

**RESPONSE TO THE
BACKGROUND PAPER FOR THE
BOARD OF PROFESSIONAL ENGINEERS,
LAND SURVEYORS, AND GEOLOGISTS**

**Submitted to the
Senate Committee on Business, Professions and Economic Development
and the
Assembly Committee on Business and Professions**

March 2019

For more detailed information regarding the responsibilities, operation and functions of the Board for Professional Engineers, Land Surveyors, and Geologists (BPELSG or Board), please refer to the Board's "2018 Sunset Review Report and Attachments." This report is available on its website at http://www.bpelsg.ca.gov/pubs/2018_sunset_review_report.pdf.

CURRENT SUNSET REVIEW ISSUES

The following are unresolved issues pertaining to the Board, or those which were not previously addressed by the Committees, and other areas of concern for the Committees to consider along with background information concerning the particular issue. There are also recommendations the Committees' staff have made regarding particular issues or problem areas which need to be addressed. The Board's responses follow the recommendations of the Committees' staff on each issue.

BUDGET ISSUES

ISSUE #1: *What is the status of the long term fund condition?*

Background: The Board receives no General Fund support and relies solely on licensing and renewal fees. As of July 2018 the Board's reserve is projected at 6.8 months, equating to \$7.2 million fund balance. Due to issues with FI\$Cal, the Board does not currently have estimates for Fiscal Year (FY) 2017/18 but expects to have them in March 2019. However, the Board does note that it exceeded revenues in FY 2017/18 by \$2.0 million.

The Board notes in its report that if its fiscal structure remains unchanged, it will encounter a deficit in FY 2020/21. To prevent this, the Board is researching a regulatory fee change based on an evaluation of actual costs that would redistribute all fees and provide a more consistent fee structure.

Table 2. Fund Condition						
FY 2014/15 – FY 2015/16: 0770 Engineer’s & Land Surveyor’s Fund						
FY 2016/17 – FY 2019/20: 0770 Professional Engineer’s, Land Surveyor’s, and Geologist’s Fund						
(Dollars in Thousands)	FY 2014/15	FY 2015/16	FY 2016/17	FY 2017/18	FY 2018/19	FY 2019/20
Beginning Balance	\$5,832	\$6,991	\$8,263	\$10,042	\$7,238	\$5,381
Prior Year Adjustment	-\$45	\$28	\$8	\$0	\$0	\$0
General Revenues	\$8,048	\$8,994	\$8,988	\$8,822	\$8,892	\$8,863
Total Revenue	\$13,835	\$16,013	\$17,259	\$18,864	\$16,130	\$14,244
Loans to General Fund	\$0	\$0	\$0	\$0	\$0	\$0
Loans Repaid From General Fund	\$500	\$0	\$3,200	\$0	\$800	\$0
Accrued Interest, Loans to General Fund	\$0	\$0	\$0	\$0	\$1,131	\$0
Total Resources	\$14,335	\$16,013	\$20,459	\$18,864	\$18,061	\$14,244
Budget Authority					\$11,828	\$12,065
Expenditures	\$7,336	\$7,732	\$9,853	\$10,927		
Other Adjustments (SCO, Fi\$Cal)	\$9	\$18	\$564	\$699	\$852	\$852
Total Expenditures	\$7,345	\$7,750	\$10,417	\$11,626	\$12,680	\$12,917
Fund Balance	\$6,990	\$8,263	\$10,042	\$7,238	\$5,381	\$1,327
Months in Reserve	10.8	9.5	10.4	6.8	5.0	1.2

Table 2. Fund Condition – 0205 Geologist and Geophysicist Account						
(Dollars in Thousands)	FY 2014/15	FY 2015/16	FY 2016/17	FY 2017/18	FY 2018/19	FY 2019/20
Beginning Balance	\$989	\$1,122	\$1,132	\$1,131	N/A	N/A
Prior Year Adjustment	\$98	\$66	-\$1	\$0		
General Revenues	\$1,103	\$1,083	\$0	\$0		
Total Resources	\$2,190	\$2,271	\$1,131	\$1,131		
Budget Authority			N/A	N/A		
Expenditures	\$1,067	\$1,136				
Other Adjustments (SCO, Fi\$Cal)	\$1	\$3				
Total Expenditures	\$1,068	\$1,139				
Fund Balance	\$1,122	\$1,132	\$1,131	\$1,131		
Months in Reserve	11.8	N/A	N/A	N/A		

Committees’ Staff Recommendation: *The Board should advise the Committees on the source of its excess expenditures and whether anticipated fee increases will be sufficient to prevent further shortfalls in the near future.*

BOARD RESPONSE:

The Board works closely with the Department of Consumer Affairs (DCA) Budget Office to monitor revenue, expenditures, fund balance, and reserves. In August 2018, DCA’s Chief of Fiscal Operations issued a Fi\$Cal Implementation Status Update that identified official year-end Fi\$Cal reports to close out FY 2017/18 are currently estimated for delivery March 2019. On February 20, 2019, DCA issued

a FI\$Cal Status Update that indicated they are on “...track to produce year-end financial statements in March 2019.” DCA also acknowledged that this is an “...issue and has made a commitment with the Department of Finance to update all fund conditions as part of the Governor’s May Revise Budget display with updated figures from reconciled financial year-end statements.” Based on budget reports provided from the DCA Budget Office and generated from the FI\$Cal system, expenditures exceeded revenues by \$2.0 million by the end of FY 2017/18. Expenditures have increased over the past four years by an average of 8%, or \$872,000 per year, and are tied to increases in staffing, employee salaries and benefits, operating expenses related to examination development costs, and pro rata charges, which in themselves have been affected by increases in employee salaries and benefits, as follows:

	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
Actual Positions	48.0	51.0	50.0	47.0
Personal Services	\$ 3,675	\$ 4,184	\$ 4,535	\$ 4,621
Operating Expenses	\$ 3,580	\$ 3,621	\$ 3,706	\$ 4,829
Departmental Prorata	\$1,315	\$1,300	\$1,748	\$1,736

Note: Dollars represented in thousands

Since FY 2014/15, personal services have increased for salaries and wages, temporary help, and benefits by \$946,000 related to filling program vacancies, merit salary adjustments, retirement and healthcare increases, and bargaining unit salary adjustments. Operating expenses have increased by \$1,249,000 related to contracts for examination development examination expert consultant services and to enforcement expenses. Departmental Prorata rose by \$421,000 and Statewide Prorata rose by \$690,000. Operating expenses have increased for examination development as the Board built up examination item banks to offer continuous testing and transitioned to computer based testing (CBT). Future costs related to examination development will trend down as the Board progresses into maintenance mode for all state-specific examinations. Enforcement costs for the Division of Investigation have gone up over the last four years but will be trending down in future fiscal years based on usage and DCA’s two-year roll forward prorata adjustment calculation.

As noted in the Sunset Report, the Board anticipates that if its fiscal structure remains unchanged, it will encounter a deficit in FY 2020/21. Additionally, since the July 1, 2016, merger of the Professional Engineer’s and Land Surveyor’s Fund and the Geologist and Geophysicist Account, the Board has recognized that the fees charged to the different professions it regulates need to be standardized. The Board directed its staff to conduct a review of the services provided, such as licensure application processing, examination development, enforcement, and renewal processing, and determine the appropriate fees that should be charged for the services in order to support the overall operations of the Board. Based on this review, at its November 2018 meeting, the Board approved staff’s proposed revisions to the regulations that specify the exact fees to be paid to the Board for these services. Staff is preparing to initiate the rulemaking process to amend the fees specified in the regulations with the goal that the new fees will be implemented as of January 1, 2020. The Board expects to review the fee structure within three years beyond the effective date of the new proposed fee structure so as to take advantage of the new efficiencies expected as a result of its business modernization efforts (more fully described in the response to Issue #6 below).

The Board anticipates the standardized fee structure proposed will foster an affordable path to licensure, align fees with the full cost of operational services, set fees to facilitate the effective administration of the Board, and respond more efficiently to the needs of the public, applicants, and licensees.

LICENSING ISSUES

ISSUE #2: *Does the Board need more staff in order to meet its performance goals?*

Background: The Board has indicated that it faces challenges in effectively tracking delays in license processing due to the variance in statutory requirements for its various license types. Additionally, while the Board will accept an application for licensure as a professional engineer or land surveyor at any time throughout the year, it has historically only offered required examinations twice a year. Similarly, applicants for licensure in the geology and geophysics professions still must meet filing deadlines due to the need to schedule for national and state examinations that are administered only once per year on a specific date. The Board indicates that, though pending applications often are greater than completed applications, the application pool stabilizes within two months of each application deadline when examinations are offered.

In FY 2016/17, the Board performed an internal reorganization of staff from three units into four units to better address the administrative, examination, licensing, and enforcement functions of the Board. The Licensing Unit was split back into two units. Previously, the unit associated with examination functions was combined with the application-processing unit to form a single unit. It had been anticipated that the integration of these units would help to increase communication, training, and direction to improve the processing time of applications and the efficiency of issuing new licenses. In three years, the Board did not see the results it had anticipated and decided to separate the units. Having the units separate again has allowed each unit to have its own manager who can focus on the needs and development of that specific unit.

The Board completed its required processes in 2013 to enable it to hire a licensed Geologist Registrar and, in 2015, was finally able to appoint a full-time Geologist Registrar. The addition of the new staff position has allowed technical review of applications to be done on a flow basis, thus improving the application review and approval processing time and providing consistency throughout all application review. The Geologist Registrar has also served as a technical resource for all geological matters relating to the Board and has participated in outreach events on behalf of the Board.

The Board indicates that it continues to use the DCA legacy systems for licensing and application processing (the Consumer Affairs System (CAS) and the Applicant Tracking System (ATS)). These systems are antiquated and requests for updates/fixes can be a lengthy, costly, and, in some cases, non-existent. The lengthy process for updates or correction can significantly affect the processing of applications, which may delay the licensing of applicants.

Committees' Staff Recommendation: *The Board should advise the Committees of what additional steps it will be taking to address licensing delays. Additionally, the Board should advise the Committees on its efforts to offer year-round examination and whether additional action is necessary to expedite licensing timelines.*

BOARD RESPONSE:

There are four major milestones which must be reached to become licensed as a professional engineer, a professional land surveyor, a professional geologist, or a professional geophysicist in California:

- Acquire the requisite combination of experience and education
- Pass up to two national examinations (if required based on the discipline of license sought)
- Apply for licensure with the Board
- Pass any applicable state examinations

Since the last sunset review, the Board has made a significant change in separating the required examination criteria from the licensure application process. A potential candidate for licensure now applies to the Board once they have acquired the requisite education and experience and after they have passed the appropriate national examinations. Furthermore, they may now take the national examinations whenever they feel prepared to do so and no longer must wait for the Board to approve their experience and education.

With this change, the Board now directly influences only two of these major milestones: the approval of an applicant for licensure upon receipt and review of a complete application, and the offering of any state examinations that may be required.

While the Board has input on the offering of national examinations, it does not directly influence when or how often they are offered. For professional engineer and land surveyor applicants, approximately one third of the national examinations are currently offered via computer based testing (CBT). The examinations with high demand, based on applicant population, are, or will be, offered on a year-round basis, while examinations with less demand will continue to be offered on specific dates nationwide. Currently, the Fundamentals of Engineering, the Fundamentals of Surveying, the Professional Surveyor, the Chemical Engineering, the Nuclear Engineering, and the Petroleum Engineering examinations are offered by CBT. The remaining examinations are expected to be converted to CBT by 2024, as shown below.

Year	Examination
2020	Fire Protection Engineering
2020	Industrial and Systems Engineering
2020	Mechanical Engineering
2021	Agricultural and Biological Engineering
2021	Electrical Engineering
2022	Control Systems Engineering
2022	Metallurgical and Materials Engineering
2023	Civil Engineering
2024	Structural Engineering

For professional geologists, the national examinations are offered twice a year on paper. Board staff are actively involved at a leadership level with ASBOG, the national organization that develops the national geology examinations, to determine an implementation plan for transition of these examinations to CBT in the future.

Upon application approval, some applicants may be required to pass a state-specific examination. Currently all state-specific examinations developed by the Board are offered by CBT. This approach provides the applicants with the flexibility and convenience of scheduling the examination at a time and location of their choosing while also ensuring that the security and standardization of the examinations are not compromised. The examinations in higher demand, based on application population, are offered year-round, while the remaining examinations are offered once or twice a year on specific dates, depending on the levels of demand.

For the applicants seeking a license in a discipline that does not require a state examination component, the application process is now the final step to licensure.

The Board regularly conducts outreach on this new process as well as helping applicants ensure their applications are complete. When an incomplete application is received, the Board works directly with the applicant to assist them in understanding the necessary information they need to provide to complete their application.

In terms of the application process with the previously described changes, the Board has established an internal goal towards notifying the applicant of acceptability or incompleteness of their application within a 30-day timeframe. Currently, this change in the process is resulting in a timeframe of between 30 to 60 days on average and is heavily influenced by the Board's reliance on outdated application licensing database systems. Through the eventual acquisition of a new, comprehensive licensing and case management system (as more fully described in Issue #6, below), and by regular process improvement validation, the Board anticipates it will have the ability to achieve its timeframe goals.

These changes have resulted in licenses being issued by the Board up to twice a month rather than twice a year as was done in the past. Consequently, the Board feels it has taken significant measures to streamline the steps in the process to achieve licensure that are under its control and influence.

ISSUE #3: *Does the new test for determining employment status, as prescribed in the court decision *Dynamex Operations West Inc. v. Superior Court*, have any potential implications for licensees of the Board working as independent contractors?*

Background: In the spring of 2018, the California Supreme Court issued a decision in *Dynamex Operations West, Inc. v. Superior Court* (4 Cal.5th 903) that significantly confounded prior assumptions about whether a worker is legally an employee or an independent contractor. In a case involving the classification of delivery drivers, the California Supreme Court adopted a new test for determining if a worker is an independent contractor, which is comprised of three necessary elements:

- A. That the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;
- B. That the worker performs work that is outside the usual course of the hiring entity's business; and,
- C. That the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

Commonly referred to as the "ABC test," the implications of the *Dynamex* decision are potentially wide-reaching into numerous fields and industries utilizing workers previously believed to be

independent contractors. Occupations regulated by entities under the Department of Consumer Affairs are no exception to this unresolved question of which workers should now be afforded employee status under the law. In the wake of *Dynamex*, the new ABC test must be applied and interpreted for licensed professionals and those they work with to determine whether the rights and obligations of employees must now be incorporated.

Committees’ Staff Recommendation: *The Board should inform the Committees of any discussions it has had about whether the Dynamex decision may somehow impact the professions under its jurisdiction.*

BOARD RESPONSE:

The Board has not yet had the opportunity to review and discuss the *Dynamex* decision. Board staff and its DCA Legal Counsel are reviewing the matter and will make a presentation at the April 2019 Board meeting. An updated response will be provided to the Committees after that meeting regarding the Board’s discussion and any impact the decision may have on the Board’s operations and licensees.

ENFORCEMENT ISSUES

ISSUE #4: Why are the Board’s enforcement timeframes increasing?

Background: The Board has noted “aggressive efforts” to reduce processing times for complaint investigations; however, the Board also notes that its efforts have been significantly impacted by delays at the Division of Investigation (DOI). Over the last four fiscal years, 57% of the completed cases that were referred to DOI took more than a year to process. Because DOI also investigates cases on behalf of other boards and bureaus within DCA, it must set priorities for its investigations. Those cases that present evidence of an immediate threat to the public health, safety, and welfare receive the highest priority. The Board notes that since there is rarely the same level of “immediate threat” relating to the practices of professional engineering, land surveying, geology, and geophysics as there might be with cases involving nursing or other healing arts professions, DOI does not give the Board’s cases the highest priority.

Enforcement Timeframes	FY 2015/16	FY 2016/17	FY 2017/18
Investigations: Average days to close	237	238	234
Discipline: Average Days to Complete	1078	1106	825

The Board also notes its desire to collaborate more closely with DOI on efforts to more effectively investigate the Board’s cases. As the Board overwhelmingly refers its complaints to investigation, it seems plausible that enforcement delays may in fact be attributable to this hand-off.

Committee’s Staff Recommendation: *The Board should advise the Committees about where it believes the bottlenecks are in its investigation processes and disciplinary actions in addition to the backlog at DOI. In the Board’s opinion, what are viable solutions to the extensive timeframes in its enforcement processes? The Board should inform the committees of what steps it has taken to increase productivity between DOI and the Board and if there are impediments that the committees may be able to address.*

BOARD RESPONSE:

As noted in the table included in the Background section, the enforcement timeframes for the investigative stage have steadily averaged less than eight months over the last three years. This is in stark contrast to the average of more than a year at the time the Board's 2014 Sunset Review Report was published. Furthermore, as also noted in the table included in the Background section, the average days to complete disciplinary matters have decreased by more than nine months from FY 2016/17 to FY 2017/18. The Board has been able to accomplish this reduction in the length of time it takes to investigate complaint cases through additional staffing and concerted efforts to improve efficiency while still maintaining the integrity of its investigations.

It is important to understand that all cases are investigated by the Board's Enforcement Unit staff, who are analysts and not field investigators. Only a small portion of the cases are referred to DOI to assist the Board's staff with the investigation; the majority of the Board's case investigations rarely involve DOI participation. The investigation timeframe is calculated from receipt of a complaint through a determination of whether or not violations occurred and what enforcement action, if any, is warranted. If a case is referred to DOI to assist with the investigation, the time the case is at DOI is included in the investigative stage timeframe.

While the DOI portion of an investigation can take an average of several months to complete, affecting the overall aging of the entire investigative stage of the case, less than 10% of the Board's cases are referred to DOI to assist in investigations, markedly down from previous years. One of the reasons for the decrease in the number of cases referred to DOI is the implementation of Business and Professions Code sections 6775.2, 7860.2, and 8780.2. These laws require licensees who are the subject of a complaint investigation to respond to requests from the Board to cooperate in the investigation of the complaint. It was common practice prior to the enactment of these laws to request the assistance of DOI to contact licensees and elicit responses after efforts by Board staff had proved fruitless.

Typically, the cases referred to DOI involve allegations relating to unlicensed activity, such as unlicensed individuals operating businesses without an appropriately licensed individual in responsible charge of the business operations, as well as cases where unlicensed people are posing as licensees. Due to the complexity of the Board's laws regarding who may offer professional services, exactly what services require licensure, and how businesses must be structured, there are nuances that may be overlooked by investigators who are not fully versed on the Board's laws. Other cases referred to DOI involve those where Board staff lacks sufficient resources to locate individuals and obtain documents. DOI has the resources to locate individuals and conduct in-person interviews, as well as obtain documents from individuals, private businesses, and government agencies. Because of the technical nature of the professions, laypeople, including trained investigators, may not be familiar with the terminology used or types of documents produced. These issues, while understandable, can lead to prolonged investigations due to the need for clarification and follow-up. In discussions with DOI, it was agreed that it would be beneficial to the DOI investigators for Board staff to provide training regarding specific aspects of our laws and the technical aspects of our professions so that the DOI investigators would have a better understanding of these issues before beginning to conduct the investigations. Board staff is working with DOI to develop the training with the goal of presenting it to the investigators in the late spring or early summer of 2019.

As to the current average for completion of the investigative stage, there are a number of factors contributing to the processing timeframe. The majority of complaint cases are referred to independent Technical Expert Consultants during the investigative stage to provide an expert opinion regarding

whether or not violations of the laws have occurred. Independent Technical Expert Consultants are not Board employees and typically have their own full-time private practice. Contracting with outside experts ensures independent, unbiased review of the evidence and technical aspects of the cases. Technical Expert Consultants complete the review of cases, many of which contain voluminous project documents and other related evidence, as their time permits with their own full-time workload. Depending on the extent of the review due to the technical nature of the investigations, the timeframe solely for expert review can range from 30 to 90 days of the overall investigative stage. Pursuant to the Board's Strategic Plan, measures have been taken to improve the timeframes in which experts are assigned cases. Internal milestones were established, and experts are more closely tracked to ensure they are meeting deadlines prescribed by a more formal contracting process. In addition, Board staff recently provided training to all contracted Technical Expert Consultants to discuss processes and expectations related to the completion of thorough reviews and preparation of reports.

Another factor determining the length of the investigative stage is the gathering of all relevant written documentary evidence from any number of parties. While the Board has seen marked improvement in the licensees' responses to requests for information, there are still unlicensed individuals, complainants, property owners, public agencies, and other professionals who are relied upon to provide necessary documentation. The collection of documentation via electronic means has begun to replace antiquated systems involving postal mail, which is time-consuming, or facsimile, which can be difficult to read or limits the number of pages that can be sent. This has resulted in a more expedient way in which to exchange information with related parties.

Additionally, as shown in the statistical table included in the Background section, there has been a significant decrease in the timeframe for discipline cases as calculated from the receipt of a complaint through the date a final decision becomes effective. This reduction can likely be attributed to the recent implementation of reporting of case aging by the Office of the Attorney General and the Office of Administrative Hearings (OAH) to the Legislature, in addition to the Board's efforts to reduce the timeframe for the investigative stage. Focus by all involved entities on the aging of cases has resulted in collaboration between the Office of the Attorney General and the Board to determine avenues to decrease timeframes to complete cases. However, the necessity to prioritize cases by imminent threats to public safety or statute of limitation constraints will likely continue to affect the aging of the Board's cases, since the Board's cases rarely involve such an imminent threat and do not have a statute of limitations. Furthermore, due to the complex nature of the subject matter in the Board's cases, hearings conducted by OAH often take two or more days, resulting in the scheduling of hearings several months out from the submission of the calendaring request.

Monitoring and tracking the aging of cases is important in terms of identifying areas where timeframes can be reduced or where processes can be made more efficient. It is anticipated that the new, comprehensive licensing and case management system the Board is currently seeking to procure and implement (as more fully discussed in the response to Issue #6, below) will provide the ability to collect pertinent statistical data that can be used to perform analytics to help identify workload issues and delays during various stages of the investigations.

Ultimately, the Board continues to experience reduction in the processing timeframes of its cases. With increased efforts by the Board, DOI, the Office of the Attorney General, and OAH to reduce aging in their respective processes, we will continue to experience shorter timeframes to complete all cases. However, it is likely that the Board's cases will always average several months to complete, due to the complex technical nature of the professions it regulates.

ISSUE #5: *What is the Board doing to counteract unlicensed activity?*

Background: Over the last several years, the Board has increasingly observed the proliferation of unlicensed activity. This increase in activity coincides with the advancement of electronic technology, especially Global Positioning System (GPS) and Ground Penetrating Radar (GPR) technology and particularly as the use of that equipment or tools related to the practices of land surveying and geophysical studies.

The Board has consistently stated that unlicensed activity is more about the practice of the activity and actions than it is about the use of technology or tools. However, despite this, the Board has observed that GPS and other widely available technologies are being utilized by unlicensed laypersons. The evolution of GPS technology and decreased cost of equipment have made the acquisition and use of that equipment or tools more easily accessible to many others outside of the traditional land surveying industry. The Board notes that GPS equipment is not a perfect tool and just like any other highly sophisticated tools, can produce inconsistent or incorrect results if not used properly.

Another example is the use of Ground Penetrating Radar (GPR) technology. GPR is an electromagnetic equivalent to sonar but conducted through the earth to detect abnormalities within the subsurface portion of the earth's crust. It is the Board's understanding that licensed geophysicists consider GPR equipment as only one tool to be used along with other technology or equipment to confirm data findings prior to reporting.

As with the use of GPS equipment, it is not the actual operation of GPR equipment or tool that is considered the practice of geophysics in California, but rather the intended purpose and interpretation of the data results that is being produced by the GPR device, including any subsequent recommendations for how to rely upon that data, which is considered an activity associated with the practice of geophysics in California. While primarily designed for the above stated purpose, many users of GPR technology also use the equipment to detect the presence of reinforcing steel within concrete buildings and bridges or for use by law enforcement personnel during criminal investigations for the purposes of recovering evidence of organic material within the subsurface of the earth.

More recently, the Board has seen an increase in the use of GPR by businesses that provide on-site field services to locate existing underground utilities prior to excavation. The Board writes that it has participated in several outreach presentations at industry events related to the use of GPR and related services and has established a close working relationship with the recently formed California Facilities Safe Excavation Board in an effort to collaborate and extend its reach. Despite this, the Board continues to receive complaints about this practice and encounters businesses throughout the state that are completely unaware of the geophysics licensing requirements or that they may be in violation of several state laws.

Committees' Staff Recommendation: *The Board should advise the Committees of its ongoing efforts to combat unlicensed activity and what outreach efforts have been pursued to educate unlicensed operators.*

BOARD RESPONSE:

Unlicensed activity is of great concern to the Board, particularly with the rapid growth of technology, ranging from wide-spread use of the internet to conduct business to the actual tools used to perform

professional engineering, land surveying, geology, and geophysics. Companies not properly overseen by licensees are conducting businesses through web sites and communicating via cell phone and electronic communication. This causes difficulty in locating the responsible individuals, as there is often no physical address included in the contact information on the website. Furthermore, unlike the authority to shut down telephone services regulated under the Public Utilities Commission, the Board has no authority to shut down websites and cell phones.

Current efforts to discourage unlicensed activity include the issuance of administrative citations, which may include the assessment of an administrative fine. Unfortunately, citations and fines are not always the most effective tools in motivating violators to cease and desist unlicensed activity. Violators may choose to simply pay the fine and continue operations. Others ignore the citation, and the Board has little recourse in collecting fines that are not paid. The current practice of referring matters to the Franchise Tax Board is not sufficiently effective, as the Board can only recover monies through individual tax returns and gambling and lottery winnings. It would be beneficial to this Board, as well as other boards under DCA, if the DCA and the boards were able to contract jointly with collection agencies to recover the unpaid fines.

One of the most common forms of unlicensed activity that is brought to the Board's attention involves licensed contractors who may be unknowingly exceeding their license authority by performing professional engineering, land surveying, geological, and geophysical services on projects, particularly in the use of technologically advanced tools. The Board has worked with the Contractors State License Board in the past to publicize the limitations of licensed contractors and offer education regarding the restrictions of the use of particular tools, such as GPS, drones, and GPR equipment, and the limitations of exemptions provided by the Board's laws.

Other efforts to discourage unlicensed activity include outreach to both licensed and unlicensed individuals, as well as to government agencies that deal with the professions the Board regulates, to educate them regarding potential areas of unlicensed activity, including the unknowing practice by unlicensed individuals. During meetings and outreach events with various professional organizations, Board staff have focused on identifying for industry professionals ways in which they can participate in the Board's efforts to curtail unlicensed activity. Licensees who discover such activity are encouraged to file formal complaints and include documentary evidence, rather than passing along unsubstantiated allegations in an informal conversational setting or correspondence. The Board also works with government agencies, both at the local and state level, to help them understand what services must be provided by licensed individuals so that the agencies do not accept work done by unlicensed individuals and do not inadvertently require unlicensed individuals to offer to provide such work when proposing (bidding) on government contracts.

TECHNOLOGY ISSUES

ISSUE #6: *What is the status of BreZE implementation by the Board?*

Background: The BreZE Project was to provide DCA boards, bureaus, and committees with a new enterprise-wide enforcement and licensing system. BreZE would replace the existing outdated legacy systems and multiple "work around" systems with an integrated solution based on updated technology.

BreEZe would have provided all DCA organizations with a solution for all applicant tracking, licensing, renewal, enforcement, monitoring, cashiering, and data management capabilities. In addition to meeting these core DCA business requirements, BreEZe was intended to improve DCA's service to the public and connect all license types for an individual licensee. BreEZe is web-enabled, allowing licensees to complete applications, renewals, and process payments through the Internet. The public can also file complaints, access complaint status, and check licensee information.

BreEZe is an important opportunity to improve the Board's operations to include electronic payments and expedite processing. Staff from numerous DCA boards and bureaus have actively participated with the BreEZe Project. Due to increased costs in the BreEZe Project, SB 543 (Steinberg, Chapter 448, Statutes of 2011) was amended to authorize the Department of Finance (DOF) to augment the budgets of boards, bureaus, and other entities that comprise DCA for expenditure of non-General Fund moneys to pay BreEZe project costs.

The Board is a "Release 3" board that never received the system and instead utilizes legacy programs and software.

It would be helpful to update the Committees about the Boards' current work to implement the BreEZe project.

Committees' Staff Recommendation: *The Board should update the Committees about the current status of its implementation of BreEZe. What have been the challenges to improving IT services at the Board? What are the costs of implementing this system? Is the cost of BreEZe consistent with what the Board was told the project would cost?*

BOARD RESPONSE:

The Board is not utilizing BreEZe because it is one of 19 boards and bureaus in the former Release 3 implementation of BreEZe that were removed from the BreEZe project entirely in 2015.

Based on information that identifies all actual and projected costs associated with the BreEZe program provided to the Board by DCA, the Board's actual expenses for BreEZe, even though the Board does not and will not utilize BreEZe, total \$1,380,033 from FY 2009/10 through FY 2016/17. Projected expenses for FY 2017/18 are \$340,000, with no expenses identified in FY 2018/19. DCA has identified that a credit for FY 2017/18 should reduce the amount currently projected.

The Board currently depends upon DCA's legacy systems, the Applicant Tracking System (ATS) and the Consumer Affairs System (CAS), for the day-to-day operations of processing applications, licensure, and enforcement efforts. Due to the extended reliance upon these legacy systems, operations at the Board require additional workarounds for data tracking and storing information, mainly through the use of other software, such as Microsoft Access or Excel.

Beginning in 2016, the Board began a Business Modernization effort for the purposes of evaluating current organizational processes with the overall goal of improving all services, not just those involving interaction with a computer system. The Board worked with consulting vendors to map, analyze, and document As-Is and To-Be workflow processes; develop stakeholder requirements that were then converted to functional system requirements; and create use cases that correspond to the

To-Be processes. In addition, the Board conducted extensive market research on the solutions available and in use by both other State of California agencies and similar licensing boards nationwide.

The Board has also worked in concert with the DCA Office of Information Services (OIS) through the California Department of Technology's (CDT) Project Approval Lifecycle (PAL) process towards acquiring a new licensing and case management system. In February 2018, the Board received approval from CDT of its PAL Stage 1 – Business Analysis. The Board's PAL Stage 2 – Alternatives Analysis is currently under review by CDT, after having received DCA and Agency approval.

The Board is committed to seeking a comprehensive licensing and case management solution that will facilitate applicant processing, licensing and renewals management, enforcement case management and monitoring, cashiering, and other data management capabilities. DCA OIS is fully supportive of the Board's effort to transition off of the legacy systems and move through the PAL approval process with CDT to obtain the most appropriate solution to best meet the Board's individual business needs.

TECHNICAL CLEANUP

ISSUE #7: *Is there a need for technical cleanup?*

Background: The Board submitted the below code sections in its report for technical cleanup.

- Section 6704.1 – This section relates to the review of the engineering branch titles to determine whether certain title acts should be eliminated, retained, or converted to practice acts (the so-called “Title Act Study”). The law required the Title Act Study report to be submitted to the Legislature in 2002. The report was submitted as required. As such, this section is now obsolete and should be repealed.
- Section 8727 – This section provides an exemption to the licensure requirements in the Professional Land Surveyors’ Act regarding who may legally perform surveys solely for geological or landscape purposes that do not involve property boundaries. At the time Section 8727 was originally added, there were no licensure laws governing the practices of geology or landscape architecture, as there are now. This section needs to be updated to clarify that the exemption applies only to those individuals legally authorized to practice geology or landscape architecture.
- Sections 6787, 7872, and 8792 – These three sections describe actions that constitute “unlicensed activity” if done by people not legally authorized under the three licensing acts. These sections contain outdated and confusing cross references to other sections. Language also needs to be added to make it clear that it is a violation to use a licensee’s signature or license number, as well as their name or seal. Other changes are needed to standardize the three sections with each other.
- Section 7860.1 – Currently, the Board has the authority to take action against the holder of an Engineer-in-Training certificate under Section 6775.1 and the holder of a Land Surveyor-in-Training certificate under Section 8780.1, but it does not have the same authority with regards to the holder of a Geologist-in-Training certificate. As such, a section needs to be added to give the Board that authority.

- Sections 6775.2, 7860.2, and 8780.2 – These sections need to be amended to remove the subdivision containing a sunset date. It has been demonstrated in the years since these laws were enacted (in 2016) that they are effective and have not been abused by the Board. Based on the low number of licensees who fail to respond to and cooperate with the Enforcement Unit during the investigations, the Board believes these laws are working as intended, and the sunset date included in each section needs to be eliminated so that these laws will be permanent.

The Board should recommend additional cleanup amendments for this section and submit proposed language to the committees for inclusion in the sunset bill.

Committees’ Staff Recommendation: *The Board should recommend cleanup amendments and submit proposed language to the Committees.*

BOARD RESPONSE:

Board staff has provided proposed language to the Committees’ staff to accomplish the necessary clean-up amendments. The proposed language is included as an attachment to this response paper for reference.

**CONTINUED REGULATION OF PROFESSIONAL ENGINEERS,
LAND SURVEYORS, AND GEOLOGISTS
BY THE BOARD OF PROFESSIONAL ENGINEERS,
LAND SURVEYORS, AND GEOLOGISTS**

ISSUE #8: *Should the licensing and regulation of professional engineers, land surveyors, and geologists be continued and be regulated by the current Board membership?*

Background: The health, safety, and welfare of consumers are protected by the presence of a strong licensing and regulatory Board with oversight over professional engineers, land surveyors, and geologists. The BPELSG has shown over the years a strong commitment to improve the Board's overall efficacy and effectiveness and has worked cooperatively with the DCA, the Legislature, and these Committees to bring about necessary changes.

Committees’ Staff Recommendation: *Recommend that the licensing and regulation of the engineering, land surveying, and geology professions continue to be regulated by the current Board members in order to protect the interests of the public and be reviewed once again in four years to review whether the issues and recommendations in this Background Paper have been addressed.*

BOARD RESPONSE:

The Board greatly appreciates the Committees’ recognition of its efforts to improve its operations and the continued support for its future endeavors. The Board members and staff look forward to working with the Committees and their staff over the next four years to accomplish the recommendations outlined in the Background Paper.

Proposed Legislative Language in Response to Issue #7

Section 6704.1 of the Business and Professions Code is repealed.

~~(a) The Department of Consumer Affairs, in conjunction with the board, and the Joint Committee on Boards, Commissions, and Consumer Protection shall review the engineering branch titles specified in Section 6732 to determine whether certain title acts should be eliminated from this chapter, retained, or converted to practice acts similar to civil, electrical, and mechanical engineering, and whether supplemental engineering work should be permitted for all branches of engineering. The department shall contract with an independent consulting firm to perform this comprehensive analysis of title act registration.~~

~~(b) The independent consultant shall perform, but not be limited to, the following:~~

~~(1) meet with representatives of each of the engineering branches and other professional groups;~~

~~(2) examine the type of services and work provided by engineers in all branches of engineering and interrelated professions within the marketplace, to determine the interrelationship that exists between the various branches of engineers and other interrelated professions;~~

~~(3) review and analyze educational requirements of engineers;~~

~~(4) identify the degree to which supplemental or “overlapping” work between engineering branches and interrelated professions occurs;~~

~~(5) review alternative methods of regulation of engineers in other states and what impact the regulations would have if adopted in California;~~

~~(6) identify the manner in which local and state agencies utilize regulations and statutes to regulate engineering work; and,~~

~~(7) recommend changes to existing laws regulating engineers after considering how these changes may effect the health, safety, and welfare of the public.~~

~~(c) The board shall reimburse the department for costs associated with this comprehensive analysis. The department shall report its findings and recommendations to the Legislature by September 1, 2002.~~

Section 6775.2 of the Business and Professions Code is amended to read:

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

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

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

Every person is guilty of a misdemeanor:

(a) Who, unless he or she is exempt from licensure under this chapter, practices or offers to practice civil, electrical, or mechanical engineering in this state according to the provisions of this chapter without legal authorization.

(b) Who presents or attempts to file as his or her own the certificate of licensure of a licensed professional engineer unless he or she is the person named on the certificate of licensure.

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

(d) Who impersonates or uses the seal, signature, or license number of a licensed professional engineer or who uses a false license number.

(e) Who uses an expired, suspended, surrendered, or revoked ~~certificate issued by the board~~ license.

(f) Who represents himself or herself as, or uses the title of, a licensed or registered civil, electrical, or mechanical engineer, or any other title whereby that person could be considered as practicing or offering to practice civil, electrical, or mechanical engineering in any of its branches, unless he or she

is correspondingly qualified by licensure as a civil, electrical, or mechanical engineer under this chapter.

(g) Who, unless appropriately registered, manages, or conducts as manager, proprietor, or agent, any place of business from which civil, electrical, or mechanical engineering work is solicited, performed, or practiced, except as authorized pursuant to subdivision ~~(d)~~ (e) of Section 6738 and Section 8726.1.

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

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

(j) Who violates any provision of this chapter.

Section 6788 of the Business and Professions Code is amended to read:

Any person who violates any provision of subdivisions (a) to ~~(i)~~ (j), inclusive, of Section 6787 in connection with the offer or performance of engineering services for the repair of damage to a residential or nonresidential structure caused by a disaster for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code, or for which an emergency or major disaster is declared by the President of the United States, shall be punished by a fine up to ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, or for two or three years, or by both the fine and imprisonment, or by a fine up to one thousand dollars (\$1,000), or by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.

Section 7830 of the Business and Professions Code is amended to read:

It is unlawful for anyone other than a geologist ~~registered~~ licensed under this chapter to stamp or seal any plans, specifications, plats, reports, or other documents with the seal or stamp of a professional geologist or ~~registered~~ licensed certified specialty geologist, or to use in any manner the title "professional geologist" or the title of any ~~registered~~ licensed certified specialty geologist, or any combination of the words and phrases or abbreviations thereof, unless ~~registered~~ licensed or ~~registered~~ licensed and certified under this chapter.

Section 7830.1 of the Business and Professions Code is amended to read:

It is unlawful for anyone other than a geophysicist ~~registered~~ licensed under this chapter to stamp or seal any plans, specifications, plats, reports, or other documents with the seal or stamp of a ~~registered~~ licensed geophysicist, professional geophysicist, or ~~registered~~ licensed certified specialty geophysicist, or to use in any manner the title "registered geophysicist," "professional geophysicist," or the title of any ~~registered~~ licensed certified specialty geophysicist, or any combination of the words and phrases or abbreviations thereof, unless ~~registered~~ licensed, or ~~registered~~ licensed and certified, under this chapter.

Section 7860.1 of the Business and Professions Code is added to read:

The board may, upon its own initiative or upon the receipt of a complaint, investigate the actions of any geologist-in-training and make findings thereon.

By a majority vote, the board may revoke the certificate of any geologist-in-training:

- (a) Who has been convicted of a crime as defined in subdivision (a) of Section 480.
- (b) Who has committed any act that would be grounds for denial of a license pursuant to Section 480 or 496.
- (c) Who has committed any act of fraud, deceit, or misrepresentation in obtaining his or her geologist-in-training certificate or license as a professional geologist, certified specialty geologist, or professional geophysicist.
- (d) Who aids or abets any person in the violation of any provision of this chapter or any regulation adopted by the board pursuant to this chapter.
- (e) Who violates Section 119 with respect to a geologist-in-training certificate.
- (f) Who commits any act described in Section 7872.
- (g) Who violates any provision of this chapter.

Section 7860.2 of the Business and Professions Code is amended to read:

- ~~(a) The failure of, or refusal by, a licensee or a certificate holder to respond to a written request from a representative of the board to cooperate in the investigation of a complaint against that licensee or certificate holder constitutes a cause for disciplinary action under Section 7860 or 7860.1.~~
- ~~(b) This section shall remain in effect only until January 1, 2020, and as of that date is repealed.~~

Section 7872 of the Business and Professions Code is amended to read:

Every person is guilty of a misdemeanor and for each offense of which he or she is convicted is punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment not to exceed three months, or by both fine and imprisonment:

- (a) Who, unless he or she is exempt from ~~registration~~ licensure under this chapter, practices or offers to practice geology or geophysics for others in this state according to the provisions of this chapter without legal authorization.
- (b) Who presents or attempts to file as his or her own the certificate of registration of another.
- (c) Who gives false evidence of any kind to the board, or to any member thereof, in obtaining a certificate of registration.
- (d) Who impersonates or uses the seal, signature, or license number of any ~~other practitioner~~ professional geologist, certified specialty geologist, or professional geophysicist or who uses a false license number.
- (e) Who uses an expired, suspended, surrendered, or revoked ~~certificate of registration~~ license.
- (f) Who shall represent himself or herself as, or use the title of, professional geologist, or any other title whereby the person could be considered as practicing or offering to practice geology for others, unless he or she is qualified by ~~registration~~ licensure as a professional geologist under this chapter, or who shall represent himself or herself as, or use the title of, professional geophysicist, or any other title whereby the person could be considered as practicing or offering to practice geophysics for others, unless he or she is qualified by ~~registration~~ licensure as a geophysicist under this chapter.
- (g) Who, ~~unless appropriately licensed,~~ manages, or conducts as manager, proprietor, or agent, any place of business from which geological or geophysical work is solicited, performed, or practiced for others, ~~unless the geological work is supervised or performed by a professional geologist, or unless the geophysical work is supervised or performed by a professional geophysicist or geologist except as authorized pursuant to Section 7834.~~
- (h) Who uses the title, or any combination of that title, of “professional geologist,” “registered geophysicist,” or “professional geophysicist,” the title of any licensed certified specialty geologist or any licensed certified specialty geophysicist, or “geologist-in-training,” or who makes use of any abbreviation of such title that might lead to the belief that he or she is licensed as a geologist, a

geophysicist, a certified specialty geologist, or a certified specialty geophysicist, or holds a certificate as a geologist-in-training, without being licensed, licensed and certified, or certified as required by this chapter.

(i) Who violates any provision of this chapter.

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

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

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

(c) This section shall remain in effect only until January 1, ~~2020~~, 2024, and as of that date is repealed. Notwithstanding any other law, the repeal of this section shall render the board subject to review by the appropriate policy committees of the Legislature.

Section 8727 of the Business and Professions Code is amended to read:

Surveys made exclusively for geological purposes performed by a person authorized to practice geology under the provisions of Chapter 12.5 (commencing with Section 7800) of Division 3 of this code or exclusively for landscaping purposes performed by a person authorized to practice landscape architecture under the provisions of Chapter 3.5 (commencing with Section 5615) of Division 3 of this code, ~~which~~ that do not involve the determination of any property line do not constitute surveying within the meaning of this chapter.

Section 8780.2 of the Business and Professions Code is amended to read:

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

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

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

Every person is guilty of a misdemeanor:

(a) Who, unless he or she is exempt from licensing under this chapter, practices, or offers to practice, land surveying in this state without legal authorization.

(b) Who presents as his or her own the license of a professional land surveyor unless he or she is the person named on the license.

(c) Who attempts to file as his or her own any record of survey under the license of a professional land surveyor.

(d) Who gives false evidence of any kind to the board, or to any member, in obtaining a license.

(e) Who impersonates or uses the seal, signature, or license number of a professional land surveyor or who uses a false license number.

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

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

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

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

(j) Who violates any provision of this chapter.