This language was provided to the sponsors, and they agreed to consider it. At this time, the bill is not scheduled for hearing, and it is unknown if it will be moving forward during this legislative session.

**Staff Recommendation:** No action needed at this time.

**Laws:** An act to amend Sections 8726, 8764, and 8780 of the Business and Professions Code, and to amend Sections 4529 and 66452.5 of the Government Code, relating to land.
An act to amend Sections 8726, 8764, and 8780 of the Business and Professions Code, and to amend Sections 4529 and 66452.5 of the Government Code, relating to land.

LEGISLATIVE COUNSEL’S DIGEST

SB 1057, as introduced, Jones. Land.

(1) Existing law, the Professional Land Surveyors’ Act, provides for the licensure and regulation of land surveyors by the Board for Professional Engineers, Land Surveyors, and Geologists, and makes it unlawful to practice land surveying without a license, except as specified. Existing law includes within the practice of land surveying cadastral surveying.

This bill would define cadastral surveying for purposes of the act.

Existing law requires a record of survey filed with the county surveyor by a licensed surveyor or licensed civil engineer to include, among other information, any data necessary for the intelligent interpretation of the various items and locations of the points, lines, and areas shown, or convenient for the identification of the survey or surveyor.

This bill would provide that this data may be in graphic or narrative form. The bill would make nonsubstantive changes relating to licensed land surveyors and civil engineers.

(2) Existing law requires a state or local agency head, as defined, to select professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. Existing law makes
those provisions inapplicable where the state or local agency head determines that the services needed are more of a technical nature and involve little professional judgment and that requiring bids would be in the public interest.

This bill would require a state or local agency head who makes that determination to be licensed in the discipline for which they are making that determination if licensure is required in that discipline.

(3) The Subdivision Map Act authorizes a subdivider, or any tenant of the subject property in specified circumstances, to appeal from an action of the advisory agency relating to a tentative map to the appeal board or legislative body, as specified, and provides for the appeal from the decision of the appeal board to the legislative body. The act further authorizes any interested person adversely affected by a decision of the advisory agency or appeal board to appeal the decision with the legislative body. Existing law requires a hearing to be held after an appeal is filed pursuant to those provisions within 30 days after the request is filed by the appellant.

This bill would instead require a hearing to be held within 45 days after the request is filed and would make conforming changes.


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

SECTION 1. Section 8726 of the Business and Professions Code is amended to read:

8726. (a) A person, including any person employed by the state or by a city, county, or city and county within the state, practices land surveying within the meaning of this chapter who, either in a public or private capacity, does or offers to do any one or more of the following:

(1) Locates, relocates, establishes, reestablishes, or retraces the alignment or elevation for any of the fixed works embraced within the practice of civil engineering, as described in Section 6731.

(2) Determines the configuration or contour of the earth’s surface, or the position of fixed objects above, on, or below the surface of the earth by applying the principles of mathematics or photogrammetry.
(3) Locates, relocates, establishes, reestablishes, or retraces any property line or boundary of any parcel of land, right-of-way, easement, or alignment of those lines or boundaries.

(d) (4) Makes any survey for the subdivision or resubdivision of any tract of land. For the purposes of this subdivision, the term “subdivision” or “resubdivision” shall be defined to include, but not be limited to, the definition in the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code) or the Subdivided Lands Law (Chapter 1 (commencing with Section 11000) of Part 2 of Division 4 of this code).

(e) (5) By the use of the principles of land surveying determines the position for any monument or reference point which marks a property line, boundary, or corner, or sets, resets, or replaces any monument or reference point.

(f) (6) Geodetic or cadastral surveying. As used in this chapter:

(A) Geodetic surveying means performing surveys, in which account is taken of the figure and size of the earth to determine or predetermine the horizontal or vertical positions of fixed objects thereon or related thereto, geodetic control points, monuments, or stations for use in the practice of land surveying or for stating the position of fixed objects, geodetic control points, monuments, or stations by California Coordinate System coordinates.

(B) Cadastral surveying means a survey that creates, marks, defines, retraces, or reestablishes the boundaries and subdivisions of the public land of the United States, or any other field survey of a cadaster that is a public record, survey, or map of the extent and ownership of land.

(g) (7) Determines the information shown or to be shown on any map or document prepared or furnished in connection with any one or more of the functions described in subdivisions (a), (b), (c), (d), (e), and (f), paragraphs (1) to (6), inclusive.
(8) Indicates, in any capacity or in any manner, by the use of the title “land surveyor” or by any other title or by any other representation that he or she practices or offers to practice land surveying in any of its branches.

(9) Procures or offers to procure land surveying work for himself, herself, themselves or others.

(10) Manages, or conducts as manager, proprietor, or agent, any place of business from which land surveying work is solicited, performed, or practiced.

(11) Coordinates the work of professional, technical, or special consultants in connection with the activities authorized by this chapter.

(12) Determines the information shown or to be shown within the description of any deed, trust deed, or other title document prepared for the purpose of describing the limit of real property in connection with any one or more of the functions described in subdivisions (a) to (f); paragraphs (1) to (6), inclusive.

(13) Creates, prepares, or modifies electronic or computerized data in the performance of the activities described in subdivisions (a), (b), (c), (d), (e), (f), (k), and (l); paragraphs (1), (2), (3), (4), (5), (6), (11), and (12).

(14) Renders a statement regarding the accuracy of maps or measured survey data.

(b) Any department or agency of the state or any city, county, or city and county that has an unregistered person in responsible charge of land surveying work on January 1, 1986, shall be exempt from the requirement that the person be licensed as a land surveyor until the person currently in responsible charge is replaced.

(c) The review, approval, or examination by a governmental entity of documents prepared or performed pursuant to this section shall be done by, or under the direct supervision of, a person authorized to practice land surveying.
SEC. 2. Section 8764 of the Business and Professions Code is amended to read:

8764. (a) The record of survey shall show the applicable provisions of the following consistent with the purpose of the survey:

1. All monuments found, set, reset, replaced, or removed, describing their kind, size, and location, and giving other data relating thereto.

2. Bearing or witness monuments, basis of bearings, bearing and length of lines, scale of map, and north arrow.

3. Name and legal designation of the property in which the survey is located, and the date or time period of the survey.

4. The relationship to those portions of adjacent tracts, streets, or senior conveyances which have common lines with the survey.

5. Memorandum of oaths.

6. Statements required by Section 8764.5.

7. Any other data, in graphic or narrative form, necessary for the intelligent interpretation of the various items and locations of the points, lines, and areas shown, or convenient for the identification of the survey or surveyor, as may be determined by the civil engineer or land surveyor preparing the record of survey.

(b) The record of survey shall also show, either graphically or by note, the reason or reasons, if any, why the mandatory filing provisions of paragraphs (1) to (5), inclusive, of subdivision (b) of Section 8762 apply.

(c) The record of survey need not consist of a survey of an entire property.

SEC. 3. Section 8780 of the Business and Professions Code is amended to read:

8780. (a) The board may, upon its own initiative or upon the receipt of a complaint, investigate the actions of any land surveyor
licensed under this chapter or any civil engineer licensed under
the provisions of Chapter 7 (commencing with Section 6700) who
is legally authorized to practice land surveying and make findings
thereon.

By

(b) By a majority vote, the board may publicly reprove, suspend
for a period not to exceed two years, or revoke the license or
certificate of any land surveyor licensed under this chapter or civil
engineer licensed under the provisions of Chapter 7 (commencing
with Section 6700) who is legally authorized to practice land
surveying on any of the following grounds:

(1) Any fraud, deceit, or misrepresentation in their practice of land surveying.

(2) Any negligence in their practice of land surveying.

(3) Any incompetence in their practice of land surveying.

(4) Any fraud or deceit in obtaining their license.

(5) Any violation of any provision of this chapter or of any other
law relating to or involving the practice of land surveying.

(6) Any conviction of a crime substantially related to the
qualifications, functions, and duties of a land surveyor. The record
of the conviction shall be conclusive evidence thereof.

(7) Aiding or abetting any person in the violation of any
provision of this chapter or any regulation adopted by the board
pursuant to this chapter.

(8) A breach or violation of a contract to provide land surveying
services.

(9) A violation in the course of the practice of land surveying
of a rule or regulation of unprofessional conduct adopted by the
board.

SEC. 4. Section 4529 of the Government Code is amended to
read:
4529. (a) This chapter shall not apply where the state or local agency head determines that the services needed are more of a technical nature and involve little professional judgment and that requiring bids would be in the public interest.  
(b) A state or local agency head making a determination pursuant to subdivision (a) shall be licensed in the discipline for which they are making the determination if a license is required to practice in that discipline.  
SEC. 5. Section 66452.5 of the Government Code is amended to read:  
66452.5. (a) (1) The subdivider, or any tenant of the subject property, in the case of a proposed conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, may appeal from any action of the advisory agency with respect to a tentative map to the appeal board established by local ordinance or, if none, to the legislative body.  
(2) The appeal shall be filed with the clerk of the appeal board, or if there is none, with the clerk of the legislative body within 10 days after the action of the advisory agency from which the appeal is being taken.  
(3) Upon the filing of an appeal, the appeal board or legislative body shall set the matter for hearing. The hearing shall be held within 30-45 days after the date of a request filed by the subdivider or the appellant. If there is no regular meeting of the legislative body within the next 30-45 days for which notice can be given pursuant to Section 66451.3, the appeal may be heard at the next regular meeting for which notice can be given, or within 60 days from the date of the receipt of the request, whichever period is shorter. Within 10 days following the conclusion of the hearing, the appeal board or legislative body shall render its decision on the appeal.  
(b) (1) The subdivider, any tenant of the subject property, in the case of a conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, or the advisory agency may appeal from the action of the appeal board to the legislative body. The appeal shall be filed in writing with the clerk of the legislative body within 10 days after the action of the appeal board from which the appeal is being taken.
(2) After the filing of an appeal, the legislative body shall set
the matter for hearing. The hearing shall be held within 30 45 days
after the date of the request filed by the subdivider or the appellant.
If there is no regular meeting of the legislative body within the
next 30 45 days for which notice can be given pursuant to Section
66451.3, the appeal may be heard at the next regular meeting for
which notice can be given, or within 60 days from the date of the
receipt of the request, whichever period is shorter. Within 10 days
following the conclusion of the hearing, the legislative body shall
render its decision on the appeal.

(c) (1) If there is an appeal board and it fails to act upon an
appeal within the time limit specified in this chapter, the decision
from which the appeal was taken shall be deemed affirmed and an
appeal therefrom may thereupon be taken to the legislative body
as provided in subdivision (b) of this section. If no further appeal
is taken, the tentative map, insofar as it complies with applicable
requirements of this division and any local ordinance, shall be
deemed approved or conditionally approved as last approved or
conditionally approved by the advisory agency, and it shall be the
duty of the clerk of the legislative body to certify or state that
approval, or if the advisory agency is one which is not authorized
by local ordinance to approve, conditionally approve, or disapprove
the tentative map, the advisory agency shall submit its report to
the legislative body as if no appeal had been taken.

(2) If the legislative body fails to act upon an appeal within the
time limit specified in this chapter, the tentative map, insofar as it
complies with applicable requirements of this division and any
local ordinance, shall be deemed to be approved or conditionally
approved as last approved or conditionally approved, and it shall
be the duty of the clerk of the legislative body to certify or state
that approval.

(d) (1) Any interested person adversely affected by a decision
of the advisory agency or appeal board may file an appeal with
the legislative body concerning any decision of the advisory agency
or appeal board. The appeal shall be filed with the clerk of the
legislative body within 10 days after the action of the advisory
agency or appeal board that is the subject of the appeal. Upon the
filing of the appeal, the legislative body shall set the matter for
hearing. The hearing shall be held within 30 45 days after the date
of a request filed by the subdivider or the appellant. If there is no
regular meeting of the legislative body within the next 30 days for which notice can be given pursuant to Section 66451.3, the appeal may be heard at the next regular meeting for which notice can be given, or within 60 days from the date of the receipt of the request, whichever period is shorter. The hearing may be a public hearing for which notice shall be given in the time and manner provided.

(2) Upon conclusion of the hearing, the legislative body shall, within 10 days, declare its findings based upon the testimony and documents produced before it or before the advisory board or the appeal board. The legislative body may sustain, modify, reject, or overrule any recommendations or rulings of the advisory board or the appeal board and may make any findings that are not inconsistent with the provisions of this chapter or any local ordinance adopted pursuant to this chapter.

(e) Each decision made pursuant to this section shall be supported by findings that are consistent with the provisions of this division and any local ordinance adopted pursuant to this division.

(f) Notice of each hearing provided for in this section shall be sent by United States mail to each tenant of the subject property, in the case of a conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, at least three days prior to the hearing. The notice requirement of this subdivision shall be deemed satisfied if the notice complies with the legal requirements for service by mail. Pursuant to Section 66451.2, fees may be collected from the subdivider or from persons appealing or filing an appeal for expenses incurred under this section.
VIII. Enforcement

A. Enforcement Statistical Reports
   1. Fiscal Year 2019/20 Update
Complaint Investigation Phase

Number of Complaint Investigations Opened & Completed by Month
12-Month Cycle

- **Opened**
- **Completed**

NOTE: FY19/20 statistics are through May 31, 2020
Complaint Investigation Phase

Number of Open (Pending) Complaint Investigations
(at end of FY or month for current FY)

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Average Days from Opening of Complaint Investigation to Completion of Investigation

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NOTE: FY19/20 statistics are through May 31, 2020
# Complain Investigation Phase

**Aging of Open (Pending) Complaint Investigation Cases – 12-Month Cycle**

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*Note:* The data represents the number of cases in each age category for each month over a 12-month cycle.
Complaint Investigation Phase
Outcome of Completed Investigations

Outcome of Completed Investigations

FY16/17: Total 323
FY17/18: Total 349
FY18/19: Total 334
FY19/20: Total 310

NOTE: FY19/20 statistics are through May 31, 2020
Closed with No Action Taken, includes No Violation/Insufficient Evidence; Compliance Obtained; Warning Letter; Other Reason for Closing Without Action (e.g., subject deceased); Resolved After Initial Notification; Referred to District Attorney with Request to File Criminal Charges; and Mediated.
Cite = Referred for Issuance of Citation
FDA = Referred for Formal Disciplinary Action
Citations (Informal Enforcement Actions)

Number of Complaint Investigations Referred and Number of Citations Issued

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Number of Citations Issued and Final

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Average Days Between Date of Issuance of Citation and Date Citation Becomes Final

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</table>

Average Days from Opening of Complaint Investigation to Date Citation Becomes Final

<table>
<thead>
<tr>
<th>FY16/17</th>
<th>FY17/18</th>
<th>FY18/19</th>
<th>FY19/20</th>
</tr>
</thead>
<tbody>
<tr>
<td>639</td>
<td>495</td>
<td>587</td>
<td>503</td>
</tr>
</tbody>
</table>

NOTE: FY19/20 statistics are through May 31, 2020
Formal Disciplinary Actions Against Licensees

Number of Licensees Referred for Formal Disciplinary Action and Number of Final Disciplinary Decisions

Average Days from Referral for Formal Disciplinary Action to Effective Date of Final Decision

Average Days from Opening of Complaint Investigation to Effective Date of Final Decision

NOTE: FY19/20 statistics are through May 31, 2020
## Number of Complaint Investigations Opened & Completed by Month

### 12-Month Cycle

<table>
<thead>
<tr>
<th>Month</th>
<th>Complaint Investigations Opened</th>
<th>Complaint Investigations Completed</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 2019</td>
<td>21</td>
<td>30</td>
</tr>
<tr>
<td>July 2019</td>
<td>37</td>
<td>30</td>
</tr>
<tr>
<td>August 2019</td>
<td>40</td>
<td>37</td>
</tr>
<tr>
<td>September 2019</td>
<td>33</td>
<td>32</td>
</tr>
<tr>
<td>October 2019</td>
<td>21</td>
<td>21</td>
</tr>
<tr>
<td>November 2019</td>
<td>19</td>
<td>20</td>
</tr>
<tr>
<td>December 2019</td>
<td>41</td>
<td>32</td>
</tr>
<tr>
<td>January 2020</td>
<td>24</td>
<td>34</td>
</tr>
<tr>
<td>February 2020</td>
<td>35</td>
<td>28</td>
</tr>
<tr>
<td>March 2020</td>
<td>22</td>
<td>31</td>
</tr>
<tr>
<td>April 2020</td>
<td>29</td>
<td>22</td>
</tr>
<tr>
<td>May 2020</td>
<td>15</td>
<td>23</td>
</tr>
</tbody>
</table>

## Complaint Investigations Opened and Completed

### Total by Fiscal Year

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Complaint Investigations Opened</th>
<th>Complaint Investigations Completed</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016/17</td>
<td>353</td>
<td>323</td>
</tr>
<tr>
<td>2017/18</td>
<td>362</td>
<td>349</td>
</tr>
<tr>
<td>2018/19</td>
<td>328</td>
<td>334</td>
</tr>
<tr>
<td>2019/20</td>
<td>316</td>
<td>310</td>
</tr>
</tbody>
</table>

*Current Fiscal Year through May 31, 2020*

## Number of Open (Pending) Complaint Investigations

### (at end of FY or month for current FY)

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Number of Open (Pending) Complaint Investigations</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016/17</td>
<td>237</td>
</tr>
<tr>
<td>2017/18</td>
<td>254</td>
</tr>
<tr>
<td>2018/19</td>
<td>247</td>
</tr>
<tr>
<td>2019/20</td>
<td>249</td>
</tr>
</tbody>
</table>

*Current Fiscal Year through May 31, 2020*
## Complaint Investigation Phase

### Average Days from Opening of Complaint Investigation to Completion of Investigation (at end of FY or month for current FY)

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Average Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016/17</td>
<td>243</td>
</tr>
<tr>
<td>2017/18</td>
<td>238</td>
</tr>
<tr>
<td>2018/19</td>
<td>236</td>
</tr>
<tr>
<td>2019/20</td>
<td>276</td>
</tr>
</tbody>
</table>

Current Fiscal Year through May 31, 2020

### Outcome of Completed Investigations

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th># Closed</th>
<th>% Closed</th>
<th># Cite</th>
<th>% Cite</th>
<th># FDA</th>
<th>% FDA</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016/17</td>
<td>205</td>
<td>63%</td>
<td>97</td>
<td>30%</td>
<td>21</td>
<td>7%</td>
</tr>
<tr>
<td>2017/18</td>
<td>219</td>
<td>63%</td>
<td>93</td>
<td>27%</td>
<td>37</td>
<td>10%</td>
</tr>
<tr>
<td>2018/19</td>
<td>225</td>
<td>67%</td>
<td>83</td>
<td>25%</td>
<td>27</td>
<td>8%</td>
</tr>
<tr>
<td>2019/20</td>
<td>201</td>
<td>65%</td>
<td>83</td>
<td>27%</td>
<td>26</td>
<td>8%</td>
</tr>
</tbody>
</table>

Current Fiscal Year through May 31, 2020

Closed = Closed with No Action Taken, includes No Violation/Insufficient Evidence; Compliance Obtained; Warning Letter; Other Reason for Closing Without Action (e.g., subject deceased); Resolved After Initial Notification; Referred to District Attorney with Request to File Criminal Charges; and Mediated.

Cite = Referred for Issuance of Citation

FDA = Referred for Formal Disciplinary Action
### Aging of Open (Pending) Complaint Investigation Cases

**12-Month Cycle**

<table>
<thead>
<tr>
<th>Month</th>
<th>0-30 Days</th>
<th>31-60 Days</th>
<th>61-90 Days</th>
<th>91-12 Days</th>
<th>121-180 Days</th>
<th>181-270 Days</th>
<th>271-365 Days</th>
<th>1-2 Years</th>
<th>2-3 Years</th>
<th>3-4 Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 2019</td>
<td>17</td>
<td>31</td>
<td>26</td>
<td>21</td>
<td>33</td>
<td>42</td>
<td>39</td>
<td>37</td>
<td>1</td>
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</tr>
<tr>
<td>July 2019</td>
<td>37</td>
<td>17</td>
<td>30</td>
<td>24</td>
<td>26</td>
<td>46</td>
<td>32</td>
<td>41</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>August 2019</td>
<td>40</td>
<td>37</td>
<td>16</td>
<td>27</td>
<td>40</td>
<td>27</td>
<td>41</td>
<td>27</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>September 2019</td>
<td>33</td>
<td>40</td>
<td>36</td>
<td>16</td>
<td>43</td>
<td>37</td>
<td>28</td>
<td>24</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>October 2019</td>
<td>20</td>
<td>32</td>
<td>39</td>
<td>36</td>
<td>36</td>
<td>37</td>
<td>33</td>
<td>23</td>
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<tr>
<td>November 2019</td>
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<td>32</td>
<td>34</td>
<td>50</td>
<td>44</td>
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<td>36</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>December 2019</td>
<td>40</td>
<td>19</td>
<td>20</td>
<td>30</td>
<td>64</td>
<td>40</td>
<td>22</td>
<td>27</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>January 2020</td>
<td>23</td>
<td>39</td>
<td>17</td>
<td>19</td>
<td>57</td>
<td>53</td>
<td>22</td>
<td>22</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>February 2020</td>
<td>35</td>
<td>18</td>
<td>33</td>
<td>15</td>
<td>43</td>
<td>60</td>
<td>31</td>
<td>23</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>March 2020</td>
<td>21</td>
<td>34</td>
<td>17</td>
<td>31</td>
<td>31</td>
<td>65</td>
<td>29</td>
<td>21</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>April 2020</td>
<td>28</td>
<td>20</td>
<td>33</td>
<td>16</td>
<td>42</td>
<td>56</td>
<td>38</td>
<td>23</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>May 2020</td>
<td>15</td>
<td>28</td>
<td>17</td>
<td>29</td>
<td>39</td>
<td>42</td>
<td>48</td>
<td>30</td>
<td>1</td>
<td>0</td>
</tr>
</tbody>
</table>
### Number of Complaint Investigations Referred and Number of Citations Issued

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Complaint Investigations Referred for Issuance of Citation</th>
<th>Citations Issued</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016/17</td>
<td>97</td>
<td>100</td>
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<tr>
<td>2017/18</td>
<td>93</td>
<td>83</td>
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<tr>
<td>2018/19</td>
<td>83</td>
<td>75</td>
</tr>
<tr>
<td>2019/20</td>
<td>83</td>
<td>64</td>
</tr>
</tbody>
</table>

Current Fiscal Year through May 31, 2020

### Number of Citations Issued and Final

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Issued</th>
<th>Final</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016/17</td>
<td>100</td>
<td>101</td>
</tr>
<tr>
<td>2017/18</td>
<td>83</td>
<td>91</td>
</tr>
<tr>
<td>2018/19</td>
<td>75</td>
<td>76</td>
</tr>
<tr>
<td>2019/20</td>
<td>64</td>
<td>75</td>
</tr>
</tbody>
</table>

Current Fiscal Year through May 31, 2020

### Average Days Between Date of Issuance of Citation and Date Citation Becomes Final

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Number of Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016/17</td>
<td>259</td>
</tr>
<tr>
<td>2017/18</td>
<td>164</td>
</tr>
<tr>
<td>2018/19</td>
<td>236</td>
</tr>
<tr>
<td>2019/20</td>
<td>138</td>
</tr>
</tbody>
</table>

Current Fiscal Year through May 31, 2020

### Average Days from Opening of Complaint Investigation to Date Citation Becomes Final

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Number of Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016/17</td>
<td>639</td>
</tr>
<tr>
<td>2017/18</td>
<td>495</td>
</tr>
<tr>
<td>2018/19</td>
<td>587</td>
</tr>
<tr>
<td>2019/20</td>
<td>503</td>
</tr>
</tbody>
</table>

Current Fiscal Year through May 31, 2020
### Number of Licensees Referred for Formal Disciplinary Action and Number of Final Disciplinary Decisions

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Number of Licensees Referred for Formal Disciplinary Action</th>
<th>Number of Final Disciplinary Decisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016/17</td>
<td>36</td>
<td>41</td>
</tr>
<tr>
<td>2017/18</td>
<td>28</td>
<td>19</td>
</tr>
<tr>
<td>2018/19</td>
<td>34</td>
<td>30</td>
</tr>
<tr>
<td>2019/20</td>
<td>35</td>
<td>35</td>
</tr>
</tbody>
</table>

Current Fiscal Year through May 31, 2020

### Average Days from Referral for Formal Disciplinary Action to Effective Date of Final Decision

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Number of Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016/17</td>
<td>703</td>
</tr>
<tr>
<td>2017/18</td>
<td>585</td>
</tr>
<tr>
<td>2018/19</td>
<td>550</td>
</tr>
<tr>
<td>2019/20</td>
<td>493</td>
</tr>
</tbody>
</table>

Current Fiscal Year through May 31, 2020

### Average Days from Opening of Complaint Investigation to Effective Date of Final Decision

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Number of Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016/17</td>
<td>1106</td>
</tr>
<tr>
<td>2017/18</td>
<td>825</td>
</tr>
<tr>
<td>2018/19</td>
<td>923</td>
</tr>
<tr>
<td>2019/20</td>
<td>740</td>
</tr>
</tbody>
</table>

Current Fiscal Year through May 31, 2020
IX. Exams/Licensing

A. Update on 2020 California State Examinations
B. Discussion on Alternate Ways to Administer State Examinations
X. Executive Officer’s Report

A. Rulemaking Status Report
B. Update on Board’s Business Modernization Project
C. Personnel
D. ABET
E. Association of State Boards of Geology (ASBOG)
F. National Council of Examiners for Engineering and Surveying (NCEES)
G. Update on Outreach Efforts
   1. Discussion on Outreach Efforts During Pandemic
H. Review of Board’s Operating Procedures Related to President and Vice President Elections.
Rulemaking Overview

1. Fees and Certificates (404, 410, 3005, and 3010)
     - Submitted for final review by DCA/Agency on February 26, 2020.
     - Board approved modified language for 15-day public comment period on January 16, 2020.
     - DCA/Agency approved for filing with OAL for publication on November 14, 2019.
     - Submitted for initial (pre-notice) review by DCA Legal on May 30, 2019.
     - Board directed staff to pursue rulemaking proposal on November 1, 2018.

2. Repeal Professional Engineer and Land Surveyor Appeals (443 and 444)
   - Submitted for initial (pre-notice) review by DCA Legal on September 5, 2019.
     - Board directed staff to pursue rulemaking proposal on March 1, 2013.

3. Substantial Relationship Criteria and Criteria for Rehabilitation (416, 418, 3060, and 3061)
   - Final language and responses to comments to Board for adoption on June 25, 2020.
     - 45-Day public comment period ended on April 27, 2020.
     - Board approved modified language for 15-day public comment period on March 12, 2020.
     - DCA/Agency approved for filing with OAL for publication on March 2, 2020.
     - Submitted for initial (pre-notice) review by DCA Legal on June 11, 2019.
     - Board directed staff to pursue rulemaking proposal on February 21, 2019.

4. Definition of Traffic Engineering (404)
   - Board directed staff to pursue rulemaking proposal on March 8, 2019.

5. Definitions of Negligence and Incompetence (3003 and 3003.1)
   - Board directed staff to pursue rulemaking proposal on September 6, 2018.
Note: Documents related to any rulemaking file listed as “noticed” can be obtained from the Board's website at http://www.bpelsg.ca.gov/about_us/rulemaking.shtml.
EXECUTIVE SUMMARY

Narrative Summary of Status | Schedule: GREEN | Budget: GREEN | Issues: GREEN
---|---|---|---
Minimum Viable Product (MVP) Product increments of work are currently underway. BPELSG’s MVP is Engineer-In-Training and Land Surveyor-In-Training application submission. Online Complaint Submission has also been developed for MVP. Both processes are customer facing. The project remains on target for budget projections. The MVP schedule has been extended to August 2020 with an additional Sprint for User Acceptance Testing and Interface refinement.

PROJECT MILESTONE STATUS REVIEW

<table>
<thead>
<tr>
<th>Project Milestones</th>
<th>Status</th>
<th>Completion Date</th>
<th>Issues Exist (Yes/No)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Planning Complete – Project Start</td>
<td>Complete</td>
<td>1/13/2020</td>
<td>No</td>
</tr>
<tr>
<td>Onboard Systems Integrator</td>
<td>Complete</td>
<td>1/31/2020</td>
<td>No</td>
</tr>
<tr>
<td>Sprint Planning &amp; Development</td>
<td>In Progress</td>
<td>7/10/2020</td>
<td>No</td>
</tr>
<tr>
<td>User Acceptance Testing (UAT)</td>
<td>Not Started</td>
<td>8/14/2020</td>
<td>No</td>
</tr>
<tr>
<td>MVP Product Increment 1 - Dates may adjust depending on final project schedule baseline</td>
<td>In Progress</td>
<td>8/26/2020</td>
<td>Yes</td>
</tr>
</tbody>
</table>
## QUARTERLY OUTREACH REPORT (Q1)
### SOCIAL MEDIA: January–March 2020

### TOP 5 FACEBOOK POSTS

<table>
<thead>
<tr>
<th>Post Description</th>
<th>Date</th>
<th>Views</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASBOG geology exams have been canceled</td>
<td>March 13</td>
<td>2,507</td>
</tr>
<tr>
<td>NCEES has announced that the April 2020 paper exam is canceled</td>
<td>March 13</td>
<td>801</td>
</tr>
<tr>
<td>UPDATE to earlier post about “essential” work under Executive Order N-33-20</td>
<td>March 20</td>
<td>459</td>
</tr>
<tr>
<td>The Official Notice and Agenda has been amended to add a new item (item IV)</td>
<td>March 2</td>
<td>426</td>
</tr>
<tr>
<td>The Official Notice and Agenda for the January meeting</td>
<td>January 3</td>
<td>406</td>
</tr>
</tbody>
</table>

### TOP 5 TWEETS

<table>
<thead>
<tr>
<th>Tweet Description</th>
<th>Date</th>
<th>Views</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposing to amend Title 16 re: fees &amp; duplicate certificates</td>
<td>January 17</td>
<td>921</td>
</tr>
<tr>
<td>U.S. Census Bureau is recruiting</td>
<td>January 22</td>
<td>896</td>
</tr>
<tr>
<td>Addendum to the meeting materials for the January Board Mtg.</td>
<td>January 15</td>
<td>681</td>
</tr>
<tr>
<td>Two additional comments beyond the comment period are included in the addendum</td>
<td>January 15</td>
<td>677</td>
</tr>
<tr>
<td>Meeting materials for the January Board meeting are available</td>
<td>January 9</td>
<td>637</td>
</tr>
</tbody>
</table>

### WEB PAGE VIEWS

<table>
<thead>
<tr>
<th>Page Description</th>
<th>Views</th>
</tr>
</thead>
<tbody>
<tr>
<td>License Lookup</td>
<td>299,246</td>
</tr>
<tr>
<td>Board Homepage</td>
<td>182,524</td>
</tr>
<tr>
<td>Applicant Information</td>
<td>145,590</td>
</tr>
<tr>
<td>Professional Engineer Application</td>
<td>111,694</td>
</tr>
<tr>
<td>Licensee Information</td>
<td>88,467</td>
</tr>
</tbody>
</table>
OUTREACH EVENTS: January–March 2020

**January**

**January 7: Sacramento**
CDM Smith corporate presentation to civil engineers by Natalie King.

**January 7: Irvine**
ASCE Orange County YMF presentation by Natalie King.

**January 10: Cal Poly, San Luis Obispo**
Electrical engineering path to licensure presentation by Mike Donelson.

**January 23: Sacramento**
Sacramento County surveyor industry meeting—Q&A session by Ric Moore and Dallas Sweeney.

**January 24: Sacramento, Cal Recycle**
Monument preservation and licensure requirements presentation by Ric Moore and Dallas Sweeney.

**January 24–25: Fresno State University Geomatics Conference**
Presentation on the steps to licensure and the test plan by Ric Moore and Dallas Sweeney.

**January 31–Feb 1: San Diego, SWE Regional Conference**
All disciplines presentation by Natalie King and Mike Donelson.

**January 25: Sacramento**
Sacramento County surveyor industry meeting—Q&A session by Ric Moore and Dallas Sweeney.

**January 24–25: Fresno State University Geomatics Conference**
Presentation on the steps to licensure and the test plan by Ric Moore and Dallas Sweeney.

**January 31–Feb 1: San Diego, SWE Regional Conference**
All disciplines presentation by Natalie King and Mike Donelson.

---

**KEY**

- ASCE American Society of Civil Engineers
- APWA American Public Works Association
- CalGeo California Geotechnical Engineering Association
- SWE Society of Women Engineers
- YMF Young Members Forum
FEBRUARY

February 4: Chico State University
Senior-level class presentation for civil and mechanical engineers by Natalie King and Mike Donelson.

February 11: Cal Poly, San Luis Obispo
Geology Career Planning: The GIT and Professional Geologist License presentation by Laurie Racca.

February 12: Cal State, East Bay
CLSA presentation on currents affairs of the profession by Ric Moore and Dallas Sweeney.

February 14: San Jose State
Electrical/mechanical presentation on path to licensure by Mike Donelson.

February 18: Cal State, East Bay
Geology Career Planning: The GIT and Professional Geologist License presentation by Laurie Racca.

February 21: CSU, Los Angeles
Electrical/mechanical presentation on path to licensure by Mike Donelson.

February 27: CSU, Stanislaus
Geology Career Planning: The GIT and Professional Geologist License presentation by Laurie Racca.

February 28: San Diego State
Electrical/mechanical presentation on path to licensure by Mike Donelson.

MARCH

March 3: Cal Poly, Pomona
Chemicals/materials presentation on path to licensure by Mike Donelson.

March 4: CCSU, Fullerton
Geology Career Planning: The GIT and Professional Geologist License presentation by Laurie Racca.
Message from the Executive Officer
Richard B. Moore, PLS

In the winter 2019 Board Bulletin, there was mention of the Board’s efforts toward modernizing its operational processes by implementing a new integrated licensing and enforcement case management system. The Board is pleased to announce that in collaboration with the Department of Consumer Affairs Office of System Integration Unit and several of our peer boards/bureaus, a software platform to accomplish these goals was selected and onboarding of the vendor is already underway. This modernization will have a significant positive impact for how consumers, applicants, and licensed professionals may connect with the Board in a more meaningful and efficient manner. While there are many facets of the development scheduled to take shape over the remainder of 2020, the efforts will initially focus on foundational functionality such as credit card processing, cashiering, communication with other task-specific systems that are necessary to support future developments before quickly transitioning to the offering of online application submittal of Engineer-In-Training and Land Surveyor-In-Training applications, and online submission of complaints. We anticipate providing additional information on this effort in future Bulletins as the development progresses.

In recent years, legislative trends across the country reveal an increase of differing opinions related to the continued need for regulatory licensing, or, more specifically, maintaining the historical level of regulatory licensing. Some feel that the regulatory licensing arena has become too much of a hurdle and prohibitive to many seeking a career and recommend reform only to a lesser degree. Others argue that traditional licensing models have outgrown their intended usefulness, not properly addressing today’s public.

(continued on page 2)
Executive Officer Report – Item G. 1. – Discussion on Outreach Efforts During Pandemic

At the May 7, 2020 Board meeting, Board Member Alavi asked that we include a topic to discuss what changes we had made to the Board’s outreach efforts during and because of the pandemic. The following is a brief synopsis of current efforts being made by Board Staff in this regard:

Primarily Board staff has shifted focus towards the development of traditional outreach information through a remote presentation format (e.g., WebEx) as well as attempting to provide answers to reoccurring questions. Current efforts are focusing on:

- Development of regularly scheduled webinar(s) to assist potential applicants with understanding what is necessary to submit a complete application which will emphasize the online resources currently available on the Board’s website (i.e., fingerprint requirements, FAQ’s, Laws/Regulations, etc.)
- Associated webinar(s) intending to assist professional references with understanding their responsibilities with completing the reference portion of the applicant’s completed application.
- Webinar(s) associated the next steps once the application is approved and all required examination(s) are passed (i.e., next step to obtaining a license, when will the wall certificate and pocket ID card be mailed, proper use of their seal/signature, what does responsible charge mean, renewal information, volunteering to participate in exam development workshops, etc.)
- Development of webinar(s) as a follow up to the 2019 outreach efforts associated with the appropriate compliance with the Professional Land Surveyors’ Act and related Board Rules, more specifically related to the filing of a Record of Survey or a Corner Record.
- Development of presentations intending to cover the traditional information packets provided during in-person events in a more remote-friendly format and provide these to public agencies and private firms which employ civil engineers offering civil engineering services.
- Presentations through Zoom or WebEx to Senior Design classes at various educational institutions targeting the topics of licensure and required examinations.
- Videos are in development related to the different licensing processes and for the various examinations.
- Continue to offer online webinar presentations upon request from outside parties
Executive Officer Report – Item H.

At the May 7, 2020 Board meeting, members asked if we had any contingency plans for board officers should Steve and/or Andrew not be reappointed to the Board after June 30, 2020. The following is an excerpt from the current Board Operating Procedures which was last revised in April 2017. Section 2.0.5 specifically refers to this question.

Should the President and/or Vice President position become vacant after June 30, 2020, re-election will be included in the August agenda for the Board to act on.

ARTICLE II: BOARD PRESIDENT AND VICE PRESIDENT
2.0 SELECTION OF BOARD PRESIDENT, VICE PRESIDENT, AND TEMPORARY PRESIDENT

2.0.1 The nomination for and selection of the Board President and Vice President shall be accomplished by the last scheduled meeting of each fiscal year.

2.0.2 The method of selection for the Board President and Vice President shall be by nomination from the members of the Board. The Board President may appoint a Nominating Committee to recommend to the Board a proposed Board President and Vice President. Members of the Board may suggest names to the Nominating Committee. Nominations from the floor shall also be accepted.

2.0.3 The terms for the Board President and Vice President shall be for a period of one year commencing July 1.

2.0.4 During the absence of the Board President, the Vice President shall preside, and, in the event that both the Board President and Vice President are absent, the members present shall select a member as Temporary President.

2.0.5 In the event that the office of the Board President and/or Vice President becomes vacant, the members present shall elect from its members to complete the term(s) of office.
XI. Technical Advisory Committees (TACs)

A. Assignment of Items to TACs (Possible Action)
B. Appointment of TAC Members (Possible Action)
C. TAC Appointment (Possible Action)
D. Reports from the TACs (Possible Action)
XII. President’s Report/Board Member Activities
XIII. Approval of Meeting Minutes (Possible Action)

A. Approval of the Minutes of the May 7, 2020, Board Meeting
DRAFT
MINUTES OF THE BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS

Teleconference

Thursday, May 7, 2020, beginning at 9:00 a.m.

Board Members Present:
Fel Amistad, President; Steve Wilson, Vice President; Natalie Alavi; Alireza Asgari; Duane Friel; Andrew Hamilton; Kathy Jones Irish; Eric Johnson; Coby King; Asha Lang; Betsy Mathieson; Mohammad Qureshi; Frank Ruffino; and Robert Stockton

Board Staff Present:
Ric Moore (Executive Officer); Nancy Eissler (Assistant Executive Officer); Tiffany Criswell (Enforcement Manager); Jeff Alameida (Administration Manager); Larry Kereszt (Examinations Manager); Celina Calderone (Board Liaison); and Anthony Pane (Legal Counsel)

I. Roll Call to Establish a Quorum
President Amistad called the meeting to order at 9:00 AM and a quorum was established.

II. Pledge of Allegiance
Mr. Ruffino led everyone in the recitation of the Pledge of Allegiance.

III. Public Comment for Items Not on the Agenda
During Public Comment, Allen Escarda, representing PECG, thanked Board staff Brooke Phayer for his outreach efforts for June meetings, but with the ongoing constraints, those meetings will likely be cancelled. He also thanked the Board for hosting the meeting in this format.

IV. Consideration of Rulemaking Proposals
A. Approval and/or Adoption of Rulemaking Proposal to Amend Title 16, California Code of Regulations sections 416 and 3060 (Substantial Relationship Criteria) and sections 418 and 3061 (Criteria for Rehabilitation) to Conform to Statutory Changes Made by AB 2138 (Chapter 995, Statutes of 2018) (Possible Action)

Ms. Eissler reviewed the rulemaking proposal in which the Board is amending sections of the regulations for professional engineers, land surveyors, geologists, and geophysicists.

MOTION: Mr. King and Ms. Alavi moved to adopt the proposed responses to the comments; adopt the final rulemaking proposal after the 15-day public comment period if no...
substantive comments are received; and delegate to the Executive Officer to finalize the rulemaking file.

VOTE: 14-0, Motion Carried

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V. Administration
A. Fiscal Year 2018/19 Budget Status
Mr. Alameida reported that he has received communication from the Budget Office that the Board will receive the Fi$Cal reports that will close out Fiscal Year 2018/19 this month. He will continue to monitor to modify and refine the numbers for 2018/19.

He also reported that the Budget Analyst vacancy has been filled by Angela Yu.

B. Fiscal Year 2019/20 Budget Report
Mr. King inquired whether revenue would be impacted for the Business Modernization Project. Mr. Alameida reported that the budget letter noted that the Board may not enter into any new service contracts. DCA’s Project Director has been in communication with the Legislature with regards to the ongoing funding. There has been no indication that there is a lack of funding, but he will continue to track as a risk as it may impact future releases. Currently, he is waiting for the possible revision of the Governor’s budget and any updates that may arise throughout June. He will then confirm with the Board in June as to the status of the project going forward.

VI. Legislation
A. 2020 Legislative Calendar
Ms. Eissler reviewed the Legislative Calendar. The Assembly returned this week, and the Senate will return next week, but it is still unknown what the actual schedule of committee hearings will be.

Ms. Eissler reported on items that required action.

B. Discussion of Legislation for 2020 (Possible Action)

**AB 2028** State agencies: meetings

| MOTION: | Mr. King and Ms. Irish moved to take a position of “Oppose Unless Amended” on AB 2028 and request that the bill be amended to exempt materials relating to budgetary, legislative, and regulatory matters. |
| VOTE: | 14-0, Motion Carried |

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**AB 2113** Refugees, asylees, and immigrants: professional licensing.

| MOTION: | Ms. Alavi and Ms. Irish moved to take a WATCH position on AB 2113, as amended May 4, 2020. |
| VOTE:   | 14-0, Motion Carried |

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AB 3334  Professional Land Surveyors’ Act.

**MOTION:** Mr. Wilson and Mr. King moved to take a position of “Oppose Unless Amended” position on AB 3334, as amended May 4, 2020, and submit the language included with the staff analysis as the amendments it is requesting. The Board also delegated to Board Members Steve Wilson, PE, PLS, and Andrew Hamilton the authority to change the Board’s position on the bill should it be amended to address the Board’s concerns prior to the next Board meeting.

**VOTE:** 14-0, Motion Carried

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SB 1057  Land.

**MOTION:** Ms. Mathieson and Mr. King move to change its position to “Oppose Unless Amended” on SB 1057 to amend the definition of “cadastral surveying” to the language included with this analysis. The Board also delegated to Board Members Steve Wilson, PE, PLS, and Andrew Hamilton the authority to change the Board’s position on the bill should it be amended to address the Board’s concerns prior to the next Board meeting.

**VOTE:** 14-0, Motion Carried
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**AB 2185** Professions and vocations: applicants licensed in other states: reciprocity.

During public comment, Kevin Johnston noted current law states that PE comity applicants must go through the same application process as those seeking licensure for the first time. He stated that a simpler comity application process should be looked into.

**MOTION:** Ms. Alavi and Mr. King moved to take a position of WATCH on AB 2185, as amended March 16, 2020.

**VOTE:** 14-0, Motion Carried
**AB 2454** Department of Consumer Affairs: retired or inactive status license: discipline.

**MOTION:** Mr. Hamilton and Ms. Alavi moved to remove the position of SUPPORT and take a NO POSITION on AB 2454, as amended March 16, 2020, since it no longer has any impact on the Board or its operations.

**VOTE:** 14-0, Motion Carried

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**AB 1263** Contracts: consumer services: consumer complaints.
No action taken.

**AB 1616** Department of Consumer Affairs: boards: expunged convictions.
No action taken.

**AB 2549** Department of Consumer Affairs: temporary licenses.
No action taken.

**AB 2631** License fees: military partners and spouses.
No action taken.

**SB 865** Excavations: subsurface installations.
No action taken.

**SB 878** Department of Consumer Affairs Licensing: applications: wait times.
No action taken.

**VII. Enforcement**

A. Enforcement Statistical Reports

1. Fiscal Year 2019/20 Update
Ms. Criswell reported on the Enforcement statistics. She provided an update on how the Enforcement staff is adapting to the new normal. She thanked Anthony Pane for assisting in enforcement matters.

During Public Comment, Mr. Kevin Johnston indicated that he has submitted complaints to the Board’s Enforcement Unit, and he has been advised several times to complete the complaint form and provide more information. The form is not applicable for internet advertisement for engineering services being offered. He has made several attempts to contact the Board and feels the validity of his complaints has been downgraded. He encourages the Board to modify the form.

VIII. Exams/Licensing

A. Update on 2020 California State Examinations

Mr. Kereszt provided an update on the 2020 State Specific exams. He acknowledged his staff dealing with the ongoing changes and closures of exam sites.

The administration of the March 2020 CSE was held on March 17. Also, on March 17, Prometric made the decision to temporarily close their test centers globally. They have extended their closure date until June 1, 2020, which remains tentative.

In reference to the physical distancing requirements for candidates choosing to sit for the exams, Prometric is accommodating the concern by scheduling candidates with alternating seats within the test centers to ensure 6 feet of distance. The result of this accommodation is that the test centers will be at 50% capacity. The concern is the amount of exam candidates who have been waiting to take the test and are eligible will want to schedule. We must ensure that they have that opportunity along with all of the other clients that Prometric has who have also been waiting. It becomes problematic with various candidates trying to take exams at an exam site with 50% capacity. For those candidates hesitant to sit for the exam, they will have an opportunity to postpone or request a refund.

Ms. Mathieson would like to make sure that there will not be a penalty to candidates who arrive at the site and then decide they do not feel comfortable sitting for the exam even with the 6 feet of distance. Mr. Kereszt said that they can contact the Board to reschedule to a different date and time or request a refund.

B. Update on 2020 NCEES and ASBOG Examinations

The NCEES exams that were scheduled for April will be held in October to ensure everyone has an opportunity to sit for the examinations. Scheduling will start June 1.
ASBOG’s March 20 exams that were scheduled to take place in Long Beach will also be rescheduled for October. Mr. Kereszt will share additional information as it becomes available.

During Public Comment, Kevin Johnston commented on the state specific civil exams. He stated that, because the end date of the pandemic is unknown, there should be consideration given to other test methods such as a remote assessment, which Prometric offers. There would be a webcam on the test taker during the administration of the exam.

During Public Comment, Alan Escarda asked for clarification of exam cycles.

During Public Comment, Jennifer Kirby expressed her appreciation to merge Quarters 3 and 4 into one window. She is recommending that the Board hold off approving any and all new authorizations and provide Quarter 1 and Quarter 2 examinees an opportunity to secure their exams over Quarters 3 and 4 candidates.

During Public Comment, Chase Hemming also recommended prioritizing Quarter 1 and 2 candidates.

Mr. Moore clarified that the following week's Authorization To Test notices are for Quarters 1 and 2 candidates.

During Public Comment, JC expressed his appreciation of combining Quarters 3 and 4 candidates and said that it does not appear that Prometric has all days open.

Asha Lang left the meeting at 12:00 PM

IX. Executive Officer’s Report
   A. Rulemaking Status Report
      Mr. Alameida reported that the fees and certificates rulemaking package is currently at agency for review. The requested effective date is July 1, 2020.

      The rulemaking package regarding repealing the sections that address appeals of engineering and land surveying examinations is currently under pre-notice review by DCA Legal.

      The other rulemaking packages are pending and will be attended to by staff.

   B. Update on Board’s Business Modernization Project
      Mr. Alameida noted that this is a high-level overview. The project is moving forward as planned and will meet the Minimum Viable Product (MVP) scope that includes the Board’s online Engineer-In-Training and Land Surveyor-In-Training application submission as well as online complaint submission and
back office workflow. There are currently four sprints and are projecting a Sprint 5 for testing.

C. Personnel
   Angela Yu has been hired as the new Budget Analyst.

D. ABET
   There will not be any ABET visits to campuses this year.

E. Association of State Boards of Geology (ASBOG)
   Mr. Moore reported that the Board is moving towards the fall for ASBOG exam administration and will provide updates as they become available.

F. National Council of Examiners for Engineering and Surveying (NCEES)
   Mr. Moore reported that, at the March meeting, the Board voted to support Karen Purcell, from Nevada, for the position of NCEES Western Zone Vice-President. The Board has since received a letter and information from the Utah Professional Engineers and Professional Land Surveyors Board recommending Mr. C. Scott Bishop as a candidate for the office of the NCEES Western Zone Vice President. Mr. Moore is anticipating that some time close to the Annual Meeting, NCEES will find a way to conduct necessary business, such as the election of officers.

   1. Presentation from Western Zone Vice President Brian Robertson, P.E.
      Mr. Robertson, NCEES Western Zone Vice-President, provided a presentation on the mission, vision, functions, and the organizational structure of NCEES.

G. Update on Outreach Efforts
   Mr. Moore reviewed the outreach efforts.

X. Technical Advisory Committees (TACs)
   A. Assignment of Items to TACs
      Mr. Moore recalled that at the March Board meeting the Board requested to have the Land Surveyor TAC meet and discuss the language regarding the definition of cadastral survey. The meeting has not been scheduled but staff has reached out to the sponsors of AB 3334 and are waiting to see where the sponsors go with the definition.

   B. Appointment of TAC Members
      No report given.

   C. TAC Appointment
      No report given.

   D. Reports from the TACs
      No report given.
XI. President’s Report/Board Member Activities
As President Amistad nears the end of his term, he thanked the Board. Ms. Irish thanked President Amistad for his leadership. Ms. Alavi thanked him as well.

XII. Nomination and Election of President and Vice President for Fiscal Year 2020/21
Dr. Qureshi announced that he and Mr. Johnson served as the Nominating Committee and are nominating Steve Wilson for President and Andrew Hamilton for Vice President. President Amistad asked if there were any other nominations from the floor.

| MOTION: | Mr. King and Mr. Friel moved to close the nominations. |
| VOTE: | 13-0, Motion Carried |

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| MOTION: | Mr. Friel and Ms. Irish moved to elect Steve Wilson as Board President and Andrew Hamilton as Board Vice President. |
| VOTE: | 13-0, Motion Carried |

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XIII. **Approval of Meeting Minutes** (Possible Action)
   A. Approval of the Minutes of the March 12, 2020, Board Meeting

   **MOTION:** Ms. Mathieson and Mr. King moved to approve the March 12, 2020, Board meeting minutes.

   **VOTE:** 10-0-3, Motion Carried

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XIV. **Discussion Regarding Proposed Agenda Items for Next Board Meeting**

Ms. Alavi suggested discussing alternate methods to conduct exams and outreach during the current isolation period.

Legal Counsel Anthony Pane stated the Board will return to open session only for the purpose of adjourning.

XV. **Closed Session – The Board met in Closed Session to discuss, as needed:**

A. Personnel Matters [Pursuant to Government Code sections 11126(a) and (b)]
B. Examination Procedures and Results [Pursuant to Government Code section 11126(c)(1)]
C. Administrative Adjudication [Pursuant to Government Code section 11126(c)(3)]
D. Pending Litigation [Pursuant to Government Code section 11126(e)]

XVI. **Adjourn**

The meeting adjourned at 4:14 PM
PUBLIC PRESENT
Alan Escarda, PECG
Kevin Johnston
Jennifer Kirby
Chase Hemming
Brian Robertson, NCEES
JC
XIV. Discussion Regarding Proposed Agenda Items for Next Board Meeting
XV. Closed Session – The Board will meet in Closed Session to discuss, as needed:
   A. Personnel Matters [Pursuant to Government Code sections 11126(a) and (b)]
   B. Examination Procedures and Results [Pursuant to Government Code section 11126(c)(1)]
   C. Administrative Adjudication [Pursuant to Government Code section 11126(c)(3)]
   D. Pending Litigation [Pursuant to Government Code section 11126(e)]
XVI. Adjournment

Due to technological limitations, adjournment will not be broadcast. Adjournment will immediately follow Closed Session, and there will be no other items of business discussed.