



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

Board for Professional Engineers,  
Land Surveyors, and Geologists

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



Teleconference Public Board Meeting



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BOARD MEETING

JUNE 25, 2020

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**I. Roll Call to Establish a Quorum**

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## II. Moment of Silence for Robert Alan Stockton

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### III. Pledge of Allegiance

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#### **IV. Public Comment for Items Not on the Agenda**

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**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**

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- 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:

(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 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:

~~(a)~~ (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;

~~(b)~~ (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;

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

Note: Authority cited: Sections 481, 493, 6716, and 8710, Business and Professions Code. Reference: Sections 141, 480, 481, 490, 493, 6706.3, 6710, 6732, 6775, 6775.1, 6779, 8780, 8780.1, and 8783, Business and Professions Code.

**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; the Board will consider the following criteria in evaluating the rehabilitation of the applicant and his or her present eligibility for such a licensure or authority:~~

(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 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 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 crime(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)~~ (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 geophysicists 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.

Note: Authority cited: Sections 481, 493, and 7818, Business and Professions Code. Reference: Sections 141, 480, 481, 490, 493, and 7860, 7860.1, and 7863, Business and Professions Code.

**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) (c) When considering the suspension or revocation of the certification of a geologist-in-training or the license of a professional geologist, a specialty geologist, or 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) (5) Evidence, if any, Any evidence of rehabilitation submitted by the licensee license holder.~~

~~(7) (6) Total criminal record.~~

(7) 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.

~~(e)~~ (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~~ 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 a geologist-in-training or licensure as a professional geologist, a specialty geologist, a professional geophysicist, or a specialty geophysicist.

Note: Authority cited: ~~Section~~ Sections 482 and 7818, Business and Professions Code.  
Reference: Sections 475, 480, 482, 488, 490, 7860, 7860.1, and 7862, 7863, and 7864, Business and Professions Code.



## 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 means 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. [emphasis added] 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. Mallor, Barnes, Bowers, Langvardt, *Business Law, The Ethical, Global, and E-Commerce Environment* (15<sup>th</sup> ed. 2013) pg. 140. 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.<sup>1</sup> 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.<sup>2</sup> See **Exhibit A**.

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<sup>1</sup> 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 20<sup>th</sup> 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”.

<sup>2</sup> 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.

**b. The Amendments Call for Discipline for A “Crime”, “Professional Misconduct” or “Act” But Does Not Consistently State That A Conviction Is Required.**

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”

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*the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.” Cal. Bus. & Prof. Code § 490(c).*



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”<sup>3</sup>*

**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

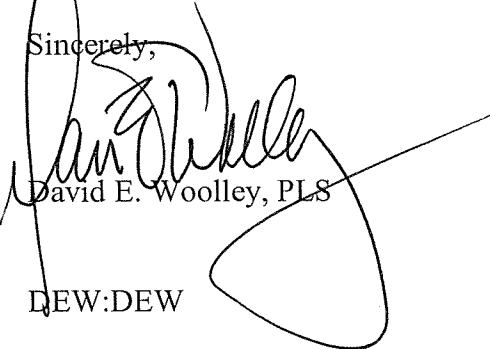
<sup>3</sup> [https://oal.ca.gov/underground\\_regulations/](https://oal.ca.gov/underground_regulations/)

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

DEW:DEW

Enclosures

cc: Richard Moore



EXHIBIT A

Barclays Official California Code of Regulations <small>Currentness</small>
Title 16. Professional and Vocational Regulations
Division 5. Board for Professional Engineers and Land Surveyors
Article 1. General Provisions (Refs & Annos)

16 CCR § 404

§ 404. Definitions.

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

accordance with Section 8747(a) of the Code.

(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.

Note: Authority cited: Sections 6716, 6717, 6751.5 and 8710, Business and Professions Code. Reference: Sections 6701, 6702, 6702.1, 6702.2, 6704, 6706.3, 6710, 6730, 6731, 6731.5, 6731.6, 6732, 6732.1, 6732.2, 6732.3, 6734, 6734.1, 6734.2, 6736, 6736.1, 6751, 6751.2, 6751.5, 6753, 6756, 6763, 6775, 8701, 8726, 8741, 8742, 8747 and 8780, Business and Professions Code.

## 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

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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

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End of Document

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EXHIBIT B

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April 29, 2008

Honorable Noreen Evans  
Room 3152, State Capitol

STATUTE OF LIMITATIONS: LAND SURVEYORS - #0806551

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<sup>1</sup> 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:

---

<sup>1</sup> 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 recordation 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).<sup>2</sup> 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).<sup>3</sup>

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<sup>2</sup> 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).

<sup>3</sup> 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.<sup>4</sup>

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

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(...continued)

be filed in an action that has been brought within the 10-year time period (subd. (c), Sec. 337.15). Also, common interest developments and residential units first sold after January 1, 2003, are subject to separate statutes affecting the applicable limitations periods for suit upon latent defects in those projects (see Sec. 895 and following, and Secs. 941 and 1375, Civ. C.).

<sup>4</sup> The First District Court of Appeal has held that *Regents'* two-step analysis also applies to Section 337.1 relative to patent defects (*Roger E. Smith, Inc. v. SHN Consulting Engineers & Geologists, Inc.* (2001) 89 Cal.App.4th 638).

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:

“[I]t 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. Rust 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 1981." (*Industrial Risk Insurers v. Rust Engineering Co.*, supra, at pp. 1042-1044)

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

*Sheila R. Mohan*

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.

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

**MODIFIED TEXT**

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~~.

**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) ~~(b)~~ 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) ~~(c)~~ The two-year biennial renewal fee for a license that expires on or after ~~July 1, 2012, January 1, 2020, July 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) ~~(d)~~ 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) ~~(e)~~ The duplicate certificate fee prescribed in Section 410 shall be \$10.

(h) ~~(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 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.

(i) ~~(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.

~~(i)~~(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."

Note: Authority cited: Sections 6716, 6799, 8710, and 8805, Business and Professions Code. Reference: Sections 158, 6706.3, ~~6710, 6732,~~ 6795, ~~6796, 6798,~~ 6799, ~~8775.3,~~ 8801, 8802, 8804, ~~8804.5,~~ and 8805, Business and Professions Code.

#### **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.

Note: Authority cited: Sections 6716, ~~6765,~~ and 8710, and 8749, Business and Professions Code. Reference: Sections 119, 122, ~~6732.2, 6756, 6762, 6763,~~ 6765, ~~6766, 6787,~~ 6799, 8747, 8749, ~~8752, 8792~~ and 8805, Business and Professions Code; ~~and Section 2015.5, Code of Civil Procedure.~~

#### **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)~~ (b) 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)~~ (c) 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.
- (~~f~~) ~~(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.
- (~~g~~) ~~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.
- (~~h~~) ~~(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.

Note: Authority cited: Sections 7818 and ~~7851~~ 7887, Business and Professions Code. Reference: Sections ~~158, 7846~~ 7851, 7880, 7881, and 7887, Business and Professions Code.

### **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.

Note: Authority cited: Section 7818 and 7854, Business and Professions Code. Reference: Sections 119, 122, 7854, and 7887, Business and Professions Code.



1	Dave Cascadia Engineering	<p>Thanks for your work on this, the fee increases seem completely reasonable and I have zero objection.</p> <p>I am curious what these fees go towards funding, can you let me know where I might find that information?</p>
<p><b><u>Response to Comment 1</u></b></p> <p>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.</p> <p>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: <a href="http://www.bpelsg.ca.gov/about_us/rulemaking.shtml">www.bpelsg.ca.gov/about_us/rulemaking.shtml</a>. 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."</p>		
2	Alan W. Rasplicka	<p>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.</p>
<p><b><u>Board Response to Comment 2</u></b></p> <p>Changes that are the subject of this 15-day noticed public comment period are shown as additions in <u>double-underlined italics</u> and deletions in <del>double-strikethrough italics</del>. 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.</p>		
3	Christine Jansen, PE	<p>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</p>

		<p>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.</p>
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**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.

<p><b>4</b></p>	<p>Randy R. Bick, PE</p>	<p>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.</p> <p>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.</p>
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**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](http://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.

<p><b>5</b> Tyler Munzing, Director of Government Affairs, American Council of Engineering Companies, California</p>	<p>Our Executive Committee had a conversation about the proposed Board fee increases. Some questions for you:</p> <ol style="list-style-type: none"> <li>1. Do the current fees cover the Board's current costs? We believe the answer to be no.</li> <li>2. Does the Board currently operate at a loss relative to the revenues generated by fees? We believe the answer to be yes.</li> <li>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?</li> <li>4. Does the Board have a scholarship or reduced fee schedule for (primarily first-time applicants) experiencing financial hardships?</li> </ol> <p>Thanks for all your help, we would like to work with you guys on this.</p>
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**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](http://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	<p>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.</p> <p>The question is WHY and for WHAT purpose are the fees being raised?</p> <p>On WHAT will the increase in fees be spent?</p> <p>And why such an increased amount (56.5%)?</p> <p>Raised fees merely indicate a higher taxation on professional services.</p> <p>We question the need for this rise in fees and request that you justify why they are required.</p>
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**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](http://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**

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- A. Fiscal Year 2018/19 Budget Status
- B. Fiscal Year 2019/20 Budget Report





0770 - Professional Engineers, Land Surveyors and Geologists  
 Financial Statement

Prepared 6/16/2020

	FY 19-20 REV & EXP 4/12 Activity Log	FY 19-20 FM 1 Projections	FY 19-20 Projections to year end	% CHANGE
<b>Revenue</b>				
1 Applications/Licensing Fees	1,196,248	1,646,000	1,646,000	0%
2 Renewal fees	6,116,355	6,891,000	6,891,000	0%
3 Delinquent fees	48,633	88,000	88,000	0%
Other & Reimbursements	68,720	140,000	140,000	0%
4 Interest	74,492	163,000	163,000	0%
<b>Total Revenue:</b>	<b>7,504,448</b>	<b>8,928,000</b>	<b>8,928,000</b>	<b>0%</b>
<b>Expense</b>				
<b>Personnel Services:</b>				
5 Salary & Wages (Staff)	1,956,776	2,924,425	2,934,231	0%
Temp Help	88,479	123,785	139,627	13%
Statutory Exempt (EO)	89,056	135,526	133,998	-1%
Board Member Per Diem	6,100	10,000	10,000	0%
Overtime/Flex Elect/Lump Sum	725	0	900	100%
Staff Benefits	1,172,709	1,713,980	1,760,538	3%
<b>Total Personnel Services</b>	<b>3,313,845</b>	<b>4,907,716</b>	<b>4,979,294</b>	<b>1%</b>
<b>Operating Expense and Equipment:</b>				
General Expense	51,411	67,000	80,000	19%
6 Printing	25,056	8,000	30,000	275%
Communication	15,592	44,000	25,000	-43%
Postage	0	50,000	26,310	-47%
Insurance	103	16,000	17,000	6%
Travel In State	35,346	60,000	50,000	-17%
Travel, Out-of-State	0	800	4,800	500%
Training	20	150	300	100%
Facilities Operations	248,250	416,004	410,000	-1%
7 C & P Services - Interdept.	326,410	457,090	631,730	38%
8 C & P Services - External	907,944	1,243,885	1,845,843	48%
9 DCA Pro Rata	1,184,247	1,579,000	1,615,000	2%
DOI - Investigations	0	0	0	0%
Interagency Services	10,861	27,000	21,000	-22%
Consolidated Data Center	20,760	22,000	31,000	41%
Information Technology	14,442	1,143,000	29,000	-97%
Equipment	10,533	0	120,234	100%
10 Other Items of Expense (ARF Deposit)	0	0	300,000	100%
<b>Total OE&amp;E</b>	<b>2,850,975</b>	<b>5,133,929</b>	<b>5,237,217</b>	<b>2%</b>
<b>Total Expense:</b>	<b>6,164,820</b>	<b>10,041,645</b>	<b>10,216,511</b>	<b>2%</b>
<b>Total Revenue:</b>	7,504,448	8,928,000	8,928,000	
<b>Total Expense:</b>	6,164,820	10,041,645	10,216,511	
<b>Difference:</b>	1,339,628	(1,113,645)	(1,288,511)	

## 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**

**Object Description**  
Provides the name of the line item where our revenue and expenditures occur

**FM1 Projections**  
Identifies the amount that BPELSG projected in July 2019 for FY 19-20

**Percentage Change**  
Provides a percentage reference on the difference between FM1 Projections and Projections to year end

	FY 19-20 REV & EXP 4/12 Activity Log	FY 19-20 FM 1 Projections	FY 19-20 Projections to year end	% CHANGE
<b>Revenue</b>				
Applications/Licensing Fees	1,196,248	1,646,000	1,646,000	0%
Renewal fees	6,116,355	6,891,000	6,891,000	0%
Delinquent fees	48,633	88,000	88,000	0%
Other & Reimbursements	68,720	140,000	140,000	0%
Interest	74,492	163,000	163,000	0%
<b>Total Revenue:</b>	<b>7,504,448</b>	<b>8,928,000</b>	<b>8,928,000</b>	<b>0%</b>
<b>Expense</b>				
<b>Personnel Services:</b>				
Salary & Wages (Staff)	1,956,776	2,924,425	172,293	-94%
Temp Help	88,479	123,785	12,392	-90%
Statutory Exempt (EO)	89,056	135,526	11,243	-92%
Board Member Per Diem	6,100	10,000	10,000	0%
Overtime/Flex Elect/Lump Sum	725	0	900	100%
Staff Benefits	1,172,709	1,713,980	1,760,538	3%
<b>Total Personnel Services</b>	<b>3,313,845</b>	<b>4,907,716</b>	<b>1,967,366</b>	<b>-60%</b>
<b>Operating Expense and Equipment:</b>				
General Expense	51,411	67,000	80,000	19%
Printing	25,056	8,000	30,000	275%
Communication	15,592	44,000	25,000	-43%
Postage	0	50,000	0	-100%
Insurance	103	16,000	17,000	6%
Travel In State	35,346	60,000	50,000	-17%

**Revenue and Expenditures**  
This column is provided for reference and

**Projections to year end**  
Identifies amounts for revenue and expenditure projected for the current fiscal year, as of June 16, 2020

**0770 - Professional Engineer's, Land Surveyor's and Geologist's Fund**  
**Analysis of Fund Condition**

Prepared 6/17/2020

(Dollars in Thousands)

**Governor's Budget 2020-21**

	PY 2018-19	CY 2019-20	Governor's Budget BY 2020-21	BY + 1 2021-22
<b>BEGINNING BALANCE</b>	\$ 7,955	\$ 6,907	\$ 5,845	\$ 5,041
Prior Year Adjustment	\$ 832		\$ -	\$ -
Adjusted Beginning Balance	\$ 8,787	\$ 6,907	\$ 5,845	\$ 5,041
<b>REVENUES AND TRANSFERS</b>				
Revenues:				
4121200 Delinquent fees	\$ 75	\$ 88	\$ 128	\$ 129
4127400 Renewal fees	\$ 6,259	\$ 6,891	\$ 10,366	\$ 11,623
4129200 Other regulatory fees	\$ 100	\$ 140	\$ 127	\$ 127
4129400 Other regulatory licenses and permits	\$ 1,842	\$ 1,646	\$ 2,011	\$ 2,017
141200 Sales of documents	\$ -	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ -	\$ -	\$ -	\$ -
4140000 Sales of documents	\$ -	\$ -	\$ -	\$ -
4150500 Interest Income from interfund loans	\$ 24	\$ -	\$ -	\$ -
4163000 Income from surplus money investments	\$ 194	\$ 259	\$ 259	\$ 73
160400 Sale of fixed assets	\$ -	\$ -	\$ -	\$ -
4171400 Escheat of unclaimed checks and warrants	\$ 22	\$ 22	\$ 22	\$ 22
4172500 Miscellaneous revenues	\$ 1	\$ 1	\$ 1	\$ 1
Totals, Revenues	\$ 8,517	\$ 9,047	\$ 12,914	\$ 13,992
Transfers from Other Funds				
Revenue Transfer from Geology/General Fund		\$ -		
FO0001 Proposed GF Loan Repayment per item 1110-011-0770, Budget Act of 2011	\$ 800	\$ -	\$ -	\$ -
Totals, Revenues and Transfers	\$ 9,317	\$ 9,047	\$ 12,914	\$ 13,992
Totals, Resources	\$ 18,104	\$ 15,954	\$ 18,759	\$ 19,033
<b>EXPENDITURES</b>				
Disbursements:				
1111 Department of Consumer Affairs (State Operations)	\$ 10,346	\$ 10,216	\$ 12,874	\$ 13,260
8880 Financial Information System for CA (State Operations)	\$ 1	\$ -1	\$ -	\$ -
9892 Supplemental Pension Payments (State Operations)	\$ 98	\$ 209	\$ 209	\$ 209
9900 Statewide Admin. (State Operations)	\$ 752	\$ 819	\$ 635	\$ 635
Less funding provided by General Fund (State Operations)	\$ -	\$ -1,134	\$ -	\$ -
Total Disbursements	\$ 11,197	\$ 10,109	\$ 13,718	\$ 14,104
<b>FUND BALANCE</b>				
Reserve for economic uncertainties	\$ 6,907	\$ 5,845	\$ 5,041	\$ 4,929
<b>Months in Reserve</b>	8.2	5.1	4.3	4.1

## VII. Legislation

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### 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.



**DEADLINES**

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

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

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

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

MAY						
S	M	T	W	TH	F	S
					1	2
3	4	5	6	7	8	9
10	<u>11</u>	12	13	14	15	16
17	18	19	20	21	22	23
24	<u>25</u>	26	27	28	<u>29</u>	30
31						

[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)).

\*Holiday schedule subject to Senate Rules committee approval.

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

**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)).

**June 22-26** **Floor Session Only.** No committees, other than conference or Rules committees, may meet for any purpose (J.R. 61(b)(10)).

**June 25** Last day for a legislative measure to qualify for the November 3 General Election ballot (Election code Sec. 9040).

**June 26** Last day for each house to pass bills introduced in that house (J.R. 61(b)(11)).

JULY						
S	M	T	W	TH	F	S
			1	<u>2</u>	<u>3</u>	4
5	6	7	8	9	10	11
12	<u>13</u>	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	<u>31</u>	

**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)).

AUGUST						
S	M	T	W	TH	F	S
						1
2	3	4	5	6	<u>7</u>	8
9	10	11	12	13	<u>14</u>	15
16	<u>17</u>	<u>18</u>	<u>19</u>	<u>20</u>	<u>21</u>	22
23	<u>24</u>	<u>25</u>	<u>26</u>	<u>27</u>	<u>28</u>	29
30	<u>31</u>					

**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. 21** 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.

AMENDED IN ASSEMBLY JANUARY 6, 2020

AMENDED IN ASSEMBLY APRIL 1, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1263**

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**Introduced by Assembly Member Low**

February 21, 2019

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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

AB 1263, as amended, Low. ~~Peer-to-peer car sharing.~~ *Contracts: consumer services: consumer complaints.*

*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.~~

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

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

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

3     1670.8.5. (a) A contract or proposed contract involving the  
4 provision of a consumer service by a licensee regulated by a  
5 licensing board shall not include a provision limiting the  
6 consumer's ability to file a complaint with that board or to  
7 participate in the board's investigation into the licensee.

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

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

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

13    (2) "Licensing board" means any entity contained in Section  
14 101 of the Business and Professions Code, the State Bar of

1 California, the Department of Real Estate, or any other state  
2 agency that issues a license, certificate, or registration authorizing  
3 a person to engage in a business or profession.

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

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

10

11 ~~CHAPTER 1.6. PEER-TO-PEER CAR SHARING PROGRAMS~~

12

13 ~~1939.60. This chapter may be cited as the Peer-to-Peer Car~~  
14 ~~Sharing Program Act.~~

15 ~~1939.61. As used in this chapter, the following terms have the~~  
16 ~~following meanings:~~

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

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

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

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

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

37 (1) ~~The intent to terminate the use of the shared vehicle is~~  
38 ~~verifiably communicated by the shared vehicle driver to the shared~~  
39 ~~vehicle owner using the peer-to-peer car sharing program.~~

1 ~~(2) The shared vehicle owner or the shared vehicle owner's~~  
2 ~~authorized designee takes possession and control of the shared~~  
3 ~~vehicle.~~

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

6 ~~(f) "Peer-to-peer car sharing" means the authorized use of a~~  
7 ~~vehicle by an individual other than the vehicle's owner through a~~  
8 ~~peer-to-peer car sharing program.~~

9 ~~(g) "Peer-to-peer car sharing program" means a business~~  
10 ~~platform that connects vehicle owners with licensed drivers to~~  
11 ~~enable the sharing of vehicles for financial consideration.~~  
12 ~~"Peer-to-peer car sharing program" does not mean car rental~~  
13 ~~agency.~~

14 ~~(h) "Shared vehicle" means a vehicle that is available for sharing~~  
15 ~~through a peer-to-peer car sharing program.~~

16 ~~(i) "Shared vehicle driver" means a person who is authorized~~  
17 ~~to drive a shared vehicle by the shared vehicle owner under a car~~  
18 ~~sharing program agreement.~~

19 ~~(j) "Shared vehicle owner" means the registered owner of a~~  
20 ~~vehicle made available for sharing to shared vehicle drivers through~~  
21 ~~a peer-to-peer car sharing program.~~

22 ~~1939.62. Each car sharing program agreement made in the state~~  
23 ~~shall disclose to the shared vehicle owner and the shared vehicle~~  
24 ~~driver all of the following:~~

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

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

34 ~~(c) That the peer-to-peer car sharing program's insurance~~  
35 ~~coverage on the shared vehicle owner and the shared vehicle driver,~~  
36 ~~required pursuant to Article 5.1 (commencing with Section~~  
37 ~~11629.6) to Chapter 1 of Part 3 of Division 2 of the Insurance~~  
38 ~~Code, is in effect only during each car sharing period and that, for~~  
39 ~~any use of the shared vehicle by the shared vehicle driver after the~~

1 ~~car sharing termination time, the shared vehicle driver and the~~  
2 ~~shared vehicle owner may not be covered.~~

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

7 ~~(e) That the shared vehicle owner's motor vehicle liability~~  
8 ~~insurance may not provide coverage for a shared vehicle.~~

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

11 ~~1939.63. A peer-to-peer car sharing program shall disclose the~~  
12 ~~daily rate, charges, fees, and costs when providing a quote and~~  
13 ~~shall not require any other fees or charges to be paid as a condition~~  
14 ~~of using the shared vehicle.~~

15 ~~1939.64. (a) A peer-to-peer car sharing program shall only~~  
16 ~~enter into a car sharing program agreement with a shared vehicle~~  
17 ~~driver who is at least 18 years of age and who provides~~  
18 ~~documentation of either of the following documents:~~

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

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

26 ~~1939.65. A peer-to-peer car sharing program shall have sole~~  
27 ~~responsibility for any equipment that is installed in or on the~~  
28 ~~vehicle to facilitate the car sharing transaction, and shall agree to~~  
29 ~~indemnify and hold harmless the shared vehicle owner for any~~  
30 ~~damage to or theft of the equipment during the sharing period not~~  
31 ~~caused by the vehicle owner. The peer-to-peer car sharing program~~  
32 ~~has the right to seek indemnity from the shared vehicle driver for~~  
33 ~~any loss or damage to the equipment that occurs during the car~~  
34 ~~sharing period.~~

35 ~~1939.66. (a) Notwithstanding any other law, a commercial~~  
36 ~~airport authority is authorized to regulate access to an airport and~~  
37 ~~set access fees for peer-to-peer car sharing programs. If required,~~  
38 ~~a peer-to-peer car sharing program shall obtain a permit or other~~  
39 ~~written authorization from the airport operator prior to facilitating~~  
40 ~~the sharing of vehicles at that airport.~~



1 ~~(b) This section does not affect the authority of any political~~  
2 ~~subdivision of the state to regulate access to an airport it owns or~~  
3 ~~operates and to set access fees or requirements for a peer-to-peer~~  
4 ~~car sharing program.~~

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

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

9  
10 ~~Article 5.1. Peer-to-Peer Car Sharing Programs~~

11  
12 ~~11629.6. For purposes of this article, the definitions set forth~~  
13 ~~in Section 1939.61 of the Civil Code shall apply.~~

14 ~~11629.61. (a) A peer-to-peer car sharing program shall assume~~  
15 ~~the liability of a shared vehicle owner for any property damage to~~  
16 ~~the shared vehicle or any bodily injury or property damage to third~~  
17 ~~parties or uninsured and underinsured motorist or personal injury~~  
18 ~~protection losses during the car sharing period in an amount stated~~  
19 ~~in the peer-to-peer car sharing program agreement which amount~~  
20 ~~may not be less than those set forth in Section 16056 of the Vehicle~~  
21 ~~Code. In addition, a peer-to-peer car sharing program shall also~~  
22 ~~assume liability for the shared vehicle.~~

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

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

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

- 35 ~~(1) The shared vehicle owner.~~  
36 ~~(2) The shared vehicle driver.~~  
37 ~~(3) The peer-to-peer car sharing program.~~  
38 ~~(4) Any combination of the above.~~

39 ~~(d) The peer-to-peer car sharing program shall assume primary~~  
40 ~~liability for a claim when it is, in whole or in part, providing the~~

1 insurance required under subdivision (b) and both of the following  
2 are true:

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

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

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

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

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

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

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

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

35 11629.62. Before a shared vehicle is made available for car  
36 sharing on the peer-to-peer car sharing program, the peer-to-peer  
37 car sharing program shall notify the shared vehicle owner that, if  
38 the shared vehicle has a lien against it, the use of the shared vehicle  
39 through a peer-to-peer car sharing program, including use without

1 physical damage coverage, may violate the terms of the contract  
2 with the lienholder.

3 ~~11629.63. An authorized insurer that writes motor vehicle  
4 liability insurance may exclude any and all coverage and the duty  
5 to defend or indemnify for any claim afforded under a shared  
6 vehicle owner's personal motor vehicle liability insurance policy.  
7 This article does not invalidate or limit an exclusion contained in  
8 a motor vehicle liability insurance policy, including any insurance  
9 policy in use or approved for use that excludes coverage for motor  
10 vehicles made available for rent, sharing, or hire or for any business  
11 use.~~

12 ~~11629.64. A motor vehicle insurer may not deny, cancel, void,  
13 terminate, rescind, or nonrenew a policy of personal private  
14 passenger automobile liability insurance of a shared vehicle owner  
15 solely on the basis that vehicle covered under the policy has been  
16 made available for sharing through a peer-to-peer car sharing  
17 program.~~

18 ~~11629.65. A peer-to-peer car sharing program shall collect and  
19 verify records pertaining to the use of a vehicle, including, but not  
20 limited to, times used, fees paid by the shared vehicle driver, and  
21 revenues received by the shared vehicle owner and provide that  
22 information upon request to the shared vehicle owner, the shared  
23 vehicle owner's insurer, or the shared vehicle driver's insurer to  
24 facilitate a claim coverage investigation. The peer-to-peer car  
25 sharing program shall retain the records for not less than five years  
26 unless a longer retention period is otherwise required by law.~~

27 ~~11629.66. A motor vehicle insurer that defends or indemnifies  
28 a claim involving a shared vehicle that is excluded under the terms  
29 of its policy shall have the right to seek contribution against the  
30 motor vehicle insurer of the peer-to-peer car sharing program if  
31 both of the following are true:~~

32 ~~(a) The claim is made against the shared vehicle owner or the  
33 shared vehicle driver for loss or injury that occurs during the car  
34 sharing period.~~

35 ~~(b) Coverage for peer-to-peer vehicle sharing is excluded under  
36 the terms of its policy.~~

37 ~~11629.67. A peer-to-peer car sharing program shall, for each  
38 vehicle that it facilitates the use of, provide the registered owner  
39 of the vehicle with a Department of Motor Vehicles Form REG  
40 5085 or other suitable proof of compliance with the insurance~~

1 requirements of this section and the requirements of the California  
2 Financial Responsibility Law in Section 1656.2 of the Vehicle  
3 Code, a copy of which shall be maintained in the vehicle by the  
4 vehicle's registered owner during any time when the vehicle is  
5 operated by any person other than the vehicle's owner pursuant to  
6 a peer-to-peer car sharing program.

7 SEC. 4. Section 11752 of the Vehicle Code is amended to read:

8 11752. As used in this article, the following definitions apply:

9 (a) The term "dealer" has the same meaning as in Section 285.

10 (b) (1) A "manufacturer's recall" is a recall conducted pursuant  
11 to Sections 30118 to 30120, inclusive, of Title 49 of the United  
12 States Code.

13 (2) A manufacturer's recall does not include a service campaign  
14 or emission recall when the vehicle manufacturer or the National  
15 Highway Traffic Safety Administration has not issued a recall  
16 notice to owners of affected vehicles, pursuant to Section 30118  
17 of Title 49 of the United States Code.

18 (c) A "peer-to-peer car sharing program" has the same meaning  
19 as defined in Section 1939.61 of the Civil Code.

20 (d) A "recall database" is a database from which an individual  
21 may obtain vehicle identification number (VIN) specific  
22 manufacturer's recall information relevant to a specific vehicle.

23 (1) For a vehicle manufacturer that is not subject to the  
24 regulations adopted pursuant to Section 31301 of the federal  
25 Moving Ahead for Progress in the 21st Century Act (Public Law  
26 112-141), a recall database is one of the following:

27 (A) The recall data on a vehicle manufacturer's internet website  
28 for a specific vehicle's line-make.

29 (B) The recall data in a vehicle manufacturer's internal system  
30 that provides information to its franchisees on vehicles subject to  
31 recall.

32 (C) The recall data in subparagraph (A) or (B) that is contained  
33 in a commercially available vehicle history system.

34 (2) For a vehicle manufacturer that is subject to the regulations  
35 adopted pursuant to Section 31301 of the federal Moving Ahead  
36 for Progress in the 21st Century Act (Public Law 112-141), a recall  
37 database shall include, at a minimum, the recall information  
38 required pursuant to Section 573.15 of Title 49 of the Code of  
39 Federal Regulations.

1 (e) A “recall database report” is a report, specific to a vehicle  
2 that is identified by its VIN, containing information obtained from  
3 a recall database.

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

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

7 11754. (a) No later than 48 hours after receiving a notice of a  
8 manufacturer’s recall, or sooner if practicable, a dealer or rental  
9 car company with a motor vehicle fleet of 34 or fewer loaner or  
10 rental vehicles shall not loan, rent, or offer for loan or rent a vehicle  
11 subject to that recall until the recall repair has been made.

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

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

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

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

40 SEC. 6. Section 11760 of the Vehicle Code is amended to read:

1     ~~11760. (a) This article does not create any legal duty upon the~~  
2 ~~dealer, rental car company, peer-to-peer car sharing program, or~~  
3 ~~department related to the accuracy, errors, or omissions contained~~  
4 ~~in a recall database report or any legal duty to provide information~~  
5 ~~added to a recall database after the dealer, rental car company,~~  
6 ~~peer-to-peer car sharing program, or department obtained the recall~~  
7 ~~database report pursuant to Sections 11754 and 11758.~~

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

11     ~~(c) This section does not affect the determination of whether or~~  
12 ~~not a company is a rental car company or whether or not a company~~  
13 ~~is a peer-to-peer car sharing program.~~

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**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.

AMENDED IN ASSEMBLY JANUARY 6, 2020

AMENDED IN ASSEMBLY APRIL 1, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1616**

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

February 22, 2019

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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

AB 1616, as amended, Low. ~~Accelerated death benefits—Department of Consumer Affairs: boards: expunged convictions.~~

*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.~~

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

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

1     SECTION 1. Section 493.5 is added to the Business and  
2     Professions Code, to read:  
3     493.5. (a) A board within the department that has posted on  
4     its internet website that a person's license was revoked because  
5     the person was convicted of a crime, upon receiving from the  
6     person a certified copy of an expungement order granted pursuant  
7     to Section 1203.4 of the Penal Code for the underlying offense,  
8     shall, within six months of receiving the expungement order, unless  
9     it is otherwise prohibited by law, or by other terms or conditions,  
10    do either of the following:

1 (1) If the person reapplies for licensure or has been relicensed,  
2 post notification of the expungement order and the date thereof  
3 on its internet website.

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

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

12 (c) For purposes of this section "board" means an entity listed  
13 in Section 101.

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

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

18 ~~10295.6. (a) If a policyholder or certificate holder requests an~~  
19 ~~acceleration of death benefits, the insurer shall send a statement~~  
20 ~~to the policyholder or certificate holder and irrevocable beneficiary~~  
21 ~~showing any effect that the payment of the accelerated death benefit~~  
22 ~~would have on the policy's cash value, accumulation account,~~  
23 ~~death benefit, premium, policy loans, and policy liens. The~~  
24 ~~statement shall disclose that receipt of accelerated death benefit~~  
25 ~~payments may adversely affect the recipient's eligibility for~~  
26 ~~Medicaid or other government benefits or entitlements. In addition,~~  
27 ~~receipt of an accelerated death benefit payment may be taxable~~  
28 ~~and assistance should be sought from a personal tax adviser. If a~~  
29 ~~previous disclosure statement becomes invalid as a result of an~~  
30 ~~acceleration of the death benefit, the insurer shall send a revised~~  
31 ~~disclosure statement to the policyholder or certificate holder and~~  
32 ~~irrevocable beneficiary.~~

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

36 ~~(c) If the insurer charges a separate premium for the accelerated~~  
37 ~~death benefit, then the insurer may also offer a waiver of premium~~  
38 ~~benefit as defined in subdivision (a) of Section 10271.1. At the~~  
39 ~~time the waiver of the accelerated death benefit premium benefit~~

1 is claimed, the insurer shall explain any continuing premium  
2 requirement to keep the underlying policy in force.

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

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

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

24 (g) ~~If payment of an accelerated death benefit results in a pro  
25 rata reduction in cash value, the payment may be applied toward  
26 repaying a portion of the loan equal to a pro rata portion of any  
27 outstanding policy loans if disclosure of the effect of acceleration  
28 upon any remaining death benefit, cash value or accumulation  
29 account, policy loan, and premium payments, including a statement  
30 of the possibility of termination of any remaining death benefit,  
31 is provided to the policyholder or certificate holder. The  
32 policyholder or certificate holder shall provide written consent  
33 authorizing any other arrangement for the repayment of outstanding  
34 policy loans.~~

- 1
- 2 REVISIONS:
- 3 Heading—Line 2.
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**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.

AMENDED IN ASSEMBLY JUNE 4, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2028**

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**Introduced by Assembly Member Aguiar-Curry**  
*(Coauthor: Assembly Member Gonzalez)*

January 30, 2020

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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; 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.

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

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

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) The Bagley-Keene Open Meeting Act (Article 9
- 3 (commencing with Section 11120) of Chapter 1 of Part 1 of
- 4 Division 3 of Title 2 of the Government Code) (hereafter
- 5 “Bagley-Keene”) was intended to implement Section 3 of Article
- 6 I of the California Constitution, which states in part, “The people
- 7 have the right of access to information concerning the conduct of
- 8 the people’s business, and, therefore, the meetings of public bodies
- 9 and the writings of public officials and agencies shall be open to
- 10 public scrutiny.”
- 11 (b) Bagley-Keene was written to protect public meetings and
- 12 public notice and to ensure the transparency of actions taken by
- 13 state agencies, boards, and commissions.
- 14 (c) Californians have the right to participate in state body
- 15 deliberations. This includes the public’s ability to comment on all
- 16 agenda items discussed at a meeting of the state body, regardless



1 of whether an item has been discussed previously in a committee  
2 of the state body.

3 (d) The purpose of public notice is so that state bodies give the  
4 public adequate time for review of the substance of a state body  
5 meeting and for comment.

6 (e) Public notice must also include any writings or materials  
7 provided by a state body's staff or by a member of the state body  
8 to other members of the state body for a noticed meeting of the  
9 body held at least 10 days prior to the meeting.

10 (f) Bagley-Keene affirms these rights by stating in Section 11120  
11 of the Government Code, "The people of this state do not yield  
12 their sovereignty to the agencies which serve them. The people,  
13 in delegating authority, do not give their public servants the right  
14 to decide what is good for the people to know and what is not good  
15 for them to know. The people insist on remaining informed so that  
16 they may retain control over the instruments they have created."

17 SEC. 2. Section 11125 of the Government Code is amended  
18 to read:

19 11125. (a) The state body shall provide notice of its meeting  
20 to any person who requests that notice in writing. Notice shall be  
21 given and also made available on the internet *website* at least 10  
22 days in advance of the meeting, and shall include the name,  
23 address, and telephone number of any person who can provide  
24 further information prior to the meeting, but need not include a  
25 list of witnesses expected to appear at the meeting. The written  
26 notice shall additionally include the address of the internet website  
27 where notices required by this article are made available.

28 (b) The notice of a meeting of a body that is a state body shall  
29 include a specific agenda for the meeting, containing a brief  
30 description of the items of business to be transacted or discussed  
31 in either open or closed session. A brief general description of an  
32 item generally need not exceed 20 words. A description of an item  
33 to be transacted or discussed in closed session shall include a  
34 citation of the specific statutory authority under which a closed  
35 session is being held. No item shall be added to the agenda  
36 subsequent to the provision of this notice, unless otherwise  
37 permitted by this article.

38 (c) (1) Except as otherwise provided in paragraph (4), any  
39 notice provided pursuant to subdivision (a) shall include all  
40 writings or materials provided for the noticed meeting to a member

1 of the state body by the staff of a state agency, board, or  
2 commission, or another member of the state body, that are in  
3 connection with a matter subject to discussion or consideration at  
4 the meeting.

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

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

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

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

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

31 (d) Notice of a meeting of a state body that complies with this  
32 section shall also constitute notice of a meeting of an advisory  
33 body of that state body, provided that the business to be discussed  
34 by the advisory body is covered by the notice of the meeting of  
35 the state body, provided that the specific time and place of the  
36 advisory body's meeting is announced during the open and public  
37 state body's meeting, and provided that the advisory body's  
38 meeting is conducted within a reasonable time of, and nearby, the  
39 meeting of the state body.

1 (e) A person may request, and shall be provided, notice pursuant  
2 to subdivision (a) for all meetings of a state body or for a specific  
3 meeting or meetings. In addition, at the state body’s discretion, a  
4 person may request, and may be provided, notice of only those  
5 meetings of a state body at which a particular subject or subjects  
6 specified in the request will be discussed.

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

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

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

21 11125.7. (a) Except as otherwise provided in this section, the  
22 state body shall provide an opportunity for members of the public  
23 to directly address the state body on each agenda item before or  
24 during the state body’s discussion or consideration of the item.  
25 Every notice for a special meeting at which action is proposed to  
26 be taken on an item shall provide an opportunity for members of  
27 the public to directly address the state body concerning that item  
28 prior to action on the item. In addition, the notice requirement of  
29 Section 11125 shall not preclude the acceptance of testimony at  
30 meetings, other than emergency meetings, from members of the  
31 public if no action is taken by the state body at the same meeting  
32 on matters brought before the body by members of the public.

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

38 (c) (1) Notwithstanding subdivision (b), when a state body  
39 limits time for public comment the state body shall provide at least  
40 twice the allotted time to a member of the public who utilizes a

1 translator to ensure that non-English speakers receive the same  
2 opportunity to directly address the state body.

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

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

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

12 (1) Closed sessions held pursuant to Section 11126.

13 (2) Decisions regarding proceedings held pursuant to Chapter  
14 5 (commencing with Section 11500), relating to administrative  
15 adjudication, or to the conduct of those proceedings.

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

18 (4) Agenda items that involve decisions of the Public Utilities  
19 Commission regarding adjudicatory hearings held pursuant to  
20 Chapter 9 (commencing with Section 1701) of Part 1 of Division  
21 1 of the Public Utilities Code. For all other agenda items, the  
22 commission shall provide members of the public, other than those  
23 who have already participated in the proceedings underlying the  
24 agenda item, an opportunity to directly address the commission  
25 before or during the commission's consideration of the item.

O

**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.**

**Status:** 6/11/2020 – In Senate. Read first time. Referred to Committee on Rules for assignment.

**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.

AMENDED IN ASSEMBLY MAY 4, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2113**

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

February 6, 2020

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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.

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

Revised 6-4-20—See last page.

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

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

3 135.4. (a) Notwithstanding any other law, a board within the  
4 department shall expedite, and may assist, the initial licensure  
5 process for an applicant who supplies satisfactory evidence to the  
6 board that they have been admitted to the United States as a refugee  
7 under Section 1157 of Title 8 of the United States Code, have been  
8 granted political asylum by the Secretary of Homeland Security  
9 or the Attorney General of the United States pursuant to Section  
10 1158 of Title 8 of the United States Code, or they have a special  
11 immigrant visa (SIV) that has been granted a status under Section  
12 1244 of Public Law 110-181, under Public Law 109-163, or under  
13 Section 602(b) of Title VI of Division F of Public Law 111-8.

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

18 ~~(b)~~

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

21

22

23 **REVISIONS:**

24 **Heading—Lines 2 and 3.**

25

O

**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.

AMENDED IN ASSEMBLY MAY 13, 2020  
AMENDED IN ASSEMBLY MARCH 16, 2020  
CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2185**

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**Introduced by Assembly Members Patterson and Gallagher**

February 11, 2020

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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 ~~the other~~ *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.

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

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

1 SECTION 1. Section 117 is added to the Business and  
2 Professions Code, to read:

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

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

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

14 (3) The person has held the license and has practiced in the  
15 licensed field in ~~the other~~ *another state or jurisdiction* for at least  
16 three of the last five years.

17 (4) The person has not had any disciplinary actions imposed  
18 against their license and has not had a license in the discipline for

1 which the person is applying revoked or suspended in any other  
2 state.

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

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

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

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

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

24 (c) This section shall not apply to the Board of Registered  
25 ~~Nursing, Nursing or any other board that currently authorizes~~  
26 ~~license portability as a component of qualifying for licensure in~~  
27 ~~this state, and the Board of Behavioral Sciences or any other board~~  
28 ~~that has a mandatory license portability requirement in statute, and~~  
29 ~~any board that currently authorizes license portability as a~~  
30 ~~component of qualifying for licensure in this state. statute. License~~  
31 ~~portability is defined as either providing a license by endorsement~~  
32 ~~with verification of an out-of-state license in good standing, or~~  
33 ~~exempting state-specific requirements to facilitate a practitioner's~~  
34 ~~ability to obtain a license and practice in multiple jurisdictions.~~

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

39 SEC. 2. No reimbursement is required by this act pursuant to  
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school  
2 district will be incurred because this act creates a new crime or  
3 infraction, eliminates a crime or infraction, or changes the penalty  
4 for a crime or infraction, within the meaning of Section 17556 of  
5 the Government Code, or changes the definition of a crime within  
6 the meaning of Section 6 of Article XIII B of the California  
7 Constitution.

O

Date of Hearing: May 21, 2020

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 2185 (Patterson) – As Amended May 13, 2020

**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.**

**Status:** 6/11/2020 – In Senate. Read first time. To Committee on Rules for assignment.

**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.

AMENDED IN ASSEMBLY MAY 18, 2020  
AMENDED IN ASSEMBLY MARCH 12, 2020  
CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2549**

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**Introduced by Assembly Member Salas**  
*(Coauthor: Assembly Member Gonzalez)*

February 19, 2020

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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

Revised 6-4-20—See last page.

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~~ *submit to the department for approval draft 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.*

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

*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*

1 the following eligible temporary licenses to an applicant within  
2 30 days of receiving the required documentation pursuant to  
3 meeting the requirements set forth in subdivision (c):

4 (1) Registered nurse license by the Board of Registered Nursing.

5 (2) Vocational nurse license issued by the Board of Vocational  
6 Nursing and Psychiatric Technicians of the State of California.

7 (3) Psychiatric technician license issued by the Board of  
8 Vocational Nursing and Psychiatric Technicians of the State of  
9 California.

10 (4) Speech-language pathologist license issued by the  
11 Speech-Language Pathology and Audiology and Hearing Aid  
12 Dispensers Board.

13 (5) Audiologist license issued by the Speech-Language  
14 Pathology and Audiology and Hearing Aid Dispensers Board.

15 (6) All licenses issued by the Veterinary Medical Board.

16 (7) All licenses issued by the Board for Professional Engineers,  
17 Land Surveyors, and Geologists.

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

19 (9) All licenses issued by the Podiatric Medical Board of  
20 California.

21 (10) All licenses issued by the Dental Board of California.

22 (11) All licenses issued by the Dental Hygiene Board of  
23 California.

24 (12) All licenses issued by the California State Board of  
25 Pharmacy.

26 (13) All licenses issued by the State Board of Barbering and  
27 Cosmetology.

28 (14) All licenses issued by the Board of Psychology.

29 (15) All licenses issued by the California Board of Occupational  
30 Therapy.

31 (16) All licenses issued by the Physical Therapy Board of  
32 California.

33 (17) All licenses issued by the California Board of Accountancy.  
34 Revenues from fees for temporary licenses issued under this  
35 paragraph shall be credited to the Accountancy Fund in accordance  
36 with Section 5132.

37 (b) The board may conduct an investigation of an applicant for  
38 purposes of denying or revoking a temporary license issued  
39 pursuant to this section. This investigation may include a criminal  
40 background check.

1 (c) An applicant seeking a temporary license pursuant to this  
2 section shall meet the following requirements:

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

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

13 (3) The applicant shall submit an application to the board that  
14 shall include a signed affidavit attesting to the fact that the  
15 applicant meets all of the requirements for the temporary license  
16 and that the information submitted in the application is accurate,  
17 to the best of the applicant's knowledge. The application shall also  
18 include written verification from the applicant's original licensing  
19 jurisdiction stating that the applicant's license is in good standing  
20 in that jurisdiction.

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

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

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

34 (d) A temporary license issued pursuant to this section may be  
35 immediately terminated upon a finding that the temporary  
36 licenseholder failed to meet any of the requirements described in  
37 subdivision (c) or provided substantively inaccurate information  
38 that would affect the person's eligibility for temporary licensure.  
39 Upon termination of the temporary license, the board shall issue  
40 a notice of termination that shall require the temporary

1 licenseholder to immediately cease the practice of the licensed  
2 profession upon receipt.

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

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

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

23 (h)

24 (g) A board shall ~~adopt~~ *submit to the department for approval*  
25 *draft* regulations necessary to administer this section ~~and shall~~  
26 ~~publish these regulations on its internet website and in application~~  
27 ~~materials~~ by January 1, 2022. *These regulations shall be adopted*  
28 *pursuant to the Administrative Procedure Act (Chapter 3.5*  
29 *(commencing with Section 11340) of Part 1 of Division 3 of Title*  
30 *2 of the Government Code).*

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

38 SEC. 2. Section 5132 of the Business and Professions Code is  
39 amended to read:



1 5132. (a) All moneys received by the board under this chapter  
2 from any source and for any purpose and from a temporary license  
3 issued under Section 115.6 shall be accounted for and reported  
4 monthly by the board to the Controller and at the same time the  
5 moneys shall be remitted to the State Treasury to the credit of the  
6 Accountancy Fund.

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

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

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**REVISIONS:**  
**Heading—Line 2.**

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O

**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.

**ASSEMBLY BILL**

**No. 2631**

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**Introduced by Assembly Member Cunningham**  
**(Coauthors: Assembly Members Boerner Horvath, Fong, Lackey,**  
**and Mayes)**  
(Coauthors: Senators Jones and Wilk)

February 20, 2020

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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.

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

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

1 SECTION 1. Section 115.5 of the Business and Professions  
2 Code is amended to read:  
3 115.5. (a) A board within the department shall expedite the  
4 licensure process for an applicant who meets both of the following  
5 requirements:  
6 (1) Supplies evidence satisfactory to the board that the applicant  
7 is married to, or in a domestic partnership or other legal union  
8 with, an active duty member of the Armed Forces of the United  
9 States who is assigned to a duty station in this state under official  
10 active duty military orders.  
11 (2) Holds a current license in another state, district, or territory  
12 of the United States in the profession or vocation for which the  
13 applicant seeks a license from the board.  
14 (b) *A board shall not charge an applicant who meets the*  
15 *requirements in subdivision (a) an initial or original license fee.*  
16 ~~(b)~~  
17 (c) A board may adopt regulations necessary to administer this  
18 section.

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**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.

AMENDED IN ASSEMBLY MAY 11, 2020

AMENDED IN ASSEMBLY MAY 4, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 3334**

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**Introduced by Assembly Member Chen**

February 21, 2020

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An act to amend Sections 6731.1, 6738, 6787, 8726, ~~and 8729~~ 8729, ~~and 8792~~ 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 ~~or~~ *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.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

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

3 6731.1. Civil engineering also includes the practice or offer to  
4 practice, either in a public or private capacity, all of the following:

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

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

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

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

1 or the position of fixed objects above, on, or below the surface of  
2 the earth.

3 (c) Creates, prepares, or modifies electronic or computerized  
4 data in the performance of the activities described in subdivisions  
5 (a) and (b).

6 (d) Renders a statement regarding the accuracy of maps or  
7 measured survey data pursuant to subdivisions (a), (b), and (c).

8 *SEC. 2. Section 6738 of the Business and Professions Code,*  
9 *as amended by Section 1 of Chapter 150 of the Statutes of 2018,*  
10 *is amended to read:*

11 6738. (a) This chapter does not prohibit one or more civil,  
12 electrical, or mechanical engineers from practicing or offering to  
13 practice, within the scope of their license, civil (including  
14 geotechnical and structural), electrical, or mechanical engineering  
15 as a sole proprietorship, partnership, limited liability partnership,  
16 firm, or corporation (hereinafter called business), if all of the  
17 following requirements are met:

18 (1) A civil, electrical, or mechanical engineer currently licensed  
19 in this state is an owner, partner, or officer in charge of the  
20 engineering practice of the business.

21 (2) All civil, electrical, or mechanical engineering services are  
22 performed by, or under the responsible charge of, a professional  
23 engineer licensed in the appropriate branch of professional  
24 engineering.

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

35 (b) An out-of-state business with a branch office in this state  
36 shall meet the requirements of subdivision (a) and shall have an  
37 owner, partner, or officer who is in charge of the engineering work  
38 in the branch in this state, who is licensed in this state, and who is  
39 physically present at the branch office in this state on a regular  
40 basis. However, the name of the business may contain the name

1 of any person not licensed in this state if that person is  
2 appropriately registered or licensed in another state. Any offer,  
3 promotion, or advertisement that contains the name of any  
4 individual in the business, other than by use of the names of the  
5 individuals in the business name, shall clearly and specifically  
6 designate the license or registration discipline of each individual  
7 named.

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

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

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

25 ~~(f)~~

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

32 ~~(g)~~

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

37 (1) The person's name had been used in the name of the  
38 business, or a predecessor in interest of the business, prior to and  
39 after the death or retirement of the person.

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

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

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

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

18 ~~(h)~~

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

21 ~~(i)~~

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

25 ~~(j)~~

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

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

31 6738. (a) This chapter does not prohibit one or more civil,  
32 electrical, or mechanical engineers from practicing or offering to  
33 practice within the scope of their license civil (including  
34 geotechnical and structural), electrical, or mechanical engineering  
35 as a sole proprietorship, partnership, firm, or corporation  
36 (hereinafter called business), if all of the following requirements  
37 are met:

38 (1) A civil, electrical, or mechanical engineer currently licensed  
39 in this state is an owner, partner, or officer in charge of the  
40 engineering practice of the business.

1 (2) All civil, electrical, or mechanical engineering services are  
2 performed by, or under the responsible charge of, a professional  
3 engineer licensed in the appropriate branch of professional  
4 engineering.

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

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

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

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

39 ~~(e) This chapter does not prevent an individual or business~~  
40 ~~engaged in any line of endeavor other than the practice of civil,~~

1 ~~electrical, or mechanical engineering from employing or~~  
2 ~~contracting with a licensed civil, electrical, or mechanical engineer~~  
3 ~~to perform the respective engineering services incidental to the~~  
4 ~~conduct of business.~~

5 ~~(f)~~

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

12 ~~(g)~~

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

17 (1) The person's name had been used in the name of the  
18 business, or a predecessor in interest of the business, prior to and  
19 after the death or retirement of the person.

20 (2) The person shall have been an owner, partner, or officer of  
21 the business, or an owner, partner, or officer of the predecessor in  
22 interest of the business.

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

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

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

37 ~~(h)~~

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

40 ~~(i)~~

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

4 (j)

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

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

8 6787. A person who does any of the following is guilty of a  
9 misdemeanor:

10 (a) Unless the person is exempt from licensure under this  
11 chapter, ~~practice or offer~~ *practices or offers* to practice civil,  
12 electrical, or mechanical engineering in this state according to the  
13 provisions of this chapter without legal authorization.

14 (b) ~~Present or attempt~~ *Presents or attempts* to file as the person's  
15 own the certificate of licensure of a licensed professional engineer  
16 unless they are the person named on the certificate of licensure.

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

19 (d) ~~Impersonate or use~~ *Impersonates or uses* the seal, signature,  
20 or license number of a licensed professional engineer or ~~use~~ *uses*  
21 a false license number.

22 (e) ~~Use~~ *Uses* an expired, suspended, surrendered, or revoked  
23 license.

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

31 (g) Unless appropriately licensed, ~~manage, or conduct~~ *manages,*  
32 *or conducts* as manager, proprietor, or agent, any place of business  
33 from which civil, electrical, or mechanical engineering work is  
34 solicited, performed, or practiced, except as authorized pursuant  
35 to ~~subdivision (e) of Section 6738 and Section 8726.1.~~

36 (h) ~~Use~~ *Uses* the title, or any combination of that title, of  
37 "professional engineer," "licensed engineer," "registered engineer,"  
38 or the branch titles specified in Section 6732, or the authority titles  
39 specified in Sections 6736 and 6736.1, or "engineer-in-training,"  
40 or ~~use~~ *makes use of* any abbreviation of that title that might lead

1 to the belief that the person is a licensed engineer, is authorized  
2 to use the titles specified in Section 6736 or 6736.1, or holds a  
3 certificate as an engineer-in-training, without being licensed,  
4 authorized, or certified as required by this chapter.

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

9 (j) ~~Violate~~ Violates any provision of this chapter.

10 ~~SEC. 2.~~

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

13 8726. A person, including any person employed by the state  
14 or by a city, county, or city and county within the state, practices  
15 land surveying within the meaning of this chapter who, either in  
16 a public or private capacity, does or offers to do any one or more  
17 of the following:

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

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

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

38 (2) For purposes of this subdivision, “remote sensing” means  
39 the detecting, collection, processing, and analysis of data that will  
40 determine the dimensions of physical objects, or otherwise using



1 various acquisition methods intended to or resulting in the  
2 determination of the configuration or contour of the earth's surface,  
3 or the position of fixed objects above, on, or below the surface of  
4 the earth.

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

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

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

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

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

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

39 (i) Procures or offers to procure land surveying work for  
40 themselves or others.

1 (j) Manages, or conducts as manager, proprietor, or agent, any  
2 place of business from which land surveying work is solicited,  
3 performed, or practiced.

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

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

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

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

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

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

26 ~~SEC. 3:~~

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

30 8729. (a) This chapter does not prohibit one or more licensed  
31 land surveyors or civil engineers licensed in this state prior to 1982  
32 (hereinafter called civil engineers) from practicing or offering to  
33 practice, within the scope of their licensure, land surveying as a  
34 sole proprietorship, partnership, limited liability partnership, firm,  
35 or corporation (hereinafter called business), if the following  
36 conditions are satisfied:

37 (1) A land surveyor or civil engineer currently licensed in the  
38 state is an owner, partner, or officer in charge of the land surveying  
39 practice of the business.

1 (2) All land surveying services are performed by or under the  
2 responsible charge of a land surveyor or civil engineer.

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

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

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

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

35 (e) This section shall not prevent the use of the name of any  
36 business engaged in rendering land surveying services, including  
37 the use by any lawful successor or survivor, that lawfully was in  
38 existence on June 1, 1941. However, the business is subject to the  
39 provisions of paragraphs (1) and (2) of subdivision (a).

1 (f) A business engaged in rendering land surveying services  
2 may use in its name the name of a deceased or retired person if  
3 the following conditions are satisfied:

4 (1) The person's name had been used in the name of the  
5 business, or a predecessor in interest of the business, prior to the  
6 death or retirement of the person.

7 (2) The person shall have been an owner, partner, or officer of  
8 the business, or an owner, partner, or officer of the predecessor in  
9 interest of the business.

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

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

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

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

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

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

28 ~~SEC. 4.~~

29 *SEC. 7.* Section 8729 of the Business and Professions Code,  
30 as amended by Section 4 of Chapter 150 of the Statutes of 2018,  
31 is amended to read:

32 8729. (a) This chapter does not prohibit one or more licensed  
33 land surveyors or civil engineers licensed in this state prior to 1982  
34 (hereinafter called civil engineers) from practicing or offering to  
35 practice within the scope of their licensure, land surveying as a  
36 sole proprietorship, partnership, firm, or corporation (hereinafter  
37 called business), if the following conditions are satisfied:

38 (1) A land surveyor or civil engineer currently licensed in the  
39 state is an owner, partner, or officer in charge of the land surveying  
40 practice of the business.

1 (2) All land surveying services are performed by or under the  
2 responsible charge of a land surveyor or civil engineer.

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

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

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

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

35 (e) This section shall not prevent the use of the name of any  
36 business engaged in rendering land surveying services, including  
37 the use by any lawful successor or survivor, that lawfully was in  
38 existence on June 1, 1941. However, the business is subject to the  
39 provisions of paragraphs (1) and (2) of subdivision (a).

1 (f) A business engaged in rendering land surveying services  
2 may use in its name the name of a deceased or retired person if  
3 the following conditions are satisfied:

4 (1) The person's name had been used in the name of the  
5 business, or a predecessor in interest of the business, prior to the  
6 death or retirement of the person.

7 (2) The person shall have been an owner, partner, or officer of  
8 the business, or an owner, partner, or officer of the predecessor in  
9 interest of the business.

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

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

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

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

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

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

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

29 8792. A person who does any of the following is guilty of a  
30 misdemeanor:

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

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

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

38 (d) Gives false evidence of any kind to the board, or to any  
39 board member, in obtaining a license.

- 1 (e) Impersonates or uses the seal, signature, or license number
- 2 of a professional land surveyor or who uses a false license number.
- 3 (f) Uses an expired, suspended, surrendered, or revoked license.
- 4 (g) Represents themselves as, or uses the title of, professional
- 5 land surveyor, or any other title whereby that person could be
- 6 considered as practicing or offering to practice land surveying,
- 7 unless the person is correspondingly qualified by licensure as a
- 8 land surveyor under this chapter.
- 9 (h) Uses the title, or any combination of that title, of
- 10 “professional land surveyor,” “licensed land surveyor,” “land
- 11 surveyor,” or the titles specified in Sections 8751 and 8775, or
- 12 “land surveyor-in-training,” or who makes use of any abbreviation
- 13 of that title that might lead to the belief that the person is a licensed
- 14 land surveyor or holds a certificate as a land surveyor-in-training,
- 15 without being licensed or certified as required by this chapter.
- 16 (i) Unless appropriately licensed, manages, or conducts as
- 17 manager, proprietor, or agent, any place of business from which
- 18 land surveying work is solicited, performed, or practiced, except
- 19 as authorized pursuant to ~~Section 6731.2 and subdivision (e) of~~
- 20 ~~Section 8729:~~ 6731.2.
- 21 (j) Violates any provision of this chapter.

22 ~~SEC. 5.~~

23 *SEC. 9.* No reimbursement is required by this act pursuant to

24 Section 6 of Article XIII B of the California Constitution because

25 the only costs that may be incurred by a local agency or school

26 district will be incurred because this act creates a new crime or

27 infraction, eliminates a crime or infraction, or changes the penalty

28 for a crime or infraction, within the meaning of Section 17556 of

29 the Government Code, or changes the definition of a crime within

30 the meaning of Section 6 of Article XIII B of the California

31 Constitution.

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**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.

AMENDED IN SENATE JUNE 2, 2020

AMENDED IN SENATE MAY 7, 2020

**SENATE BILL**

**No. 865**

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**Introduced by Senator Hill**

January 17, 2020

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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.

LEGISLATIVE COUNSEL'S DIGEST

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~~ *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.

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

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

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

3 4216. As used in this article, the following definitions apply:

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

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

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

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

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

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

34 (2) “Unexpected occurrence” includes, but is not limited to, a  
35 fire, flood, earthquake or other soil or geologic movement, riot,

1 accident, damage to a subsurface installation requiring immediate  
2 repair, or sabotage.

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

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

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

17 (j) "High priority subsurface installation" means high-pressure  
18 natural gas pipelines with normal operating pressures greater than  
19 415kPA gauge (60psig), petroleum pipelines, pressurized sewage  
20 pipelines, high-voltage electric supply lines, conductors, or cables  
21 that have a potential to ground of greater than or equal to 60kv, or  
22 hazardous materials pipelines that are potentially hazardous to  
23 workers or the public if damaged.

24 (k) "Inactive subsurface installation" means either of the  
25 following:

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

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

32 (l) "Legal excavation start date and time" means two working  
33 days, not including the date of notification, unless the excavator  
34 specifies a later date and time, which shall not be more than 14  
35 calendar days from the date of notification. For excavation in an  
36 area of continual excavation, "legal excavation start date and time"  
37 means two working days, not including the date of notification,  
38 unless the excavator specifies a later date and time, which shall  
39 not be more than six months from the date of notification.

1 (m) “Local agency” means a city, county, city and county,  
2 school district, or special district.

3 (n) (1) “Locate and field mark” means to indicate the existence  
4 of any owned or maintained subsurface installations by using the  
5 guidelines in Appendix B of the “Guidelines for Operator Facility  
6 Field Delineation” published in the most recent version of the Best  
7 Practices guide of the Common Ground Alliance and in  
8 conformance with the uniform color code of the American Public  
9 Works Association. If there is a conflict between the marking  
10 practices in the guidelines and this article, this article shall control.

11 (2) “Locate and field mark” does not require an indication of  
12 the depth.

13 (o) “Operator” means any person, corporation, partnership,  
14 business trust, public agency, or other entity that owns, operates,  
15 or maintains a subsurface installation. For purposes of Section  
16 4216.1, an “operator” does not include an owner of real property  
17 where subsurface installations are exclusively located if they are  
18 used exclusively to furnish services on that property and the  
19 subsurface facilities are under the operation and control of that  
20 owner.

21 (p) “Qualified person” means a person who completes a training  
22 program in accordance with the requirements of Section 1509 of  
23 Title 8 of the California Code of Regulations Injury and Illness  
24 Prevention Program, that meets the minimum locators training  
25 guidelines and practices published in the most recent version of  
26 the Best Practices guide of the Common Ground Alliance.

27 (q) “Regional notification center” means a nonprofit association  
28 or other organization of operators of subsurface installations that  
29 provides advance warning of excavations or other work close to  
30 existing subsurface installations, for the purpose of protecting  
31 those installations from damage, removal, relocation, or repair.

32 (r) “State agency” means every state agency, department,  
33 division, bureau, board, or commission.

34 (s) “Subsurface installation” means any underground pipeline,  
35 conduit, duct, wire, or other structure, except nonpressurized  
36 sewerlines, nonpressurized storm drains, or other nonpressurized  
37 drain lines.

38 (t) “Ticket” means an excavation location request issued a  
39 number by the regional notification center.

1 (u) "Tolerance zone" means 24 inches on each side of the field  
2 marking placed by the operator in one of the following ways:

3 (1) Twenty-four inches from each side of a single marking,  
4 assumed to be the centerline of the subsurface installation.

5 (2) Twenty-four inches plus one-half the specified size on each  
6 side of a single marking with the size of installation specified.

7 (3) Twenty-four inches from each outside marking that  
8 graphically shows the width of the outside surface of the subsurface  
9 installation on a horizontal plane.

10 (v) "Working day" for the purposes of determining excavation  
11 start date and time means a weekday Monday through Friday, from  
12 7:00 a.m. to 5:00 p.m., except for federal holidays and state  
13 holidays, as defined in Section 19853, or as otherwise posted on  
14 the internet website of the regional notification center.

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

17 4216.1. (a) Every operator of a subsurface installation, except  
18 the Department of Transportation, shall become a member of,  
19 participate in, and share in the costs of, a regional notification  
20 center. Operators of subsurface installations who are members of,  
21 participate in, and share in, the costs of a regional notification  
22 center, including, but not limited to, the Underground Service  
23 Alert—Northern California or the Underground Service  
24 Alert—Southern California are in compliance with this section  
25 and Section 4216.9. A regional notification center shall not charge  
26 a fee to a person for notifying the regional notification center to  
27 obtain a ticket or to renew a ticket.

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

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

32 4216.2. (a) Before notifying the appropriate regional  
33 notification center, an excavator planning to conduct an excavation  
34 shall delineate the area to be excavated. If the area is not delineated,  
35 an operator may, at the operator's discretion, choose not to locate  
36 and field mark until the area to be excavated has been delineated.

37 (b) Except in an emergency, an excavator planning to conduct  
38 an excavation shall notify the appropriate regional notification  
39 center of the excavator's intent to excavate at least two working  
40 days, and not more than 14 calendar days, before beginning that

1 excavation. The date of the notification shall not count as part of  
2 the two-working-day notice. If an excavator gives less notice than  
3 the legal excavation start date and time and the excavation is not  
4 an emergency, the regional notification center will take the  
5 information and provide a ticket, but an operator has until the legal  
6 excavation start date and time to respond. However, an excavator  
7 and an operator may mutually agree to a different notice and start  
8 date. The contact information for operators notified shall be  
9 available to the excavator.

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

23 (d) Except in an emergency, every excavator covered by Section  
24 4216.8 planning to conduct an excavation on private property that  
25 does not require an excavation permit may contact the appropriate  
26 regional notification center if the private property is known, or  
27 reasonably should be known, to contain a subsurface installation  
28 other than the underground facility owned or operated by the  
29 excavator. Before notifying the appropriate regional notification  
30 center, an excavator shall delineate the area to be excavated. Any  
31 temporary marking placed at the planned excavation location shall  
32 be clearly seen, functional, and considerate to surface aesthetics  
33 and the local community. An excavator shall check if any local  
34 ordinances apply to the placement of temporary markings.

35 (e) The regional notification center shall provide a ticket to the  
36 person who contacts the center pursuant to this section and shall  
37 notify any member, if known, who has a subsurface installation  
38 in the area of the proposed excavation. A ticket shall be valid for  
39 28 days from the date of issuance. If work continues beyond 28  
40 days, the excavator shall renew the ticket either by accessing the



1 center's internet website or by calling "811" by the end of the 28th  
2 day.

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

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

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

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

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

29 4216.3. (a) (1) (A) Unless the excavator and operator  
30 mutually agree to a later start date and time, or otherwise agree to  
31 the sequence and timeframe in which the operator will locate and  
32 field mark, an operator shall do one of the following before the  
33 legal excavation start date and time:

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

38 (ii) To the extent and degree of accuracy that the information  
39 is available, provide information to an excavator where the  
40 operator's active or inactive subsurface installations are located.

1 (iii) Advise the excavator it operates no subsurface installations  
2 in the area delineated for excavation.

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

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

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

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

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

22 ~~Commencing~~

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

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

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

37 (C) “Header” means a chamber from which liquid or gas is  
38 distributed to or from smaller pipelines.

39 (b) If the field marks are no longer reasonably visible, an  
40 excavator shall renotify the regional notification center with a

1 request for remarks that can be for all or a portion of the  
2 excavation. Excavation shall cease in the area to be remarked. If  
3 the delineation markings are no longer reasonably visible, the  
4 excavator shall redelineate the area to be remarked. If remarks are  
5 requested, the operator shall have two working days, not including  
6 the date of request, to remark the subsurface installation. If the  
7 area to be remarked is not the full extent of the original excavation,  
8 the excavator shall delineate the portion to be remarked and provide  
9 a description of the area requested to be remarked on the ticket.  
10 The excavator shall provide a description for the area to be  
11 remarked that falls within the area of the original location request.

12 (c) (1) (A) On and after January 1, 2021, every operator shall  
13 supply an electronic positive response through the regional  
14 notification center before the legal excavation start date and time.  
15 Upon a showing of good cause by an operator, the board may  
16 extend the time by which the operator is required to comply with  
17 this requirement. The board shall not grant an extension beyond  
18 December 31, 2021. The board shall determine which facts or  
19 circumstances constitute good cause.

20 (B) The regional notification center shall make the responses  
21 required by subparagraph (A) available to the excavator.

22 (2) The regional notification centers shall annually report to the  
23 board regarding their continual technological development in their  
24 roles of facilitating communication between excavators and  
25 operators in a manner that enhances safety, accountability, and  
26 efficiency.

27 (d) (1) On or before January 1, 2021, the board shall adopt  
28 regulations to implement subparagraph (A) of paragraph (1) of  
29 subdivision (c). The initial adoption, amendment, or repeal of a  
30 regulation authorized by this section is deemed to address an  
31 emergency, for purposes of Sections 11346.1 and 11349.6, and  
32 the board is hereby exempted for that purpose from the  
33 requirements of subdivision (b) of Section 11346.1. After the initial  
34 adoption, amendment, or repeal of an emergency regulation  
35 pursuant to this section, the board shall not request approval from  
36 the Office of Administrative Law to readopt the regulation as an  
37 emergency regulation pursuant to Section 11346.1.

38 (2) It is the intent of the Legislature, in authorizing the deviations  
39 in this section from the requirements and procedures of Chapter  
40 3.5 (commencing with Section 11340) of Part 1 of Division 3 of

1 Title 2, to authorize the board to expedite the exercise of its power  
2 to implement regulations as its unique operational circumstances  
3 require.

4 (e) The excavator shall notify the appropriate regional  
5 notification center of the failure of an operator to identify  
6 subsurface installations pursuant to subparagraph (A) or (B) of  
7 paragraph (1) of subdivision (a), or subdivision (b). The notification  
8 shall include the ticket issued by the regional notification center.  
9 The regional notification center shall maintain a record of all  
10 notifications received pursuant to this subdivision for a period of  
11 not less than three years. The record shall be available for  
12 inspection pursuant to subdivision (f) of Section 4216.2.

13 (f) If an operator or local agency knows that it has a subsurface  
14 installation embedded or partially embedded in the pavement that  
15 is not visible from the surface, the operator or local agency shall  
16 contact the excavator before pavement removal to communicate  
17 and determine a plan of action to protect that subsurface installation  
18 and excavator.

19 SEC. 5. Section 4216.4 of the Government Code is amended  
20 to read:

21 4216.4. (a) (1) Except as provided in paragraph (2), if an  
22 excavation is within the tolerance zone of a subsurface installation,  
23 the excavator shall determine the exact location of the subsurface  
24 installations in conflict with the excavation using hand tools before  
25 using any power-driven excavation or boring equipment within  
26 the tolerance zone of the subsurface installations. In all cases the  
27 excavator shall use reasonable care to prevent damaging subsurface  
28 installations.

29 (2) (A) An excavator may use a vacuum excavation device to  
30 expose subsurface installations within the tolerance zone if the  
31 operator has marked the subsurface installation, the excavator has  
32 contacted any operator whose subsurface installations may be in  
33 conflict with the excavation, and the operator has agreed to the  
34 use of a vacuum excavation device. An excavator shall inform the  
35 regional notification center of the excavator's intent to use a  
36 vacuum excavation device when obtaining a ticket.

37 (B) An excavator may use power-operated or boring equipment  
38 for the removal of any existing pavement only if there is no known  
39 subsurface installation contained in the pavement.

1 (C) Beginning July 1, 2020, an excavator may use  
2 power-operated or boring equipment, as determined by the board,  
3 prior to determining the exact location of subsurface installations.  
4 The board shall adopt regulations to implement this paragraph on  
5 or before July 1, 2020.

6 (3) An excavator shall presume all subsurface installations to  
7 be active, and shall use the same care around subsurface  
8 installations that may be inactive as the excavator would use around  
9 active subsurface installations.

10 (b) If the exact location of the subsurface installation cannot be  
11 determined by hand excavating in accordance with subdivision  
12 (a), the excavator shall request the operator to provide additional  
13 information to the excavator, to the extent that information is  
14 available to the operator, to enable the excavator to determine the  
15 exact location of the installation. If the excavator has questions  
16 about the markings that an operator has placed, the excavator may  
17 contact the notification center to send a request to have the operator  
18 contact the excavator directly. The regional notification center  
19 shall provide the excavator with the contact telephone number of  
20 the subsurface installation operator.

21 (c) (1) An excavator discovering or causing damage to a  
22 subsurface installation that results in an emergency shall do the  
23 following:

24 (A) The excavator shall immediately call “911” emergency  
25 services.

26 (B) After calling “911” emergency services, the excavator shall  
27 immediately notify the subsurface installation operator. The  
28 excavator may contact the regional notification center to obtain  
29 the contact information of the subsurface installation operator. If  
30 the operator is unknown and the damage or discovery of damage  
31 occurs outside the working hours of the regional notification center,  
32 the excavator may follow the instructions provided by the regional  
33 notification center through its internet website or the telephone  
34 line recorded message.

35 (C) Within two hours of discovering or causing damage, the  
36 excavator shall notify the regional notification center.

37 (2) An excavator discovering or causing any damage to a  
38 subsurface installation, including all breaks, leaks, nicks, dents,  
39 gouges, grooves, or other damage to subsurface installation lines,  
40 conduits, coatings, or cathodic protection, shall do the following:

1 (A) The excavator shall immediately notify the subsurface  
2 installation operator. The excavator may contact the regional  
3 notification center to obtain the contact information of the  
4 subsurface installation operator. If the operator is unknown and  
5 the damage or discovery of damage occurs outside the working  
6 hours of the regional notification center, the excavator may follow  
7 the instructions provided by the regional notification center through  
8 its internet website or the telephone line recorded message.

9 (B) Within two hours of discovering or causing damage, the  
10 excavator shall notify the regional notification center.

11 (d) Each excavator, operator, or locator shall communicate with  
12 each other and respect the appropriate safety requirements and  
13 ongoing activities of the other parties, if known, at an excavation  
14 site.

15 SEC. 6. Section 4216.6 of the Government Code is amended  
16 to read:

17 4216.6. (a) (1) Any operator or excavator who negligently  
18 violates this article is subject to a civil penalty in an amount not  
19 to exceed ten thousand dollars (\$10,000).

20 (2) Any operator or excavator who knowingly and willfully  
21 violates any of the provisions of this article is subject to a civil  
22 penalty in an amount not to exceed fifty thousand dollars (\$50,000).

23 (3) Except as otherwise specifically provided in this article, this  
24 section is not intended to affect any civil remedies otherwise  
25 provided by law for personal injury or for property damage,  
26 including any damage to subsurface installations, nor is this section  
27 intended to create any new civil remedies for those injuries or that  
28 damage.

29 (4) This article shall not be construed to limit any other provision  
30 of law granting governmental immunity to state or local agencies  
31 or to impose any liability or duty of care not otherwise imposed  
32 by law upon any state or local agency.

33 (b) An action may be brought by the Attorney General, the  
34 district attorney, or the local or state agency that issued the permit  
35 to excavate, for the enforcement of the civil penalty pursuant to  
36 this section in a civil action brought in the name of the people of  
37 the State of California. If penalties are collected as a result of a  
38 civil suit brought by a state or local agency for collection of those  
39 civil penalties, the penalties imposed shall be paid to the general  
40 fund of the agency. If more than one agency is involved in

1 enforcement, the penalties imposed shall be apportioned among  
2 them by the court in a manner that will fairly offset the relative  
3 costs incurred by the state or local agencies, or both, in collecting  
4 these fees.

5 (c) This article may also be enforced by the following agencies,  
6 either following a recommendation of the Dig Safe Board that the  
7 agency shall act to accept, amend, or reject, or through the agency's  
8 own investigations, as follows:

9 (1) The Registrar of Contractors of the Contractors' State  
10 License Board shall enforce this article on contractors, as defined  
11 in Article 2 (commencing with Section 7025) of Chapter 9 of  
12 Division 3 of the Business and Professions Code, and telephone  
13 corporations, as defined in Section 234 of the Public Utilities Code,  
14 when acting as a contractor, as defined in Article 2 (commencing  
15 with Section 7025) of Chapter 9 of Division 3 of the Business and  
16 Professions Code. Nothing in this section affects the Public Utilities  
17 Commission's existing authority over a public utility.

18 (2) The Public Utilities Commission shall enforce this article  
19 on gas corporations, as defined in Section 222 of the Public Utilities  
20 Code, and electrical corporations, as defined in Section 218 of the  
21 Public Utilities Code, and water corporations, as defined in Section  
22 241 of the Public Utilities Code.

23 (3) The Office of the State Fire Marshal shall enforce this article  
24 on operators of hazardous liquid pipeline facilities, as defined in  
25 Section 60101 of Chapter 601 of Subtitle VIII of Title 49 of the  
26 United States Code.

27 (d) A local governing board may enforce this article on local  
28 agencies under the governing board's jurisdiction.

29 (e) Commencing July 1, 2020, the Dig Safe Board shall enforce  
30 this article on persons other than those listed in subdivisions (c)  
31 and (d). The board shall not initiate an enforcement action pursuant  
32 to this subdivision for a violation that occurred prior to July 1,  
33 2020. As the enforcing body for persons other than those listed in  
34 subdivisions (c) and (d), the board may collect any monetary  
35 penalties imposed upon those persons.

36 (f) Moneys collected as a result of penalties imposed pursuant  
37 to subdivisions (c) and (e) shall be deposited into the Safe Energy  
38 Infrastructure and Excavation Fund.

39 (g) Statewide information provided by operators and excavators  
40 regarding incident events shall be compiled and made available

1 in an annual report by regional notification centers and posted on  
2 the internet websites of the regional notification centers and shall  
3 be made available to the board upon request.

4 (h) For purposes of subdivision (g), the following terms have  
5 the following meanings:

6 (1) “Incident event” means the occurrence of excavator  
7 downtime, damages, near misses, and violations.

8 (2) “Statewide information” means information submitted by  
9 operators and excavators using the California Regional Common  
10 Ground Alliance’s Virtual Private Damage Information Reporting  
11 Tool. Supplied data shall comply with the Damage Information  
12 Reporting Tool’s minimum essential information as listed in the  
13 most recent version of the Best Practices guide of the Common  
14 Ground Alliance.

15 SEC. 7. Section 4216.12 of the Government Code is amended  
16 to read:

17 4216.12. (a) The Dig Safe Board is hereby created under, and  
18 shall be assisted by the staff of, the Office of the State Fire Marshal  
19 until January 1, 2022. On and after January 1, 2022, the board shall  
20 be within the Office of Energy Infrastructure Safety within the  
21 Natural Resources Agency pursuant to Part 7.3 (commencing with  
22 Section 15470) of Division 3 of Title 2.

23 (b) The board shall perform the following tasks:

24 (1) Coordinate education and outreach activities that encourage  
25 safe excavation practices, as described in Section 4216.17.

26 (2) Develop standards, as described in Section 4216.18.

27 (3) Investigate possible violations of this article, as described  
28 in Section 4216.19.

29 (4) Enforce this article to the extent authorized by subdivision  
30 (e) of Section 4216.6.

31 (c) Notwithstanding any other law, on and after January 1, 2020,  
32 the board shall be subject to review by the appropriate policy  
33 committees of the Legislature at least once every three years.

34 SEC. 8. Section 4216.17 of the Government Code is amended  
35 to read:

36 4216.17. (a) The board shall annually convene a meeting for  
37 the following purposes:

38 (1) To understand the existing needs for education and outreach,  
39 including to those groups with the highest awareness and education  
40 needs, including, but not limited to, homeowners.



1 (2) To facilitate discussion on how to coordinate existing  
2 education and outreach efforts with state and local government  
3 agencies, California operators, regional notification centers, and  
4 trade associations that fund outreach and education programs that  
5 encourage safe excavation practices.

6 (b) In addition to state and local government agencies, California  
7 operators, regional notification centers, and trade associations that  
8 fund outreach and education programs that encourage safe  
9 excavation practices, the meeting pursuant to subdivision (a) shall  
10 include representatives of groups that may be the target of those  
11 outreach and education efforts.

12 (c) For violations that are neither egregious nor persistent, the  
13 board shall offer violators the option of completing an educational  
14 course in lieu of paying a fine. To develop the programming for  
15 the educational option, the board may contract with a third party  
16 or create the curriculum itself.

17 (d) Upon appropriation by the Legislature, moneys in the Safe  
18 Energy Infrastructure and Excavation Fund shall be available to  
19 the board to fund the educational course developed pursuant to  
20 subdivision (c).

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**SB 878 (Jones, R-El Cajon)**  
**Department of Consumer Affairs Licensing: applications: wait times.**

**Status:** 6/11/2020 – Set for hearing on 6/18/2020 in Senate Committee on Appropriations.

**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 be 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 were 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.

**Introduced by Senator Jones**

January 22, 2020

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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.

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

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

- 1 SECTION 1. Section 139.5 is added to the Business and
- 2 Professions Code, to read:
- 3 139.5. Each board, as defined in section 22, within the
- 4 department that issues a license shall do both of the following:
- 5 (a) Prominently display the current timeframe for processing
- 6 initial and renewal license applications on its internet website.

- 1 (b) With respect to the information displayed on the website,
- 2 specify the average timeframe for each license category.

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**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.



**Introduced by Senator Jones**February 18, 2020

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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.

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

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

1 SECTION 1. Section 8726 of the Business and Professions  
2 Code is amended to read:

3 8726. (a) A person, including any person employed by the  
4 state or by a city, county, or city and county within the state,  
5 practices land surveying within the meaning of this chapter who,  
6 either in a public or private capacity, does or offers to do any one  
7 or more of the following:

8 (a)

9 (1) Locates, relocates, establishes, reestablishes, or retraces the  
10 alignment or elevation for any of the fixed works embraced within  
11 the practice of civil engineering, as described in Section 6731.

12 (b)

13 (2) Determines the configuration or contour of the earth's  
14 surface, or the position of fixed objects above, on, or below the  
15 surface of the earth by applying the principles of mathematics or  
16 photogrammetry.

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

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

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

19 (f)  
 20 (6) Geodetic or cadastral surveying. As used in this ~~chapter,~~  
 21 *geodetic chapter:*

22 (A) *Geodetic surveying* means performing surveys, in which  
 23 account is taken of the figure and size of the earth to determine or  
 24 predetermine the horizontal or vertical positions of fixed objects  
 25 thereon or related thereto, geodetic control points, monuments, or  
 26 stations for use in the practice of land surveying or for stating the  
 27 position of fixed objects, geodetic control points, monuments, or  
 28 stations by California Coordinate System coordinates.

29 (B) *Cadastral surveying* means a survey that creates, marks,  
 30 defines, retraces, or reestablishes the boundaries and subdivisions  
 31 of the public land of the United States, or any other field survey  
 32 of a cadaster that is a public record, survey, or map of the extent  
 33 and ownership of land.

34 (g)  
 35 (7) Determines the information shown or to be shown on any  
 36 map or document prepared or furnished in connection with any  
 37 one or more of the functions described in ~~subdivisions (a), (b), (c),~~  
 38 ~~(d), (e), and (f):~~ *paragraphs (1) to (6), inclusive.*

39 (h)

1 (8) Indicates, in any capacity or in any manner, by the use of  
2 the title “land surveyor” or by any other title or by any other  
3 representation that ~~he or she practices or offers~~ *they practice or*  
4 *offer* to practice land surveying in any of its branches.  
5 (i)  
6 (9) Procures or offers to procure land surveying work for  
7 ~~himself, herself, themselves~~ or others.  
8 (j)  
9 (10) Manages, or conducts as manager, proprietor, or agent, any  
10 place of business from which land surveying work is solicited,  
11 performed, or practiced.  
12 (k)  
13 (11) Coordinates the work of professional, technical, or special  
14 consultants in connection with the activities authorized by this  
15 chapter.  
16 (l)  
17 (12) Determines the information shown or to be shown within  
18 the description of any deed, trust deed, or other title document  
19 prepared for the purpose of describing the limit of real property  
20 in connection with any one or more of the functions described in  
21 ~~subdivisions (a) to (f), paragraphs (1) to (6), inclusive.~~  
22 (m)  
23 (13) Creates, prepares, or modifies electronic or computerized  
24 data in the performance of the activities described in ~~subdivisions~~  
25 ~~(a), (b), (c), (d), (e), (f), (k), and (l).~~ *paragraphs (1), (2), (3), (4),*  
26 *(5), (6), (11), and (12).*  
27 (n)  
28 (14) Renders a statement regarding the accuracy of maps or  
29 measured survey data.  
30 ~~Any~~  
31 (b) *Any* department or agency of the state or any city, county,  
32 or city and county that has an unregistered person in responsible  
33 charge of land surveying work on January 1, 1986, shall be exempt  
34 from the requirement that the person be licensed as a land surveyor  
35 until the person currently in responsible charge is replaced.  
36 ~~The~~  
37 (c) *The* review, approval, or examination by a governmental  
38 entity of documents prepared or performed pursuant to this section  
39 shall be done by, or under the direct supervision of, a person  
40 authorized to practice land surveying.

1 SEC. 2. Section 8764 of the Business and Professions Code is  
2 amended to read:

3 8764. (a) The record of survey shall show the applicable  
4 provisions of the following consistent with the purpose of the  
5 survey:

6 ~~(a)~~

7 (1) All monuments found, set, reset, replaced, or removed,  
8 describing their kind, size, and location, and giving other data  
9 relating thereto.

10 ~~(b)~~

11 (2) Bearing or witness monuments, basis of bearings, bearing  
12 and length of lines, scale of map, and north arrow.

13 ~~(c)~~

14 (3) Name and legal designation of the property in which the  
15 survey is located, and the date or time period of the survey.

16 ~~(d)~~

17 (4) The relationship to those portions of adjacent tracts, streets,  
18 or senior conveyances which have common lines with the survey.

19 ~~(e)~~

20 (5) Memorandum of oaths.

21 ~~(f)~~

22 (6) Statements required by Section 8764.5.

23 ~~(g)~~

24 (7) Any other ~~data~~ *data, in graphic or narrative form*, necessary  
25 for the intelligent interpretation of the various items and locations  
26 of the points, lines, and areas shown, or convenient for the  
27 identification of the survey or surveyor, as may be determined by  
28 the civil engineer or land surveyor preparing the record of survey.

29 ~~The~~

30 (b) *The* record of survey shall also show, either graphically or  
31 by note, the reason or reasons, if any, why the mandatory filing  
32 provisions of paragraphs (1) to (5), inclusive, of subdivision (b)  
33 of Section 8762 apply.

34 ~~The~~

35 (c) *The* record of survey need not consist of a survey of an entire  
36 property.

37 SEC. 3. Section 8780 of the Business and Professions Code is  
38 amended to read:

39 8780. (a) The board may, upon its own initiative or upon the  
40 receipt of a complaint, investigate the actions of any land surveyor

1 licensed under this chapter or any civil engineer licensed under  
2 the provisions of Chapter 7 (commencing with Section 6700) who  
3 is legally authorized to practice land surveying and make findings  
4 thereon.

5 ~~By~~

6 (b) *By* a majority vote, the board may publicly reprove, suspend  
7 for a period not to exceed two years, or revoke the license or  
8 certificate of any land surveyor licensed under this chapter or civil  
9 engineer licensed under the provisions of Chapter 7 (commencing  
10 with Section 6700) who is legally authorized to practice land  
11 surveying on any of the following grounds:

12 ~~(a)~~

13 (1) Any fraud, deceit, or misrepresentation in ~~his or her~~ *their*  
14 practice of land surveying.

15 ~~(b)~~

16 (2) Any negligence or incompetence in ~~his or her~~ *in their*  
17 practice of land surveying.

18 (3) *Any incompetence in their practice of land surveying.*

19 ~~(c)~~

20 (4) Any fraud or deceit in obtaining ~~his or her~~ *their* license.

21 ~~(d)~~

22 (5) Any violation of any provision of this chapter or of any other  
23 law relating to or involving the practice of land surveying.

24 ~~(e)~~

25 (6) Any conviction of a crime substantially related to the  
26 qualifications, functions, and duties of a land surveyor. The record  
27 of the conviction shall be conclusive evidence thereof.

28 ~~(f)~~

29 (7) Aiding or abetting any person in the violation of any  
30 provision of this chapter or any regulation adopted by the board  
31 pursuant to this chapter.

32 ~~(g)~~

33 (8) A breach or violation of a contract to provide land surveying  
34 services.

35 ~~(h)~~

36 (9) A violation in the course of the practice of land surveying  
37 of a rule or regulation of unprofessional conduct adopted by the  
38 board.

39 SEC. 4. Section 4529 of the Government Code is amended to  
40 read:

1 4529. (a) This chapter shall not apply where the state or local  
2 agency head determines that the services needed are more of a  
3 technical nature and involve little professional judgment and that  
4 requiring bids would be in the public interest.

5 (b) *A state or local agency head making a determination*  
6 *pursuant to subdivision (a) shall be licensed in the discipline for*  
7 *which they are making the determination if a license is required*  
8 *to practice in that discipline.*

9 SEC. 5. Section 66452.5 of the Government Code is amended  
10 to read:

11 66452.5. (a) (1) The subdivider, or any tenant of the subject  
12 property, in the case of a proposed conversion of residential real  
13 property to a condominium project, community apartment project,  
14 or stock cooperative project, may appeal from any action of the  
15 advisory agency with respect to a tentative map to the appeal board  
16 established by local ordinance or, if none, to the legislative body.

17 (2) The appeal shall be filed with the clerk of the appeal board,  
18 or if there is none, with the clerk of the legislative body within 10  
19 days after the action of the advisory agency from which the appeal  
20 is being taken.

21 (3) Upon the filing of an appeal, the appeal board or legislative  
22 body shall set the matter for hearing. The hearing shall be held  
23 within ~~30~~ 45 days after the date of a request filed by the subdivider  
24 or the appellant. If there is no regular meeting of the legislative  
25 body within the next ~~30~~ 45 days for which notice can be given  
26 pursuant to Section 66451.3, the appeal may be heard at the next  
27 regular meeting for which notice can be given, or within 60 days  
28 from the date of the receipt of the request, whichever period is  
29 shorter. Within 10 days following the conclusion of the hearing,  
30 the appeal board or legislative body shall render its decision on  
31 the appeal.

32 (b) (1) The subdivider, any tenant of the subject property, in  
33 the case of a conversion of residential real property to a  
34 condominium project, community apartment project, or stock  
35 cooperative project, or the advisory agency may appeal from the  
36 action of the appeal board to the legislative body. The appeal shall  
37 be filed in writing with the clerk of the legislative body within 10  
38 days after the action of the appeal board from which the appeal is  
39 being taken.

1 (2) After the filing of an appeal, the legislative body shall set  
2 the matter for hearing. The hearing shall be held within ~~30~~ 45 days  
3 after the date of the request filed by the subdivider or the appellant.  
4 If there is no regular meeting of the legislative body within the  
5 next ~~30~~ 45 days for which notice can be given pursuant to Section  
6 66451.3, the appeal may be heard at the next regular meeting for  
7 which notice can be given, or within 60 days from the date of the  
8 receipt of the request, whichever period is shorter. Within 10 days  
9 following the conclusion of the hearing, the legislative body shall  
10 render its decision on the appeal.

11 (c) (1) If there is an appeal board and it fails to act upon an  
12 appeal within the time limit specified in this chapter, the decision  
13 from which the appeal was taken shall be deemed affirmed and an  
14 appeal therefrom may thereupon be taken to the legislative body  
15 as provided in subdivision (b) of this section. If no further appeal  
16 is taken, the tentative map, insofar as it complies with applicable  
17 requirements of this division and any local ordinance, shall be  
18 deemed approved or conditionally approved as last approved or  
19 conditionally approved by the advisory agency, and it shall be the  
20 duty of the clerk of the legislative body to certify or state that  
21 approval, or if the advisory agency is one which is not authorized  
22 by local ordinance to approve, conditionally approve, or disapprove  
23 the tentative map, the advisory agency shall submit its report to  
24 the legislative body as if no appeal had been taken.

25 (2) If the legislative body fails to act upon an appeal within the  
26 time limit specified in this chapter, the tentative map, insofar as it  
27 complies with applicable requirements of this division and any  
28 local ordinance, shall be deemed to be approved or conditionally  
29 approved as last approved or conditionally approved, and it shall  
30 be the duty of the clerk of the legislative body to certify or state  
31 that approval.

32 (d) (1) Any interested person adversely affected by a decision  
33 of the advisory agency or appeal board may file an appeal with  
34 the legislative body concerning any decision of the advisory agency  
35 or appeal board. The appeal shall be filed with the clerk of the  
36 legislative body within 10 days after the action of the advisory  
37 agency or appeal board that is the subject of the appeal. Upon the  
38 filing of the appeal, the legislative body shall set the matter for  
39 hearing. The hearing shall be held within ~~30~~ 45 days after the date  
40 of a request filed by the subdivider or the appellant. If there is no



1 regular meeting of the legislative body within the next ~~30~~ 45 days  
2 for which notice can be given pursuant to Section 66451.3, the  
3 appeal may be heard at the next regular meeting for which notice  
4 can be given, or within 60 days from the date of the receipt of the  
5 request, whichever period is shorter. The hearing may be a public  
6 hearing for which notice shall be given in the time and manner  
7 provided.

8 (2) Upon conclusion of the hearing, the legislative body shall,  
9 within 10 days, declare its findings based upon the testimony and  
10 documents produced before it or before the advisory board or the  
11 appeal board. The legislative body may sustain, modify, reject, or  
12 overrule any recommendations or rulings of the advisory board or  
13 the appeal board and may make any findings that are not  
14 inconsistent with the provisions of this chapter or any local  
15 ordinance adopted pursuant to this chapter.

16 (e) Each decision made pursuant to this section shall be  
17 supported by findings that are consistent with the provisions of  
18 this division and any local ordinance adopted pursuant to this  
19 division.

20 (f) Notice of each hearing provided for in this section shall be  
21 sent by United States mail to each tenant of the subject property,  
22 in the case of a conversion of residential real property to a  
23 condominium project, community apartment project, or stock  
24 cooperative project, at least three days prior to the hearing. The  
25 notice requirement of this subdivision shall be deemed satisfied if  
26 the notice complies with the legal requirements for service by mail.  
27 Pursuant to Section 66451.2, fees may be collected from the  
28 subdivider or from persons appealing or filing an appeal for  
29 expenses incurred under this section.

O



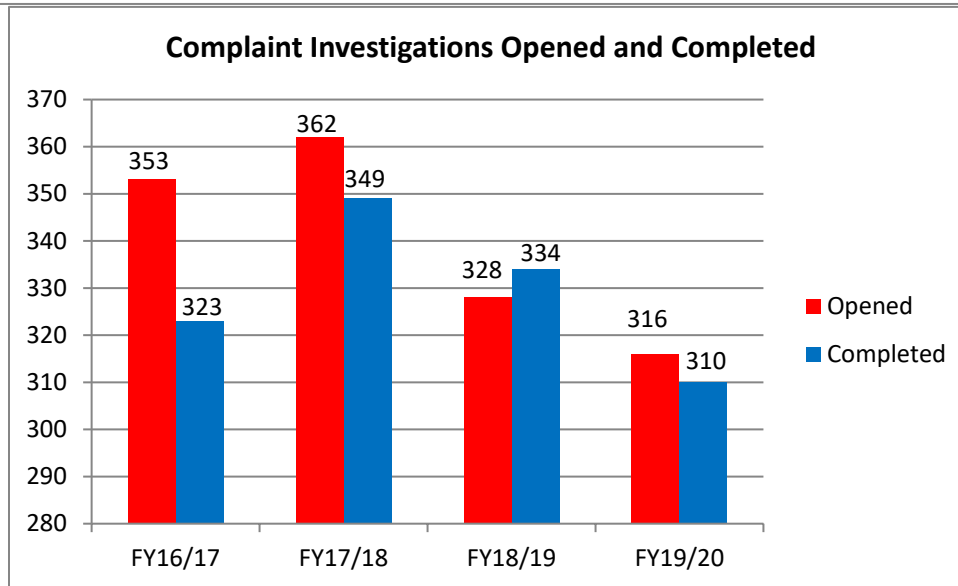
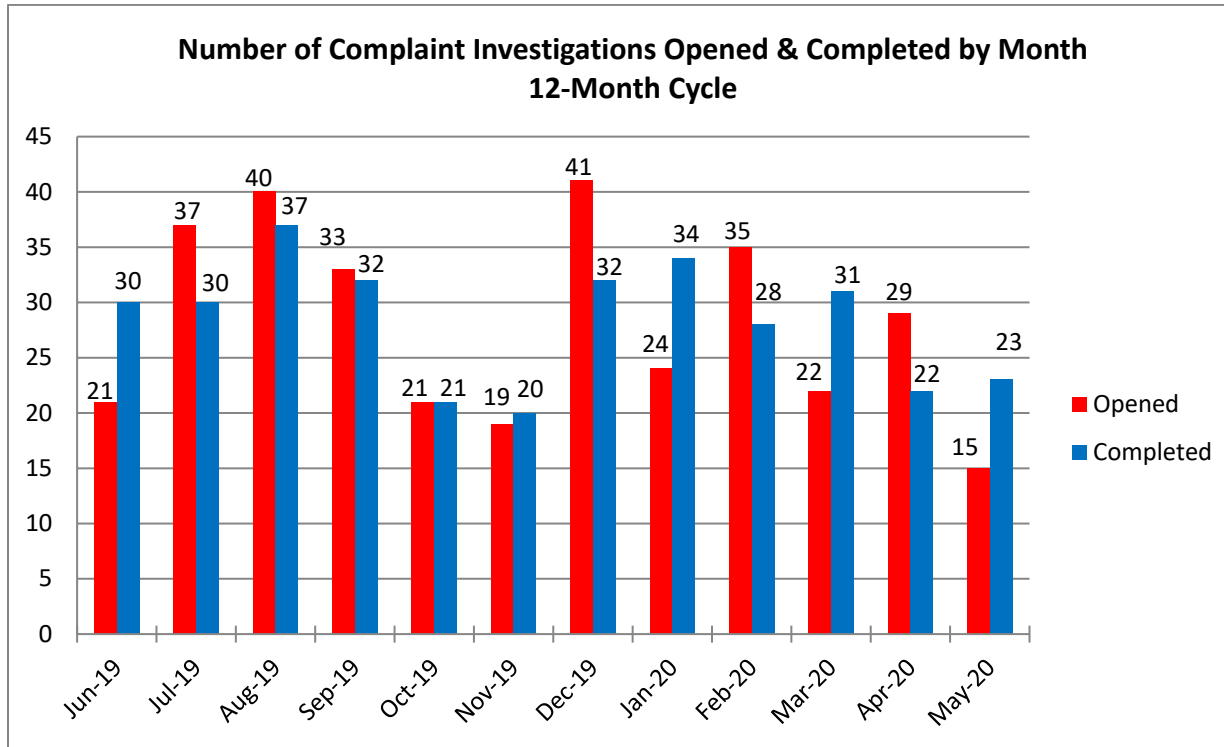
## **VIII. Enforcement**

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

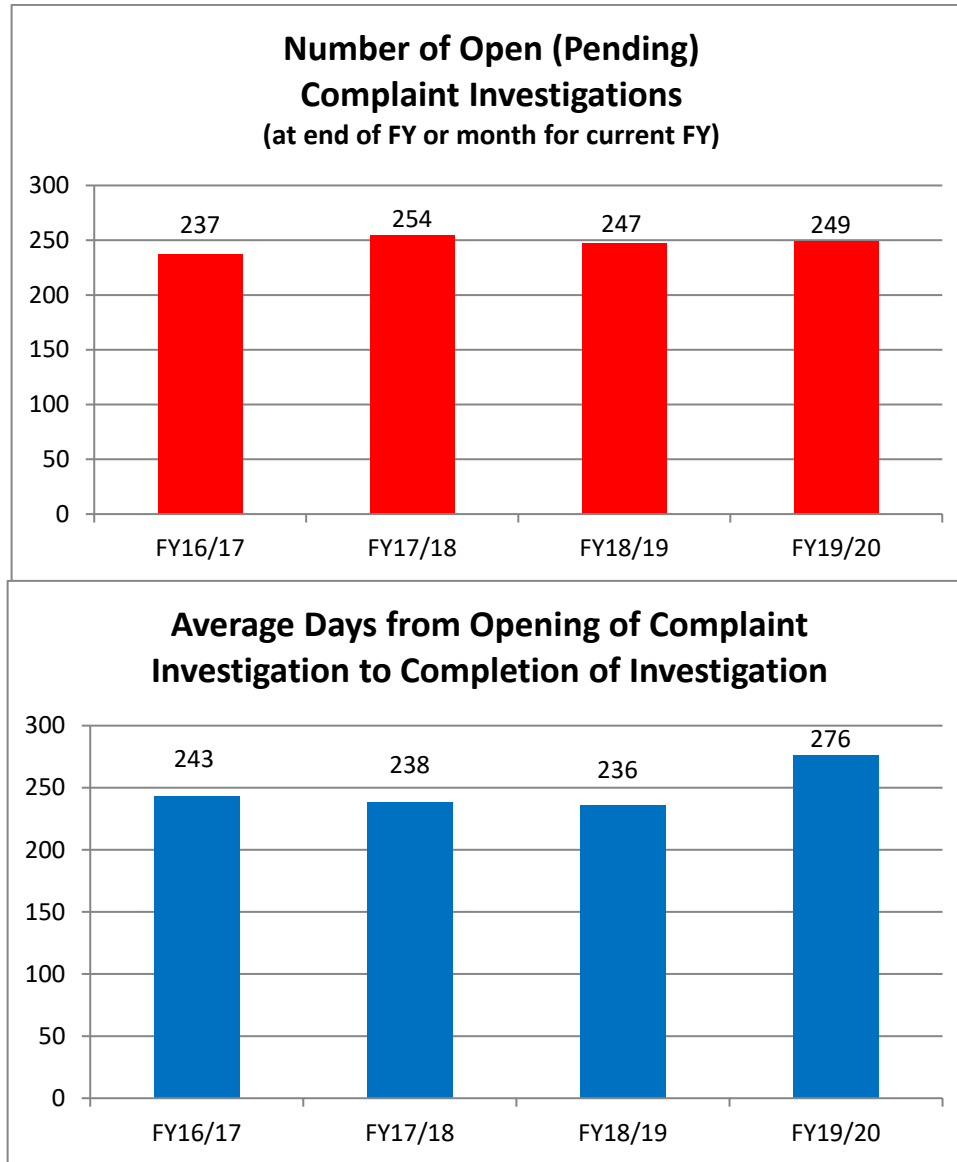


# Complaint Investigation Phase



NOTE: FY19/20 statistics are through May 31, 2020

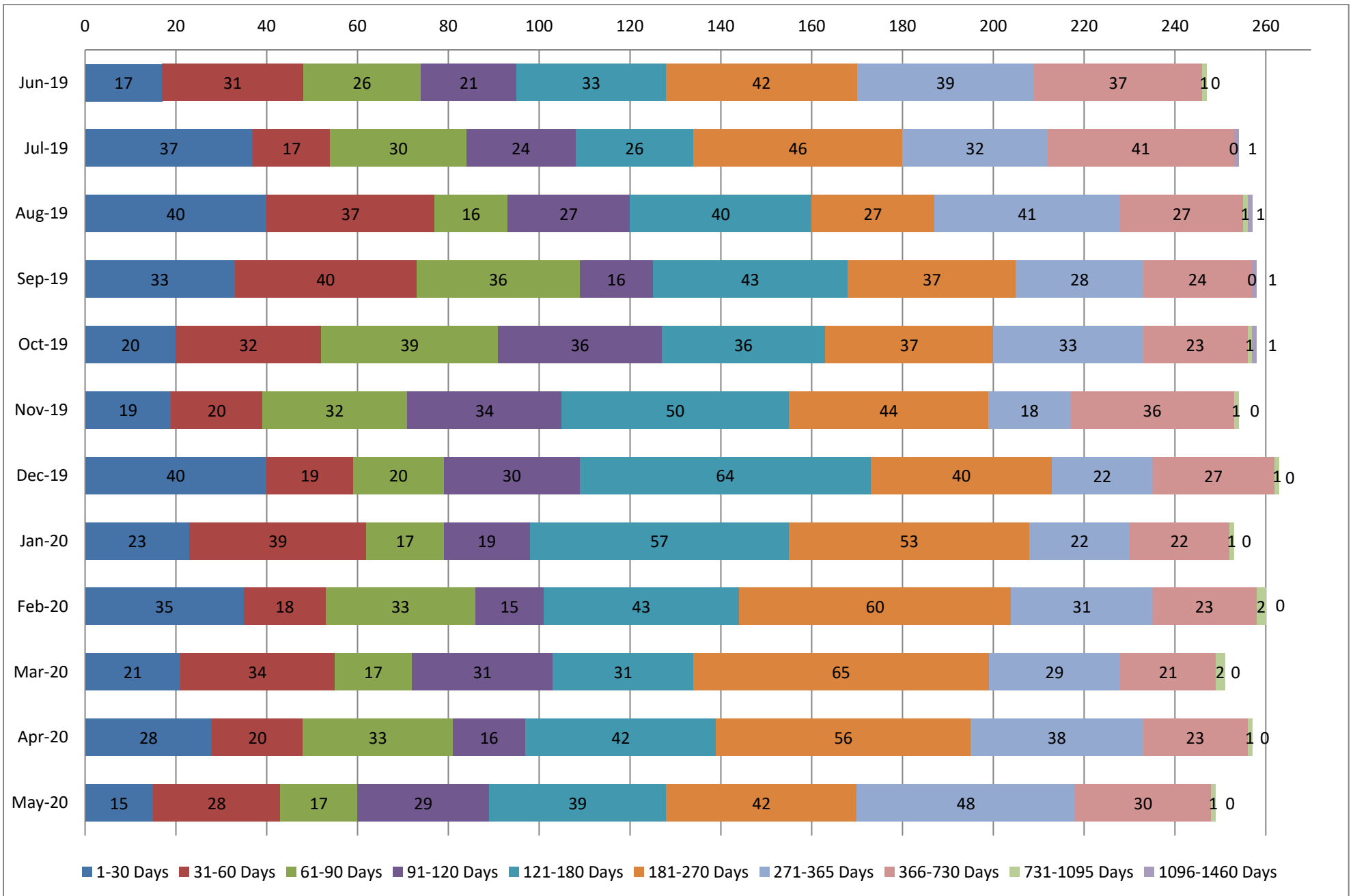
# Complaint Investigation Phase



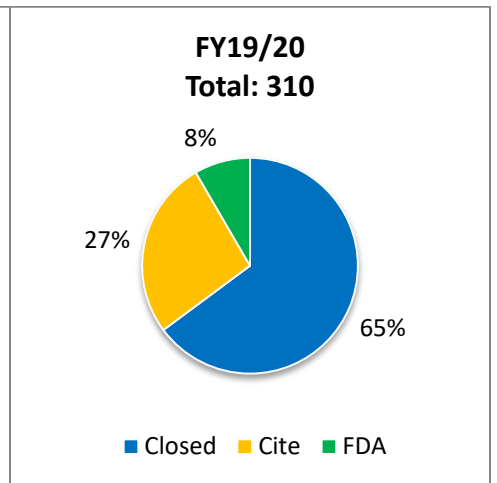
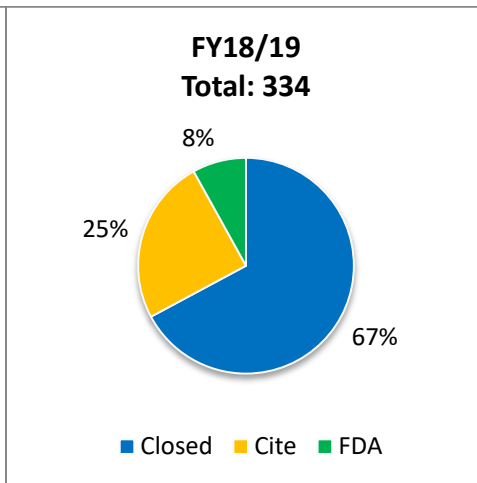
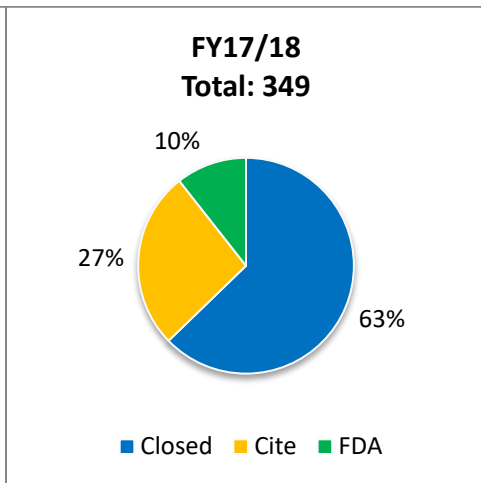
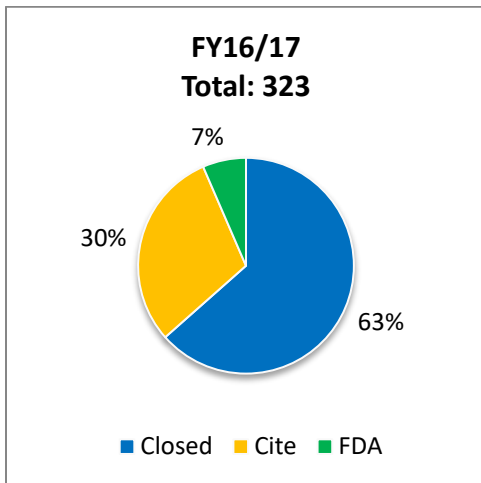
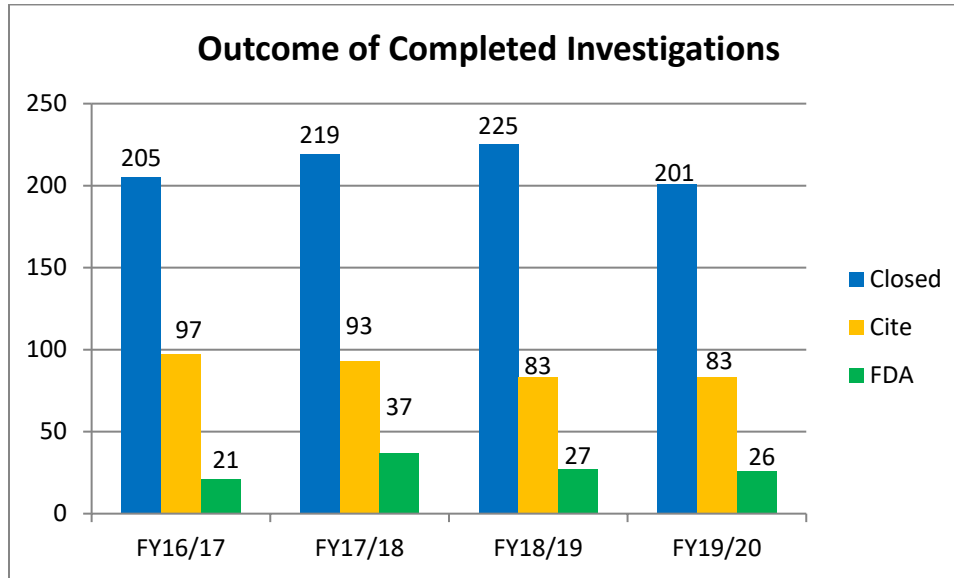
NOTE: FY19/20 statistics are through May 31, 2020

# Complaint Investigation Phase

## Aging of Open (Pending) Complaint Investigation Cases – 12-Month Cycle



# Complaint Investigation Phase Outcome of Completed Investigations



**NOTE: FY19/20 statistics are through May 31, 2020**

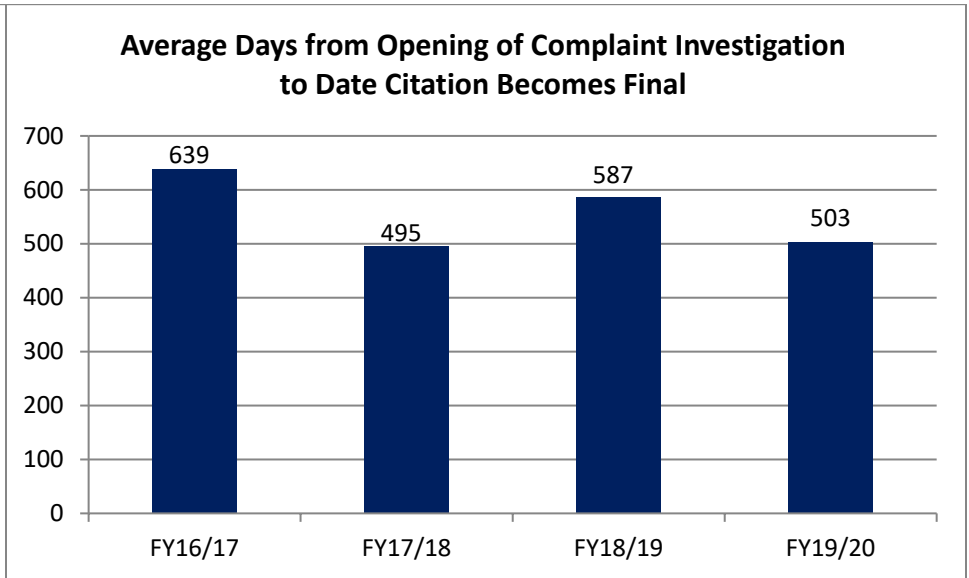
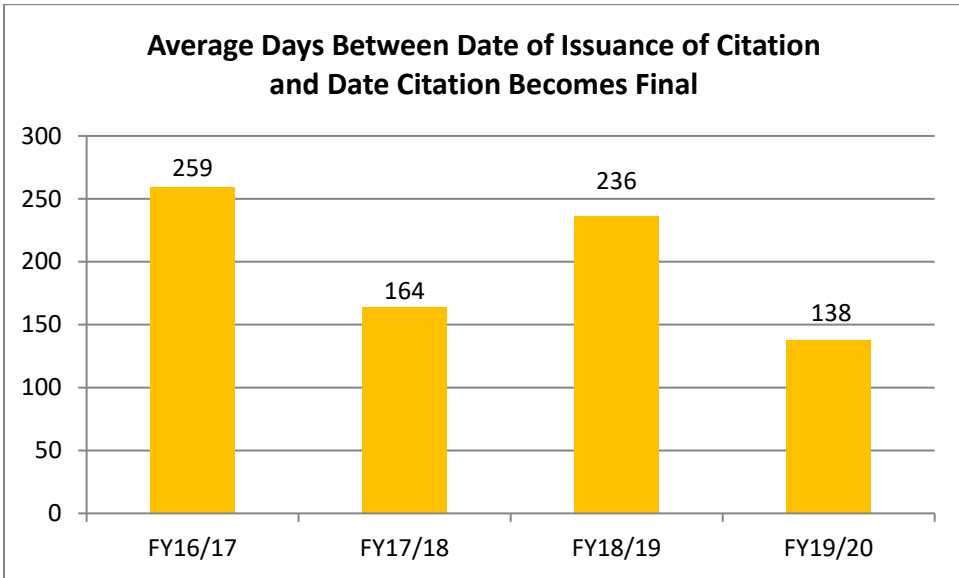
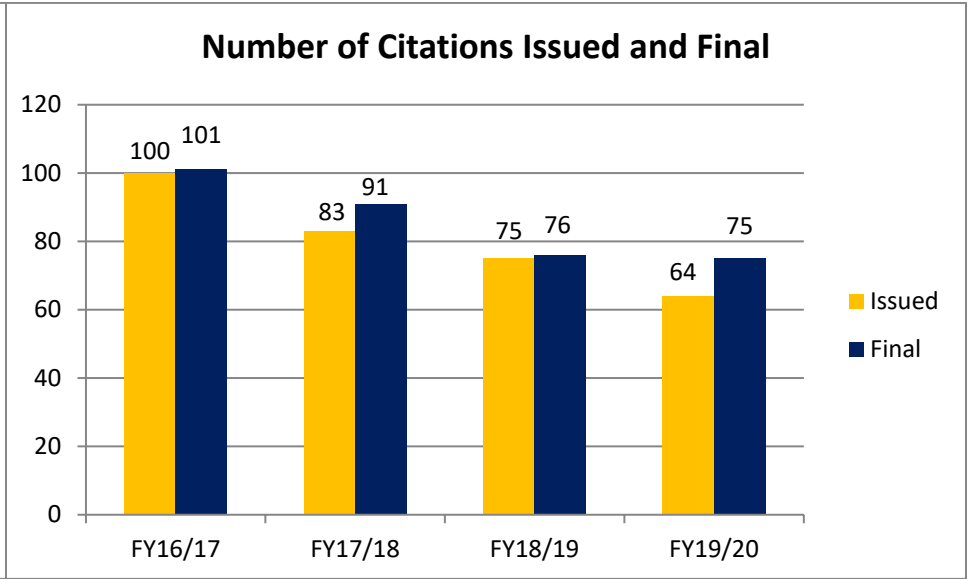
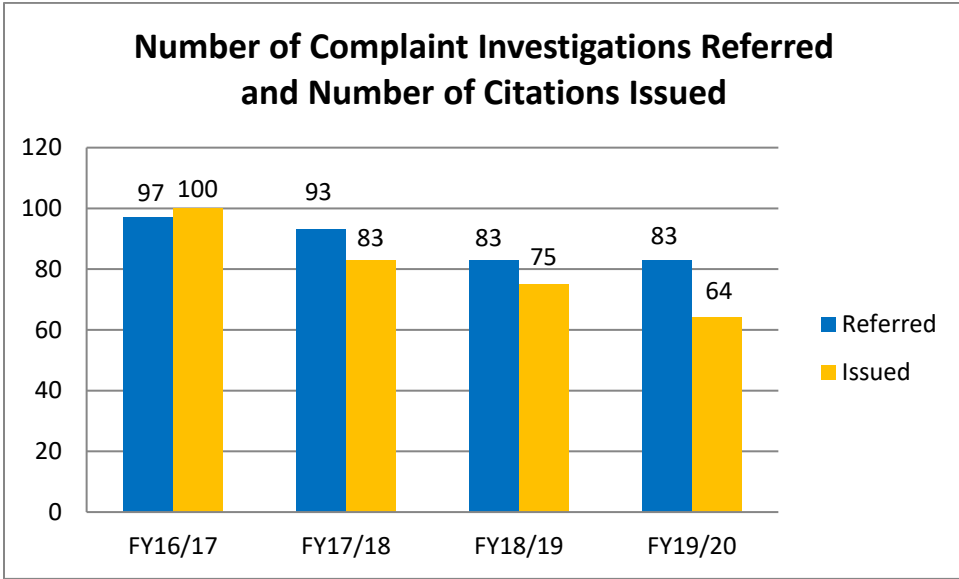
Closed with No Action Taken, includes No Violation/Insufficient Evidence; Compliance Obtained; Warning Letter; Other Reason for Closing Without Action (e.g., subject deceased); Resolved After Initial Notification; Referred to District Attorney with Request to File Criminal Charges; and Mediated.

Cite = Referred for Issuance of Citation

FDA = Referred for Formal Disciplinary Action

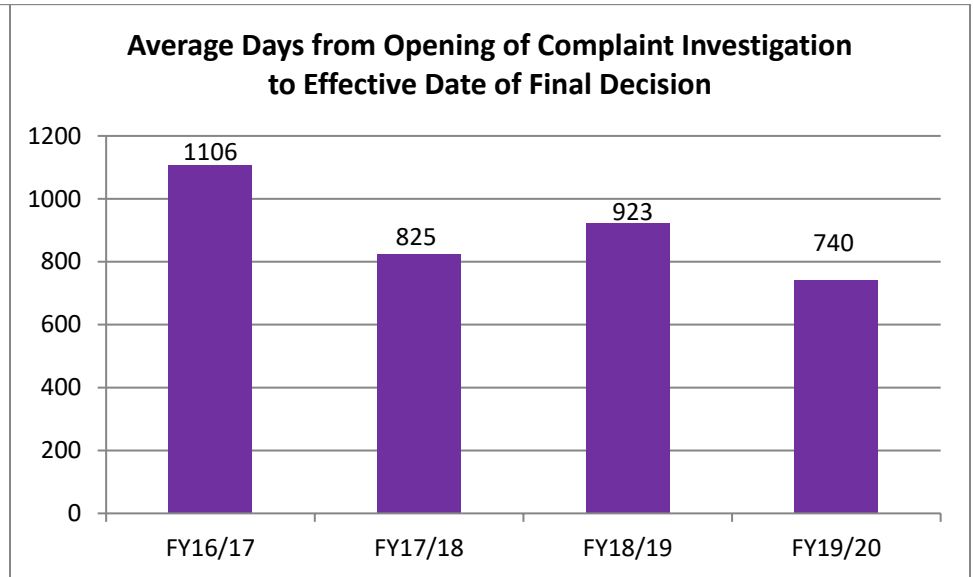
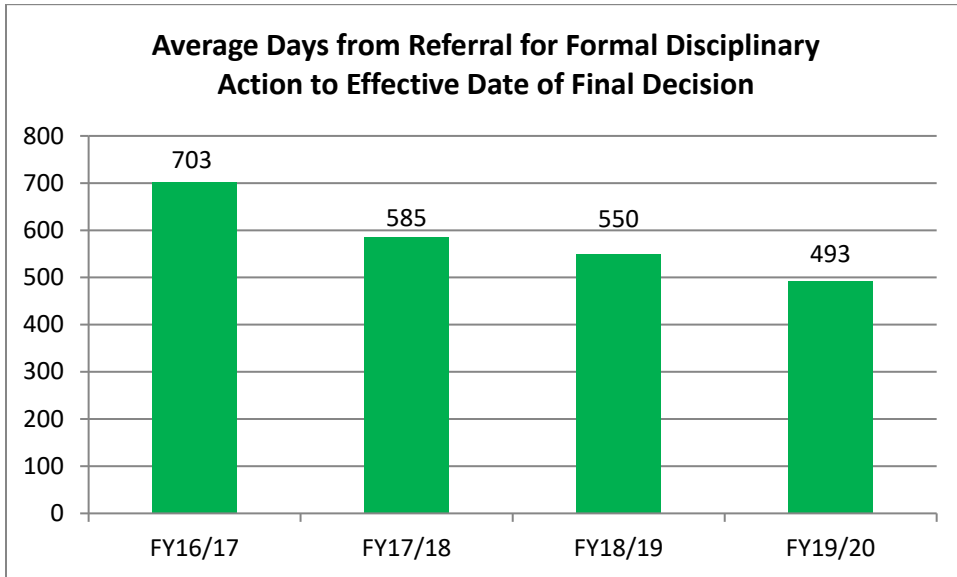
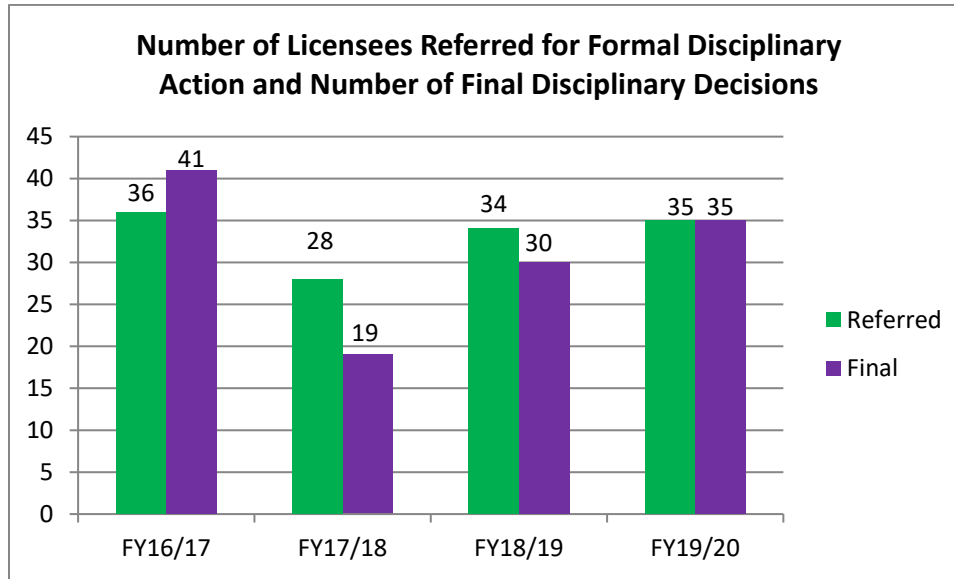


# Citations (Informal Enforcement Actions)



NOTE: FY19/20 statistics are through May 31, 2020

# Formal Disciplinary Actions Against Licensees



NOTE: FY19/20 statistics are through May 31, 2020

**Number of Complaint Investigations Opened & Completed by Month  
12-Month Cycle**

Month	Complaint Investigations Opened	Complaint Investigations Completed
June 2019	21	30
July 2019	37	30
August 2019	40	37
September 2019	33	32
October 2019	21	21
November 2019	19	20
December 2019	41	32
January 2020	24	34
February 2020	35	28
March 2020	22	31
April 2020	29	22
May 2020	15	23

**Complaint Investigations Opened and Completed  
Total by Fiscal Year**

Fiscal Year	Complaint Investigations Opened	Complaint Investigations Completed
2016/17	353	323
2017/18	362	349
2018/19	328	334
2019/20	316	310

Current Fiscal Year through May 31, 2020

**Number of Open (Pending) Complaint Investigations  
(at end of FY or month for current FY)**

Fiscal Year	Number of Open (Pending) Complaint Investigations
2016/17	237
2017/18	254
2018/19	247
2019/20	249

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)

Fiscal Year	Average Days
2016/17	243
2017/18	238
2018/19	236
2019/20	276

Current Fiscal Year through May 31, 2020

### Outcome of Completed Investigations

Fiscal Year	# Closed	% Closed	# Cite	% Cite	# FDA	% FDA
2016/17	205	63%	97	30%	21	7%
2017/18	219	63%	93	27%	37	10%
2018/19	225	67%	83	25%	27	8%
2019/20	201	65%	83	27%	26	8%

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**

Month	0-30 Days	31-60 Days	61-90 Days	91-12 Days	121-180 Days	181-270 Days	271-365 Days	1-2 Years	2-3 Years	3-4 Years
June 2019	17	31	26	21	33	42	39	37	1	0
July 2019	37	17	30	24	26	46	32	41	0	1
August 2019	40	37	16	27	40	27	41	27	1	1
September 2019	33	40	36	16	43	37	28	24	0	1
October 2019	20	32	39	36	36	37	33	23	1	1
November 2019	19	20	32	34	50	44	18	36	1	0
December 2019	40	19	20	30	64	40	22	27	1	0
January 2020	23	39	17	19	57	53	22	22	1	0
February 2020	35	18	33	15	43	60	31	23	2	0
March 2020	21	34	17	31	31	65	29	21	2	0
April 2020	28	20	33	16	42	56	38	23	1	0
May 2020	15	28	17	29	39	42	48	30	1	0

**Number of Complaint Investigations Referred and Number of Citations Issued**

Fiscal Year	Complaint Investigations Referred for Issuance of Citation	Citations Issued
2016/17	97	100
2017/18	93	83
2018/19	83	75
2019/20	83	64

Current Fiscal Year through May 31, 2020

**Number of Citations Issued and Final**

Fiscal Year	Issued	Final
2016/17	100	101
2017/18	83	91
2018/19	75	76
2019/20	64	75

Current Fiscal Year through May 31, 2020

**Average Days Between Date of Issuance of Citation and Date Citation Becomes Final**

Fiscal Year	Number of Days
2016/17	259
2017/18	164
2018/19	236
2019/20	138

Current Fiscal Year through May 31, 2020

**Average Days from Opening of Complaint Investigation to Date Citation Becomes Final**

Fiscal Year	Number of Days
2016/17	639
2017/18	495
2018/19	587
2019/20	503

Current Fiscal Year through May 31, 2020

**Number of Licensees Referred for Formal Disciplinary Action  
and Number of Final Disciplinary Decisions**

Fiscal Year	Number of Licensees Referred for Formal Disciplinary Action	Number of Final Disciplinary Decisions
2016/17	36	41
2017/18	28	19
2018/19	34	30
2019/20	35	35

Current Fiscal Year through May 31, 2020

**Average Days from Referral for Formal Disciplinary Action  
to Effective Date of Final Decision**

Fiscal Year	Number of Days
2016/17	703
2017/18	585
2018/19	550
2019/20	493

Current Fiscal Year through May 31, 2020

**Average Days from Opening of Complaint Investigation  
to Effective Date of Final Decision**

Fiscal Year	Number of Days
2016/17	1106
2017/18	825
2018/19	923
2019/20	740

Current Fiscal Year through May 31, 2020





**IX. Exams/Licensing**

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A. Update on 2020 California State Examinations

B. Discussion on Alternate Ways to Administer State Examinations



**X. Executive Officer's Report**

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- 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)

- Additional 15-Day public comment period ended on June 19, 2020.
  - Submitted for final review by DCA/Agency on February 26, 2020.
  - 15-Day public comment period ended February 2, 2020.
  - Board approved modified language for 15-day public comment period on January 16, 2020.
  - 45-Day public comment period ended on January 14, 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.
  - 15-Day public comment period ended on May 13, 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](http://www.bpelsg.ca.gov/about_us/rulemaking.shtml).

## PROJECT STATUS REPORT

<b>Reporting period:</b>	4/5/2020 – 6/12/2020	<b>Project title:</b>	Business Modernization Cohort 1
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### EXECUTIVE SUMMARY

<b>Narrative Summary of Status</b>	<b>Schedule:</b>	<b>GREEN</b>	<b>Budget:</b>	<b>GREEN</b>	<b>Issues:</b>	<b>GREEN</b>
<p>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.</p>						

### PROJECT MILESTONE STATUS REVIEW

<b>Project Milestones</b>	<b>Status</b>	<b>Completion Date</b>	<b>Issues Exist (Yes/No)</b>
Project Planning Complete – Project Start	Complete	1/13/2020	No
Onboard Systems Integrator	Complete	1/31/2020	No
Sprint Planning & Development	In Progress	7/10/2020	No
User Acceptance Testing (UAT)	Not Started	8/14/2020	No
MVP Product Increment 1 - Dates may adjust depending on final project schedule baseline	In Progress	8/26/2020	Yes










# QUARTERLY OUTREACH REPORT (Q1)

## SOCIAL MEDIA: January–March 2020

 TOP 5 FACEBOOK POSTS	DATE	VIEWS
ASBOG geology exams have been canceled	March 13	2,507
NCEES has announced that the April 2020 paper exam is canceled	March 13	801
UPDATE to earlier post about “essential” work under Executive Order N-33-20	March 20	459
The Official Notice and Agenda has been amended to add a new item (item IV)	March 2	426
The Official Notice and Agenda for the January meeting	January 3	406

 TOP 5 TWEETS	DATE	VIEWS
Proposing to amend Title 16 re: fees & duplicate certificates	January 17	921
U.S. Census Bureau is recruiting	January 22	896
Addendum to the meeting materials for the January Board Mtg.	January 15	681
Two additional comments beyond the comment period are included in the addendum	January 15	677
Meeting materials for the January Board meeting are available	January 9	637

 WEB PAGE VIEWS	VIEWS
License Lookup	299,246
Board Homepage	182,524
Applicant Information	145,590
Professional Engineer Application	111,694
Licensee Information	88,467



## OUTREACH EVENTS: January–March 2020

### 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

### JANUARY

**January 7:** *Sacramento*  
 CDM Smith corporate presentation to civil engineers by Natalie King.

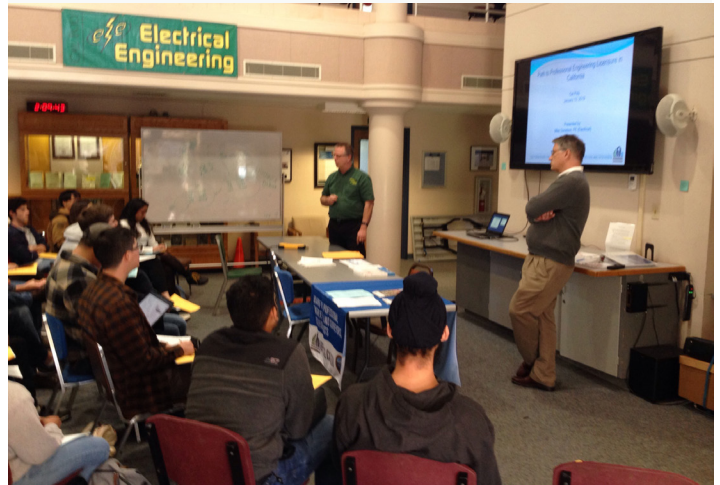
**January 7:** *Irvine*  
 ASCE Orange County YMF presentation by Natalie King.



**January 7:** *Sacramento, CLSA Land Survey Review*  
 Presentation on the steps to licensure and the test plan by Ric Moore and Dallas Sweeney.

**January 9:** *San Diego, CLSA Land Survey Review*  
 Presentation on the steps to licensure and the test plan by Ric Moore and Dallas Sweeney.

**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.



### 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 current 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.



# PRINTED MATERIALS: January–March 2020 Quarterly Publication [www.bpelsg.ca.gov/pubs/bulletin.latest.pdf](http://www.bpelsg.ca.gov/pubs/bulletin.latest.pdf)

VOLUME 7 | NUMBER 1

SPRING 2020

BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS

# BULLETIN

Please visit [www.bpelsg.ca.gov](http://www.bpelsg.ca.gov) for any COVID-19 related communications.

**Features**

- 3 Examination Statistics

**In Every Issue**

- 1 Message from the Executive Officer
- 2 Board News
- 2 Board Members
- 8 Get to Know Our Licensees
- 10 Legislation and Regulation News and Updates
- 11 Outreach Events
- 15 Enforcement Actions
- 18 In Memoriam
- 19 National Association News
- 19 ASBOG News
- 20 Contact Us
- 22 Board Calendar

**Our Spring 2020 *Bulletin* Exam Results Issue**

Every spring, the Board for Professional Engineers, Land Surveyors, and Geologists publishes the results of its examinations to provide year-to-year comparisons. This issue features statistical results for the past five years for all California-specific examinations.

The Examination Report begins on page 3.

**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 board/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 development 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 careers and recommend reform only to what is necessary. Others argue that traditional licensing models have outgrown the intended usefulness, not properly addressing today's public

(continued on page 2)

BPELSGCA.GOV



## **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)**

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- 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**

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

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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.

<b>Board Members Present:</b>	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
<b>Board Staff Present:</b>	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.

<b>MOTION:</b>	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
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	substantive comments are received; and delegate to the Executive Officer to finalize the rulemaking file.
<b>VOTE:</b>	14-0, Motion Carried

Member Name	Yes	No	Abstain	Absent	Recusal
Fel Amistad	X				
Steve Wilson	X				
Natalie Alavi	X				
Alireza Asgari	X				
Duane Friel	X				
Andrew Hamilton	X				
Kathy Jones Irish	X				
Eric Johnson	X				
Coby King	X				
Asha Lang	X				
Betsy Mathieson	X				
Mohammad Qureshi	X				
Frank Ruffino	X				
Robert Stockton	X				

**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

<b>MOTION:</b>	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.
<b>VOTE:</b>	14-0, Motion Carried

Member Name	Yes	No	Abstain	Absent	Recusal
Fel Amistad	X				
Steve Wilson	X				
Natalie Alavi	X				
Alireza Asgari	X				
Duane Friel	X				
Andrew Hamilton	X				
Kathy Jones Irish	X				
Eric Johnson	X				
Coby King	X				
Asha Lang	X				
Betsy Mathieson	X				
Mohammad Qureshi	X				
Frank Ruffino	X				
Robert Stockton	X				

**AB 2113** Refugees, asylees, and immigrants: professional licensing.

<b>MOTION:</b>	Ms. Alavi and Ms. Irish moved to take a WATCH position on AB 2113, as amended May 4, 2020.
<b>VOTE:</b>	14-0, Motion Carried

Member Name	Yes	No	Abstain	Absent	Recusal
Fel Amistad	X				
Steve Wilson	X				
Natalie Alavi	X				
Alireza Asgari	X				
Duane Friel	X				
Andrew Hamilton	X				
Kathy Jones Irish	X				
Eric Johnson	X				

Coby King	X				
Asha Lang	X				
Betsy Mathieson	X				
Mohammad Qureshi	X				
Frank Ruffino	X				
Robert Stockton	X				

**AB 3334** Professional Land Surveyors' Act.

<b>MOTION:</b>	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.
<b>VOTE:</b>	14-0, Motion Carried

Member Name	Yes	No	Abstain	Absent	Recusal
Fel Amistad	X				
Steve Wilson	X				
Natalie Alavi	X				
Alireza Asgari	X				
Duane Friel	X				
Andrew Hamilton	X				
Kathy Jones Irish	X				
Eric Johnson	X				
Coby King	X				
Asha Lang	X				
Betsy Mathieson	X				
Mohammad Qureshi	X				
Frank Ruffino	X				
Robert Stockton	X				

**SB 1057** Land.

<b>MOTION:</b>	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.
<b>VOTE:</b>	14-0, Motion Carried



Member Name	Yes	No	Abstain	Absent	Recusal
Fel Amistad	X				
Steve Wilson	X				
Natalie Alavi	X				
Alireza Asgari	X				
Duane Friel	X				
Andrew Hamilton	X				
Kathy Jones Irish	X				
Eric Johnson	X				
Coby King	X				
Asha Lang	X				
Betsy Mathieson	X				
Mohammad Qureshi	X				
Frank Ruffino	X				
Robert Stockton	X				

**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.

<b>MOTION:</b>	Ms. Alavi and Mr. King moved to take a position of WATCH on AB 2185, as amended March 16, 2020.
<b>VOTE:</b>	14-0, Motion Carried

Member Name	Yes	No	Abstain	Absent	Recusal
Fel Amistad	X				
Steve Wilson	X				
Natalie Alavi	X				
Alireza Asgari	X				
Duane Friel	X				
Andrew Hamilton	X				
Kathy Jones Irish	X				
Eric Johnson	X				
Coby King	X				
Asha Lang	X				
Betsy Mathieson	X				
Mohammad Qureshi	X				
Frank Ruffino	X				
Robert Stockton	X				

**AB 2454** Department of Consumer Affairs: retired or inactive status license: discipline.

<b>MOTION:</b>	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.
<b>VOTE:</b>	14-0, Motion Carried

Member Name	Yes	No	Abstain	Absent	Recusal
Fel Amistad	X				
Steve Wilson	X				
Natalie Alavi	X				
Alireza Asgari	X				
Duane Friel	X				
Andrew Hamilton	X				
Kathy Jones Irish	X				
Eric Johnson	X				
Coby King	X				
Asha Lang	X				
Betsy Mathieson	X				
Mohammad Qureshi	X				
Frank Ruffino	X				
Robert Stockton	X				

**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.

<b>MOTION:</b>	Mr. King and Mr. Friel moved to close the nominations.
<b>VOTE:</b>	13-0, Motion Carried

Member Name	Yes	No	Abstain	Absent	Recusal
Fel Amistad	X				
Steve Wilson	X				
Natalie Alavi	X				
Alireza Asgari	X				
Duane Friel	X				
Andrew Hamilton	X				
Kathy Jones Irish	X				
Eric Johnson	X				
Coby King	X				
Asha Lang				X	
Betsy Mathieson	X				
Mohammad Qureshi	X				
Frank Ruffino	X				
Robert Stockton	X				

<b>MOTION:</b>	Mr. Friel and Ms. Irish moved to elect Steve Wilson as Board President and Andrew Hamilton as Board Vice President.
<b>VOTE:</b>	13-0, Motion Carried

Member Name	Yes	No	Abstain	Absent	Recusal
Fel Amistad	X				
Steve Wilson	X				
Natalie Alavi	X				
Alireza Asgari	X				
Duane Friel	X				
Andrew Hamilton	X				
Kathy Jones Irish	X				
Eric Johnson	X				
Coby King	X				

Asha Lang				X	
Betsy Mathieson	X				
Mohammad Qureshi	X				
Frank Ruffino	X				
Robert Stockton	X				

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

A. Approval of the Minutes of the March 12, 2020, Board Meeting

<b>MOTION:</b>	Ms. Mathieson and Mr. King moved to approve the March 12, 2020, Board meeting minutes.
<b>VOTE:</b>	10-0-3, Motion Carried

Member Name	Yes	No	Abstain	Absent	Recusal
Fel Amistad	X				
Steve Wilson	X				
Natalie Alavi			X		
Alireza Asgari	X				
Duane Friel			X		
Andrew Hamilton	X				
Kathy Jones Irish			X		
Eric Johnson	X				
Coby King	X				
Asha Lang				X	
Betsy Mathieson	X				
Mohammad Qureshi	X				
Frank Ruffino	X				
Robert Stockton	X				

**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:**

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- 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**

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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.