

**BACKGROUND PAPER FOR THE
BOARD FOR PROFESSIONAL ENGINEERS,
LAND SURVEYORS, AND GEOLOGISTS**
(Oversight Hearing, March 21, 2011, Senate Committee on
Business, Professions and Economic Development)

**IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS
REGARDING THE BOARD FOR PROFESSIONAL ENGINEERS,
LAND SURVEYORS, AND GEOLOGISTS**

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

Functions of the Board

BPELSG is responsible for regulating the practice of professional engineers and a number of branches of engineering, and also land surveyors, geologists and geophysicists. According to BPELSG, engineers, land surveyors, geologists, and geophysicists make professional judgments, which have major financial, health, safety, and other significant consequences on a daily basis. The highways, bridges, dams, waterways, buildings, and electrical and mechanical systems in buildings are all products of engineering. Consequences of poorly designed bridges or buildings include deaths and injuries as well as financial hardship to the property owner ultimately responsible for damages and reconstruction. Land surveyors help to define property boundaries. A miscalculation in a residential or commercial neighborhood could cause a property owner financial loss if the property is sold with an incorrect boundary. A structure could be located on another individual's property, with concomitant major financial losses and inability to convey title.

The complexity of engineering, land surveying, geology, and geophysics projects necessitates a very high degree of technical skill and knowledge. The vast majority of licensed engineers hold a college degree in engineering. Calculus, physics, material science, and computer programming skills are required; these are knowledge and skills not typically possessed by members of the general public. Land surveyors make decisions based upon interpretation of legal documents and the use of high-tech locating instrumentation, including satellites and computer programming. Geologists perform fault evaluations, ground water investigations, and slope stability analysis. Again, laypersons rarely possess these skills.

BPELSG is responsible for implementation and enforcement of the Professional Engineers Act, the Professional Land Surveyors' Act, and the Geologist and Geophysicist Act; the laws and regulations related to the education, examination, licensure, practice and discipline of engineers, land surveyors,

geologists and geophysicists. The current BPESG mission statement, as stated in its 2008-2010 Strategic Plan, is as follows:

The Mission of the Board for Professional Engineers and Land Surveyors is to safeguard the life, health, property, and welfare of the public by regulating the practices of professional engineering and land surveying. The Board accomplishes its Mission by:

- ***Licensing qualified individuals as professional engineers and land surveyors.***
- ***Anticipating changes in the engineering and land surveying professions to ensure that the laws and regulations are contemporary, relevant, and responsive.***
- ***Establishing regulations and promoting professional conduct.***
- ***Enforcing laws and regulations.***
- ***Providing information so that the public can make informed decisions regarding utilizing professional engineering and land surveying services.***

BPELSG currently treats the licensing and regulation of geologists and geophysicists as a separate function (Program) apart from that of the licensing and regulation of engineers and land surveyors. Legislation enacted during the 4th Extraordinary Session of 2009 (ABx4 20) eliminated the Board for Geologists and Geophysicists and transferred all of the duties, powers, purposes, responsibilities, and jurisdiction to regulate the practices of geology and geophysics to the Board for Professional Engineers and Land Surveyors (BPELS). The transfer of authority became effective October 23, 2009. The Geologist and Geophysicist Act (Business and Professions Code section 7800, et seq.) and the Rules and Regulations pertaining to the practices of geology and geophysics (Title 16, California Code of Regulations section 3000, et seq.) remained in effect. The title of BPELS was then changed to the “Board for Professional Engineers, Land Surveyors, and Geologists” pursuant to AB 1431 (Hill, Chapter 696, Statutes of 2010) and the composition of the Board was also increased from 13 to 15 by adding a licensed geologist or geophysicist and a public member to the Board. It was the decision of BPELSG to continue with a separate “Geologists and Geophysicists Program” to provide for the licensing and qualifications and enforce the laws and regulations as it pertains to geologists and geophysicists.

Licensing

The Professional Engineers Act (PE Act) has had some major changes over the years since the Board’s creation. The number of branches of engineering, which BPELSG regulates, has increased, and the status of some of the older branches has changed. Currently, professional engineers are licensed through three (3) “Practice Act” categories of civil, electrical, and mechanical engineering, and through nine (9) “Title Act” categories of agricultural, chemical, control system, fire protection, industrial, metallurgical, nuclear, petroleum, and traffic engineering. There are also two specialized “Title Authorities” for those already licensed as a civil engineer: structural and geotechnical (soils) engineer. In addition to the engineering branch titles already listed, titles also restricted to licensed engineers are “Consulting Engineer,” “Professional Engineer,” “Registered Engineer,” and “Licensed Engineer.”

There is only one category of licensure for land surveyors. They are regulated under the Professional Land Surveyors’ Act (PLS Act). Restricted titles for land surveyors are “licensed land surveyor,” “professional land surveyor,” “land surveyor,” “land survey engineer,” “survey engineer,” “geodetic

engineer,” “geomatics engineer,” “geometronic engineer,” “photogrammetrist,” and “photogrammetric surveyor,” or any combination thereof.

Certification, and the right to use the titles, is also provided to those designated as an “Engineer-In-Training” (EIT) or a “Land-Surveyor-In-Training” (LSIT). An EIT or LSIT will be certified after completing the qualifying experience and passing the required examination. The examinations, which test a person's knowledge of the fundamentals of engineering and surveying, are usually taken and passed prior to applying for licensure as a professional engineer or land surveyor.

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.

As earlier indicated, the Geologists and Geophysicists Program is responsible for the licensing of geologists and geophysicists, and also the certifications for the specialty geologist titles of “Certified Engineering Geologist (CEG)” and “Certified Hydrogeologist (CHG).” (To receive certification as a CEG or CHG, licensure as a Professional Geologist (PG) is required and must be maintained with the specialty geologist certification.)

As of July 1, 2010, there are approximately 84,000 licensed professional engineers, 4,100 land surveyors and 31,000 certified EITs and LSTs. There are also approximately 5,000 licensed geologists, 200 licensed geophysicists and 1050 certified engineering geologists.

Current Composition of the Board

There are fifteen (15) members of BPELSG which consists of a majority of public members. There are eight (8) public members, six (6) appointed by the Governor and one (1) by the Senate Rules Committee and one (1) by the Speaker of the Assembly. There are seven (7) professional member positions, all appointed by the Governor. The seven professional member positions represent the branches or disciplines of engineering, land surveying, geology and geophysics listed below. In addition, one professional member (either engineer or land surveyor) must be from a local public agency and another professional member (also either engineer or land surveyor) must be from a State agency.

- Civil Engineer
- Electrical Engineer
- Mechanical Engineer
- Structural Engineer
- Other Professional Engineer (representing a branch or discipline not already represented)
- Land Surveyor
- Geologist or Geophysicist

As of March 1, 2011, there were three vacancies. The vacancies are two of the Governor-appointed Public member positions and the Speaker of the Assembly-appointed Public member position. BPELSG as a whole generally meets at least four times throughout the year to address work completed by various committees of the Board and hear disciplinary cases. The following is a listing of the

current members of BPELSG with a brief biography of each member, their current status, appointment and term expiration dates and the appointing authority:

Name	Appointment Date	Term Expiration Date	Appointing Authority
<p>Mike S. Modugno, P.E., President Mr. Modugno has served as lead electrical engineer in the Los Angeles office of Gausman and Moore since 2007 and was self-employed for Mike Modugno Consulting in 2007. Previously, he worked as principal engineer for Dalan Engineering from 1981 to 2006 and as an electrical engineering assistant for the city of Los Angeles from 1972 to 1981. He is a member of the National Fire Protection Association.</p>	<p>June 29, 2010 (reappointment date)</p>	<p>June 30, 2013</p>	<p>Governor</p>
<p>William "Jerry" Silva, Vice President 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>	<p>January 2, 2011 (reappointment date)</p>	<p>June 30, 2014</p>	<p>Governor</p>
<p>Kim Blackseth Since 1988, Mr. Blackseth has owned Kim R. Blackseth Interests Incorporated, a disabled access consulting firm. Prior to that, he worked as senior project manager for Bank of America from 1984 to 1987 and procurement project manager for Bechtel Corporation from 1980 to 1984.</p>	<p>October 9, 2009 (reappointment date)</p>	<p>June 30, 2012</p>	<p>Governor</p>
<p>James W. Foley, P.E. Since 2003, Mr. Foley has served as sole-owner of James W. Foley P.E. Engineering & Construction Consulting. Prior to founding his own business, he served the City of San Jose as deputy director of public works and other various capacities from 1980 to 2003. He previously was a structural engineer and designer for the engineering firms Bechtel Incorporated from 1973 to 1980 and Degenkolb Associates from 1972 to 1973.</p>	<p>July 26, 2006 (reappointment date)</p>	<p>June 1, 2010</p>	<p>Governor</p>
<p>Carl H. Josephson, S. E. Mr. Josephson has served as president of Josephson-Werdowatz and Associates since 1988. He worked as senior associate engineer at Klagge-Stevens and Associates from 1985 to 1988, associate engineer at Nowak-Meulmester and Associates from 1981 to 1985, and project engineer in the structural engineering division at Hope Consulting Group from 1980 to 1981.</p>	<p>January 2, 2011</p>	<p>June 30, 2013</p>	<p>Governor</p>
<p>David Luzuriaga, P.E. Mr. Luzuriaga has served as president of Luzuriaga Taylor, Incorporated since 2000. Prior to that, he served as president of David Luzuriaga Associates Civil Engineers from 1998 to 2000. He worked as a project engineer for Brian Kangas Foulk from 1995 to 1998 and for Treadwell and Rollo, Incorporated from 1993 to 1995. He has been a licensed civil</p>	<p>July 24, 2008</p>	<p>June 30, 2011</p>	<p>Governor</p>

engineer in California since 1997. He received a Bachelor of Science degree in civil engineering from California Polytechnic State University, San Luis Obispo.			
Philip Quartararo Mr. Quartarao has served as the chief executive officer for Filament Entertainment since 2006. He 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.	January 2, 2011 (reappointment date)	June 30 2014	Governor
Ray Satorre Mr. Satorre, who was appointed to the Daly City Planning Commission in 2003, was named the “2006 Commissioner of the Year.” In addition, to serving on the Planning Commission, he has been President of Medical Link Providers II, Inc. and Health Professionals, Inc., both of Daly City. He has been a member of the Daly City Lions Club and President of the Serravista Homeowners Association.	July 11, 2007	June 30, 2011	Senate Rules Committee
Patrick J. Tami, P.L.S. Mr. Tami has served as senior associate and manager of the Surveying and Mapping Department in the Sacramento office of RBF Consulting since 1995.	May 30, 2008 (reappointment date)	June 30, 2011	Governor
Michael Trujillo Since 2006, Mr. Trujillo has served as a real estate officer for Coldwell Banker Realty in San Marino. Previously, he served as principal of Cornerstone Lending from 2002 to 2006, partner for Cornerstone Mortgage Software from 2003 to 2006 and was a loan officer for Prudential Mortgage from 1996 to 2002.	October 8, 2009 (reappointment date)	June 30, 2012	Governor
William "Paul" Wilburn, P.E. Mr. Wilburn has worked for the Department of General Services as a supervising mechanical engineer since 2006 and previously held the positions of senior mechanical engineer from 2000 to 2006 and associate mechanical engineer from 1999 to 2000. Prior to that, he worked for Peters Engineering as a project manager and mechanical engineer from 1996 to 1999. He was a designer for Ainsworth Associates from 1994 to 1996 and senior mechanical engineer for General Physics Corporation from 1989 to 1994.	October 8, 2009	June 30, 2012	Governor
Erik Zinn, P.G., C.E.G. Mr. Zinn has been the principal geologist for his company, Zinn Geology, since 2005, and held the same position from 1999 to 2001. He 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	January 2, 2011	June 30, 2014	Governor

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.			
Vacant – Public Member (Governor)			
Vacant – Public Member (Governor)			
Vacant – Public Member (Speaker)			

Budget

The total revenues (resources) anticipated by BPELSG from the Professional Engineers and Land Surveyors Fund for FY 2010/11 as of March 11, 2011 is \$9,375,000, and for FY 2011/12, \$10,410,000. The total expenditures anticipated for BPELSG for FY 2010/11, is \$9,466,000, and for FY 2011/2012, \$9,643,000. BPELSG anticipates it would have approximately 6.6 months in reserve for FY 2010/11, and 7.5 months in reserve for FY 2011/12. BPELSG spends approximately 52% of its budget on its examination program and 23% on its enforcement program. Total revenues have exceeded expenditures by an average of \$1.1 million since FY 2005/06, thus enabling BPELSG to maintain a consistent 6.5 months reserve. However, it is anticipated that for FY 2011/12, BPELSG will be required to provide a \$5 million loan to the General Fund out of its reserve fund which will provide for a \$1 million reserve fund, or a little less than 1 month reserve. A \$2 million loan was also made to the General Fund in FY 2008/09, and appears as if this loan is still unreimbursed. This means that BPELSG will be owed \$7 million from the General Fund sometime in the future. Like other agencies BPELSG is subject to the Governor hiring freeze, as well as a 5% staff reduction directive from the Department of Finance on October 26, 2010.

BPELSG keeps a separate accounting for the Geologist and Geophysicist Program under its Geology and Geophysics Fund. As of March 11, 2011, the total revenues (resources) anticipated by BPELSG for this Fund for FY 2010/11 is \$1,022,000, and for FY 2011/12, \$988,000. The total expenditures anticipated for BPELSG for this Fund for FY 2010/11, is \$810,000, and for FY 2011/2012, \$1,357,000. BPELSG anticipates it would have approximately 4.6 months in reserve for FY 2010/11, and 1.0 months in reserve for FY 2011/12. It is anticipated that there will be a shortfall of revenue to expenditures of about \$240,000 by FY 2012/13, and there will be no reserves available for unanticipated emergencies. It should also be noted that although staffing levels for the former Board of Geologists and Geophysicists was reduced from a staff of about 9 positions to 2 positions, there has been a decline in applicants and an increase in costs for examination which is the primary reason for the anticipated deficit for this Program in FY 2012/13. BPELSG Geologist and Geophysicist Program currently spends approximately 45% of its budget on its examination program and 33 on its enforcement program.

(For more detailed information regarding the responsibilities, operation and functions of BPELSG please refer to BPELSG’s “Sunset Review Report 2010.” This report is available on its website at www.pels.ca.gov.

PRIOR SUNSET REVIEWS: CHANGES AND IMPROVEMENTS

BPELSG was first reviewed by the Joint Legislative Sunset Review Committee (JLSRC) in 1996-1997. JLSRC and the Department of Consumer Affairs (DCA) recommended only extending the

existence of this Board for two more years because of major unresolved issues pertaining to the regulation of engineers. The Legislature passed SB 828 (Greene) (Chapter 828, Statutes of 1997), which extended the Board's sunset date to July 1, 2000 and instructed BPELSG to address the unresolved problems as identified by JLSRC and DCA prior to the next sunset review hearing. SB 1306 (Figueroa) (Chapter 656, Statutes of 1999) extended the sunset date of the Board for one more year to July 1, 2001, so that it could be reviewed in 1999-2000.

During BPELSG's review in 1999-2000, the Board was required to address a number of issues and report on its progress in resolving many of these problem areas identified by JLSRC. It was revealed that little progress had been made by BPELSG on some of the more important issues which the Board was directed to address pursuant to its first sunset review. Because of the concerns raised by both JLSRC and DCA, as well as those from the profession and the Center for Public Interest Law (CPIL), BPELSG was specifically directed to work more closely with JLSRC and DCA over the next three years to implement the following recommendations: (1) conduct an independent review of the Professional Engineers Act; (2) specifically define electrical and mechanical engineering in statute rather than in regulations; (3) seek statutory authority to adopt a code of professional conduct for the engineering profession; (4) codify all policy resolutions or other proposals relating to any aspect of its licensing authority as either regulations or statutes; (5) pursue legislation to adopt a written contract requirement for engineers; (6) pursue legislation to make "clean-up" amendments to the Professional Engineer's Licensing Act and the Professional Land Surveyors' Act; (7) eliminate state-only examinations for structural engineering and land surveying and provided instead the current national examinations; (8) implement a schedule for performing new occupational analyses for examinations provided by the Board to meet current legal requirements; (9) seek new fee increases to avoid a budget deficit; (10) seek legislation to change the composition of BPELSG so that it adequately represents engineers from the public sector. The Board's sunset date was extended for only three more years so that it could address and implement all of these recommendations.

In September 2003, the Board submitted its required sunset report to JLSRC. In this report, the Board described actions it had taken since the Board's last review in 1999-2000. BPELSG basically addressed almost all of the issues and recommendations made during their prior sunset review. The only outstanding issue was a study of the Professional Engineers Act. In 2000, JLSRC, the Board, and DCA decided that the best way to address this issue was to contract with an independent consultant to perform a review of all of the Title Act branches. Senate Bill 2030 (Chapter 1006, Statutes of 2000) mandated that an independent research group conduct an in-depth analysis of the Professional Engineers Act, by adding Section 6704.1 to the Business and Professions Code. The California State University Sacramento Institute for Social Research (ISR) was hired and oversight was provided by the Department; the report was completed in November 2002.

On January 7, 2004 the Board was reviewed once again, but the primary focus of the review concerned recommendations made pursuant to the ISR study completed in November 2002, and the work of a Task Force appointed by the Board to review this study. The ISR made several recommendations to Board regarding the continued licensure and regulation of engineers in individual disciplines of engineering, the reporting of legal actions against engineers, and the collection of information regarding the practice of engineering in California. It was decided by BPELSG, DCA and JLSRC to have this ISR study reviewed by a Task Force appointed by the Board consisting of two members of the Board, committee consultants of the Legislature, a representative from the Department, and other various members of the public and two engineers not affiliated with the Board. The Task Force began meeting in August of 2003 and held five meetings throughout the State to discuss the ISR

recommendations and receive public comment regarding those recommendations, or others being considered by the Task Force. It was anticipated that the recommendations of the Task Force would then be considered by BPELSG and that the Board would then make final recommendations to JLSRC.

At the January 7, 2004 hearing of JLSRC, the Board presented what were issues and recommendations being considered by the Task Force and indicated that it would make final recommendations to JLSRC by May 2004. The Task Force completed its work at the end of January 2004, and made recommendations to the Board. BPELSG, with only some minor changes and clarification of recommendations, approved the Task Force recommendations on May 6, 2004. JLSRC met on June 1, 2004 to review the recommendations presented by the Board, DCA and Joint Committee staff and adopted the Board's recommendations and in June 2005 placed them in a bill, SB 246. SB 246 contained language that established chemical, control systems, fire protection, nuclear, petroleum, and traffic engineering as "practice acts" and discontinued examinations for the title disciplines of agricultural, industrial, and metallurgical engineering (the examination for manufacturing engineering was discontinued in 2003 - SB 364). SB 246 was met with vigorous opposition and did not make it through the Legislature. BPELSG then worked with JLSRC to determine the most appropriate method of regulating the practice of engineering. After further study and numerous meetings, it was determined by the Legislature that it would be in the best interest of consumers and licensees to maintain the way the Board currently licenses engineers.

As indicated, the last sunset review in 2004 was primarily concerned with a study of the Professional Engineer's Act; however, there were still at least a couple of issues that were not addressed involving the authority of BPELSG to fingerprint applicants and the small amount of their budget devoted to its enforcement program. For those issues which were not addressed and which may still be of concern to the Committee, they are discussed more fully under "Current Sunset Review Issues."

On October 1, 2010, BPELSG submitted its required sunset report to the Committee. In this report, the Board described actions it has taken since its prior review to address the recommendations of JLSRC. The following are some of the more important programmatic and operational changes and enhancements which BPELSG has taken and other important policy decisions or regulatory changes it has adopted:

Several significant legislative changes have occurred since the last sunset review of BPELSG. They are as follows:

- SB 1549 (Figueroa) (Chapter 691, Statutes of 2004). Reporting of legal action requirements. This legislation created a program where all professional engineers and land surveyors are required to report criminal convictions; civil action judgments, settlements, and arbitration awards; and administrative actions to the Board within 90 days of their occurrence or from when the licensee has knowledge of the action. In addition to this requirement for licensees, liability insurers, California courts, and all self-insured local and state governmental agencies are required to report criminal convictions, civil judgments, settlements, and awards. The Board implemented its reporting of "Legal Actions Program" on January 1, 2008.
- SB 1476 (Figueroa) (Chapter 658, Statutes of 2006). This bill contained language that allows the Board to authorize a selected organization to receive payments directly from applicants for its examination fees. This bill also gave the Board the authority to contract with an outside vendor for the direct collection of national examination fees.

- SB 819 (Negrete McLeod) (Senate Committee on Business, Professions and Economic Development omnibus bill) (Chapter 308, Statutes of 2009). This bill amended an archaic provision of the law for professional engineers and land surveyors that required the Board to approve the examination cut scores before the examination results could be mailed out to the candidates. This process resulted in a delay of up to 8 weeks (until the Board could approve the cut scores at its next scheduled Board meeting) before the results could then be released. This change will now allow/enable candidates to be licensed in a more timely manner.
- ABX4 20 (4th Extraordinary Session of 2009) eliminated the Board for Geologists and Geophysicists and transferred all of the duties, powers, purposes, responsibilities, and jurisdiction to regulate the practices of geology and geophysicists to the Board for Professional Engineers and Land Surveyors. The transfer of authority became effective October 23, 2009.

Since the last sunset review, BPELSG has made a number of regulatory changes to the Board Rules (Title 16, California Code of Regulations, Section 400, et seq.). The major changes are as follows:

- Amended Sections 472.1 and 473.1 to increase the maximum amount of the administrative fine which may be ordered from \$2,500 to \$5,000 to conform with statutory changes. (Effective July 9, 2004)
- Amended Sections 404.1 and 404.2 to clarify the responsible charge criteria and definition for professional engineers and professional land surveyors. (Effective September 28, 2005)
- Amended Section 418 to clarify the criteria for rehabilitation that the Board must consider when determining whether to deny issuance of a license and when determining whether to reinstate a revoked license. (Effective August 25, 2005)
- Amended Section 473 to clarify that review by a licensee is required prior to the issuance of a citation in cases involving negligence and/or incompetence. (Effective September 24, 2005.)

The Board conducts a biennial strategic planning session to review the accomplishments of the Board during the previous two years and to revise the plan to reflect future goals and objectives. BPELSG provided a copy to the Committee of their current strategic plan for 2008-2010.

In October of 2004, the Board began administering the National Structural II examination in addition to the Board's State Specific Structural Engineering Seismic examination. In 2005, the Board began administering the National Structural Engineering examination and the National Land Surveyor examination twice per year, rather than once per year. The Board determined that administering the examinations twice per year would allow structural engineers and land surveyors to become licensed in a more expeditious manner, thus affording consumers with more choices when hiring a structural engineer or land surveyor.

In April of 2009, after thorough review and input from its Structural Engineering Technical Advisory Committee, the Board adopted the use of the newly-developed 16-hour National Council of Examiners for Engineering and Surveying (NCEES) Structural Engineering examination for licensing structural engineers in California. This examination will replace the 8-hour National Structural II examination and the 8-hour State Specific Structural Engineering Seismic examination that are currently administered by the Board. Administration of this new national examination will

begin in April 2011. The use of a national examination will facilitate licensure in California of structural engineers who are licensed in other states. In order to comply with the requirements as currently stated in Business and Professions Code Section 6763.1 that all structural engineer applicants be tested on their “knowledge of state laws, rules, and regulations, and of seismicity and structural engineering unique to the practice in this state,” the Board has begun working with subject matter experts to develop a multiple choice, examination to be administered starting in October 2011 and continuing once a year thereafter which will also need to be passed in order to obtain licensure in California as a structural engineer.

CURRENT SUNSET REVIEW ISSUES

The following are unresolved issues pertaining to BPELSG, or those which were not previously addressed by BPELSG, and other areas of concern for the Committee 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.

BOARD ADMINISTRATION ISSUE

ISSUE #1: (SEPARATE GEOLOGIST AND GEOPHYSICIST PROGRAM NECESSARY UNDER BPELSG?) Should BPELSG continue to keep the licensing and regulation of geologists and geophysicists as a separate Program to that for engineers and land surveyors?

Background: A previously indicated, legislation enacted during the 4th Extraordinary Session of 2009 (ABx4 20) eliminated the Board for Geologists and Geophysicists and transferred all of the duties, powers, purposes, responsibilities, and jurisdiction to regulate the practices of geology and geophysics to the Board for Professional Engineers and Land Surveyors. The transfer of authority became effective October 23, 2009. The Geologists and Geophysicist Act (Business and Professions Code section 7800, et seq.) and the Rules and Regulations pertaining to the practices of geology and geophysics (Title 16, California Code of Regulations section 3000, et seq.) remain in effect. The practices of geology and geophysics are still regulated. Individuals must still obtain licensure and practice in accordance with the laws and professional standards relating to geology and geophysics. The only change is that BPELSG is now enforcing those laws.

When the Board for Geologists and Geophysicists was eliminated, BPELSG established the Geologist and Geophysicists Program (Program). The Geologist and Geophysicists Program is a parallel program to that for engineers and land surveyors. The budget, staff, and online systems have been maintained as separate programs, and all fees are directed to the appropriate accounts. The former Board for Geologists and Geophysicists Fund has not been comingled with the Engineers and Land Surveyors Fund. There is some indication that the reason for keeping the merger of the Geologist and Geophysicist Board with that of BPELSG as a separate Program was that there may be some action in the future to possibly undo what the Governor and Legislature did back in 2009 (based on a lawsuit that had been filed by an association of professional geologists following the elimination of the Board for Geologists and Geophysicists). This appears doubtful. It was also looked upon as a “cost savings” approach by the former Governor when the staffing of the Geologists and Geophysicists Board was

reduced. Bringing the separate program of geologists and geophysicists under BPELSG may at least help address some of the resource and staffing issues which both this separate Program has as well as that of BPELSG and improve the overall effectiveness of the functions of this Program. (This will be further discussed in this Paper.)

Staff Recommendation: *BPELSG should explain to the Committee why it believes the licensing and regulation of geologists and geophysicists should be maintained as a Program separate and apart from both the licensing and enforcement programs of BPELSG. Unless there is adequate justification for keeping the licensing and enforcement of geologists and geophysicists as a separate Program, this Program should be merged with that of the engineers and land surveyors and the separate Geologists and Geophysicists Fund should be eliminated and all moneys deposited into the Professional Engineer's and Land Surveyor's Fund .*

EXAMINATION AND LICENSING ISSUES

ISSUE #2: (ELIMINATE REQUIREMENT FOR CALIFORNIA SPECIFIC STRUCTURAL ENGINEERING EXAMINATION?) **Should the statutory requirement for a structural engineering examination be eliminated now that BPELSG has determined that the national structural engineering examination meets all the requirements for licensure?**

Background: According to BPELSG, prior to 2004, a civil engineer applying to use the title "structural engineer" was required to pass the 16-hour California Structural examination. At that time, NCEES also provided a national examination for structural engineers, but it was not used for licensing in California. The prior JLSRC Committee questioned why the national examination, which would provide for better comity for out-of-state structural engineers, could not be used. Based on discussions during the prior Sunset Review process, it was determined that the Board should use the national examination in conjunction with a state specific examination. The Board transitioned to using the NCEES Structural II national examination in conjunction with an 8-hour state-specific examination in 2004. Currently, the Board is legislatively mandated to administer a national structural engineering examination if available, and a supplemental California specific examination. Currently the Board requires applicants to pass both NCEES SE II examination and the state-specific structural examination.

A few years ago, the Board began working with NCEES to develop a new 16-hour national structural examination that would incorporate the material examined in the California 8-hour structural examination and the material covered in NCEES Structural II 8-hour examination. This new examination was developed after NCEES conducted a national occupational analysis and will be the only NCEES structural examination available beginning in 2011. The NCEES released its last NCEES SE II examination for administration in October 2010.

Beginning in April 2011, the only NCEES structural exam will now be the new 16-hour NCEES Structural Examination. The Board's Structural Engineers Technical Advisory Committee (SE TAC) recommended to the Board in April of 2009 that the new 16-hour NCEES Structural examination be administered in California for structural licensing beginning in April 2011, and that the legislative requirement for a California specific structural examination be eliminated as it will be redundant. The SE TAC reviewed the test plans for both the new 16-hour NCEES Structural examination and the current California specific structural examination and determined that the new NCEES examination

covers all the material currently included on the California specific examination. Therefore, the Board adopted the requirement that applicants for licensure as a structural engineer be required to take and pass only the new 16-hour NCEES Structural examination. This would greatly facilitate comity licensing as all other states will be using this new examination as the only requirement for structural licensing.

In 2009, BPELSG sponsored legislation to eliminate the statutory language requiring administration of the California specific structural examination since it will no longer be necessary; however, even though the language/change was supported by the Structural Engineers Association of California objections to the changes by two other professional groups caused the language to be pulled from the bill. The Board is currently in the process of determining how to meet the existing statutory requirements without requiring up to 24 hours of examination (8 hours of it being redundant).

In order to comply with the requirements as currently stated in Business and Professions Code Section 6763.1 that all structural engineer applicants be tested on their “knowledge of state laws, rules, and regulations, and of seismicity and structural engineering unique to the practice in this state,” the Board has begun working with subject matter experts to develop a multiple choice, examination which will also need to be passed in order to obtain licensure in California as a structural engineer.

Staff Recommendation: *The requirements for a California specific examination for structural engineering seems unnecessary since the 16-hour NCEES Structural Examination has been considered as testing for all the material previously provided in the state specific examination. The requirement for a state specific structural engineering examination should be eliminated rather than BPELSG trying to create a “take-home” multiple choice examination to meet the current statutory requirement.*

ISSUE #3: (ELIMINATE POTENTIAL COSTS AND LIABILITY TO BPELSG FOR LOSS OR SUBVERSION OF NCEES EXAMINATIONS.) Should BPELSG relinquish its authority over the administration of NCEES examinations and the collection of fees from those applicants requesting to take a particular examination provided by NCEES?

Background: BPELSG currently contracts with NCEES to develop, provide, and grade 16 of the 21 examinations the Board administers to test for licensure in California. Effective in FY 2007/08, NCEES revised its policies to hold individual boards liable for national examination loss or subversion. To eliminate this liability for the average 17,000 NCEES examinations the Board uses and administers each fiscal year for testing, the Board voted to contract with NCEES to administer the national examinations and to receive the fees directly from applicants. The Board currently collects all fees and pays NCEES for examination books and grading. NCEES assesses a value to each examination question ranging from \$2,100 to \$41,000 dependent upon the examination type. For example, the FY 2007/08 NCEES Structural II Examination is composed of 4 questions with a liability of \$164,000 at \$41,000 per question. Business and Professions Code (B&P) Sections 6754 and 8740 were amended in 2006 to allow the Board to make arrangements with a public or private organization, such as NCEES, to conduct its examinations, provide examination materials, and receive payment of the required examination fees directly from applicants. The Board indicated that it is currently reviewing its statutes and regulations to appropriately split the fees between application related fees and examination related fees. This would allow the examination related fees to be paid directly to the appropriate vendors. This would appear to remove any liability on the part of BPELSG for any examination loss or subversion. It is interesting to note that in 2009/10 BPELSG opened at least 167

complaints of examination subversion this, however, has decreased from a high of 271 complaints opened four years ago. If BPELSG is ultimately held responsible by NCEES for examination subversion this could be a very costly outcome for the Board.

Staff Recommendation: *BPELSG should immediately move forward with any statutory or regulatory changes that are necessary to assure that the NCEES is completely responsible for administering their examinations and in receiving payment and fees directly from applicants for the 16 examinations provided by NCEES.*

ISSUE #4: (IS THE LICENSING OF GEOPHYSICISTS STILL NECESSARY IN THE STATE OF CALIFORNIA?) Should the licensing of Geophysicists continue in this State and should BPELSG still have to provide a state specific Professional Geophysicist Examination to potential applicants for licensure?

Background: According to BPELSG, in the short time that the Board has been responsible for the administration and enforcement of the laws and regulations of the Geologist and Geophysicist Act, they have noted several concerns regarding the development and administration of the Professional Geophysicist examination. Development of the most current examination (which was administered in October 2010) cost approximately \$49,000. The number of applicants scheduled for this exam administration was two. This resulted in the examination costing the Geologist and Geophysicist Program (Program) in excess of \$25,000 per examinee. This amount includes the cost of the examination development, the use of subject matter experts, and administrative costs.

Another issue facing the development of the Professional Geophysicist examination is the recruitment of subject matter experts needed to assist in developing and constructing the examination. While there appears to be little interest in applying to take the Professional Geophysicist exam, there also appears to be little interest in licensees wanting to help develop the examination. The amount of time and personnel needed to recruit subject matter experts, conduct workshops to develop the examination, and prepare for administration of the examination for two examinees results in a significant financial burden to the Program. However, because Business and Professions Code Section 7841.1(d) requires that a written examination be administered for the Professional Geophysicist license, the Board is required to develop and administer this examination.

State specific examinations are generally developed in coordination with the Department of Consumer Affairs' Office of Professional Examination Services (OPES). Subject Matter Experts are necessary to assist in developing the examinations so that they are constructed as a legally defensible and professionally valid examination. OPES typically requests that eight Subject Matters Experts attend each of the development workshops. Eight to ten workshops are usually conducted to develop one examination. Four examinations are developed and constructed with the assistance of OPES and the Subject Matter Experts. It appears as if BPELSG will have great difficulty in obtaining the necessary Subject Matter Experts in the future.

BPELSG has had discussions with several licensed geophysicists about the declining applicant population and the difficulties in recruiting licensees to assist in the development of the Professional Geophysicist examination. It appears from the Board's discussions that the declining applicant population may be the result of a lack of need for licensure in the job field. Very few employers, if any, require licensure for employment. Geophysicists are not typically hired by consumers as often as they are hired by governmental agencies to utilize their services. The job duties of a geophysicist

typically involve the research and location of gas and oil on property. The practice of geophysics also involves extensive use of computer platforms and software programs. California remains one of only two states that license Professional Geophysicists (Texas is the other state). Those that become licensed may be doing so as an addition to their resume. To BPELS and the Program, however, the licensing of Professional Geophysicists within its current applicants-to-cost ratio has become a significant financial burden.

Staff Recommendation: *BPELSG along with the Program should conduct one public hearing to receive input from the affected profession and other interested parties on eliminating the requirement for licensing of geophysicists in California and report to the Legislature with its recommendation by June, 2011.*

ENFORCEMENT ISSUES

ISSUE #5: (IT APPEARS AS IF DISCIPLINARY CASE MANAGEMENT TIMEFRAME IS TAKING ON AVERAGE TWO YEARS OR MORE.) Will BPELSG be able to meet DCA'S goal of reducing the average disciplinary case timeframe from two years or more to 12-18 months?

Background: The average number of years it takes from receipt of a complaint to the final disposition of a case, where disciplinary action is taken, is unclear as it pertains to BPELSG. It appears as if at least 34% of cases took more than one year to investigate in 2009/10, especially if they are sent to DCA's Division of Investigation (DOI), but it is not clear how long it took from the time of completing the investigation to the actual disciplinary order or settlement by the Attorney General's Office (AG). The only information provided by BPELSG showed about half of the cases taking from 6 months to one year, but DCA provided enforcement data which showed three years or more for particular cases referred to the AG.

As has been presented for other boards under DCA, BPELSG is not alone in its problems related to its lengthy disciplinary process. As pointed out by the BPELSG, by the end of FY 2005/06, there were 648 complaint investigation cases pending with 50% over one year old. In FY 2006/07, the Enforcement Unit was authorized to add two full-time analysts and one full-time clerical position to deal with the backlog of cases. The Enforcement Unit reduced, although **did** not completely eliminate, its backlog of complaint investigation cases. At the end of FY 2009/10, there were 298 complaint investigation cases pending with 34% over one year old. (It should be noted that the Board opened 456 complaints in 2009/10, with about 179 from the public, and referred to the AG 88 cases for disciplinary action. There were 11 revocations or surrender of a license and 11 placed on probation in 2009/10.) The Board indicates that the Enforcement Unit is continuing to focus on reducing the backlog of aged complaint-investigation cases. One of the reasons given by the Board that investigations may move slowly is that there is generally not an immediate threat to the public health, safety, and welfare with engineering and land surveying cases; therefore, the DOI does not give these cases the highest priority. As to the AG's Office, the Board indicates that it does not have any major concerns with the handling of its cases by the AG; the cases are either processed in a timely manner or there are valid reasons for the delays.

Complaints opened by BPELSG will possibly continue to increase with the addition of its "Reporting of Legal Actions Program." With additional information regarding criminal convictions, court judgments or settlements regarding licensees and a self-reporting requirement for any crimes committed by the licensee, the Board will have to fully investigate all suspected cases. If BPELSG is also granted authority to fingerprint licensee applicants and upon renewal of a license, similar to other boards, this will also cause the Board to investigate any criminal information it receives regarding an applicant or current licensee of the Board.

It should be noted that through a recent legal opinion of DCA, any expert consultants of boards must now be under contract with the board rather than using them on a temporary as needed basis, thus costing more time and money to the respective boards.

Additionally, the Board anticipates that it will run out of money from the PELS Fund to cover its Attorney General (AG) expenses in FY 2010-11. The Board initially requested a current year deficiency to cover the anticipated overexpenditure of \$150,000; however, this request was denied based on the belief that the Board will be able to absorb this overexpenditure within its existing budget. The BPELSG also anticipates that it will overexpend the AG expenses in FY 2011-12 by the amount of \$248,000. The Board submitted a request for a budget augmentation through the Spring Finance Letter process. However, the Department of Finance (DOF) denied this request, indicating that there was not a "critical and compelling justification" for the augmentation. DOF recommended that the Board absorb the anticipated overexpenditure within its FY 2011-12 budget. The BPELSG has indicated that it is concerned that it will not be able to absorb the overexpenditures for two years in a row without having to cease work on all cases which would be able to be submitted to the AG's Office for administrative disciplinary action against licensed engineers and land surveyors. The BPELSG has reported that it has experienced an increase in the AG's caseload and associated billings in the last three years. The AG workload increased from 15 cases in FY 2007-08 to 94 cases in FY 2009-10. The AG's monthly invoice increased from \$12,128 to \$43,628 during that same period, for a difference of \$31,500 monthly. In a January 14, 2011, letter from the Attorney General's office the BPELSG was notified that CY 2010-11 invoices are \$63,000 averaged monthly, well above previous years and well beyond the Board's budget appropriation. DCA Policy has deemed enforcement a necessary policy and the Board has put its efforts into increased enforcement. The AG budget shortfall is unanticipated and will create a situation that the BPELSG considers as an imminent threat to the health, safety, welfare, and property of the public because negligent professional engineers and land surveyors would be allowed to continue practicing. The AG's Office is currently working on 110 of the Board's enforcement cases, and the Board has 45 additional cases ready for submittal. The Board projects the number of total FY AG cases submitted to the AG to remain consistent or increase in FY 2011-12 and ongoing.

The Geologist and Geophysicist Program (Program) appears to be struggling even more than BPELSG with regard to the handling of complaints and pursuing disciplinary action. Since BPELSG has not taken over this responsibility, the Program has basically one staff person who handles approximately 100 complaint cases per year and investigates these cases as needed. Additionally, the enforcement analyst for this Program is responsible for all enforcement-related legislative and regulatory proposals. According to BPELSG, "[t]he lack of sufficient staffing has not only aged the pending cases but has cause delays in the processing and investigation of new complaint cases that continue to be filed. Current budgetary restraints prohibit the hiring of additional staff." (It should be noted that in 2009/10, only 11 complaints were filed by the public. Other complaints may come from other licensees where they suspect unlicensed practice, or from local or state agencies for substandard reports submitted by a

geologist. The former Geologist and Geophysicist Board used to open about 50 complaints on its own for violations of law or of the practice act. Since the Board was merged it only opened 4 internal complaints in 2009/10.)

Through a Spring Finance Letter pending the passing of the FY 2010/2011 budget, one (1) Associate Governmental Program Analyst (AGPA) was transferred from BPELSG fund, specifically from the BPELSG Enforcement Unit, to the Program.

Staff Recommendation: *It does not appear as if BPELSG or the Geologist and Geophysicist Program will be able to meet its goal of reducing the timeframe for the handling of its disciplinary cases. Lack of adequate staffing, reliance on DOI and delays at the AG's Office in prosecuting cases, all contribute to the possible average of two years or more to complete a disciplinary action. Having the BPELSG assume full responsibility for the enforcement of the Geologist and Geophysicists Act may help to alleviate some of the delays at least for the Program, but adequate staffing and funding for the Board is still an issue which needs to be addressed. Committee should consider communicating with the Senate and Assembly Budget Committees, with the Department of Finance and with the Governor's Office on the unique circumstances which exist regarding the funding and staffing of BPELSG, especially in light of the fact that this Board took on the responsibility for the functions and operation of the prior Geologist and Geophysicist Board.*

ISSUE #6: (PROVIDE AUTHORITY TO BPELSG TO FINGERPRINT LICENSEES?)

Should 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 from the Department of Justice?

Background: BPELSG argues that it needs to be able to obtain criminal history information for its applicants and licensees. In order to do this, the Board needs to have legislative authority to collect fingerprints from its applicants and licensees and to obtain both state and federal criminal records on its applicants and licensees.

As part of its 2003 Sunset Review, the Board recommended that it be given the authority to collect fingerprints from and obtain criminal history information about its applicants and licensees (referred to as a "fingerprint program"). The Legislature supported the recommendation and included language to enact a fingerprint program in the Board's Sunset legislation (SB 1547). Even one of the major professional associations (CELSOC, now ACEC-CA) supported the fingerprint program proposal. However, the Department of Finance opposed the proposal due to the costs associated with its implementation and the anticipated need to increase license renewal fees to cover the costs. Therefore, the fingerprint program proposal was dropped in 2004.

In 2009, a few boards were in the news because of failures in the operation of their fingerprint programs, which allowed individuals with numerous convictions to obtain or maintain licensure to the detriment and harm of consumers. DCA worked with those boards to ensure that they have appropriate fingerprint programs and the ability to operate the programs effectively and appropriately. DCA also indicated a willingness to assist other boards in ensuring that they also had appropriate fingerprint authority. BPELSG again attempted to seek legislation to obtain such authority; however, it was not successful due to opposition from professional associations and concerns with the added costs and workload to DOJ if all boards and bureaus under DCA expanded or implemented such programs at the same time.

BPELSG indicates that its applications for in-training certificates and for professional licensure require all applicants to state whether or not they have been convicted of a crime because current law allows the Board to deny certification or licensure if the applicant has been convicted of a crime substantially related to the qualifications, functions, and duties of the professional practice. However, the Board does not have the legal authority to obtain criminal history information to verify if the information provided on the applications is correct. Since the Board has no legal authority to independently verify the truthfulness of an applicant's response, the Board must rely solely on the information provided by the applicant on the applications. This current process does not adequately protect consumers.

Additionally, the Board can take disciplinary action against a licensee if the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the professional practice. However, the Board is not able to proactively monitor whether its licensees have been convicted of crimes because it is not able to obtain criminal history information directly. The Board must wait for someone to submit a complaint and provide the conviction information. Again, this current process does not adequately protect consumers.

Furthermore, in January 2008, the Board's "Reporting of Legal Actions Program" became operative. This program requires licensees to report criminal convictions to the Board. However, without a fingerprint program, the Board has no way to independently verify whether licensees are accurately and appropriately reporting convictions as required.

When the Board discussed seeking the legislative authority to obtain criminal history information for its applicants and licensees, some of the Board's licensees questioned why that would be necessary and was there really a problem that would justify doing this. Professional Engineers and Professional Land Surveyors have the right to go onto a person's property without the person's consent in order to conduct professional engineering and professional land surveying. Even without that allowance, there are many times when professional engineers and professional land surveyors are requested by consumers to go into the consumers' homes or businesses or go onto the consumers' properties in order to perform professional engineering and professional land surveying services. Without the ability to obtain criminal history information on its applicants and licensees, the Board is not able to fully meet its legislative mandate to safeguard the life, health, property, and public welfare of California's consumers of professional engineering and land surveying services.

BPELSG provided several examples of situations in which the Board has been forced into a reactive, rather than proactive, response due to its inability to directly obtain criminal history information. It also indicated circumstances under which its staff was made aware, through information submitted to the Enforcement Unit by outside sources, of several licensees who have been convicted of crimes resulting from sexually-based offenses and provided examples of these cases.

BPELSG firmly believes that it is not fully meeting its mandate to protect the health, safety, welfare, and property of the consumers of California because of its inability to obtain criminal history information on its licensees and applicants. The Board argues that if it were given the legislative authority to obtain criminal history information, the Board would collect fingerprints from all of its applicants and licensees and then submit them to the DOJ, similar to the many other boards under DCA. Once the Board was listed in the system as an agency to receive criminal history information, such information would automatically be sent to the Board whenever the information was entered into the system. The Board would no longer have to rely upon the truthfulness of its applicants to verify the information provided on applications nor would the Board have to wait for someone to submit a

complaint regarding the conviction of a licensee. The Board's staff would review all of the criminal information and investigate any where the crime appeared to be substantially related to the qualifications, functions, and duties of the profession. If the evidence showed that the crime was substantially related, then the Board would use that to deny certification or licensure to the applicant or would pursue disciplinary action against the licensee.

Staff Recommendation: *Business and Professions Code Section 144 should be amended to specifically list BPELSG as one of the boards, bureaus, divisions, and programs under DCA that may obtain both state and federal criminal history information. In addition, new sections would need to be added to the Professional Engineers, Land Surveyors and Geologist and Geophysicist Acts to give the Board the authority to collect fingerprints from its applicants and licensees and to obtain the criminal history information of the applicants and licensees. These new sections would also describe the requirements and responsibilities of the applicants and licensees and of the DOJ in processing fingerprints.*

BUDGETARY ISSUES

ISSUE #7: (PROVIDE FOR ONE STAFF GEOLOGIST TO BPELSG?) Should BPELSG receive at least one staff Geologist to assist the Board in carrying out its responsibilities in operating the Geologist and Geophysicist licensing and enforcement programs?

Background: The Geologist and Geophysicist Program, as earlier explained, has dealt with delays in its enforcement investigations and in responding to consumer questions and comments. The functions and duties of the former Board for Geologists and Geophysicists were performed by a staff of five (5) analyst and clerical positions, two (2) seasonal workers, a Senior Engineering Geologist, and an Executive Officer (who was a licensed Professional Geologist). When the duties and responsibilities were transferred to BPELSG, only two staff analyst positions were transferred. The Program does not have a staff geologist (while the former Board had two) and must utilize outside expert consultants who are licensed professionals in the field to review applications and at times assist with consumer questions and complaints. (It should be noted that through a recent legal opinion of DCA any expert consultants of boards must now be under contract with the board rather than using them on a temporary as needed basis, thus costing more time and money to the respective boards.) Through a Spring Finance Letter, two additional staff positions were given to the Program, pending the passing of the FY 2010/2011 budget. Furthermore, one (1) Associate Governmental Program Analyst (AGPA) was transferred from BPELSG fund. However, as the Board points out, the Program remains void of a staff Geologist, and the Program continues to experience a staff shortage that may continue to delay the services the Program provides to the public and to its licensees.

In November 2009, the Board held town hall meetings in both Northern and Southern California. The purpose of these meetings was to give a forum for the geologist and geophysicist communities to voice their concerns about the abolishment of the Board for Geologists and Geophysicists. One of the concerns that was aired frequently at both meetings was that there was no geologist representation on the then "Board for Professional Engineers and Land Surveyors," and that there was no staff geologist retained to assist the Board in a professional capacity with the day-to-day geology issues. As earlier indicated, AB 1431 was introduced in 2010 to re-name the Board to the Board for Professional Engineers, Land Surveyors, and Geologists and add one Professional Geologist member and one

public member to the Board. In order to add a geologist member to the staff, the Board submitted a BCP for a half-time Professional Geologist. This request was denied by SCSA. The Program must currently rely on the use of subject matter experts who are retained on a temporary basis to provide expertise on geology issues. Therefore, as the Board states, "it is essential that the Program be given funding and authority for a Staff Geologist."

Staff Recommendation: *The Committee should express to the Senate and Assembly Budget Committees, the Department of Finance and the Governor's Office the need to include at least one staff Geologist on BPELSG to assist in carrying out the responsibilities of the Board in operating the licensing and enforcement functions for geologists and geophysicists and provide the Board with the expertise it needs in protecting consumers.*

ISSUE #8: (GEOLOGIST AND GEOPHYSICIST FUND WILL HAVE SHORTFALL BY FY 20102/13.) BPELSG may be required to seek an increase in fees for geologists and geophysicists to cover the costs of the Geologists and Geophysicist Program.

Background: BPELSG anticipates it will have approximately 4.6 months in reserve for FY 2010/11, and 1.0 months in reserve for FY 2011/12. It is anticipated that there will be a shortfall of revenue to expenditures of about \$240,000 by FY 2012/13, and there will be no reserves available for unanticipated emergencies. It should also be noted that although staffing levels for the former Board of Geologists and Geophysicists was reduced from a staff of about 9 positions to 2 positions, there has been a significant decline in application revenue and an increase in costs for examinations which is the primary reason for the anticipated deficit for this Program in FY 2012/13. The former Geologist and Geophysicist Board's last fee increase was in January 1, 2008 where the renewal fee was raised from \$200 to \$270. The statutory limit for the renewal fee is \$400. The fee for an initial license is set at the maximum of \$270, but the statutory limit is also \$400.

Staff Recommendation: *BPELSG should present to this Committee the "Committee Worksheet" for a fee increase and indicate whether a future fee increase pursuant to regulations should be pursued. BPELSG should determine whether both the initial licensing fee as well as the renewal fee should be increased to assure that there will be no future shortfall in the overall costs for the licensing and regulation of geologists and geophysicists.*

ISSUE #9: (INCREASE FEES FOR GEOLOGISTS EXAMINATIONS?) Should the examination fees for the geologist's examinations be increased to match the actual costs to the Geologist and Geophysicist Program?

Background: BPELSG indicates that the Geologist and Geophysicist Program can increase its revenue by increasing the exam fee for the Professional Geologist exam. Business and Professions Code Section 7887(h) states:

Each applicant for registration as a geologist shall pay an examination fee fixed by the board at an amount equal to the actual cost to the board to administer the examination described in subdivision (d) of Section 7841 that shall not exceed four hundred fifty dollars (\$450).

Currently, the national examinations administered by the Program consist of a Practice of Geology exam and a Fundamentals of Geology exam. These examinations are prepared by and purchased from

the National Association of State Board of Geology (ASBOG). The two national exams and a California Specific Exam (CSE) exam must be taken and passed to achieve licensure as a Professional Geologist. The Practice of Geology exam costs the Program \$250, and the Fundamentals of Geology exam costs \$150. However, applicants are only being charged \$150 each for the exams. In order to recover costs, applicants should be charged \$250 for the Practice of Geology exam.

Furthermore, pursuant to Title 16, Division 29, Section 3005 of the California Code of Regulations, applicants are only charged one fee of \$300 if they request to take the Practice of Geology exam, the Fundamentals of Geology exam, and the California Specific Exam (which is also required for licensure as a Professional Geologist) at the same examination administration. This results in a loss of \$200 per applicant.

If each of the examinations were charged separately, the cost would be as follows:

Practice of Geology examination (PG)	\$250
Fundamentals of Geology examination (FG)	\$150
California Specific Exam (CSE)	\$100
Professional Geophysicist examination (PGp)	\$100
Certified Engineering Geologist examination (CEG)	\$100
Certified Hydrogeologist examination (CHG)	\$100

In the past, applicants were not charged for the California Specific Exam if they were also taking the Practice of Geology and Fundamentals of Geology exam at the same examination administration. If an applicant was to be charged for each of the examination costs, their total pay for the exams would be \$500. Currently, they are only being charged \$300.

Test Taken by Applicant	Current Cost	Cost Should Be	Loss of Revenue
PG, FG, CSE	\$300	\$500	\$200
PG, FG	\$300	\$400	\$100
FG, CSE	\$250	\$250	\$0
PG, CSE	\$250	\$350	\$100
FG	\$150	\$150	\$0
PG	\$150	\$250	\$100
CSE	\$100	\$100	\$0

Raising the ASBOG examination fees to match the amount Program spends on purchasing the examination will not only increase its revenue, it will bring the Program into compliance with current statute.

It should be noted that it is generally the policy of this Committee to assure that boards are requiring, under most circumstances, to have applicants pay for the costs of the examination and the processing of their application without supplementing the costs of examinations by licensing fees which should be used for the operation of the board's licensing and enforcement programs.

Staff Recommendation: Both the Business and Professions Code Section 7887(h) and Title 16, California Code of Regulations Section 3005 should be amended so that the additional fees for the examinations may be charged to the applicant.

ISSUE #10: (IMPACT OF THE RECENT PROPOSED BPELSG LOAN TO THE GENERAL FUND.) Will the Governor’s recent proposed borrowing of \$5 million from the Board’s reserve account and the \$2 million still owing to the Board have an impact on the ability of the Board to carry out its responsibilities in the licensing and regulation of professional engineers, land surveyors, geologists and geophysicists.

Background: The Governor recently proposed borrowing \$830 million from 48 special funds to be transferred to the General Fund as a way to replace the bulk of the \$1.2 billion in one-time revenue lost by the cancellation of the former Administration’s proposed sale of state office buildings. Also tapped are more than 15 of the regulatory boards and bureaus under DCA. BPELSG already has an outstanding loan of \$2 million which was provided in FY 2008/09, and must now part with another \$5 for FY 2011/2012, for a total of \$7 million owing to the Board.

Staff Recommendation: *BPELSG should explain to the Committee what the impact will be to its overall Budget and the ability to operate its licensing and enforcement programs if the loan of \$5 million is made from its reserve fund.*

**CONTINUED REGULATION OF THE PROFESSION BY THE
CURRENT MEMBERS OF BPELSG**

ISSUE #11. (CONSUMER SATISFACTION WITH BPELSG IS SOMEWHAT BETTER THAN MOST BOARDS.) A Consumer Satisfaction Survey performed by BPELSG over the past four years, shows that on average about 70% of consumers were satisfied with the overall service provided by the Board. The one significant difference is that complainants had a lower level of satisfaction with the results reached by the Board.

Background: Since 1993, the Board has sent a Complaint Survey to the complainant whenever a complaint investigation case is closed, along with a self-addressed, prepaid postage envelope. The survey is sent with the letter notifying the complainant of the results of the investigation and that the case has been closed. A survey is not sent if there is no named complainant (such as anonymous complaints). If the survey response includes questions or negative comments, the complainant is contacted to clarify concerns and/or answer any questions. However, there will always be some consumers who do not understand the limits of the Board’s jurisdiction and authority and will never be satisfied with the responses they receive from the Board if the outcome of the investigation is not what they wanted. For the Fiscal Years 2006/07 through 2009/10, the Board sent out 1,249 surveys but received only 77 responses for a 6% response rate.

2006/07 – 2009/10 CONSUMER SATISFACTION SURVEY RESULTS				
QUESTIONS	Percentage of Positive Reponses			
	2006/07	2007/08	2008/09	2009/10
1 Was our representative courteous?	92%	95%	84%	85%
2 Did our representative understand your problem?	79%	89%	63%	77%
3 Was the complaint process explained to you?	92%	95%	84%	69%
4 Were you kept advised of the status of your complaint?	83%	89%	95%	77%

5	Were the reasons for case closure explained to you in a clear and concise manner?	83%	84%	68%	69%
6	Were you satisfied with the results?	71%	68%	63%	38%
7	Even if the matter was not resolved in your favor, do you feel that your case was dealt with in a fair and reasonable manner?	79%	74%	63%	62%

The Contractor’s Board seems to enjoy a better satisfaction rate in resolving a complaint and the result which it achieves because it tries under certain circumstances to try and mediate disputes first to hopefully bring quicker resolution to the matter and possibly provide some form of restitution to the consumer who has been harmed by the licensee. If there is an issue of competency or violation of law(s) then the Contractor’s Board will still proceed with licensing action against the contractor even though the complainants issue has been settled. This Committee should begin to explore the use of mediation or what is called “alternative dispute resolution” (ADR) for boards and whether they could utilize those trained in ADR or current ADR programs to resolve complaints. Consideration could be made of possibly expanding on the current “Complaint Medication Program” (CMP) of DCA, which primarily provides dispute resolution for its bureaus, to also include consumers who have problems with professionals regulated by the boards. The CMP under DCA deals with difficulties by consumers in purchasing products or business services, and may provide value to BPELSG in instances where ADR could be utilized when disputes arise (in the form of a complaint to the board) regarding services provided by an engineer, land surveyor or geologist.

Recommendation: *BPELSG should explain to the Committee why it believes consumer satisfaction regarding the results obtained by the Board for a consumer complaint are low (only 38% of those surveyed were satisfied) and what other efforts the Board could take to improve its general service to the consumer. Does Board attempt mediation of complaints and if so, does it believe that it could be used more often to help resolve complaints from the general public, and if not, then could DCA’s Complaint Mediation Program be utilized?*

ISSUE #12. (CONTINUED REGULATION BY BPELSG?) Should the licensing and regulation of engineers, land surveyors, geologists and geophysicists be continued and be regulated by the current board membership?

Background: The health, safety and welfare of consumers are protected by a well-regulated engineering, land surveying and geology profession. BPELSG has shown over the years a strong commitment to improve the Board’s overall efficiency and effectiveness and has worked cooperatively with the Department, the Legislature and this Committee to bring about necessary changes. BPELSG should be continued with a four-year extension of its sunset date so that the Committee may review once again if the issues and recommendations in this Paper and others of the Committee have been addressed.

Staff Recommendation: *Recommend that the engineering, land surveying and geology professions continue to be regulated by the current BPELSG members in order to protect the interests of the public and be reviewed once again in four years.*