

MINUTES OF THE BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS

Department of Public Works
825 East Third Street
San Bernardino, CA 92415

Thursday, July 27, 2023, beginning at 9:00 a.m.

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| Board Members Present: | President Michael Hartley; Vice-President Christina Wong; Fel Amistad; Alireza Asgari; Coby King; Guillermo Martinez; Betsy Mathieson; and Fermin Villegas |
| Board Members Absent: | Rossana D'Antonio; Frank Ruffino; and Wilfredo Sanchez; |
| Board Staff Present: | Ric Moore (Executive Officer); Nancy Eissler (Assistant Executive Officer); Tiffany Criswell (Enforcement Manager); Celina Calderone (Board Liaison); Christopher Pirrone (Legal Counsel) |

I. Roll Call to Establish a Quorum

President Hartley called the meeting to order at 9:00 a.m., and a quorum was established.

II. Pledge of Allegiance

Vice-President Wong led everyone in the recitation of the Pledge of Allegiance.

III. Public Comment for Items Not on the Agenda

During Public Comment, Carl Josephson, representing SEAOC, introduced Alex Gross, an intern for Josephson-Werdowatz & Associates and a Senior at Chico State. San Bernardino County Surveyor Tom Herrin welcomed the Board to San Bernardino. President Hartley welcomed newly appointed Board Member Fermin Villegas.

IV. Legislation

A. 2023 Legislative Calendar

Ms. Eissler reviewed the legislative calendar. The Legislature is currently in recess for the summer and will reconvene on August 14. This is the first year of a two-year legislative cycle. There are a couple of bills that did not make it out, and they are now considered two-year bills.

B. Discussion of Legislation for 2023

1. Assembly Bill (AB) 883 - Business licenses: United States Department of Defense SkillBridge program.
No action taken at this time.

2. Senate Bill (SB) 372 - Department of Consumer Affairs: licensee and

registrant records: name and gender changes.

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| MOTION: | Ms. Mathieson and Vice-President Wong moved to take a position of “Support” on SB 372, as amended June 28, 2023. |
| VOTE: | 8-0, Motion Carried |

| Member Name | Yes | No | Abstain | Absent | Recusal |
|---------------------|-----|----|---------|--------|---------|
| President Hartley | X | | | | |
| Vice-President Wong | X | | | | |
| Fel Amistad | X | | | | |
| Alireza Asgari | X | | | | |
| Rossana D’Antonio | | | | X | |
| Coby King | X | | | | |
| Guillermo Martinez | X | | | | |
| Betsy Mathieson | X | | | | |
| Frank Ruffino | | | | X | |
| Wilfredo Sanchez | | | | X | |
| Fermin Villegas | X | | | | |

3. SB 447 – Go-Biz
No action taken at this time.

4. SB 544 - Bagley-Keene Open Meeting Act: teleconferencing.

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| MOTION: | Mr. King and Ms. Mathieson moved to take a position of “Watch” on SB 544 and appoint a two-member committee to work with staff regarding the Board’s concerns with the bill; recent amendments are not yet in print. |
| VOTE: | 8-0, Motion Carried |

| Member Name | Yes | No | Abstain | Absent | Recusal |
|---------------------|-----|----|---------|--------|---------|
| President Hartley | X | | | | |
| Vice-President Wong | X | | | | |
| Fel Amistad | X | | | | |
| Alireza Asgari | X | | | | |
| Rossana D’Antonio | | | | X | |
| Coby King | X | | | | |
| Guillermo Martinez | X | | | | |
| Betsy Mathieson | X | | | | |
| Frank Ruffino | | | | X | |
| Wilfredo Sanchez | | | | X | |
| Fermin Villegas | X | | | | |

President Hartley appointed Mr. King and Dr. Asgari as the committee to work with staff on SB 544.

5. SB 802 - Licensing boards: disqualification from licensure: criminal conviction.
Ms. Eissler reported that this bill is now dead for this year.
6. SB 818 - Department of Consumer Affairs: terms of office: fingerprinting.
Ms. Eissler reported that this bill is now dead for this year.

V. Administration

A. Fiscal Year 2022/23 Budget Report

Mr. Moore reported that expenditures are about 90%. As expected, there was a significant increase in initial application volume, but revenue is down due to it being a biennial off year for renewals. Projections are as expected for Fiscal Month 11. He reported that the months-in-reserve (MIR) is 1.9 for this year. Due to the wide variation in application volume during the pandemic and the new Connect system, we are going back to the previous 5 years and conducting an average of applications and being conservative of what to expect for revenue rather than assuming there would be an increase.

B. License Renewal Notices Report

Mr. Moore reported that coordinated through DCA, the Employment Development Department (EDD) has been responsible for the printing of the Board's renewal notices as well as other state agencies for the printing and mailing of notices. EDD decided they were no longer going to offer these services resulting in DCA contracting with another vendor. However, there have been issues with extracting data from the legacy systems and interruptions in printing renewal notices. Last year, the Board sponsored legislation to require licensees to provide an email address so that we may now notify the licensee to renew online via Connect. We also removed the requirement for us to mail out paper renewal forms. With the issues arising with printing, DCA is recommending that all boards process renewals online and move away from printing due to all the interruptions in service. Staff has been encouraging everyone to go online as much as possible to process their renewals. Online participation for renewal transactions this Fiscal Year is nearing 90%. There are a number of licensees for whom we may not have an accurate email address or who have not participated in the online renewal process so they will receive a paper notification mailed to their address of record encouraging them to renew online. There is an average of \$50,000 per year in postage expenditures, and this year it is projected to be \$93,000. Currently, the Board is not required to provide and mail renewal notices. Licensees receive an email notification or text message if they have opted into texting, through BPELSG Connect to notify them of a message on their online account. Currently, the only option to pay online is a credit or debit card.

During Public Comment, Alex Gross asked whether it would be beneficial to see how other boards are handling their renewals. Ms. Eissler responded by saying

all DCA licensing boards are being affected as well. Some are also having issues printing wall certificates, whereas the Board has always printed their own.

VI. Enforcement

A. Enforcement Statistical Reports

1. Fiscal Year 2022/23 Update

Ms. Criswell, Enforcement Program Manager, reviewed the Enforcement Statistics. Ms. Mathieson inquired about the number of licensees referred for Formal Disciplinary Action and the number of Final Disciplinary Decisions has gone down. Ms. Criswell noted that one of the more recent board meetings there were no deliberations to consider. There has been an increase in hearings and believes that the accessibility of having virtual hearings has helped. She added that there has been an increase in the scheduling of hearings rather than negotiating settlements early on.

During Public Comment, Dave Woolley, Land Surveyor, reported that part of his role is serving as an expert in litigation cases both in state and federal court that involve land surveyor negligence. He provided history in reference to fraud in the land surveying industry and noted there are still reflections of it today. Engineers outnumber land surveyors 10-1, but land surveyors probably have more complaints than engineers. There is an education component. The education is available, but the community is not receptive. He believes that we need to look at the land surveying profession as a whole and create regulations to give it more practice-based laws, evaluate bills, and overregulate the profession to get it where it needs to be.

VII. Exams/Licensing

A. Examination/Licensing Updates

No report at this time.

VIII. Responsible Charge and Business Entity Requirements

Mr. Moore opened the discussion by reporting that licensees can practice and offer services through their own name or a business entity. When the services are offered through their business entity, there are certain requirements on how to form the business entity.

Ms. Eissler noted that she did not include the Geology and Geophysicist Act or regulations because their business entity laws are very different, and there is not yet a responsible charge criteria definition in regulations.

President Hartley reported that Business and Professions Code 8729 (a) (1) requires a land surveyor or civil engineer currently licensed be an owner, partner, or officer in charge of the land surveying practice of the business. In part (b), it indicates that an out-of-state business with a branch office in this state shall meet the requirements and shall have an owner, partner, or officer who is in charge of the land surveying work in this state, who is licensed in this state, and who is to be physically present

at the branch office in the state on a regular basis. He would argue that if you only have an in-state business then the same would apply. Current application of this law by the profession has created a situation in which one could open a land surveying office, be licensed, have your license suspended, revoked, etc. and you find yourself needing someone to sign for you. This person could have a full-time job employed by a municipality or government agency and have a complete other side business with staff and be in responsible charge of a completely different organization. This would not preclude someone who is a government employee from still having a side business. We do not want to limit people's ability to make a living, but we do want to protect the public and make sure there is someone in responsible charge of the work being done and that person needs to physically be present in a branch office on a regular basis. You cannot be in multiple locations at once. He believes that one of the key problems with the current law is the title, "Officer of a Corporation" and believes that the legislators or authors intended it to be someone with a personal investment in that corporation.

Mr. King explained that if there are two provisions in a law, one dealing with in-state and the other dealing with out-of-state, and if there is something that is only in the out-of-state provision, it clearly does not apply to in-state. If President Hartley believes it should be, it would require a change in the law.

Ms. Eissler added that it is not just any out-of-state business, it is only out-of-state businesses with a branch office in California, so it is even more limiting. There must be a licensee in responsible charge at an in-state business and the responsible charge criteria addresses how the person can maintain that responsible charge, by being either physically present or available with communications devices. While it may not say that you must be physically present for an in-state business, you must be in responsible charge, which means either being physical present or available through a communication device. She added that there have many questions in reference to the term, "Officer". Legal counsel has advised that there is nothing in the statutes that require a percentage of ownership of the company. The only time it refers to owner, it would apply to the sole proprietorship as it refers to owner, partner, or officer and then refers to sole proprietorship, partnership, or corporation. The only way to know if someone is an officer is if they are listed in the bylaws of the corporation or minutes from a corporation's board meeting that shows they have been appointed but it does not indicate at what level. Our law says they must be the one in responsible charge, making the engineering or land surveying decisions for the business which is different than being in responsible charge of a particular project for that business.

President Hartley's issue in what he sees as harming the public is when a licensee has more than one company that they are in responsible charge of, that they are on more than one Organization Record form. There are other states that limit the

licensee's responsibility to one firm, and he believes California should do something similar.

During Public Comment, Rob McMillan discussed span of control and as licensed professionals we must consider how well can we supervise a group of subordinates.

David Woolley offered his perspective, if there is a licensed surveyor that works at a municipality and then you have engineering companies offering land surveying services, but they either cannot hire a licensee or they are unavailable but most often they do not want to pay a licensee for full-time staff. They will add someone to their Organization Record form who can be on multiple records. He considers it a "License for sale" and there is no span of control.

Mr. Moore explained this may come through as a legislative effort from an outside organization or the Board can seek to sponsor legislation to change. The Board can also seek to work within the current statutory framework and assemble a rulemaking proposal. He predicts it will be challenging as there will be other interests with concerns and input.

President Hartley was tasked to read portions of the PLS Act in reference to the Land Surveyor Technical Advisory Committee (LS TAC) and admits that he is still not clear of the functions of the TAC and asked Mr. Moore if this would be something that the TAC would review. Mr. Moore added that this would not only involve land surveyors, but engineers, geologists, and geophysicists as well. He explained that the TAC serves in an advisory role for tasks that the Board needs additional expertise, opinion, or thoughts. Their input is usually technical in nature and they do not advise on how to interpret the law. They will advise how land surveying is practiced and how it applies to the concern of the Board.

The Board directed staff to make recommendations for clarifying and updating language to reflect current practices for the Board's review and further action.

Mr. King expressed that the President has a sense that the current laws do not adequately deal with problems within the profession and that there are potential abuses that occur because of the manner in which the law is written and/or interpreted. One method to changing the law is that you must truly make a case that there is something wrong, that there are those abuses, that there is a problem that really needs to be corrected. Did the legislative body make a record that this was actually necessary? Asking staff to come back with language changes either to regulation or to statute is a good idea; however, he believes we skipped a major step. Has staff in consultation with professional organizations actually identify there is a problem? Once we have that information, staff can report their findings. He believes stakeholder consultations play an important part as these are big changes that will be difficult to get through the legislature.

President Hartley reported that the California Land Surveyors Association (CLSA) has a professional practices committee. It is possible that there are cases that

professional practices committees have seen.

During Public Comment, Mr. McMillan reported that he will present this at the quarterly CLSA Board of Directors meeting.

Mr. Woolley recommended the review of Organizational Record forms.

Ms. Criswell commented that future development to the Connect system would be to include associations, employment, and whether the licensee is an officer. It has been an interest among the Enforcement Unit. Mr. Moore reported that future development would replace the Organization Record forms with something in Connect to allow the licensee to include the organization(s) they are associated with.

Mr. Moore does not expect staff to bring forth an analysis and recommended language. It would be more of an analysis based on a direction received for the Board to have further discussion. It is too early to come forward with recommended language.

Ms. Mathieson agrees with Mr. King in the importance of documenting a problem for any legislation and rulemaking. She recommends distilling this discussion and giving it a label and the Board's direction to staff needs to outline the problem.

IX. Introduction, Discussion, and Overview of the 2023-24 Sunset Process for the Board

Mr. Moore reported that the Board must have the Sunset report finalized by the end of the year and to expect the full Sunset draft for submittal at the November Board meeting. He expressed the need to have a two Board member committee to assist in reviewing the report and provide revisions. He provided examples of the types of information they will be reviewing.

There will be an opportunity to bring up new issues at the September Board meeting, and the Board must adopt the report at the November meeting. The Sunset Review hearing will take place in the Spring before the members of the Assembly Business and Professions Committee and the Senate Business, Professions and Economic Development Committee.

Vice-President Wong and Mr. Martinez volunteered to be the two-member committee to review the Sunset report.

X. Executive Officer's Report

A. Rulemaking Status Report

Mr. Moore reported that the ASBOG Exam Fees, Abandoned Applications, and Postponements Rulemaking was approved by the Office of Administrative Law and became effective June 29, 2023.

B. Update on Board's Business Modernization Project

Staff continues to work on the remaining applications which include structural engineering, geotechnical engineering, and traffic engineering along with the Certified Engineering Geologist (CEG) and Certified Hydrogeologist (CHG) applications.

C. Personnel

No report given.

D. ABET

Mr. Moore explained ABET’s purpose and functions for the new Board members. The board has not yet been notified of ABET campus visits for this fall.

E. Association of State Boards of Geology (ASBOG)

1. 2023 Fall Annual Meeting, October 2023, Spokane, WA – Update

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| MOTION: | Dr. Asgari and Dr. Amistad nominated Ms. Mathieson to attend the 2023 Fall Annual Meeting as a voting member. |
| VOTE: | 8-0, Motion Carried |

| Member Name | Yes | No | Abstain | Absent | Recusal |
|---------------------|-----|----|---------|--------|---------|
| President Hartley | X | | | | |
| Vice-President Wong | X | | | | |
| Fel Amistad | X | | | | |
| Alireza Asgari | X | | | | |
| Rossana D’Antonio | | | | X | |
| Coby King | X | | | | |
| Guillermo Martinez | X | | | | |
| Betsy Mathieson | X | | | | |
| Frank Ruffino | | | | X | |
| Wilfredo Sanchez | | | | X | |
| Fermin Villegas | X | | | | |

G. Update on Outreach Efforts

Mr. Moore reviewed the outreach events and explained the Board’s outreach efforts to the new members.

F. National Council of Examiners for Engineering and Surveying (NCEES)

1. 2023 NCEES Annual Meeting, August 15-18, 2023 – Summary of Motions

The Board previously chose Vice-President Wong, Mr. Ruffino, and President Hartley as funded delegates to the NCEES Annual Meeting.

Mr. Moore reviewed the motions being presented at the 2023 NCEES Annual Meeting.

He discussed the EPS (Examinations for Professional Surveyors) motion and

the Professional Surveying examination. The Board made a motion to pull the public land surveying questions from the National exam and have it as a supplemental module and Western Zone agreed to it and submitted it as a Western Zone request. After evaluations and studies, the Council approved it. The current motion is to move that NCEES develop a Public Lands Survey System module to be used in conjunction with the Principles and Practice of Surveying examination for jurisdictions that require such an exam.

Mr. Moore recommended to accept the motion as it matches what the Board wanted to accomplish.

Ms. Eissler reported on ACCA (Advisory Committee on Council Activities) 2 motion. The Board of Directors is endorsing it but Nevada had concerns so the Board of Directors did not put it on consent as they were aware that it would most likely get pulled. It has to do with Board members terms on their own board vs. terms on the NCEES Board of Directors and when they can be elected and nominated. The Zone Vice-Presidents are elected by their zones at the Spring Zone meetings but their position does not take effect until the Annual Meeting in August. The President Elect and the Treasurer are voted on at the Annual Meeting by the entire council. There was an issue last year with the timing of when a board member who had been nominated to be President Elect by their zone termed off his own board vs. when he was approved by NCEES to be an Emeritus member to when he would have been voted on by the council at the Annual Meeting and it was determined that he was ineligible.

Ms. Mathieson referenced EPP Motion 8, the term “Refresher” is not an appropriate term for an exam prep course and suggested, “an exam preparation course” or “Exam review course”.

XI. President’s Report/Board Member Activities

Mr. Villegas was appointed as a public member by outgoing Assembly Speaker Rendon. He has been an attorney for the California Community Colleges. Prior to that he worked in private practice and at the Attorney General's Office in Sacramento. He previously served on the Architects Board approximately ten years ago but had to resign to take the position at the Attorney General 's Office as they represent DCA boards. He looks forward to being able to contribute to the Board's work.

Vice-President Wong attended the State of the Council meeting to prepare for the NCEES Zone meetings.

XII. Approval of Meeting Minutes

A. Approval of June 8, 2023, Board Meeting Minutes

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| MOTION: | Dr. Asgari and Dr. Amistad moved to approve the June 2023 minutes, as amended. |
| VOTE: | 7-1-0, Motion Carried |

| Member Name | Yes | No | Abstain | Absent | Recusal |
|---------------------|-----|----|---------|--------|---------|
| President Hartley | X | | | | |
| Vice-President Wong | X | | | | |
| Fel Amistad | X | | | | |
| Alireza Asgari | X | | | | |
| Rossana D'Antonio | | | | X | |
| Coby King | X | | | | |
| Guillermo Martinez | X | | | | |
| Betsy Mathieson | X | | | | |
| Frank Ruffino | | | | X | |
| Wilfredo Sanchez | | | | X | |
| Fermin Villegas | | | X | | |

XIII. Closed Session – The Board met in Closed Session to discuss, as needed:

- A. Deliberate on a Decision(s) to be Reached in a Proceeding(s) Required to be Conducted Pursuant to Chapter 5 (commencing with Section 11500), as Authorized by Government Code Section 11126(c)(3)
- B. Confer with, or Receive Advice from, Its Legal Counsel Regarding Pending Litigation Pursuant to Government Code Section 11126(e)(1) and (2)(A), on the following matters:
 - 2. Matt Aston, Freddy Espinal, Jesse Moorhouse, Ground Penetrating Radar Systems, LLC v. Board for Professional Engineers, Land Surveyors, and Geologists, Sacramento Superior Court Case No. 34-2020-80003553
 - 3. Patrick Frederick Christensen vs. Board for Professional Engineers, Land Surveyors, and Geologists, Department of Consumer Affairs of the State of California, San Diego County Superior Court Case No. 37-2022-00000484-CU-WM-CTL
 - 4. Ryan Crownholm, et al. vs. Richard B. Moore, et al., United States District Court, Eastern District of California, Case No. 2:22-cv-01720-DAD-CKD
 - 5. Roy Allen Olsen, et al. v. California Board of Professional Engineers, Land Surveyors and Geologists, et al., Sacramento County Superior Court. Case No. 34-2022-00328379

XIV. Adjourn

The meeting was adjourned at 3:42 p.m.

PUBLIC PRESENT

Carl Josephson, SEAOC
 Alex Gross, SEAOC
 Rob McMillan, CLSA
 Thomas Herrin, San Bernardino County Surveyor
 Paul Novak, former member of the Board