

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

**Joint Oversight Hearing, March 18, 2015**

**Senate Committee on Business, Professions and Economic Development  
and  
Assembly Committee on Business and Professions**

**BRIEF OVERVIEW OF THE BOARD FOR PROFESSIONAL ENGINEERS,  
LAND SURVEYORS, AND GEOLOGISTS**

**History and Function of the Board**

Historically, the Board originated in 1891 when the licensing of land surveyors began and the State Surveyor General was established. In 1933, the Professional Land Surveyors' Act abolished this office and merged the former Land Surveyor's Board with the recently-formed Board of Registration of Civil Engineers.

The Civil Engineering Board was created in 1929 after the failure of the Saint Francis Dam. While the Board was initially limited to licensing of civil and structural engineers, and then land surveyors, the Board's scope expanded through regulation, petition, and legislation to include a variety of engineering specialties. In 1985, the Professional Engineers Act amended Section 6732 of the Business and Professions Code which codified the existing engineering disciplines, SB 1030 (Chapter 732, Statutes of 1985).

The Board of Registration for Geologists and Geophysicists was created in 1969 by legislation under the Geologist Act (later renamed the Geologist and Geophysicist Act), driven by the consumer demand of geological practices and concern for public safety and protection of landslide damage stemming from rainfall-induced landslides in Southern California in 1962. In 1972, the Board's scope expanded to include regulation and licensing of geophysicists.

During the 4th Extraordinary Session of 2009, the Legislature merged the Board for Professional Engineers and Land Surveyors and the Board for Geologists and Geophysicists, ABx4 20 (Strickland, Chapter 18, Statutes of 2009). Subsequently, the Board was formally renamed the Board for Professional Engineers, Land Surveyors, and Geologists (BPELSG) on January 1, 2011, AB 1431 (Hill, Chapter 696, Statutes of 2010).

The BPELSG is charged with safeguarding the life, health, property, and public welfare by regulating the practices of professional engineering, land surveying, geology, and geophysics. The BPELSG provides this public service by qualifying and licensing individuals, establishing regulations, enforcing laws and regulations, and providing information so that consumers can make informed decisions.

The regulation of professional engineers, land surveyors, geologists, and geophysicists protects the public from incompetent, negligent, and unscrupulous individuals who would offer such services without having to demonstrate they are properly qualified. The public is assured that licensed engineers, licensed land surveyors, licensed geologists, and licensed geophysicists have met state-approved education, experience, and examination standards established by the BPELSG.

The complexity of engineering, land surveying, geology, and geophysics projects necessitates a very high degree of technical knowledge and skill which is typically only acquired after many years of experience. The vast majority of licensed engineers hold a college degree in engineering. Land surveyors make decisions and form opinions based upon interpretation of legal documents, field evidence, and the use of technically advanced instrumentation. Licensed geologists and geophysicists often obtain post-secondary degrees in earth sciences and devote many years of experience studying and interpreting historical data related to soils, earth dynamics, groundwater, and the effect those have on public improvements.

The current BPELSG mission statement, as stated in its 2015-2018 Strategic Plan, is as follows:

***The Mission of the Board for Professional Engineers, Land Surveyors, and Geologists is to protect the public's safety and property by promoting standards for competence and integrity through licensing and regulating the Board's professions. The Board accomplishes its Mission by:***

- ***Empowering applicants and licensees with a method for providing services in California.***
- ***Promoting appropriate standards so that qualified individuals may obtain licensure.***
- ***Ensuring that statutes, regulations, policies, and procedures strengthen and support its mandate and mission.***
- ***Protecting health and safety of consumers through the enforcement of the laws and regulations governing the practices of engineering, land surveying, geology, and geophysics.***
- ***Promoting the importance of licensing in an effort to regularly and consistently educate consumers, licensees, and stakeholders about the practice and regulation of the professions.***
- ***Working to develop and maintain an efficient and effective team of professional and public leaders and staff with sufficient resources to improve the Board's provision of programs and services.***

## **Licensing**

The licenses and certifications currently regulated by the BPELSG are comprised of three primary categories: Practice Acts, Title Acts, and Title Authorities. Practice Act licenses indicate that both the actual practice and the use of the title are regulated. Title Act licenses indicate that only the use of the title is regulated and the actual practice is not. Title Authorities represent additional authorities

obtained by an individual that is subsequent to a practice act license. The following chart illustrates these primary categories.

Practice Acts	Title Acts	Title Authorities
Civil Engineer Electrical Engineer Land Surveyor Mechanical Engineer Professional Geologist Professional Geophysicist	Agricultural Engineer Chemical Engineer Control System Engineer Fire Protection Engineer Industrial Engineer Metallurgical Engineer Nuclear Engineer Petroleum Engineer Traffic Engineer	Geotechnical Engineer Structural Engineer Certified Engineering Geologist Certified Hydrogeologist

*Note:* This table was taken from the BPELSG 2014 Sunset Review Report.

As of November 1, 2014, the BPELSG licenses and regulates more than 78,422 Professional Engineers in the Practice Act disciplines (Civil, Mechanical, & Electrical), 4,200 Land Surveyors, and 5,300 Geologists and Geophysicists. The BPELSG also oversees over 6,700 Professional Engineers in the Title Act disciplines and over 7,900 in the Title Authorities (see chart above). Each profession has its own scope of practice, entry-level requirements, and professional regulations.

Not all engineers who practice in California have to be licensed. There are a number of licensing exemptions for engineers who are employees of licensed engineers, or who work for industrial corporations, public utilities, or the federal government. In 1997, the industrial exemption was broadened to include temporary employees, contract employees, and those hired through third-party contracts.

The BPELSG also issues certifications for "Engineer-In-Training" (EIT), "Geologist-In-Training" (GIT), and "Land Surveyor-In-Training" (LSIT), which recognizes individuals who have obtained a specific level of engineering, geology, or land surveying education or work experience, as the entry-level step towards eventual licensure. As of November 1, 2014, the BPELSG certifies over 34,000 EITs, 2,600 LSITs, and 277 GITs.

**Board Membership and Committees**

The BPELSG is comprised of fifteen (15) members – seven (7) professional and eight (8) public members. The professional members are appointed by the Governor and consist of one of each:

- Civil Engineer
- Electrical Engineer
- Mechanical Engineer
- Structural Engineer

- Other Professional Engineer (any branch not otherwise represented)
- Land Surveyor
- Professional Geologist or Geophysicist.

Additionally, one professional member must be from a local public agency and another professional member must be from a State agency (Business and Professions Code (BCP) §§ 6711-12).

The eight public members are appointed in the following manner. Six (6) public members are appointed by the Governor. One (1) public member is appointed the Senate Rules Committee. One (1) public member is appointed by the Speaker of the Assembly (BPC §§ 6711-12).

An appointment to the BPELSG is for a term of four years, with vacancies filled by appointment for the unexpired term. Each appointment thereafter is for a four-year term expiring on June 30 of the fourth year following the year in which the previous term expired. A member may remain on the Board until the appointment of his or her successor or until one year has elapsed after the expiration of the term for which he or she was appointed, whichever occurs first ("grace year"). No person is allowed to serve as a member of the Board for more than two consecutive full four-year terms (BPC §6712). Board and committee meetings are subject to the Bagley-Keene Open Meetings Act. The Board generally meets six times per year to address work completed by various committees and to hear disciplinary cases. As of January 1, 2015, there are no vacancies on the Board.

The following is a listing of the current Board members and their background:

Member Name (Includes Vacancies)	Appointed	Reappointed	Term Ends	Appointing Authority	Public or Professional
<b>Kathy Jones-Irish, President</b> Ms. Jones Irish has been vice president at Arnie Berghoff and Associates since 2011. She was vice president of marketing and business development at KHAFRA Engineering Consultants Inc. from 2010 to 2011 and served as assistant general manager at the Los Angeles Department of Water and Power from 2008 to 2010 and interim general manager at the City of Los Angeles Department of Cultural Affairs in 2008. Jones Irish was director of government relations at MWH Americas Inc. from 2006 to 2008 and chief of staff for Los Angeles City Council member Tom LaBonge from 2001 to 2005. She was executive assistant to the general manager at the Los Angeles Department of Water and Power from 1998 to 2001 and manager of public affairs at the Water Replenishment District of Southern California from 1996 to 1998. Jones Irish was public affairs manager at Warner Bros. Studios from 1994 to 1996, manager of community relations at the Los Angeles County Transportation Commission from 1991 to 1994 and transportation planner at the Southern California Association of Governments from 1988 to 1991.	7/6/12	6/5/14	6/30/18	Governor	Public
<b>Robert Stockton, Vice President</b> Mr. Stockton has worked in multiple positions at Rick Engineering Company since 1981, including principal, associate principal, associate and project engineer. He was a	7/6/12		6/30/15	Governor	Professional

design engineer at Sowards and Brown Engineering Company from 1978 to 1981.					
<p><b>Nejla Bamshad-Alavi</b>  Ms. Bamshad-Alavi has been president and owner of NBA Engineering Inc. since 1994. She was chief engineer and mechanical and electrical department head at Foster Engineering from 1991 to 1994, chief engineer at AECOM-DMJM in 1990 in Japan and project engineer at DMJM from 1985 to 1989. Bamshad-Alavi earned a Master of Science degree in mechanical engineering and a Master of Science degree in industrial engineering from the University of Michigan.</p>	12/17/13		6/30/16	Governor	Professional
<p><b>Asha Brooks</b>  Ms. Brooks has been a paralegal at the Walt Disney Company since 2012. She was project manager at World Poker Tour Enterprises Inc. from 2008 to 2011.</p>	12/17/13		6/30/16	Governor	Public
<p><b>Diane Hamwi</b>  Ms. Hamwi has been principal and owner at DCH Advisors Inc. since 2008. She was director of development and marketing at EMILY's List from 2010 to 2011, western states finance director at Hillary Clinton for President from 2007 to 2008 and national finance director at Jon Tester for Senate in 2006. Hamwi was an independent political consultant from 2003 to 2008, Southern California finance director for the Governor Gray Davis Reelection Campaign from 2001 to 2002 and interim director at the Governor's Office on Service and Volunteerism in 2000. She served as a policy analyst at the Governor's Office of Planning and Research from 1999 to 2000 and was a fundraiser at Jane Harman for Governor in 1998. Hamwi was an account executive at Rogers and Associates from 1997 to 1998 and special assistant to the state director of the Clinton-Gore Coordinated Campaign in California from 1995 to 1996. Hamwi earned a Master of Public Administration degree from George Washington University.</p>	5/29/13		6/30/15	Governor	Public
<p><b>Eric Johnson</b>  Johnson has been president of ECOM Engineering Inc. since 1997. He was project engineer at Koch Chun Knobloch from 1993 to 1997 and project designer and engineer at Rex Moore Electrical Contractors from 1988 to 1993.</p>	12/3/13		6/30/17	Governor	Professional
<p><b>Coby King</b>  Mr. King has been a public affairs executive at Ek and Ek since 2012. He was senior vice president for California corporate and public affairs at the MWW Group from 2008 to 2012, president and chief executive officer at Coby King Communications from 1999 to 2008 and vice president, public affairs at Rogers and Associates from 1997 to 1999. King was an attorney at Manatt Phelps and Phillips LLP from 1995 to 1997, legal counsel at the California State Board of Equalization from 1993 to 1995 and an attorney at Skadden Arps Slate Meagher and Flom LLP from 1991 to 1993. King earned a Juris Doctorate degree from Georgetown University Law Center.</p>	5/29/13		6/30/16	Governor	Public

<p><b>Philip Quartararo</b>  He has served as the chief executive officer for Filament Entertainment since 2006. Quartararo served as executive vice president for EMI International from 2002 to 2006, president of Warner Bros. Records from 1997 to 2002, chief executive officer for Virgin Records America from 1992 to 1997, where he previously served as vice president for marketing and promotion and member of the founding team from 1986 to 1992.</p>	2/10/10		6/30/14	Governor	Public
<p><b>Mohammad Qureshi, Ph.D.</b>  Dr. Qureshi has been chief of traffic at the San Bernardino County Department of Public Works since 2012. He was regional director and senior project manager at LIN Consulting from 2007 to 2012, director of the Jackson State University Institute for Multimodal Transportation from 2006 to 2007 and assistant professor and director at the University of Missouri-Rolla's Missouri Local Transportation Resource Center from 2000 to 2006. Qureshi was a research specialist at the University of Tennessee Center for Transportation Research from 1998 to 2000 and senior associate at the Resource Systems Group Inc. from 1995 to 1997. He earned a Doctor of Philosophy degree in civil engineering from the University of Tennessee and a Master of Science degree in civil engineering from the University of California, Berkeley.</p>	3/5/14	6/5/14	6/30/18	Governor	Professional
<p><b>Hong Beom Rhee, Ph.D.</b>  Dr. Rhee holds a Ph.D. from the University of Pennsylvania, and completed graduate work in Civilization and Asian studies at Harvard University. He has studied international relations and received an M.A. in history from the University of Pennsylvania and also majored in political science at Tokyo University. Dr. Rhee has written many articles and given lectures on history, politics, government, and international relations at universities in the U.S. and Asia. In 2005, he received special recognition from the U.S. Congress for his activities in promotion of freedom and peace.</p>	3/17/11	5/3/12	6/30/15	Speaker of the Assembly	Public
<p><b>Karen E. Roberts</b>  Ms. Roberts has been senior structural engineer at the California Department of General Services, Division of the State Architect since 1999. She was project engineer and special inspection department manager at Biggs Cardosa Associates from 1990 to 1999 and a staff engineer at Mesiti-Miller Engineering from 1989 to 1990. Roberts was a junior engineer at Biggs Cardosa Associates and at Creegan and D'Angelo Consulting Engineers from 1983 to 1986.</p>	3/5/14		6/30/17	Governor	Professional
<p><b>Ray Satorre</b>  Mr. Satorre is the president of both Medical Link Providers II, Inc. and Health Professionals, Inc. He has extensive administrative and budget experience, with a Masters in Public Administration from the University of the Philippines. He has served on previous Boards and is currently the Commissioner on the Planning Commission in Daly City since 2003.</p>	7/13/07	8/24/2011	6/30/15	Senate Rules	Public

<p><b>William Silva</b> Mr. Silva has been the strategic information officer for SCE since 1999, where he previously served as region manager from 1995 to 1999, area manager from 1993 to 1995, and project engineer from 1986 to 1993.</p>	2/13/08	1/2/11 & 2/12/15	6/30/18	Governor	Public
<p><b>Patrick J. Tami,</b> Mr. Tami has been involved in all aspects of the land surveying profession. He has been active as an instructor for issues related to surveying and mapping; served in leadership positions with numerous professional surveying and engineering associations in California and nationally; and has directed the development and application of licensing examinations for the surveying profession at the state and national levels. He served for eight years as City Surveyor, and has provided management of on-call services for numerous agencies throughout California. He has also been an expert witness and is a published author on issues of boundary and property ownership.</p>	6/9/06	6/4/08 & 7/6/12	6/30/15	Governor	Professional
<p><b>Erik Zinn</b> Mr. Zinn has been the principal geologist for his company, Zinn Geology since 2005, and held the same position from 1999 to 2001. Zinn served as principal geologist for Nolan, Zinn and Associates from 2001 to 2004, project geologist for Rogers E. Johnson and Associates from 1995 to 2000, project geologist at Weber, Hayes, and Associates from 1991 to 1995, staff geologist at Pacific Geotechnical Engineering from 1989 to 1991, staff geologist at Harding, Lawson, and Associates in 1989 and as a staff geologist from 1988 to 1989 for Foxx, Nielsen and Associates. He is a member of the Association of Engineering Geologists, the Geological Society of America and the Seismological Society of America.</p>	1/2/11		6/30/14	Governor	Professional

Erik Zinn, the Professional Geologist Member, was not reappointed. Elizabeth Mathieson was appointed by the Governor as the new Professional Geologist Board Member, effective February 12, 2015. Her term will end June 30, 2018. Phil Quartararo is in his grace year. His term will end on June 30, 2015, if he is not reappointed or someone else appointed to the position prior to June 30. If any appointments are made prior to the hearing, the Board will advise the Committee at that time.

The BPELSG currently has no standing committees and has no plans to reinstate standing committees at this time.

The BPELSG has the authority to appoint Technical Advisory Committees (TACs) (BPC §§ 6728, 7826, and 8715). A TAC consists of five licensed technical members. Board members may not serve on a TAC. These committees are appointed as needed to advise BPELSG members and staff on technical matters pertaining to civil engineering, electrical engineering, geotechnical engineering, mechanical engineering, structural engineering, land surveying, and geology and geophysics. Currently, there are active TACs for civil engineering, structural engineering, land surveying, and geology and geophysics. If the BPELSG has other technical engineering issues, a TAC in the appropriate branch of engineering could be appointed.

As a result of having five Board member vacancies and only ten appointed members during the period of November 2011 through June 2012, the BPELSG experienced challenges attaining quorum. Because all vacancies are currently filled, the BPELSG does not foresee further problems with quorum requirements.

### **Fiscal and Fund Analysis**

As a Special Fund agency, the BPELSG receives no General Fund support and relies solely on fees set by statute and collected from licensing and renewal fees.

The Board's budget authority is comprised of the Professional Engineer's and Land Surveyor's Fund (PELS - 0770) and the Geology and Geophysics Account (G&G - 0205). Currently, the BPELSG maintains these two funds separately.

#### **PELS Fund**

The total revenues (resources) anticipated in the PELS Fund for FY 2014/15 is \$13.6 million and FY 2015/16 is \$12.4 million. The total expenditures anticipated from the PELS Fund for FY 2014/2015 is \$9.6 million and for FY 2015/16 is \$9.8 million. The BPELSG anticipates it would have approximately 5.4 months in reserve for FY 2014/2015 and 4.3 months in reserve for FY 2014/15. Revenues exceeded expenditures by approximately \$1 million by the end of FY 2013/14.

The BPELSG has an outstanding loan made to the General Fund (GF) in FY 2011/12 totaling \$4.5 million. The initial loan amount was \$5 million with an interest rate of 0.379%. PELS Fund was repaid \$500,000 in FY 2013/14 (Executive Order 127). Another GF loan was made in FY 2007/08 for \$2 million that was repaid in full in FY 2013/14 (Executive Order 126).

Operationally, the Board has maintained adequate revenue to support expenditures as a result of a regulatory fee change in May 2012. That same FY, the \$5.0 million was made to the GF. The GF loan was taken into account as the Board researched appropriate fee structures and that loan did not impinge on their ability to operate, license, and regulate the professions. Based on the most recent Fund Condition (FC) from the DCA Budget Office, the Board is expecting repayments of \$500,000 this FY 2014/15, \$800,000 in FY 2016/17, and \$1.0 million in FY 2017/18 leaving \$2.2 million outstanding.

In order to support and enforce statutes and regulations, the BPELSG operates three units – Enforcement, Licensing, and Administration/Executive Services. In FY 2013/14, the total expenses relating to the Professional Engineers and Land Surveyors were:

- The Enforcement Unit for approximately 29% (\$2.3 million).
- The Licensing Unit for approximately 29% (\$2.2 million).
- The Administration/Executive Services Unit for approximately 19% (\$1.4 million).
- The DCA Pro Rata accounted for the remaining 23% (\$1.8 million).

#### **G&G Fund**

The total revenues (resources) anticipated in the G&G Fund for FY 2014/15 is \$2.0 million and for FY 2015/16 is \$1.6 million. The total expenditures anticipated from the G&G for FY 2014/2015 is \$1.4



million and for FY 2015/16 is \$1.4 million. The BPELSG anticipates it would have approximately 5.2 months in reserve for FY 2014/15 and 1.8 months in reserve for FY 2015/16. Expenditures exceeded revenues by approximately \$169,000 by the end of FY 2013/14. At the current rate of decline in reserves, the BPELSG will be compelled to propose a regulatory fee increase in FY 2015/16. The BPELSG proposed the merger of the PELS and G&G funds to avoid this result. One solution to prevent this fee hike is to merge the two funds which will be discussed in the "Current Sunset Review Issues."

The same three units also serve the Geologists and Geophysicists, however, the expenses are reported separately. In FY 2013/14, the total expenses were:

- The Enforcement Unit for approximately 12% (\$137,000).
- The Licensing Unit for approximately 62% (\$703,000).
- The Administration/Executive Services Unit for approximately 12% (\$137,000).
- The DCA Pro Rata accounted for the remaining 14% (\$159,000).

### Licensing and Renewal Fees

PELS licensees renew on a biennial cycle from the original assigned date of renewal. Renewals are staggered on a quarterly basis throughout the calendar year. G&G licensees renew on a biennial cycle based on birth month and year the original license was issued.

Two significant changes to the fee structures have been implemented since the last sunset review.

#### *PELS Fund*

- FY 2012/13 – Regulatory fees were realigned to account for policy modifications which required applicants to pay their national exam fees directly to the national exam administrator. A complete restructuring reduced fees related to application fees (\$275 to \$125); application fees for the in-training certifications (\$100 to \$50); professional license renewal fees (\$125 to \$115); and one-time retired license fees (\$87.50 to \$62.50). A state-specific exam administration fee of \$150 was also added.

#### *G&G Account*

- FY 2011/12 – Restructured fees to bring the G&G Program into compliance with the BPC §7887 relating to examination fees fixed by the Board at an amount equal to the actual cost to the Board. The fees increased for the national examinations. To offset this increase, the Board had to adjust its fee structure to account for the additional cost.

### Staffing Levels

The BPELSG's Executive Officer is appointed by the Board. Richard B. Moore, P.L.S., has served as executive officer since July 2011 and previously served as Senior Registrar for the BPELSG from September 2009 until June 2011.

The current staffing matrix currently has 38.7 positions filled and 4.0 vacancies. The positions by unit are listed below.

<b>Allocated &amp; Vacant Positions</b>	<b>FY 10/11</b>	<b>FY 11/12</b>	<b>FY 12/13</b>	<b>FY 13/14</b>	<b>FY 14/15</b>
<b>Engineers<sup>1</sup></b>	<b>35.3</b>	<b>35.3</b>	<b>36.7</b>	<b>36.7</b>	<b>36.7</b>
Enforcement	11.0	11.0	11.0	11.0	11.0
Examination <sup>2</sup>	8.5	7.5	6.0		
Licensing	4.0	4.0	5.7	12.7	12.7
Administration <sup>3</sup>	6.8	7.8	12.0	11.0	11.0
Executive	2.0	2.0	2.0	2.0	2.0
IT Services <sup>4</sup>	3.0	3.0			
<b>Geology<sup>1</sup></b>	<b>5.4</b>	<b>5.4</b>	<b>5.0</b>	<b>6.0</b>	<b>6.0</b>
Enforcement	1.0	1.0	1.0	1.0	1.0
Licensing	2.0	2.0	2.0	2.0	2.0
Administration <sup>2</sup>	2.4	2.4	2.0	3.0	3.0
<b>Vacancies<sup>5</sup></b>	<b>4.8</b>	<b>1.0</b>	<b>2.0</b>	<b>3.2</b>	<b>4.0</b>
<b>Filled</b>	<b>35.9</b>	<b>39.7</b>	<b>39.7</b>	<b>39.5</b>	<b>38.7</b>
<b>Total Authorized</b>	<b>40.7</b>	<b>40.7</b>	<b>41.7</b>	<b>42.7</b>	<b>42.7</b>

**Notes -**

**1. Funding Source:**

**Engineers (1110-001-0770)**

**Geology (1110-001-0205)**

**2. Examination unit was combined with Licensing at the end of FY 2012/13 .**

**3. FY 10/11 & FY 11/12 - 1.0 SSM I split between Engineers (0.6) and Geology (0.4) .**

**4. IT Services merged with Administration at the end of FY 2011/12.**

**5. Vacancies in FY 14/15 are as of 1/1/15.**

*Note: This table was taken from the BPELSG 2014 Sunset Review Report.*

As of February 1, 2015, the Board currently has four vacancies. The first vacancy is for a PT II. The Board has conducted hiring interviews and is awaiting eligibility verification from DCA Personnel before making offers. The second vacancy is for an AGPA. The Board concluded the recruitment process and will be conducting interviews on February 6, 2015. The last two vacancies are for Senior Registrars. The Board has expended a great deal of effort working with DCA Personnel and CalHR on adjustments to the Senior Registrar classification over the last year, however, the State Personnel Board has refused to address the request even though CalHR management and Professional Engineers in California Government (PECG) have agreed to the revisions without opposition. The Board is now beginning the recruitment process for these positions even though the requested changes to the classification have not yet been made, and the advertisement for these vacancies should be posted on the system state job announcement website (VPOS) soon.

## **The Licensing Program**

The Licensing Program of the Board provides public protection by ensuring licenses or registrations are issued only to applicants who meet the minimum requirements of current statutes and regulations and who have not committed acts that would be grounds for denial.

During the application process, the Board checks prior crimes and unlawful acts of the applicant. The application form contains a question requiring the applicant to notify the Board of any criminal history and to provide the Board with any related court documents. To augment this background investigation, the Licensing Unit has recently finalized the fingerprinting program such that all applicants beginning July 1, 2015, will be required to submit fingerprints for a criminal history background check from the Department of Justice and the Federal Bureau of Investigation (BPC §144).

Additionally, the educational and experience requirements must be submitted by the applicant to prove the necessary criteria are met for licensure. These criteria vary depending on the licensure sought.

Beginning January 1, 2015, in addition to the standard application requirements for relevant education and employment experience, the Licensing Unit includes on every application a question asking if the applicant is serving in, or has previously served in, the military (BPC §114.5). Historically, the BPELSG has always considered military experience, education, and training to qualify applicants for licensure (BPC §§ 6735.5 and 35). Further, the Licensing Unit waives delinquency fees for renewal applications that were late due to military service (BPC §114.3).

The last step in the licensure process is the successful passage of the licensure examination. The BPELSG utilizes both national-level and state-developed examinations as part of the criteria to measure competency for licensure. In order to streamline the application process, the Licensing Program has undergone significant changes relating to the examination process since the last sunset review. As of October 2012, all state-specific examinations were converted from pen and paper to a computer-based testing administration format (CBT). The next phase of this conversion involves expanding the question database so that testing can be offered more frequently with the goal of the most licensed fields being offered year-round. Starting January 1, 2015, the Geotechnical Engineer state-specific examination became the first test to be offered continuously. The effect of this change results in Geotechnical Engineers to be licensed as they become qualified on rolling basis. The BPELSG anticipates implementing year-around testing by 2017 for all state examinations that have sufficient applicants to support year-round testing.

The National Council of Examiners for Engineering and Surveying (NCEES) is also transitioning the national-level examinations to CBT format and administering them on a year-round basis. The National Association of State Boards of Geology (ASBOG) continues to administer the national-level geology examination in pen and paper format.

The BPELSG continues to actively maintain and expand its pool of experts for state-examination development through social media and outreach through licensing organizations and conferences.

In addition to the changes in the testing process, the creation of the Licensing Unit in FY 2013/14 by merging the two sections that dealt with licensing/applications and examinations is expected to improve the licensing process. The approval of new licensees is heavily dependent on the testing cycles, which varies depending on the particular field. Nonetheless, all timely completed applications are processed prior to the testing date so licenses can be issued immediately upon successful test results. Historically, the actual processing times have not been tracked, but average between two to three months for qualified applicants. Because applications are approved prior to the examination, the actual number of licenses issued are significantly less due to low examination passage rates. The Licensing Unit will continue to monitor the process with the phasing in of the CBT format and examination cycles. The Licensing Unit does not foresee any future issues that may result in delays in the application process and is optimistic that the newer CBT format may expedite licensure.

<b>Total Licensing Data</b>			
	FY 2011/12*	FY 2012/13**	FY 2013/14
<b>Initial Licensing Data: FY 12/13 &amp; 13/14 approved numbers lower than 11/12 due to change in EIT/LSIT processing by NCEES</b>			
Initial License/Initial Exam Applications Received	18476	13617	12759
Initial License/Initial Exam Applications Approved	17306	9609	10371
License Issued	6854	5685	6280
<b>License Renewal Data:</b>			
License Renewed	40284	48010	54120
* - FY 2011/12 numbers are consistent with previous 3 fiscal years			
** - Beginning FY 2012/13 – Fundamentals of Engineering/Surveying exams began offering year round through Computer-Based-Testing and EIT/LSIT applicants did not apply to BPELSG for certification until after passing fundamentals exam and meeting education/experience requirements.			

*Note: This table was taken from the BPELSG 2014 Sunset Review Report (updated data).*

### **Continuing Education**

Currently, the BPELSG does not have any continuing education requirements nor does it have any plans to implement them at this time.

The BPELSG is investigating the concept of a brief examination upon renewal. The content of this examination would focus on recent changes in law related to the license being renewed. The proposal is further explained in the "Current Sunset Review Issues."

### **The Enforcement Program**

Complaints investigated by the Enforcement Unit are often complex due to the technical nature of the engineering, land surveying, geological, and geophysical professions. The majority of cases against licensees involve allegations of negligence or incompetence in their professional practice. The Enforcement Unit must obtain evidence from all of the parties involved and often retain the services of an independent Technical Expert Consultant to review all of the evidence. The consultant then opines as to whether or not the subject failed to perform his or her services in accordance with the standards of the practices or has violated other laws in his or her professional practice. With this information, the

Enforcement Unit can determine the next course of action. The Enforcement Unit maintains a pool of licensees, who are independently employed in their own private practices, to serve as experts.

The Enforcement Unit also utilizes the Department of Consumer Affairs - Division of Investigation (DOI) as a resource to assist in collecting evidence for its investigations, particularly those involving allegations of unlicensed practice or when there is a lack of response from parties involved. DOI also assists the Board with prosecutorial actions against unlicensed practitioners in cases where violations of the Board's laws are classified as criminal violations. In these cases, the Enforcement Unit works in conjunction with the DOI to refer cases to local district attorneys. However, these complaints rarely lead to criminal prosecution due to limited resources and the belief by the local prosecutors that these actions can be handled administratively by the BPELSG.

As a result of its investigations, the BPELSG may issue administrative citations to both licensed and unlicensed individuals. The citations may contain an order of abatement or an order to pay an administrative fine up to a maximum amount of \$5,000 per incident per violation or both an order of abatement and an order to pay an administrative fine.

Another outcome of the Board's investigations, particularly in a case where the investigation reveals that a licensee has failed to meet the standard of care or has demonstrated incompetency in the professional practice, is to seek formal disciplinary action, which includes referring cases to the Office of the Attorney General, which serves as the Board's attorneys in the prosecution of these matters.

The table below shows the timeframes for the last three years for investigations and formal discipline.

<b>Enforcement Timeframes – Professional Engineers &amp; Land Surveyors</b>	FY 2011/12	FY 2012/13	FY 2013/14
Investigations: Average days to close	319	360	376
Citation: Average days to final citation	1585	1217	1094
Discipline: Average days to completion of disciplinary action	1550	1576	1482

<b>Enforcement Timeframes – Geologists &amp; Geophysicists</b>	FY 2011/12	FY 2012/13	FY 2013/14
Investigations: Average days to close	1177	1239	899
Citation: Average days to final citation	1042	1002	577
Discipline: Average days to completion of disciplinary action	*	*	2047

**\* No disciplinary action was taken against geologists or geophysicists; therefore, there are no statistics to report for these two years.**

The table below identifies the actual formal disciplinary actions taken in the past three years.

<b>Formal Disciplinary Actions – Professional Engineers &amp; Land Surveyors</b>	FY 2011/12	FY 2012/13	FY 2013/14
Accusations Filed	30	35	29

Accusations Dismissed, Declined, or Withdrawn	10	8	9
Revocation	4	4	6
Voluntary Surrender	8	5	5
Suspension	0	0	0
Probation with Suspension	1	0	0
Probation	22	11	18
Public Reapproval	4	1	1
Other	0	0	0

<b>Formal Disciplinary Actions – Geologists &amp; Geophysicists</b>	FY 2011/12	FY 2012/13	FY 2013/14
Accusations Filed	0	1	4
Accusations Dismissed, Declined, or Withdrawn	0	0	0
Revocation	0	0	1
Voluntary Surrender	0	0	0
Suspension	0	0	0
Probation with Suspension	0	0	0
Probation	0	0	1
Public Reapproval	0	0	0
Other	0	0	0

*Note: These tables were taken from the BPELSG 2014 Sunset Review Report.*

Clearly, timeframes far exceed the established performance measures, however, the figures are trending downward. The Enforcement Unit has identified several barriers to reaching its benchmarks and has undertaken steps to improve these numbers.

Beginning in 2008, staffing shortages, state mandated furloughs, and other budgetary constraints heavily impacted the Enforcement Unit's processing times for complaints. With the implementation of the Reporting of Legal Actions Program, which mandated reporting of essentially any legal action taken against a licensee, the Enforcement Unit was inundated with complaints. In 2010, the Enforcement Unit was restructured to deal with the backlog. By assigning one analyst to deal with a particular aspect of the complaint process, the Enforcement Unit made significant progress in processing the oldest cases.

While successfully eliminating the backlog, the amount of time focused on this process led to an increase in the aging of the Unit's complaints. Beginning in FY 2012/13, it initiated further analysis to identify innovative process improvements that would help to reduce the aging of cases during the investigative process and satisfy the needs of its stakeholders. The Enforcement Unit focused primarily on the internal portions of the investigative process because this phase is where the BPELSG has the most control. After the investigation phase is completed, a case may be referred to the Office of the Attorney General for formal disciplinary action which compounds the time to closing cases. The DOI and Office of Administrative Hearings have also been identified as bottlenecks in the processing of complaints and further contribute to the aging of cases. Because these departments are out of the control of the BPELSG, the Enforcement Unit is limited to modifying the internal portions of the investigatory process to better achieve its benchmarks.

Through these efforts to focus on the internal investigative portion, the Enforcement Unit has been able to implement a more effective investigation monitoring to reduce the average age of its pending investigation cases from a high of 335 days at the end of FY 2011/12 to 179 days at the end of FY 2013/14. Additionally, the number of pending cases over one year (365 days) old was reduced from 137 at the end of FY 2011/12 to 9 at the end of FY 2013/14. The age of cases at closure reflects that the oldest cases are being completed.

The following table illustrates the timelines for complaint investigations.

<b>Enforcement Statistics– Professional Engineers &amp; Land Surveyors</b>				
	FY 2010/11	FY 2011/12	FY 2012/13	FY 2013/14
<b>INVESTIGATION</b>				
All Investigations				
First Assigned	418	344	300	319
Closed	400	317	340	394
Average days to close	296	319	360	376
Pending (close of FY)	320	318	297	217
Average Age of Pending (in days)	<b>269</b>	<b>335</b>	<b>317</b>	<b>179</b>
Pending Over 365 Days	86	137	110	9
Desk Investigations				
Closed	400	317	340	394
Average days to close	296	319	360	376
Pending (close of FY)	320	318	297	217
Sworn Investigations – Division of Investigation (subset of All/Desk Investigations)				
Submitted	32	42	40	40
Closed	39	41	33	45
Average days to close	367	278	269	289
Pending (close of FY)	22	23	35	44
<b>CITATION AND FINE</b>				
Citations Issued	71	177	102	74
Citations Final	32	135	102	103
Average Days to Final Citation*	1636	1585	1217	1094
Amount of Fines Assessed	\$54,250	\$211,450	\$167,200	\$194,450
Reduced, Withdrawn, Dismissed	7	38	27	9
Amount Collected	\$12,150	\$83,684	\$85,019	\$71,100
<b>CRIMINAL ACTION</b>				
Referred for Criminal Prosecution	10	15	11	7

\* From initiation of investigation to citation becoming final

<b>Enforcement Statistics– Geologists and Geophysicists</b>				
	FY 2010/11	FY 2011/12	FY 2012/13	FY 2013/14
<b>INVESTIGATION</b>				
All Investigations				
First Assigned	25	14	18	26
Closed	42	50	28	34
Average days to close	1007	1177	1239	899
Pending (close of FY)	<b>80</b>	<b>42</b>	<b>32</b>	<b>28</b>
Desk Investigations				
Closed	42	50	28	34
Average days to close	1007	1177	1239	899
Pending (close of FY)	80	42	32	28
Sworn Investigation – Division of Investigation (subset of All/Desk Investigations)				
Submitted	2	1	0	10
Closed	3	1	1	10
Average days to close	654	62	3076	186
Pending (close of FY)	1	1	0	0
<b>CITATION AND FINE</b>				
Citations Issued	4	4	1	10
Citations Final	2	3	1	2
Average Days to Final Citation*	1395	1042	1002	577
Amount of Fines Assessed	\$11,500	\$9,000	\$5,000	\$7,000
Reduced, Withdrawn, Dismissed	1	3	0	0
Amount Collected	\$2,500	\$1,500	0	\$7,000
<b>CRIMINAL ACTION</b>				
Referred for Criminal Prosecution	0	0	0	0

\* From initiation of investigation to citation becoming final

*Note: This table was taken from the BPELSG 2014 Sunset Review Report.*

The BPELSG realizes it has not yet achieved its goals in reducing the aging to what it determines are acceptable levels, however, more effective procedures have been created that should allow it to further decrease and maintain acceptable investigation times. The BPELSG is developing ideas for improvements with its internal process as well as protocols for working collaboratively with other divisions and agencies to achieve these goals.

As set by the Board in its 2015-2018 Strategic Plan, the current target for staff-level completion of complaint investigations is an average of 180 days and with the overall goal of no cases reaching one year old during the investigative phase. Staff intends to accomplish this with improvements to the efficiency of review by the analysts, staff licensees, DOI, and Technical Expert Consultants. However, there are factors that may adversely affect reaching that target and which are important to consider.

The factors and possible solutions are further explored in the "Current Sunset Review Issues."



## **Customer Service**

Since 1993, the Board has sent out Complainant Satisfaction Surveys and has continued to monitor the results of the surveys in an effort to improve the complaint process. For the FY 2010/11 through FY 2013/14, the Board mailed 1,035 surveys but received only 82 responses, an 8% response rate. The trend in responses shows that the majority of the responses received are typically from people who are dissatisfied with the outcome of the investigation of their complaints. That dissatisfaction usually arises from a lack of understanding of the Board's jurisdictional authority and legislative mandate to protect all of the public of California, rather than to provide satisfaction to one individual consumer. As has been noted by the Committee and the Board during prior reviews, the Board receives very few completed surveys in comparison to the number mailed. The Board is currently evaluating other methods for obtaining a higher response rate.

## **Public Information Policies**

The Board maintains its own website at <http://www.bpelsg.ca.gov>. The website contains information for its stakeholders: consumers, licensees, and applicants, including the Professional Engineers Act, the Professional Land Surveyors' Act, the Geologist and Geophysicist Act, the Board Rules, the Board *Bulletin* (newsletter), notices of Board and Committee meetings, Board meeting minutes, and notices of rulemaking proposals. The Board's on-line presence is intended to expand the reach and quality of its external communications, improve service delivery, connect and interact with stakeholders, and enhance public access to Board policies and programs. One of the main links on the Board's homepage is dedicated to the consumer and includes such information as how to use the License Lookup, how to file a complaint, and the Consumer Guides to engineering, land surveying, geology, and geophysics. The public can check on the license status of the person(s) they are considering hiring using the online License Lookup feature. This feature provides information on the Board's licensees including their license numbers, expiration dates, and addresses of record. The license lookup feature also provides links to any disciplinary actions taken against the licensee. Consumers can also find out how to file a complaint with the Board regarding engineering, land surveying, geology, and geophysics issues, and can obtain a complaint form to file such a complaint.

## **Workforce Development and Job Creation**

While the Board does not have a role to create jobs or provide job training in the professions it regulates, the Board maintains a College Outreach Program which provides information regarding career development, initial licensing, and examination requirements to college students and professors. The purpose of this program is to provide information and education to professionals, students, and consumers in the application of the Professional Engineers Act, the Professional Land Surveyors' Act, the Geologist and Geophysicist Act, and the engineering, land surveying, geology, and geophysics professions. Board members and staff make it a priority to attend all college visits by ABET, Inc., (formerly the Accreditation Board of Engineering and Technology), the national accreditation organization for engineering and land surveying programs. Attendance at college outreach activities, such as "Engineering Day," at California campuses is also a high priority of the Board. In addition, the Board maintains a database of all college engineering, land surveying, and geology programs in California. The database contains all contact information for the deans and department chairs of the

disciplines which it oversees. In the spring and fall, the Board sends updates to all stakeholders to notify them of changes or updates to Board practices, as well as to give the schools a contact point should they have questions about Board practices.

## **PRIOR SUNSET REVIEWS: CHANGES AND IMPROVEMENTS**

The Board was last reviewed in 2011 by the Senate Committee on Business, Professions, and Economic Development. During the previous sunset review, the Committee addressed eleven issues. Nine issues were raised during the sunset process and two issues needed further investigation and resolution.

The issues raised and handled at the 2011 Sunset Review included:

- Should the BPELSG continue to keep the licensing and regulation of geologists and geophysicists as a separate program to that for engineers and land surveyors?
  - *During the 2011 Sunset Review, the decision was made not to merge the funds and the programs at that time, but to allow BPELSG to continue the two programs separately while working towards fully merging them. The operational program has now been merged, and BPELSG is now recommending that the PELS Fund and G&G Account be merged into one fund as discussed in "Current Sunset Review Issues."*
- Should the statutory requirement for the structural engineering examination be eliminated now that the BPELSG has determined that the national structural engineering examination meets all the requirements of licensure?
  - *The 2011 Sunset legislation for BPELSG (SB 543, Chapter 448, Statutes of 2011) amended Section 6763.1 to eliminate the requirement for a state-specific structural engineering examination.*
- Should the BPELSG relinquish its authority over the administration of the NCEES examinations and the collection of fees from those applicants requesting to take a particular examination provided by the NCEES?
  - *Sections 407 and 428 of Title 16 of the California Code of Regulations (16 CCR) were amended, effective April 27, 2012, to adjust fee structures for engineering and land surveying fees to properly cover expenditures. The fee change introduced separate application, examination, and licensing fees. With this regulatory change, BPELSG was then able to allow NCEES to administer examinations and directly collect the examination fees from applicants for the NCEES examinations.*
- Should the BPELSG be granted authority to require both applicants for licensure and licensee upon renewal of their license to be fingerprinted so as to obtain prior criminal history information for the Department of Justice?
  - *BPELSG was granted authority to require fingerprinting and criminal background checks on all applicants for licensure. The implementation of this program was delayed for several reasons, but the Board is pleased to announce that the program will be fully operational by July 1, 2015.*

- Should the BPELSG receive at least one staff Geologist to assist the Board in carrying out its responsibilities in operating the Geology and Geophysicist licensing and enforcement programs?
  - *BPELSG was granted a Geologist staff position for which it is in the process of hiring. BPELSG has met with resistance from the State Personnel Board to its request to amend the specifications for the state civil service classification of "Senior Registrar" to include geology-specific knowledge, skills, and abilities. The current specifications include only engineering and land surveying, which poses difficulty in hiring a qualified geologist. BPELSG is working with DCA Human Resources and CalHR staff on how it can fill this much-needed position.*
- Will the BPELSG be required to raise fees for geologists and geophysicists to prevent the G&G account from having a shortfall?
  - *16 CCR § 3005 was amended, effective May 23, 2012, to adjust the geology and geophysics examination fees to be equal to the Board's actual cost to administer the exam. This addressed the issue of a shortfall in the G&G account.*
- Should the examination fees for the geologist's examinations be increased to match the actual costs to the Geologist and Geophysicists Program?
  - *16 CCR § 3005 was amended, effective May 23, 2012, to adjust the geology and geophysics examination fees to be equal to the Board's actual cost to administer the exam.*
- What would be the impact of the Governor's proposed borrowing of \$5 million from the Board's reserve account and what was the impact of the \$2 million still owed to the Board?
  - *Both loans were from the PELS Fund; no loans were taken from the G&G Account. The \$2 million loan has been repaid by Executive Order 126 in FY 2013/14. A \$5 million loan was made in FY 2011/12, of which \$500,000 was repaid in FY 2013/14 by Executive Order 127. Operationally, BPELSG has maintained adequate revenue to support expenditures as a result of a regulatory fee change in May 2012. Based on the most recent Fund Condition from DCA's Budget Office, BPELSG is expecting repayments of \$500,000 in FY 2014/15, \$800,000 in FY 2016/17, and \$1 million in FY 2017/18, leaving \$2.2 million outstanding.*
- Explain the results of consumer satisfaction surveys and what can be done to better manage consumer expectations.
  - *Consumer satisfaction surveys have extremely low response rates, and BPELSG believes that the lower than expected satisfaction is based on the consumer's lack of understanding about the authority of the Board and the duty to protect the public and not resolve complaints in a way always favorable to the individual consumer.*

The following two issues remain unresolved and are more fully discussed under "Current Sunset Review Issues:"

- The first issue was whether the licensing of geophysicists is still necessary in California. The decision at the time of the 2011 Sunset Hearing was to monitor the application and licensee populations and to assess the interest in the population to assist in exam development.
- The second issue involves the long delays relating to investigation and enforcement of complaints.

For more detailed information regarding the responsibilities, operation and functions of the BPELSG please refer to the BPELSG's "Sunset Review Report 2014." This report is available on its website at [http://www.bpelsg.ca.gov/pubs/2014\\_sunset\\_review\\_report.pdf](http://www.bpelsg.ca.gov/pubs/2014_sunset_review_report.pdf).

## CURRENT SUNSET REVIEW ISSUES FOR THE BPLSG

The following are unresolved issues pertaining to the Board; those which were not previously addressed; and other areas of concern for the Committees to consider along with background information concerning the particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. The Board and other interested parties, including the professions, have been provided with this Background Paper and can respond to the issues presented and the recommendations of staff.

### ADMINISTRATIVE ISSUES

**ISSUE #1: POSTING OF LICENCEES' ADDRESSES ON THE WEBSITE. *Is the licensee's city and county of record sufficient to post on the on-line License Lookup database?***

**Background:** In 2013, the Board sponsored legislation to amend BPC § 27 due its privacy concerns with including its licensees' addresses of record in the License Lookup database available through the Board's and DCA's websites. SB 207 (Canella) was introduced on February 8, 2013 and proposed to amend BPC § 27 so that the Board would not have to disclose a licensee's address of record online. Currently, BPC § 27 allows licensees to provide the Board with an alternate address which will be available to the public in lieu of the licensee's residence address. According to the Board's legal counsel, BPC § 27 does not apply to the BPELSG because it does not require a home address to be provided but can use any address at which mail can be received.

The Board still believes it should not include any licensees' addresses of record in the License Lookup database, although it would be acceptable and appropriate to include the city and county. One of the main concerns is that online public disclosure of the licensee's address poses privacy and safety issues. However, the Board would disclose the complete address of record upon direct request.

Through discussion with stakeholders, it is also apparent that licensees may be unaware that providing an alternate address is an option to protect his or her residential address from disclosure to the public.

**Staff Recommendation:** *The Board should explain why the current option for providing an alternate address is unfeasible and undesirable. The Board should discuss why it believes that this code section does not apply. It seems that if the Board would still release the address of record upon request, the privacy protection concerns raised the Board are not necessarily solved. The Board should also discuss what efforts have been made to educate its licensees about this alternate address option.*

**ISSUE #2: CONSUMER PROTECTION ENFORCEMENT ISSUES. *What efforts has the Board made to implement the DCA recommendations to apply the policy changes outlined in the initiative?***

**Background:** Following the failed passage of SB 1111 (McLeod) in 2010, the DCA recommended that the boards consider adopting regulations to implement some of the provisions proposed in the legislation as a way to implement the Consumer Protection Enforcement Initiative (CPEI).

The Board reviewed the recommendations and determined that the vast majority of them applied only to the professions regulated by the healing arts boards. The Board discussed the recommendation that the authority to adopt default decisions and stipulations that involve the surrender or revocation of the license be delegated to the Executive Officer. However, at its November 2010 meeting, the Board declined to delegate that authority.

**Staff Recommendation:** *The Board should explain how it reached its determination that many of the CPEI issues did not apply. Further, the Board should justify its decision to not delegate the authority to handle stipulated and default licensure surrender or revocation to the Executive Officer.*

**BUDGET ISSUES**

**ISSUE #3: MERGER OF THE G&G ACCOUNT INTO THE PELS FUND. *Considering that operational aspects after the merger of the two Boards in 2009 have been consolidated, should the two funds be combined?***

**Background:** Legislation enacted during the 4th Extraordinary Session of 2009, ABx4 20 (Strickland, Chapter 18, Statutes of 2009) eliminated the Board for Geologists and Geophysicists (BGG) and transferred all of the duties, powers, purposes, responsibilities, and jurisdiction to regulate the practices of geology and geophysics to this Board effective October 23, 2009. At the time, the former BGG's Geology and Geophysics (G&G) Fund was not merged into the Professional Engineer's and Land Surveyor's (PELS) Fund.

Initially, the BPELSG maintained two parallel programs – the G&G Program and the PELS Program – with operations and funds remaining exclusive to each program.

During the Board's 2011 Sunset Review, there was discussion about merging the two separate funds. However, since this Board had only recently assumed the responsibilities of the G&G Program and had not had the opportunity to fully analyze the impact such a merger would have on the Board's overall operations and budget as well as on the fees charged to applicants and licensees, the determination was made to instead change the G&G Fund into the G&G Account within the PELS Fund and to still maintain the monies separately.

Since that time, the Board reorganized to further integrate the necessary operational functions of all licensing and enforcement programs for all its licensees. The newly formed Licensing Unit, for

example, consists of application review, examination development, and licensing processes for all license types under the Board's authority. The Enforcement Unit, in a similar manner, has been cross training its analysts to handle all cases rather than having a specific analyst assigned to work on only those cases regarding the practices of geology and geophysics. The division of funds is the only remaining remnant of the merger in 2009.

With the integration of the staff and functions of the G&G Program into the overall operations of the Board, it now appears to be the appropriate time to merge the G&G Account into the PELS Fund so that there will be one single funding source for the Board. Once the merger is completed, the Board will undertake an overall review of the fees charged to all of its licensees and applicants in order to ensure that the fees are standardized and appropriate for the services provided.

***Staff Recommendation:*** *The Committees should amend BPC § 7886 to remove the reference to the Geology and Geophysics Account and to mirror the language in BPC §§ 6797 and 8800 to allow for the merging of the two funds. The legislative language should specifically address continued oversight of fees charged to all its licensees and applicants to assure fairness across all fields.*

#### **ISSUE #4: OUT-OF-STATE TRAVEL AND OTHER TRAVEL RESTRICTION ISSUES.**

***Should travel to professional conferences that directly affect licensure of California licensees and enforcement of licensing laws be deemed "mission critical" and receive automatic budgetary approval for this type of travel?***

**Background:** Over the last several years, the Board has been severely impacted in its ability to appropriately protect the health, safety, welfare, and property of the public due to restrictions on travel. The Board has been unable to travel to out-of-state meetings with the national organizations that develop, administer, and score the examinations California uses to ensure that applicants for licensure are qualified to practice in California. In addition, the Board has been unable to attend conferences held within California where its members and staff could meet with various licensee and consumer groups to discuss the laws and regulations and the services the Board offers.

The national examinations used by the Board for licensure of engineers and land surveyors are developed, administered, and scored by the National Council of Examiners for Engineering and Surveying (NCEES). The examinations used by the Board for licensure of geologists are developed and scored by the National Association of State Boards of Geology (ASBOG) and administered by the Board. The Board's participation is critical to ensure California's interests are expressed and that we are given consideration in decisions that affect California stakeholders. Since these are national organizations, the majority of the meetings are held outside of California.

NCEES regularly schedules two primary member meetings on an annual basis, an Interim Zone meeting for each zone and the Annual Meeting. Each member board of NCEES is allowed one vote during the Interim Zone meeting and the Annual Meeting for actions associated with changes to the established policies or procedures related to exam development, exam administration, fees charged, model licensing criteria, and overall NCEES organizational goals. Fifteen of the Board's twenty-two licenses and certifications require passage of the national engineering and land surveying examinations

that are developed, scored, and administered by NCEES. Often, the actions will result in changes to the criteria that are considered acceptable for licensure and to the content of the exams.

The Board is also an active voting member of the ASBOG. ASBOG is a national non-profit organization comprised of 30 member licensing boards from across the nation. ASBOG is dedicated to advancing professional licensure for geologists. As discussed, it develops, administers, and scores the national examinations predominately used to license geologists in the United States. ASBOG regularly schedules Council of Examiner Workshops twice a year and an Annual Meeting usually held in the fall concurrent with the fall workshop. These meetings are generally held to evaluate examination content and determine exam policy and fees.

*As such, in-person attendance by California Board representatives at these meetings is critical towards ensuring that these actions are not discriminatory for California applicants and licensees and that the content of the exams are appropriate for licensure in California with due regard to protecting the public health, safety, welfare, and property.*

Overall, California represents one-third of all applicants for engineering, land surveying, and geology licenses nationwide (rather than one-fiftieth). Nevertheless, all requests for approval for travel to meetings held out of state are historically denied as being an “unnecessary” expenditure of state funds. These denials severely curtailed the Board’s involvement in the discussion and decision-making on issues that impact the licensees and consumers in our state.

Fortunately, this trend is changing, but the Board has still faced challenges for these out-of-state requests. Since the Board’s last Sunset Report, representatives from the Board were granted approval to attend the spring 2013 NCEES Western Zone Interim Meeting since the meeting was held in San Francisco, and the Board was chosen by Zone representatives as being responsible as the Host Board. More recently, the Board received approval to attend the 2014 NCEES Annual Meeting which was held in Seattle, Washington in August. However, the Board’s request to attend the 2014 NCEES Western Zone Interim Meeting was denied as not being “mission critical,” even though important issues regarding examinations and licensure were discussed and decided upon at that meeting. The Board was also granted approval for our Geologist Board Member to attend an ASBOG Exam Workshop in New York during June 2014 and the upcoming ASBOG Annual Meeting in November 2014 in Indianapolis, Indiana. Attendance at these events has provided the BPELSG with a stronger platform to participate in policy changes that impact its applicants, licensees, and consumers.

Restrictions on non-essential travel within the State have hampered the Board’s opportunities to attend consumer fairs, trade shows, and conferences where staff and Board members could provide outreach to consumers, licensees, local agencies, and other regulatory agencies. To fulfill one of its critical objectives, the Board needs to travel to these and similar venues to educate and inform consumers about the Board and its regulated professions. Licensees need information about issues impacting consumers and the professions. Local agencies require updates regarding issues related to the standard of practice and unlicensed activity and how they can assist the Board in ensuring compliance with the laws to protect the public. Other regulatory agencies, such as the Division of Investigation, District Attorneys’ Offices, Office of the Attorney General, Office of Administrative Hearings, and other

consumer protection agencies, should likewise be targets for Board outreach to discuss their impact on our processes.

**Staff Recommendation:** *The Board should explain to the Committees further regarding the necessity of attendance at these conferences. The Committees should consider whether "mission critical" travel be deemed any meetings at which licensing examinations are discussed, voted upon, developed, scored, or administered and such travel shall be approved in order to ensure that the licensing examinations are appropriate for the protection of the public of California. The Committees would need to amend BPC §139 to provide for "mission critical" travel approval.*

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**ISSUE #5: Pro Rata. What services does BPELSG receive for its share of pro rata?**

**Background:** Through its various divisions, the DCA provides centralized administrative services to all boards and bureaus. Most of these services are funded through a pro rata calculation that is based on "position counts" and charged to each board or bureau for services provided by personnel, including budget, contract, legislative analysis, cashiering, training, legal, information technology, and complaint mediation. The DCA reports that it calculates the pro rata share based on position allocation, licensing and enforcement record counts, call center volume, complaints and correspondence, interagency agreement, and other distributions. In 2014, the DCA provided information to the Assembly Business, Professions and Consumer Protection Committee, in which the Director of the DCA reported that "the majority of the DCA's costs are paid for by the programs based upon their specific usage of these services." The DCA does not break out the cost of their individual services (cashiering, facility management, call center volume, etc.). The BPELSG utilizes the DCA for a number of administrative functions, including legal services, legislative and regulatory review, public affairs, and some information technology services. Whereas some other boards rely solely on the DCA for IT, the BPELSG does not. In addition, the DCA assists with cashiering, budgets, personnel, training, contracts, and travel reimbursement processing for the BPELSG. Although the DCA provides assistance to the BPELSG, and a definition of costs is provided annually, it is unclear how the rates are charged to the BPELSG and if any of those services could be handled by the BPELSG instead of the DCA for a cost savings.

For FY 2013/14, BPELSG spent approximately 23% of its budget from the PE Fund on the DCA Pro Rata costs. The DCA Pro Rata costs continue to trend upward. In FY 2012/13, the BPELSG spent 19% on Pro Rata costs and in FY 2010/11, where BPELSG spent approximately 14% of its budget on Pro Rata. From the G&G account, a similar trend is noted. For FY 2013/14, BPELSG spent approximately 14% of its budget from the G&G account on the DCA Pro Rata costs. In FY 2012/13, the BPELSG spent 12% on Pro Rata costs and in FY 2010/11, where BPELSG spent approximately 10% of its budget on Pro Rata.

**Staff Recommendation:** *The BPELSG should advise the Committees about the basis upon which pro rata is calculated, and the methodology for determining what services to utilize from the DCA. In addition, the BPELSG should also discuss whether it could achieve cost savings by dealing with more of its services in-house.*



## LICENSING ISSUES

**ISSUE #6: THE NEED FOR CONTINUED LICENSURE OF GEOPHYSICISTS IN THE STATE OF CALIFORNIA.** *Should the licensing of Geophysicists continue in this State and should the Board still have to provide a State-specific Professional Geophysicist (PGp) Examination to potential applicants for licensure?*

**Background:** The 2011 Sunset Review noted several concerns the Board had with the development and administration of the geophysicist examination. Some concerns, at the time, included the difficulty in the recruitment of in-state experts to assist with developing and constructing the examination, the cost of developing the examination, and the level of protection of the public that licensure actually provides.

During the last review, the Committee instructed the Board to conduct a public hearing in an effort to receive input regarding the continued regulation of the practice of geophysics and the continued licensure of geophysicists in California. The Board also created a subcommittee for closer analysis. A hearing was held on May 12, 2011. Based on the testimony received at the hearing, the Board's initial recommendation was to continue to license geophysicists but to closely monitor the long term trends associated with the geophysics profession and how it related to licensing protection for the general public. Since the Board knew little of the profession, more time was needed to make an educated and appropriate decision before making any recommendations regarding the continued licensure of geophysicists and the continue regulation of the practice of geophysics in California. Since that time, the Board has monitored the applicant and licensee populations, as well as the interest in the profession to assist in exam development for future licensure examinations. The chart below lists the application and examination totals for the last four years.

Professional Geophysicist Applicant Population				
Examination Cycle	Number of New Examinees	Number of Refile Examinees	Number of Examinees Passed	Pass Rate
2010	1	1	1	50%
2011	4	2	3	50%
2012	1	3	3	75%
2013	7	1	5	63%

Note: This table was taken from the BPELSG 2014 Sunset Review Report.

Below is a list of the total population of the Professional Geophysicists (PGp) in California as of the end of FY 2013/14.

Licensee Population					
		FY 2010/11	FY 2011/12	FY 2012/13	FY 2013/14
PROFESSIONAL GEOPHYSICIST LICENSE	Active	157	160	163	168
	Out-of-State	60	61	64	66
	Out-of-Country	5	5	5	5
	Delinquent	51	51	51	51

Note: This table was taken from the BPELSG 2014 Sunset Review Report.

A significant issue relating to the licensure of geophysicists is the inability to retain a sufficient number of subject matter experts for developing licensing examination content and validation. Despite the Board's open and active efforts to recruit licensees for examination development, it has encountered significant difficulty in obtaining the services of the minimum number of subject matter experts required to properly support examination efforts since there appears to be little interest from the licensed population to serve as experts.

The Board's psychometric vendors normally require a minimum number of licensed subject matter experts to participate in the necessary exam development workshops for the production of a legally defensible exam appropriately designed to measure the competence of licensing candidates. The PGp examination development normally requires three meetings per year to properly develop an examination and determine a recommended passing score. Under preferable conditions, this would require 15 to 18 licensed subject matter experts on an annual basis to support adequate exam development efforts. Over the last four years, the Board has been able to secure a total attendance of only 6 to 8 subject matter experts on an annual basis, and typically 3 to 4 the same experts attend each meeting. As a result, the statistical validity of the examination could be questionable. The examination may not be legally defensible and may not provide the level of public protection assured through examinations in other specialties.

Another obstacle to recruitment is that the Board can only contract with licensees who reside within the state. As noted in the Licensee Population chart above, a significant portion of the licensee base resides outside of California. While the trend appears to show an increase in licensees, it is primarily in those licensees who reside out-of-state. The Board believes this increase is more reflective of out-of-state individuals seeking to comply with a law that is unique to California than an indication that the geophysicist profession is becoming more popular or necessary within the state. *It is important to note that California is one of only two states that regulate the practice of geophysics and licenses individuals as geophysicists.*

In addition to the technical component of the examination development, the examination expenses are significant. The cost for the Board to develop, administer, and score the PGp examination averages \$10,000 to \$13,000 a year. In FY 2013/14, the Board incurred costs totaling about \$18,000 (about a 50% increase) as a result of having to postpone several workshops at which the examination passing score would have been developed due to a lack of subject matter experts willing and available to participate in the workshops. Due to this delay, candidates who had taken the October 2013 PGp examination had to wait over three months longer than normal to receive notice of their results, which in turn delayed licensure for the individuals who had passed the examination. In addition, the Board's policies require a new Occupational Analysis and Test Plan every five to seven years in accordance with normal licensing exam development standards. The Board incurred additional costs of approximately \$40,000 distributed between FY 2012/13 and FY 2013/14 to accomplish this.

Based on the Applicant Population chart shown above and an average of five geophysicist applicants annually, the Board incurs a net line item loss of \$8,250 to \$11,250 annually (based on the required application or exam fees of \$350 each, which accounts for \$1,750 total revenue each year). Factoring in the requirement for producing a new Occupational Analysis and Test Plan every five years, the

Board incurs a net line item loss of \$16,250 to \$19,250 on an average annual basis to produce the PGp examination.

Most geophysicist reports are utilized by other scientists, geologists, or engineers. Geophysicists rarely interact directly with the public. Additionally, the majority of the complaints the Board receives relating to the practice of geophysics are from PGps against unlicensed individuals who appear to be offering geophysical services through websites or other advertisements. The cases rarely involve evidence that the unlicensed individuals have actually performed work for consumers in California or that they performed work in a manner that poses a threat to the health, safety, welfare, and property of the public. Many of the firms advertising these services are located outside of California. As mentioned previously, the practice of geophysics is regulated in only two states. Many of these unlicensed individuals are not aware that the services they are offering nationwide are regulated in California. Based on the information obtained from the complaint history, there does not appear to be a threat to public safety.

***Staff Recommendation:*** *The Board should explain to the Committees if abolishing this license category would place the public at risk. Further, the Board should inform the Committees exactly how many complaints are directed towards licensed geophysicists and the outcome of these complaints. The Board seems to have sufficient reasoning for discontinuing this licensure. As such, the Committees should hear from the Board whether eliminating this type of licensure is prudent and the impact it would have on the Board and its stakeholders.*

**ISSUE #7: DELINQUENT REINSTATEMENTS AND INACTIVE STATUS.** *Should the Board adopt an "inactive" license status and standardize the requirements to reinstate delinquent licenses across all professions?*

**Background:** Over the last few years, the Board has become increasingly concerned with the process outlined by the laws and regulations for the reinstatement of professional engineers' and land surveyors' licenses that have been expired or delinquent for more than three years and professional geologists' and geophysicists' licenses that have been expired or delinquent for more than five years. Under the current laws, if an engineer's or surveyor's license has been expired for more than three years, he or she may apply for reinstatement of that license. If the applicant is able to demonstrate to the Board that he or she is currently competent to practice through descriptions of the work they have performed during the period of delinquency, then the license is reinstated without further examination. Geologists and geophysicists are required to take the licensing examinations and be issued new licenses, however, they are not required to provide any evidence of recent work experience in the professions. The Board is concerned with the disparity in the requirements between the professions, as well as whether a person should be allowed to reinstate a delinquent license without examination or be issued a new license without demonstrating recent work experience. Additionally, the Board believes that many licensees allow their licenses to become delinquent when they are working in an industry that is exempt from licensure or if they are working out of state. When they seek work where a license is required or return to California, they must then go through the process to reinstate the delinquent license. The Board believes that if it had the authority to allow licensees to place their license in an "inactive status," such as is allowed for Physician and Surgeon licensees would choose to do that rather than simply allowing their licenses to become delinquent.

**Staff Recommendation:** *The Board should continue to research these matters more fully in order to determine the feasibility of enacting an inactive status and to determine the appropriate requirements for reinstating a delinquent license. Depending on the outcome of this review, the Board may need to seek legislative authority in the future to enact changes.*

**ISSUE #8: REVIEW OF EXPERIENCE REQUIREMENTS TO QUALIFY FOR LICENSURE.** *Are the current experience and education requirements sufficient to ensure adequate competency standards to protect public health, safety, welfare, and property?*

**Background:** In recent years, the Board has become more concerned that the experience requirements to qualify for licensure in all of the professions it regulates may not be sufficient or appropriate to ensure that individuals have received the proper training in order to practice on their own with due regard to the public health, safety, welfare, and property.

In addition to experience concerns, the requirement that a geologist must have an undergraduate degree in geological sciences has been problematic in that an applicant for licensure does not have a clear expectation of what coursework under the broad umbrella of geological sciences is sufficient for licensure. Typically, it is not until after an applicant has graduated that he or she is advised that the requirements for licensure are not met because after review of the coursework, his or her degree is deemed inadequate.

In its 2015-1018 Strategic Plan, the Board included an objective to examine the appropriateness of current education and experience requirements for licensure across all fields. However, it is unclear what steps are being taken at this point to assure public safety and to address the needs of applicants and licensees.

**Staff Recommendation:** *The Board should inform the Committees the origins of these concerns and why more immediate action is not necessary. Along these lines, the Board should advise the Committees regarding the low passage rates for licensing examinations across all fields and whether this is a reflection of the perceived inadequate experience and education. It would be helpful to compare the passage rates for national examinations to other states. While the Board would like to continue to research this issue before taking any action, the Committees should be reassured that current requirements are sufficient for public safety and welfare. Additionally, the Board should advise the Committees on what steps are being taken to address the education requirements for geologist licensure.*

**ISSUE #9: EXAMINATION OF CALIFORNIA LAWS AND REGULATIONS.** *Should the Board institute a required take-home examination relating to California laws and regulations as part of the licensee's renewal application?*

**Background:** The Board has recently researched common violations committed by licensees discovered during complaint investigations that are not necessarily standard of practice issues. The laws and regulations of the Board are readily available to its licensees on the Board's website. While it

is expected that licensees will familiarize themselves of the laws governing their practice, it is apparent that many licensees do not review them on a regular basis or even when significant changes are made.

For instance, for many years following the requirement of written contracts for licensees, AB 2696 (Cox, Chapter 976, Statutes of 2000), numerous complaints were received alleging that a written contract was not executed. In several cases, it became apparent during the Board's investigation that compliance with the written contract statute was not fulfilled. The response from many licensees was that they were unaware of the new law, even though the Board had publicized it several times in its newsletter, on its website, and through in-person outreach opportunities.

Over a three-year period, of the cases against licensees in which violations were found which did not rise to the level of warranting formal disciplinary action, approximately 45% involved violations relating to non-practice related laws, such as failing to include all of the required elements in a written contract, failing to execute a written contract, failing to sign and seal professional documents in the manner required by law, failing to submit reports of civil judgments or settlements, and failing to file Organization Record forms.

To ensure adequate public protection and curtail unnecessary complaint investigations, the Board believes licensees should be required to periodically demonstrate their knowledge of the state laws and the Board's rules regulating their areas of practice. The most effective way to accomplish this would be to require licensees, at the time of renewal, to pass a short, multiple-choice open-book examination, which they would complete at home, that would include questions regarding state laws and the Board's rules and regulations regulating their practices. This examination would be modeled after the examination currently required for professional engineers and land surveyors at the time of initial licensure. If licensees were required to demonstrate their knowledge of the laws at the time of renewal, they would have an incentive to ensure they stay current on those laws and changes to them.

Additionally, the Board believes that applicants for licensure as a professional geologist or geophysicist (provided this field continues licensure) should be required to demonstrate their understanding of the state laws and the Board's rules and regulations regulating their practices, just as applicants for licensure as a professional engineer or land surveyor are already required to do (BPC §§ 6755.1 and 8741.1). This will ensure that, prior to obtaining licensure, the applicant is aware of the laws and regulations of the profession. This will benefit consumers since the licensees will be demonstrating competency of the laws through successful completion of the required examination. This requirement in addition to the proposed renewal examination will further harmonize the licensure standards between the G&G and PELS sections of the Board.

Based on the Board's experience, licensees fail to adequately and independently stay abreast of critical legal and regulatory updates. The Board proposes this renewal examination requirement in an effort to curb unnecessary practice violations and to assure the public that its licensees are well versed in current applicable law.

***Staff Recommendation: The Board should inform the Committees on the process; the cost; and the feasibility of operationalizing this requirement. The Board should discuss whether this process involves hand-scoring or whether a computer-based technology is a more efficient approach. As a***

*more efficient alternative, the Board should consider whether requiring renewal licensees to sign an attestation as part of the renewal application that he or she has reviewed the current legislation and regulations relating to the particular license.*

### **ENFORCEMENT ISSUES**

**ISSUE #10: COMPLAINT TIMELINES OVER TWO YEARS TO REACH RESOLUTION.**  
*Is the Enforcement Program as it currently operates able to reduce its timeline for average complaint resolution to meet DCA's goal into the twelve to eighteen month range?*

**Background:** As previously discussed, the Enforcement Unit struggles with several obstacles that impair its ability to effectively and efficiently process complaints. One of the greatest hurdles is overcoming the impact on the Board's enforcement processing timelines created by the workload of the Office of the Attorney General (AG), Office of Administrative Hearings (OAH), and Division of Investigation (DOI). Despite the Board's aggressive efforts to reduce the internal backlog and aging of its complaint investigations, including the informal (citation) and formal disciplinary actions phases, significantly protracted processing times remain a challenge, specifically for cases that are referred to the AG and OAH that involve citation appeals and formal disciplinary action cases. The AG handles cases for all of the boards and bureaus within the DCA, and they are heavily inundated with cases. The OAH hears matters for multiple agencies in addition to DCA.

In its 2015-2018 Strategic Plan, the Board identified these concerns. The Board would like to see a reduction in the overall processing time for formal disciplinary cases, including the investigation time and the time to pursue the action, to an average of 540 days. However, the Board has no control over the processing times for the AG and OAH.

The Board is also heavily impacted by DOI's delays in processing cases. 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. 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 healing arts professions, DOI does not give this Board's cases the highest priority. The inability of DOI to timely investigate its cases contributes to the overall aging of the Board's complaint investigation cases and, on occasion, causes statutes of limitations to expire on cases that could potentially be prosecuted in criminal court.

**Staff Recommendation:** *As the process currently stands, it does not appear that the Board will be able to meet the goal of reducing the timeline for handling its disciplinary cases. While the Enforcement Unit has the ability to investigate complaints, more serious complaints often require enlisting outside investigation and enforcement departments. The Board believes a more collaborative effort is needed to explore how the Board and its staff, as well as DCA and the Legislature, can assist the AG and the OAH in reducing their processing times as well which will positively affect the disposition of cases. Further, the Board suggests that it would be beneficial to all boards and bureaus if DOI were able to increase the number of investigators it employs and to also create specific units within DOI to handle specific types of cases or to work with specific*

*boards, such as with the new unit of investigators that focuses on cases from the Medical Board of California. The Board should also explain to the Committees about where it believes the bottlenecks are in its internal investigation processes and disciplinary actions.*

**ISSUE #11: LICENSEE RESPONSE REQUIREMENT.** *Should the Board have the authority to require a licensee to respond to the Board's requests for information relating to a complaint?*

**Background:** Coupled with the issues explained above, another major issue with expeditious processing of a complaint is the lack of authority to require its licensees to respond to the Board or to provide documents related to a project which the Enforcement Unit may request during the course of a complaint investigation. One of the reasons for delays in the processing of investigations has been that staff gives the subject of the investigation ample time and opportunities to respond and provide documents during the investigation. Obviously, it is important to obtain as much relevant information from the subject of the investigation as possible. However, what typically transpires is that the licensed subjects often think that if they do not respond, the complaint will simply be closed. While some cases are closed due to lack of substantive information in the complaint, this is unusual. In most cases, the Board must either proceed based on the information on file or must expend additional time and resources (such as referring the case to DOI) to obtain the information. Often, if the Board had received this information in a timely fashion, the complaint could have been resolved without any formal action being pursued against the licensee.

**Staff Recommendation:** *Since this issue could directly impact the aging of cases, the Board should advise the Committees what actions would be necessary to create a legal requirement for its licensees to respond to investigative inquiries and provide requested documents within a specified period of time.*

**ISSUE #12: UNLICENSED ACTIVITY – ONLINE ADVERTISING AND CELLULAR TELEPHONES.** *Should the Board have the ability to request the shut-down of websites and cellular phones for persons engaged in the unlicensed practice of the professions?*

**Background:** The issue of enforcement of unlicensed activity continues to be problematic for the Board. While issuing an administrative citation is an effective means of disclosing unlicensed activity to the public and in emphasizing the severity and gravity of such violations, it is not always effective in motivating violators to cease and desist. Many choose to pay the fines and continue to offer and practice, and others choose to ignore the administrative citation altogether. Therefore, the Enforcement Unit would like to research additional means of effectively inhibiting solicitation of illegal activities. For instance, current law provides the Board, through the issuance of an administrative citation, authority to order individuals advertising professional services in telephone directories to disconnect telephone services regulated by the Public Utilities Commission (PUC). Recent legislation, SB 1243 (Lieu, Chapter 395, Statutes of 2014) broadens this to include any advertising, not just a listing in a telephone directory. However, many unlicensed individuals operate through cellular telephone services, which are not regulated by the PUC. In addition, there is currently no authority to require violators to shut down websites illegally advertising professional services.

**Staff Recommendation:** *The Committees should consider legislation for disconnecting cellular phone services and shutting down websites of persons engaging in unlicensed practice. The Board would be supportive of any legislation mandating this type of action as an effective means of controlling unlicensed practice.*

**ISSUE #13:** CITATION AND FINE RECOVERY OPTIONS. *Should the Board have other options for recovering fines from unlicensed persons?*

**Background:** As part of its regulatory authority, the Board may issue administrative citations to both licensed and unlicensed individuals. The citations may contain an order of abatement, an order to pay an administrative fine to the Board in the maximum amount of \$5,000 per violation, or both. This mechanism is an effective enforcement tool for licensees. If a licensee fails to comply with the citation order, the Board has the authority to prevent renewal of a license for failure to pay the administrative fine or to pursue formal disciplinary action against the licensee.

When the offender is unlicensed, there is little authority for the Board to recover fines issued to unlicensed individuals who fail to pay. The Board currently utilizes the services of the Franchise Tax Board refund intercept program to assist in collecting fines from individuals who receive state tax refunds, lottery winnings, and have unclaimed property. This rarely results in recovery of fines. Seeking recovery through the civil courts or a collection agency is not cost effective.

**Staff Recommendation:** *The Committees should consider whether empowering the DCA to pursue fine collection through contracting with a collection agency on behalf of all boards and bureaus would be an effective means for recovering fines from unlicensed persons. The Board would be very interested in participating in this type of program.*

**ISSUE #14:** REGULATION OF THE BUSINESS ENTITY REQUIREMENTS. *How can the Board monitor compliance, oversight, and enforcement of the requirement that business entities be properly structured under BPC § 6738 and BPC § 8729?*

**Background:** The Board has been researching ways in which it can ensure that civil, electrical, or mechanical engineering and land surveying businesses are in compliance with BPC §§ 6738 and 8729, which govern the manner in which these businesses must be structured. A business offering civil, electrical, or mechanical engineering or land surveying services must have an appropriately licensed individual as an owner, partner, or corporate officer in responsible charge of the respective engineering and land surveying services it offers. The business is currently required to provide the Board with an Organization Record (OR) form, which lists pertinent information about the business, including the identity of the licensees who are owners, partners, or corporate officers, as well as those individuals who are in responsible charge of services conducted by that business. There is no fee to file the form. The Board's current authority allows administrative or disciplinary action to be taken against a licensee for failing to comply with this requirement. In certain cases, particularly those that involve practice-related violations, it would be the individual licensee on the project that the Board would hold accountable. However, there are certain cases in which the authority to investigate a business as a



whole would be helpful, such as contractual or financial issues or cases where the business as an entity was involved in a civil settlement, judgment, or arbitration award.

Another serious, and ever-increasing, problem regarding unlicensed activity is unlicensed individuals operating businesses without having an appropriately licensed individual as an owner, partner, or officer in responsible charge of the professional services offered. Typically when a consumer engages with a business that provides professional services, the consumer interacts with several representatives of that business. Initial consultation to ascertain the consumer's needs, negotiation of the anticipated costs, and the actual scope of services are examples of the tasks where interaction between the consumer and the licensed individual normally does and should occur, due to importance associated with client communication and expectations. In situations where unlicensed individuals are operating businesses without the legally-required licensee, the consumer is typically not receiving the same standard of care and attention that is required to protect their interests, and many times they do not even realize that a licensee should be involved.

The Board has begun to research the feasibility of implementing a structured system of issuing licenses to businesses, which would allow the Board to manage oversight of businesses more effectively. For instance, there is currently no authority to pursue administrative action against businesses or revoke permission to practice. The licensing of businesses would provide the Board the opportunity to exercise more authority over companies not operating in compliance with the law.

In 2012, the Board directed staff to research how other states regulate engineering and land surveying businesses. Research indicated that of the 56 United States/Territories, 41 require some type of business license, commonly referred to as a Certificate of Authorization (COA). Many of the states require a COA on file; mandate fees for submitting the application for the COA and renewals with associated fees; and enforce violations of those requirements.

Additionally, the Board would also like to enact the same requirements for geological and geophysical companies as may be enacted for engineering and land surveying companies. Currently, there is no requirement for geological and geophysical companies to file an OR form.

***Staff Recommendation:*** *The Board should continue to research the feasibility of implementing the issuance of some type of license or authorization to businesses that offer and provide the professional services that the Board regulates. At such time, the Board should advise the Committees what additional statutory language would be necessary to increase the Board's authority to enforce compliance with licensing requirements and to provide for the addition of related fees to cover the costs of the increased workload.*

## **TECHNOLOGY ISSUES**

**ISSUE #15: BreEZe ROLLOUT.** *What is the status of BreEZe implementation by the Board?*

**Background:** The "BreEZe Project" was designed to provide the DCA boards, bureaus, and committees with a new enterprise-wide enforcement and licensing system. The updated BreEZe

system was engineered to replace the existing outdated legacy systems and multiple “work around” systems with an integrated solution based on updated technology.

According to the DCA, BreEZe is intended to provide applicant tracking, licensing, renewals, enforcement, monitoring, cashiering, and data management capabilities. In addition, BreEZe is web-enabled and designed to allow licensees to complete and submit applications, renewals, and the necessary fees through the internet when fully operational. The public also will be able to file complaints, access complaint status, and check licensee information, when the program is fully operational.

According to the original project plan, BreEZe was to be implemented in three releases. The budget change proposal that initially funded BreEZe indicated the first release was scheduled for FY 2012/13, and the final release was projected to be complete in FY 2013/14.

In October 2013, after a one-year implementation delay, the first ten regulatory entities were transitioned to the BreEZe system. Release Two is scheduled to go live in March 2016, three years past the initial planned release date. The BPELSG is one of the programs scheduled to be in Release Three; as such, it is still awaiting implementation of and transition to the BreEZe system. As a result of significant cost and implementation concerns, among others, the DCA reported in late 2014, that the current vendor contract is no longer in place, and those regulatory entities, which includes the BPELSG that were scheduled for Release Three, will not transition to the current BreEZe system.

A recent audit conducted by the California State Auditor titled *California Department of Consumer Affairs' BreEZe System*, reported that "the future implementation of BreEZe is uncertain at best and, as it relates to the regulatory entities originally included in the final release [Release Three], likely unfeasible." The auditor's report also noted that "Consumer Affairs is not responsible for funding the project costs; rather, the total costs of the project are funded by regulatory entities' special funds, and the amount each regulatory entity pays is based on the total number of licenses it processes in proportion to the total number of licenses that all regulatory entities process."

While the Board has been proactive in the program implementation, even though it is part of Release Three, many of the goals and objectives remaining from the Board's 2010-14 Strategic Plan were not able to be completed primarily due to the delay in transitioning to the BreEZe system and the inability to add new services to the legacy systems. The Board's ability to successfully achieve goals and objectives within the new 2015-18 Strategic Plan will be severely impacted by continuing delays with the implementation of BreEZe or its successor system. Any further delays in implementing BreEZe, or its successor, carry with it an increased risk of having to delay plans for the Board to improve the manner in which services are provided to stakeholders.

The Board currently depends upon the 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. The delays associated with implementing BreEZe, coupled with the DCA's lack of additional resources to simultaneously support the BreEZe and the legacy systems, has caused the Board to handle improvements in our processing practices using manual methods more often than is customary in today's world. The Board is constantly evaluating critical services and

moving forward with process improvements that, if designed correctly, will positively impact the timeframes for, among other things, processing applications and investigating complaints.

**Staff Recommendation:** *The BPELSG should update the Committees about the current status of its implementation of BreEZe. What have been the challenges to implementing this new system? Is the cost of BreEZe consistent with what BPELSG was told the project would cost?*

#### **ISSUE #16: WEBCASTING.** *Should the Board be required to webcast its meetings?*

**Background:** An important function of all the boards and bureaus under the DCA is to assure that the public has access to meetings. While the posting of the minutes memorializes the information from the meeting, the delay in posting minutes is not ideal compared to real-time access. Additionally, attendance at the meetings is not always feasible or practical for the public. The technology is readily available and is currently being used by several governmental entities and will undeniably improve public outreach, comment, and availability.

**Staff Recommendation:** *The Board should explain to the Committees why its meetings are not being webcast and what, if any, barriers exist to implementing a webcasting system?*

### **OTHER ISSUES**

#### **ISSUE #17: TECHNICAL, CLEAN-UP LEGISLATION.** *What BPC sections need non-substantive updates and what language is needed to standardize the Professional Engineers Act, the Land Surveyor's Act, and the Geologists & Geophysicists Act?*

**Background:** Since the Board assumed the responsibility for administering and enforcing the Geologist and Geophysicist Act [G&G Act], and its associated regulations, staff has been conducting a comprehensive review of the three Acts (Professional Engineers Act [PE Act], Professional Land Surveyors' Act [PLS Act], and G&G Act) under the Board's jurisdiction to determine what laws need to be changed to provide standardization across the Acts. In addition, staff continuously reviews the laws to determine if any non-substantive, clean-up changes need to be made. The following are the sections of the BPC that have been identified as needing amendments. The Board has specific language ready to provide to the Legislature to accomplish these changes.

- 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.
- Sections 6738 and 8729 – Amendments need to be made to these sections to correct minor grammatical errors to ensure clarity.
- Sections 6799 and 8805 – Amendments need to be made to standardize the language in these sections with the language in Section 7887 so that the amount of the fees to renew the professional engineers' and land surveyors' licensees are not tied to the licensure application

fee in effect at the time of renewal and are simply established in regulation with a not-to-exceed maximum listed in statute, as is the case for the renewal fees for professional geologists' and geophysicists' licensees. The application fee, which is established in regulation with a not-to-exceed maximum listed in statute, is based on the costs incurred by the Board solely for the review and processing of applications for licensure and certification. The renewal fees support all of the other operations of the Board, including enforcement. Tying the renewal fee to the application fee could result in the Board having to reduce the renewal fee to an amount that would no longer generate sufficient revenue to appropriately continue its operations at the level necessary to provide mission critical functions for the protection of the public health, safety, welfare, and property.

- Sections 7835 and 7835.1 – Amendments need to be made to these sections to require professional geologists and professional geophysicists to both sign and seal (or stamp) their professional geological and geophysical documents. Currently, the laws require that the documents be either signed or sealed. However, the laws relating to professional engineering and land surveying documents require both the signature and the seal of the licensee in responsible charge of the preparation of the documents. Requiring both the signature and the seal provides for better assurance to the public that the documents reflect the final professional opinion of the licensee, rather than a preliminary opinion.
- Section 7844 – Amendments need to be made to this section so that it will match Sections 6754 and 8745 so that the Board has the authority to make arrangements with public or private organizations for materials or services related to the examinations for geologists and geophysicists, just as the Board already has the authority to do for the examinations relating to professional engineering and land surveying.
- Section 8771 – This section was amended by SB 1467 (Committee on Business, Professions and Economic Development, Chapter 400, Statutes of 2014), which was the Senate BP&ED Committee's Omnibus Bill. Although the Board was supportive of the amendments, there were concerns that the actual language proposed did not clearly articulate the requirements and responsibilities for the preservation of land surveying monuments and could result in confusion which could limit the Board's ability to enforce the provisions of this section. However, there was not sufficient time remaining in the legislative session for the Board to fully develop alternate language. Such language has now been developed and is ready to be presented for inclusion in legislation during the 2015-2016 Legislative Session.

**Staff Recommendation:** *The Board should recommend cleanup amendments for the above cited Business & Professions Code sections to the Committees.*

**ISSUE #18: DEFINITION OF SIGNIFICANT STRUCTURES AND REQUIREMENT THAT LIMITS THEIR DESIGN TO STRUCTURAL ENGINEERS.** *Should "significant structures" language be added to BPC § 6735 that limits the design of these designated structures to licensed structural engineers?*

**Background:** The Board has been made aware a proposal by the Structural Engineers Association of California (SEAOC) to amend the Professional Engineers Act to require licensure as a structural engineer, rather than solely a civil engineer, for the design of "significant structures" in California. Some examples of "significant structures" include hazardous material facilities, fire and police stations,

water storage facilities, aviation towers and hangars, and other critical buildings and structures that would be necessary for emergency operations or could result in a large number of injuries or deaths in the event of major earthquake.

The origins of this proposal are rooted in the concept that current and future buildings and other structures in California, and with them, the people of California, are at risk for injury and death due to the probability of moderate and major earthquakes occurring in populated areas. The training of structural engineers may be better suited to address the unique design considerations when dealing in seismically-active regions.

Currently, California law requires that public schools and hospitals be designed by licensed structural engineers. There has been a significant trend nationwide, especially in seismically-active states, expanding the requirement that designated "significant structures" be under the auspices of structural engineers. Washington, Oregon, Utah, and Nevada have this requirement. Illinois and Hawaii also have this requirement with limited exceptions.

The proposed change in the licensing law entails determining which "significant structures" require design exclusively by licensed structural engineers. SEAOC is currently working with the Board on specific language defining these structures. SEAOC plans to propose that currently licensed civil engineers would continue to be able to design structures in this category and that this legislation would only apply prospectively to newly licensed civil engineers.

***Staff Recommendation:*** *The Board and the engineering profession should engage in further discussion with the Committees regarding the appropriateness of this change.*

**CONTINUED REGULATION OF THE PROFESSION BY THE  
CURRENT PROFESSION BY THE NAME OF BOARD**

**ISSUE #19:** CONTINUED REGULATION BY THE BOARD. *Should the licensing and regulation of engineers, land surveyors, and geologists be continued and 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.

**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.*