

**ADDENDUM TO MEETING MATERIALS
FOR THE MAY 7, 2020, MEETING OF THE BOARD FOR
PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND
GEOLOGISTS**

IV. Consideration of Rulemaking Proposals

- A. Approval and/or Adoption of Rulemaking Proposal to Amend Title 16, California Code of Regulations sections 416 and 3060 (Substantial Relationship Criteria) and sections 418 and 3061 (Criteria for Rehabilitation) to Conform to Statutory Changes Made by AB 2138 (Chapter 995, Statutes of 2018) (Possible Action)

VI. Legislation

- B. Discussion of Legislation for 2020 (Possible Action)
 - AB 2028 State agencies: meetings.
 - AB 2113 Refugees, asylees, and immigrants: professional licensing.
 - AB 3334 Professional Land Surveyors' and Professional Engineers Acts.
 - SB 1057 Land.

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**Approval and/or Adoption of Rulemaking Proposal to Amend
Title 16, California Code of Regulations
Sections 416 and 3060 (Substantial Relationship Criteria)
and Sections 418 and 3061 (Criteria for Rehabilitation)
to Conform to Statutory Changes Made by AB 2138 (Chapter 995, Stats.2018)**

Background

In 2019, the Board approved proposed amendments to the regulations pertaining to the Substantial Relationship Criteria and the Criteria for Rehabilitation (Title 16, California Code of Regulations (16 CCR) sections 416 and 418 for professional engineers and professional land surveyors and in 16 CCR 3060 and 3061 for professional geologists and professional geophysicists) and directed staff to begin the rulemaking process. Amendments to these sections were necessitated by the amendments various sections of the Business and Professions Code (BPC) made by AB 2138 (Ch. 995, Stats. 2018). The statutory changes become operative on July 1, 2020, and the goal is to have the amendments to the related regulations become effective at the same time. The pre-notice review process required by the Department of Consumer Affairs (DCA) and Agency was recently completed, and the rulemaking documents were approved for publication by the Office of Administrative Law (OAL) to be noticed for the required 45-day public comment period.

Shortly after receiving the approval to notice the Board-approved proposal, the DCA Legal Office advised Board staff that OAL had recommended changes to the language as proposed by another DCA licensing entity in order to approve their rulemaking proposal. Since we had used nearly identical language, it was suggested that we should make similar changes. In reviewing the recommendations from OAL and the DCA Legal Office, Board staff determined that it was necessary to make changes to the originally-proposed language, although not the specific changes recommended by OAL. Staff realized that some of the originally-proposed language was not worded as clearly as it could have been to specifically relate to the Board's laws and processes.

However, due to the timing of the approval of the originally-proposed language, the input from OAL and the DCA Legal Office, and the Board meeting schedule, it was too late to make the changes to be part of the 45-public comment period. The rulemaking process allows for the Board, on its own motion, to make changes to the noticed language and provide the public with a 15-day comment period on those changes. Since the goal is to have the regulations become effective on July 1, 2020, it was necessary to have the Board approve changes to the originally-proposed language at its March 12, 2020, meeting, which the Board did.

Current Status and Next Steps

The original proposal was notice for a 45-day public comment period on March 13, 2020, and that comment period ended on April 27, 2020. The modified language, as approved by the Board at its March 2020 meeting, was noticed for the

15-day public comment period on April 29, 2020. The comment period will close on May 14, 2020.

Two sets of comments were submitted by members of the public during the 45-day comment period. The comments are included for the Board's review. Board staff, in consultation with the DCA Legal Office, does not believe that any changes need to be made to the proposal based on the comments. Therefore, staff recommends that, as part of the final rulemaking proposal, the Board reject the comments for the reasons explained on the pages entitled "Summary of Comments and Response to Comments." (Providing an official response of either accepting or rejecting the comments, with explanatory reasons, is part of the final rulemaking process; the comments and responses are submitted to OAL as part of the rulemaking package that is reviewed.)

Due to the need to have the amendments to the regulations become effective as close to July 1, 2020, as possible to coincide with the operative date of the statutory changes, and the timing of Board meetings, staff is recommending that the Board take action at this meeting to adopt the final language and the responses to the comments and delegate the authority to the Executive Officer to finalize the rulemaking package for submittal to DCA and OAL for final review and approval. This action would be conditioned upon not receiving any substantive comments during the 15-day comment period. Should substantive comments be received, they would be presented to the Board at a subsequent meeting.

The final language with the proposed changes is included for the Board's review. Language proposed to be added is shown in single underlined text. Language proposed to be deleted is shown in ~~single strikethrough text~~.

RECOMMENDED MOTION:

With regard to the rulemaking proposal to amend Title 16, California Code of Regulations sections 416, 418, 3060, and 3061:

Adopt the proposed responses to the comments;

Adopt the final rulemaking proposal after the 15-day public comment period if no substantive comments are received; and,

Delegate to the Executive Officer to finalize the rulemaking file.

Title 16, California Code of Regulations sections 416, 418, 3060, and 3061

Language proposed to be added is shown in single underlined text. Language proposed to be deleted is shown in ~~single strikethrough text~~.

Section 416 of Division 5 of Title 16 of the California Code of Regulations is amended as follows:

416. Substantial Relationship Criteria.

(a) For the purpose of denial, suspension, or revocation of the certification of an engineer-in-training or a land surveyor-in-training or license of a professional engineer or a land surveyor pursuant to Section 141, Division 1.5 (commencing with Section 475), subdivision (a) of Section 6775, subdivision (a) of Section 6775.1, Section 6779, subdivision (e) of Section 8780, subdivision (a) of Section 8780.1, or Section 8783 of the Business and Professions Code, a crime, professional misconduct, or act shall be considered substantially related to the qualifications, functions, and duties of a professional engineer or land surveyor if, to a substantial degree, it evidences present or potential unfitness of a professional engineer or land surveyor to perform the functions authorized by his or her license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, those involving the following:

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the Board shall consider all of the following criteria:

(1) The nature and gravity of the offense.

(2) The number of years elapsed since the date of the offense.

(3) The nature and duties of a professional engineer or land surveyor.

(c) For purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, the following:

(a) (1) For engineers-in-training and professional engineers, any violations of the provisions of the Professional Engineers Act or other state or federal laws governing the practice of professional engineering or aiding and abetting any person in such a violation;

(b) (2) For land surveyors-in-training and professional land surveyors, any violations of the provisions of the Professional Land Surveyors' Act or other state or federal laws governing the practice of land surveying or aiding and abetting any person in such a violation;

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

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

Section 418 of Division 5 of Title 16 of the California Code of Regulations is amended as follows:

418. Criteria for Rehabilitation.

(a) ~~When considering the denial of an application for certification as an engineer-in-training or a land surveyor-in-training, or for licensure as a professional engineer, or for licensure as a professional land surveyor, or for authority to use the title "structural engineer," or for authority to use the title "geotechnical engineer," under Section 480, Section 6779, or Section 8783 of the Code on the ground that the applicant has been convicted of a crime, the Board shall consider whether the applicant made a showing of rehabilitation if the applicant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Board shall consider the following criteria; the Board will consider the following criteria in evaluating the rehabilitation of the applicant and his or her present eligibility for such a licensure or authority:~~

(1) The nature and gravity of the crimes(s).

(2) The length(s) of the applicable parole or probation period(s).

(3) The extent to which the applicable parole or probation period(s) was shortened or lengthened and the reason(s) the period(s) was modified.

(4) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.

(5) The extent to which the terms or conditions of parole or probation were modified and the reason(s) for modification.

(b) When considering the denial of an application for certification as an engineer-in-training or a land surveyor-in-training, for licensure as a professional engineer or a professional land surveyor, or for authority to use the title "structural engineer" or "geotechnical engineer" under Section 480, Section 6779, or Section 8783 of the Code, if the Board determines that the applicant has not completed the criminal sentence at issue without a violation of parole or probation or did not make the showing of rehabilitation based on the criteria in subdivision (a) if the denial is based on the ground that the applicant has been convicted of a crime, or, if the denial is based on the ground that the applicant has been subject to formal discipline by another licensing board for professional misconduct, then the Board shall consider whether the applicant made a showing of rehabilitation by applying the following criteria in evaluating the applicant's rehabilitation:

(1) The nature and severity gravity of the act(s), professional misconduct, or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s), professional misconduct, or crime(s) committed prior to or subsequent to the act(s), professional misconduct, or crime(s) under consideration as grounds for denial which could also be considered as grounds for denial under Section 480 of the Code.

(3) The time that has elapsed since commission of the act(s), professional misconduct, or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Any evidence of rehabilitation submitted by the applicant.

(6) Total criminal record.

(7) If applicable, evidence of expungement proceedings that the conviction has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code; evidence that the applicant has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code; or evidence of a comparable dismissal or expungement.

(8) The criteria in subdivision (a)(1)-(5), as applicable.

~~(b)~~ (c) When considering the suspension or revocation of the certification of an engineer-in-training or a land surveyor-in-training, or the license of a professional engineer or a professional land surveyor, or the authority to use the title "structural engineer;" or the authority to use the title "geotechnical engineer" under Section 490, subdivision (a) of Section 6775, subdivision (a) of Section 6775.1, Section 6779, subdivision (e) of Section 8780, subdivision (a) of Section 8780.1, or Section 8783 of the Code on the ground that the license holder has been convicted of a crime, the Board shall consider whether the license holder made a showing of rehabilitation if the license holder completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Board shall consider the following criteria;
~~the Board will consider the following criteria in evaluating the rehabilitation of such person and his or her present eligibility to retain his or her license:~~

(1) The nature and gravity of the crime(s).

(2) The length(s) of the applicable parole or probation period(s).

(3) The extent to which the applicable parole or probation period(s) was shortened or lengthened and the reason(s) the period(s) was modified.

(4) The terms or conditions of parole or probation and the extent to which they bear on the license holder's rehabilitation.

(5) The extent to which the terms or conditions of parole or probation were modified and the reason(s) for modification.

(d) When considering the suspension or revocation of the certification of an engineer-in-training or a land surveyor-in-training, the license of a professional engineer or a professional land surveyor, or the authority to use the title "structural engineer" or "geotechnical engineer" under Section 490, subdivision (a) of Section 6775, subdivision (a) of Section 6775.1, Section 6779, subdivision (e) of Section 8780, subdivision (a) of Section 8780.1, or Section 8783 of the Code on the ground that the license holder has been convicted of a crime, if the Board determines that the license holder has not completed the criminal sentence at issue without a violation of parole or probation or did not make the showing of rehabilitation based on the criteria in subdivision (c), then the Board shall consider whether the license holder made a showing of rehabilitation by applying the following criteria in evaluating the license holder's rehabilitation:

(1) The nature and severity ~~gravity~~ of the act(s) ~~or~~ crime(s) under consideration as grounds for suspension or revocation.

(2) Evidence of any ~~act(s)~~ crime(s) committed prior to or subsequent to the act(s) ~~or~~ crime(s) under consideration as grounds for suspension or revocation which could also be considered as grounds for suspension or revocation under Section 490 of the Code.

(3) The time that has elapsed since commission of the ~~act(s) or crime(s)~~ referred to in subdivision (1) or (2).

(4) The extent to which the ~~licensee~~ license holder has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the license holder.

(5) Any evidence of rehabilitation submitted by the ~~licensee~~ license holder.

(6) Total criminal record.

(7) If applicable, evidence of expungement proceedings that the conviction has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code; evidence that the license holder has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code; or evidence of a comparable dismissal or expungement.

(8) The criteria in subdivision (c)(1)-(5), as applicable.

~~(e)~~ (e) When considering a petition for reinstatement of the certification of an engineer-in-training or a land surveyor-in-training, ~~or~~ the license of a professional engineer or a professional land surveyor, or the authority to use the title "structural engineer," or ~~the authority to use the title~~ "geotechnical engineer," the Board shall evaluate evidence of rehabilitation submitted by the petitioner, including but not limited to the following:

(1) Educational courses, including college-level courses, seminars, and continuing professional development courses, completed after the effective date of the Board's decision ordering revocation.

(2) Professional engineering or land surveying work done under the responsible charge of a ~~licensee~~ license holder in good standing or under the ~~direction~~ responsible charge of a person legally authorized to practice.

(3) Payment of restitution to the consumer(s) by the petitioner.

(4) Actual or potential harm to the public, client(s), employer(s), and/or employee(s) caused by the action(s) that led to the revocation or that could be caused by the reinstatement of the ~~certificate, license, or authority~~.

(5) The criteria specified in ~~subsection (b)~~ subdivision (d)(1) through (7) (8), as applicable.

(6) Disciplinary history, other than criminal actions, after the revocation.

(7) Recognition by the petitioner of his or her own actions and/or behavior that led to the revocation.

(8) Correction of the petitioner's actions and/or behavior that led to the revocation.

(f) As used in this section, "license" means certification as an engineer-in-training or a land surveyor-in-training, licensure as a professional engineer, licensure as a professional land surveyor, authority to use the title "structural engineer," or authority to use the title "geotechnical engineer."

Note: Authority cited: Sections 482, 6716, and 8710, Business and Professions Code. Reference: Sections 480, 481, 482, 488, 490, ~~6706.3, 6710, 6732~~, 6775, 6775.1, 6777, 6779, 6780, 8780, 8780.1, 8783, ~~and 8784~~, and 8785, Business and Professions Code; and Section 1203.4, Penal Code.

Section 3060 of Division 29 of Title 16 of the California Code of Regulations is amended as follows:

3060. Substantial Relationship Criteria.

(a) For the purpose of denial, suspension, or revocation of the certification of a geologist-in-training or registration license of a geologist, specialty geologist, geophysicists, or specialty geophysicists pursuant to Section 141, Division 1.5 (commencing with Section 475), subdivision (b)(1) of Section 7860, subdivision (a) of Section 7860.1, or Section 7863 of the Business and Professions Code, a crime, professional misconduct, or act shall be considered substantially related to the qualifications, functions, and duties of a geologist, specialty geologist, geophysicists, or specialty geophysicists if to a substantial degree it evidences present or potential unfitness of such geologist or geophysicists to perform the functions authorized by his registration or her license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, the following:

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the Board shall consider all of the following criteria:

(1) The nature and gravity of the offense.

(2) The number of years elapsed since the date of the offense.

(3) The nature and duties of a professional geologist or geophysicist.

(c) For purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, the following:

(a) (1) Any violation of the provisions of Chapter 12.5 of Division 3 of the Business and Professions Code or other state or federal laws governing the practice of geology or geophysics or aiding and abetting any person in such a violation;

(2) A conviction of a crime arising from or in connection with the practice of geology or geophysics.

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

Section 3061 of Division 29 of Title 16 of the California Code of Regulations is amended as follows:

3061. Criteria for Rehabilitation.

(a) When considering the denial of an application for certification as a geologist-in-training or licensure as a professional geologist, a specialty geologist, or a professional geophysicist, or certification as a specialty geologist, a specialty geophysicist, or geologist-in-training under Section 480 or Section 7863 of the Code, on the ground that the applicant has been convicted of a crime, the Board shall consider whether the applicant made a showing of rehabilitation if the applicant completed the criminal sentence at issue without a violation of parole or probation. In making this

determination, the Board shall consider the following criteria: ~~the Board, in evaluating the rehabilitation of the applicant and his or her present eligibility for such a license or certification, will consider the following criteria:~~

(1) The nature and gravity of the crimes(s).

(2) The length(s) of the applicable parole or probation period(s).

(3) The extent to which the applicable parole or probation period(s) was shortened or lengthened and the reason(s) the period(s) was modified.

(4) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.

(5) The extent to which the terms or conditions of parole or probation were modified and the reason(s) for modification.

(b) When considering the denial of an application for certification as a geologist-in-training or licensure as a professional geologist, specialty geologist, professional geophysicist, or specialty geophysicist under Section 480 or Section 7863 of the Code if the Board determines that the applicant has not completed the criminal sentence at issue without a violation of parole or probation or did not make the showing of rehabilitation based on the criteria in subdivision (a) if the denial is based on the ground that the applicant has been convicted of a crime, or, if the denial is based on the ground that the applicant has been subject to formal discipline by another licensing board for professional misconduct, then the Board shall consider whether the applicant made a showing of rehabilitation by applying the following criteria in evaluating the applicant's rehabilitation:

(1) The nature and severity ~~gravity~~ of the act(s), professional misconduct, or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s), professional misconduct, or crime(s) committed prior to or subsequent to the act(s), professional misconduct, or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under ~~Section 480 of the Code.~~

(3) The time that has elapsed since commission of the act(s), professional misconduct, or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) ~~Evidence, if any,~~ Any evidence of rehabilitation submitted by the applicant.

(6) Total criminal record.

(7) If applicable, evidence of ~~expungement proceedings~~ that the conviction has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code; evidence that the applicant has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code; or evidence of a comparable dismissal or expungement.

(8) The criteria in subdivision (a)(1)-(5), as applicable.

(b) (c) When considering the suspension or revocation of the certification of a geologist-in-training or the license of a professional geologist, a specialty geologist, or a professional geophysicist, or certification of a specialty geologist, a specialty

geophysicist, or geologist-in-training under Section 490, subdivision (b)(1) of Section 7860, subdivision (a) of Section 7860.1, or Section 7863 of the Code on the ground that the license holder has been convicted of a crime, the Board shall consider whether the license holder made a showing of rehabilitation if the license holder completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Board shall consider the following criteria; ~~the Board will consider the following criteria in evaluating the rehabilitation of such person and his or her present eligibility to retain his or her license:~~

(1) The nature and gravity of the crimes(s).

(2) The length(s) of the applicable parole or probation period(s).

(3) The extent to which the applicable parole or probation period(s) was shortened or lengthened and the reason(s) the period(s) was modified.

(4) The terms or conditions of parole or probation and the extent to which they bear on the license holder's rehabilitation.

(5) The extent to which the terms or conditions of parole or probation were modified and the reason(s) for modification.

(d) When considering the suspension or revocation of the certification of a geologist-in-training or the license of a professional geologist, a specialty geologist, a professional geophysicist, or a specialty geophysicist under Section 490, subdivision (b)(1) of Section 7860, subdivision (a) of Section 7860.1, or Section 7863 of the Code on the ground that the license holder has been convicted of a crime, if the Board determines that the license holder has not completed the criminal sentence at issue without a violation of parole or probation or did not make the showing of rehabilitation based on the criteria in subdivision (c), then the Board shall consider whether the license holder made a showing of rehabilitation by applying the following criteria in evaluating the license holder's rehabilitation:

(1) Nature ~~The nature and severity~~ gravity of the ~~act(s) or offense(s)~~ crime(s) under consideration as grounds for suspension or revocation.

(2) Evidence of any ~~act(s)~~ crime(s) committed prior to or subsequent to the ~~act(s) or offense(s)~~ crime(s) under consideration as grounds for suspension or revocation ~~under Section 490 of the Code.~~

(3) The time that has elapsed since commission of the ~~act(s) or offense(s)~~ crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the ~~licensee~~ license holder has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the ~~licensee~~ license holder.

~~(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.~~

~~(6) (5) Evidence, if any, Any evidence~~ of rehabilitation submitted by the ~~licensee~~ license holder.

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

(7) If applicable, evidence that the conviction has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code; evidence that the license holder has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code; or evidence of a comparable dismissal or expungement.

(8) The criteria in subdivision (c)(1)-(5), as applicable.

~~(e)~~ (e) When considering a petition of reinstatement of the certification as a geologist-in-training, specialty geologist, or specialty geophysicist, or the license of a professional geologist or professional geophysicist, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, including, but not limited to, the following:

(1) Educational courses, including college-level courses, seminars, and continuing professional development courses, completed after the effective date of the Board's decision ordering revocation.

(2) Professional geological or geophysical work done under the responsible charge of a ~~licensee~~ license holder in good standing or under the ~~direction~~ responsible charge of a person legally authorized to practice.

(3) Payment of restitution to the consumer(s) by the petitioner.

(4) Actual or potential harm to the public, client(s), employer(s), and/or employee(s) caused by the action(s) that led to the revocation or that could be caused by the reinstatement of the ~~certificate, license, or authority~~.

(5) The criteria specified in ~~subsection (b)~~ subdivision (d)(1) through ~~(7)~~ (8), as applicable.

(6) Disciplinary history, other than criminal actions, after the revocation.

(7) Recognition by the petitioner of his or her own actions and/or behavior that led to the revocation.

(8) Correction of the petitioner's actions and/or behavior that led to the revocation.

(f) As used in this section, "license" means certification as a geologist-in-training or licensure as a professional geologist, a specialty geologist, a professional geophysicist, or a specialty geophysicist.

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

Summary of Comments and Response to Comments

Comments were received from Ken Anderson, a Licensed Land Surveyor, via email. Mr. Anderson submitted the same set of comments twice on March 11, 2020. One set was submitted to the Board's Executive Officer; the other to a former Board employee at her new place of employment within DCA. Since the comments are the same, only those submitted to the Executive Officer are included.

Comments were also received, on April 27, 2020, from Faride Perez-Aucar, of Root and Rebound, and Vinuta Naik, of Community Legal Services in East Palo Alto, on behalf of A New Way of Life Reentry Project; Californians for Safety and Justice; Center for Employment Opportunities; Center for Living and Learning; Community Legal Services in East Palo Alto; Criminal Justice Clinic, UC Irvine School of Law; East Bay Community Law Center; Legal Aid at Work; Legal Services for Prisoners with Children, All of Us or None; Los Angeles Regional Reentry Project; National Association of Social Workers, California Chapter; REDF; The Record Clearance Project, San Jose State University; Root and Rebound; Rubicon Programs; and the Underground Scholars Initiative (referred to as "Organizations").

Summary of Anderson Comment 1:

It is not clear why the Board, or its Executive Officer, is making these changes.

Board Response to Anderson Comment 1:

Insofar as the implication in Comment 1 is that the Board has not sufficiently explained the necessity for this rulemaking proposal, the Board rejects this comment. The Notice and the Initial Statement of Reasons both clearly explain that the Board's regulations relating to the substantial relationship criteria and the criteria for rehabilitation must be amended in order to conform with the changes made to statute by AB 2138 (Ch. 995, Stats.2018). Accordingly, the Board is making no changes to the proposed regulations in response to this comment.

Summary of Anderson Comment 2:

It is not clear what is meant by the terms "professional misconduct" and "misconduct." Examples should be given.

Board Response to Anderson Comment 2:

The Board rejects this comment. The phrase "professional misconduct" is used in statute, specifically in BPC section 480(a)(2) [as will become operative on July 1, 2020]. This section further narrows the type of "professional misconduct" that is at issue; it is "professional misconduct" that 1) "would have been cause for discipline before the board for which the present application is made," and, 2) "is substantially related to the qualifications, functions, or duties of the business or profession." Additionally, it is unnecessary to provide a definition of words used in regulations when the words as used have the same general definitions as provided in dictionaries. For example, the Merriam-Webster Dictionary includes "intentional wrongdoing" and "improper behavior"

in its definition of “misconduct,” and Black’s Law Dictionary includes “a dereliction from duty, injurious to another, on the part of one employed in a professional capacity” in its definition. Furthermore, subdivision (c) of 16 CCR sections 416 and 3060 provide information as to what types of actions shall be considered “substantially related crimes, professional misconduct, or acts.” For all of these reasons, it is not necessary for the Board to provide a separate definition or a list of further examples of “professional misconduct” or “misconduct” in its regulations. Accordingly, the Board is making no changes to the proposed regulations in response to this comment.

Summary of Organizations Comment 1 (Page 3 of letter, paragraph above bulleted items): This comment states that the proposed regulations leave some gaps in the regulatory scheme pursuant to the changes to BPC sections 480, 481, 482, and 493 as modified by AB 2138. The comment states that the proposed regulations fail to fully implement these statutes. Additionally, the comment states that the proposed regulations fall short of the intent of the bill, which includes combating discrimination against people with records who have demonstrated rehabilitation and seek to establish themselves professionally.

Board Response to Organizations Comment 1: The Board rejects this comment. The purpose of the proposed regulations is to clarify substantial relationship criteria and criteria for rehabilitation, as required by AB 2138 (BPC section 481). Consistent with the requirements enacted by AB 2138, these regulations would adopt all of the following criteria, which would assist Board in implementing a balanced approach to evaluating an applicant’s eligibility for licensure:

1. The nature and gravity of the offense.
2. The number of years elapsed since the date of the offense.
3. The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

Clarifying how to determine whether a crime is substantially related and clarifying the factors that will be considered when evaluating rehabilitation should assist applicants and licensees with demonstrating their rehabilitation. Accordingly, the Board is making no changes to the proposed regulations in response to this comment.

Summary of Organizations Comment 2 (Page 3 of letter, first bulleted item): The proposed regulations do not comply with AB 2138 because Sections 416(c) and 3060(c) state that certain acts and convictions are substantially related regardless of the time that has passed or the nature and gravity of the offense in contravention of AB 2138 (BPC section 481). AB 2138 allows the Board discretion to determine which crimes are substantially related on an individual basis. Moreover, these sections fail to note that criminal history that resulted in the applicant obtaining a Certificate of Rehabilitation, pardon, dismissal per Penal Code section 1203.4 et seq., or an arrest that resulted in a disposition other than a conviction shall not be denied a license. See BPC section 480(b)-(d).

Board Response to Organizations Comment 2: The Board rejects this comment. Subdivision (b) of Sections 416 and 3060 specifies that the Board, in determining whether a crime is substantially related, must consider the nature and gravity of the offense, the number of years that have elapsed, and the nature and duties of the profession in which the applicant is seeking licensure. It would be unnecessarily duplicative to include this same language in subdivision (c) of these same sections. Therefore, the Board is making no changes to the proposed regulations in response to this comment.

Summary of Organizations Comment 3 (Page 3 of letter, second bulleted item): The regulations do not comply with AB 2138 because Sections 418 and 3061 focus too heavily on “law enforcement’s reports and determination of the applicant’s progress.” Rehabilitation can and does take many forms that the current language does not fully embrace. The comment refers the reader to Comment 8 below for examples of rehabilitation to expand the regulations.

Board Response to Organizations Comment 3: As addressed more fully in the Board’s response to Comment 8, Sections 418 and 3061 specify what evidence of rehabilitation the Board is required to consider; they do not prohibit the Board from considering other evidence as well. Furthermore, the sections include a provision that requires the Board to consider “any evidence of rehabilitation submitted by the applicant,” thus permitting the applicant to offer evidence of rehabilitation that can encompass any of the forms of rehabilitation proposed in the letter. Accordingly, the Board believes that the proposed language is consistent with legislative intent. Therefore, the Board is making no changes to the proposed regulations in response to this comment.

Summary of Organizations Comment 4 (Page 3 of letter, enumerated #1): This comment indicates that the proposed language should include the “7-year washout period” for consideration of convictions or discipline which are not statutorily considered serious felonies under Penal Code section 1192.7. (BPC section 480(a)(1), operative July 1, 2020.)

Board Response to Organizations Comment 4: The Board rejects this comment. Regulations should not indiscriminately incorporate statutory language. (Government (Gov.) Code section 11349(f).) The seven-year period during which the Board can deny a license for a conviction or formal discipline is fully described in BPC section 480(a)(1)(A) and (B), operative July 1, 2020. As this is already included in statute, adding this provision is duplicative of BPC section 480(a)(1). Therefore, it is not necessary to repeat it in the regulations. Accordingly, the Board is making no changes to the regulations in response to this comment.

Summary of Organizations Comment 5 (Page 3 of letter, enumerated #2): This comment states that the regulations should provide that a person with a criminal history shall not be denied a license if the applicant has obtained a certificate of rehabilitation, dismissal per Penal Code section 1203.4, 1203.4a, 1203.41, or 1203.42, or an arrest

which led to an infraction/citation or a disposition other than a conviction, or juvenile adjudication (BPC section 480(b)-(d)).

Board Response to Organizations Comment 5: The Board rejects this comment. Regulations should not indiscriminately incorporate statutory language. (Gov. Code section 11349(f).) BPC section 480(c), operative July 1, 2020, already states that a license may not be denied based on a conviction, or on the basis of the underlying acts, if it has been dismissed pursuant to Penal Code sections 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425, or otherwise dismissed or expunged. In addition, BPC section 480(b), operative July 1, 2020, prohibits license denial if the applicant has obtained a certificate of rehabilitation, was granted clemency or a pardon, or has made a showing of rehabilitation per BPC section 482. BPC section 480(d), operative July 1, 2020, prohibits license denial based on an arrest that resulted in something other than a conviction, such as an infraction, citation, or juvenile adjudication. Since these provisions are already specifically addressed in statute, adding them again in regulation would be duplicative. Accordingly, the Board is making no changes to the regulations in response to this comment.

Summary of Organizations Comment 6 (Page 4 of letter, enumerated #3): This comment states that the regulations fail to state that the Board shall not require an applicant to disclose any information or documentation regarding the applicant's criminal history (BPC section 480(f)(2)).

Board Response to Organizations Comment 6: The Board rejects this comment. Sections 418 and 3061 place requirements on the Board by specifying what evidence the Board must consider in determining rehabilitation; these sections do not place requirements on applicants to provide information to the Board. Furthermore, BPC section 480(f)(2), operative July 1, 2020, provides that a board cannot require an applicant for licensure to disclose any information or documentation regarding the applicant's criminal history. As this is already provided by statute, adding this provision is duplicative of BPC section 480(f)(2). Therefore, it is not necessary to repeat it in the regulations. Accordingly, the Board is making no changes to the proposed regulations in response to this comment.

Summary of Organizations Comment 7 (Page 4 of letter, enumerated #4): Comment Summary: This comment states that the proposed language fails to include that the Board must notify the applicant in writing if the applicant is denied a license or is disqualified from licensure. The comment states that the Board must provide procedures describing the process for an applicant to challenge a decision or request reconsideration, a procedure stating that the applicant has a right to appeal the Board's decision, and provide a process for requesting a complete conviction history (BPC section 480(f)(3)).

Board Response to Organizations Comment 7: The Board rejects this comment. These requirements are already set forth in statute and regulation. BPC sections 480(f)(3), 485 through 487, and 7855 (for geologists and geophysicists); 16 CCR

section 429 (for engineers and land surveyors); and the Administrative Procedure Act, at Gov. Code section 11500, et seq., already contain these requirements, including requirements for providing the legal and factual basis for the denial, service of the denial on the applicant, and notice to the applicant regarding the opportunity to request a hearing to challenge the decision. Restating these requirements would be duplicative of the statutes and regulations and, as such, it is unnecessary to include them in Sections 418 and 3061 (Gov. Code section 11349(f)). Accordingly, the Board is making no changes to the regulations in response to this comment.

Summary of Organizations Comment 8 (Page 4 of letter, enumerated #5): This comment states that the intent of AB 2138 was not to incorporate mere probation or parole reports into the occupational licensing determinations. The letter states that rehabilitation can and does take many forms that extend beyond law enforcement supervision. Therefore, the letter recommends that the Board provide additional examples of evidence of mitigating circumstances and rehabilitation efforts, including considering adding the following rehabilitation criteria:

- Volunteer service;
- Successful employment in a related field;
- A history of work experience in an employment social enterprise.
- Unpaid work in the community;
- Furthered education;
- Abstinance from controlled substances and/or alcohol;
- Stability of family life, fulfillment of parental and familial responsibilities;
- New and different social and business relationships from those which existed at the time of the underlying charges at issue;
- Change in attitude of the applicant as evidenced by:
 - Personal testimony,
 - Evidence of rehabilitation submitted by the applicant,
 - Evidence from family, friends, and/or other persons familiar with the applicant's previous behavior patterns and subsequent attitude and behavioral changes; and
- Other markers of rehabilitation.

Board Response to Organizations Comment 8: The Board rejects this comment. BPC section 482, operative July 1, 2020, requires boards to develop criteria to evaluate rehabilitation and to consider whether an applicant or licensee has made a showing of rehabilitation if either the criminal sentence has been completed without violation of probation or parole, or if the board otherwise finds the applicant rehabilitated. The final text for proposed Sections 418 and 3061 articulates a two-step process for evaluating rehabilitation:

1. First, the Board must determine if the completion of the criminal sentence with no violations constitutes rehabilitation. Consistent with the direction in AB 2138, to consider rehabilitation if an applicant completes the criminal sentence at issue without a violation of parole or probation, specific criteria are being added to

Sections 418 and 3061 to help the Board determine whether sentence completion demonstrates rehabilitation. Criteria include the nature and severity of the crime(s), the length(s) of the applicable parole or probation period(s), the extent to which the applicable parole or probation period was shortened or lengthened, the reason(s) the period was modified, the terms and conditions of parole or probation and the extent to which they bear on the applicant, licensee, or petitioner's rehabilitation, the extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification of the terms or conditions. If the Board finds rehabilitation, no further information needs to be provided.

2. The second step, if rehabilitation is not demonstrated based on sentence completion, requires the Board to consider certain other criteria to evaluate rehabilitation. A general category permitting submission of any rehabilitation evidence allows an applicant to offer evidence relating to the proposed categories suggested above, as well as any others as the applicant may choose. As the Board can and already does give serious consideration to these factors when considering whether an applicant, licensee, or petitioner is rehabilitated, the Board believes that the proposed language is consistent with legislative intent.

Accordingly, the Board is making no changes to the regulations in response to this comment.

Summary of Organizations Comment 9 (Pages 4 and 5 of the letter, enumerated #6): The comment states that the proposed regulations fail to state the requirements set forth in BPC section 480(g) including that a board retain the number of applicants with a criminal record who received notice of denial or disqualification of licensure, the number of applicants with a criminal record who provided evidence of mitigation or rehabilitation, and the final disposition and demographic information.

Board Response to Organizations Comment 9: The Board rejects this comment. These requirements are already set forth in statute (BPC section 480(g)(2), operative July 1, 2020). Stating them in regulation would be duplicative of the statute (Gov. Code section 11349(f)). Accordingly, the Board is making no changes to the regulations in response to this comment.

From: Moore, Ric@DCA
To: Eissler, Nancy@DCA
Subject: FW: Fwd:
Date: Wednesday, March 11, 2020 2:57:53 PM
Attachments: [416_notice.pdf](#)

Received public comment related to 416 rulemaking

From: Ken Anderson <[REDACTED]>
Sent: Wednesday, March 11, 2020 2:26 AM
To: Moore, Ric@DCA <Ric.Moore@dca.ca.gov>
Subject: Fwd:

[EXTERNAL]: [REDACTED]

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Hello,

2 lines of thinking hit me:

Number 1:

Ric wants to make it easier for Criminals to get licensed as a way of helping the general public who are not criminals so that we can have greater access to them?

Who wrote this?

Number 2- the hidden reason:

The Professional Misconduct is not discussed or highlighted but seems to be the reason. Not licensing Criminals. What portions of the Professional Misconduct is the focus of this proposed rulemaking change?

It seems that simply the word "Misconduct" without an explanation leaves me wondering what exactly can be classified as "misconduct" in this attached text without any reference.

Misconduct is not necessarily a crime. People behave badly all the time. People are rude, use foul language, yell, behave like children, withhold the truth, avoid, ignore, forget, disregard, minimize, misinterpret, make correctable mistakes, make uncorrectable mistakes. I think you and I have moments of poor behavior, and it happens that we might have misbehaved with one another, and our relationship is professional.

Who introduced this rulemaking change and I want some examples of what misconduct is the focus here to tie it in with the most "criminal" part of our rules?

Is this stating that ANY violation is a grounds to revoking a licence?

"The Proposal would ADD that substantially related crimes, Professional Misconduct, (comma) or acts(??) would include violating OTHER State or Federal Laws GOVERNING the Practice of LAND SURVEYING"

in my reading of this, ANY violation of the PLS Act, Subdivision Map Act, Board Rules, Federal Land Surveying Rules. I want a complete list of OTHER or will that be at the discretion of our fair and just Executive Director?

Can you please make specific and provide me the full interpretation of Professional Misconduct in the context in which the Board wishes to revoke a license when this is passed and made effective on July 1, if ratified.

Is there language as to time frame as to when the Misconduct occurred?
Can my bad behavior of yesterday become subject of your new rule on July 1 ANY more so than it is already?
Can Misconduct on the part of a Licensed Board Member be included please.
Can you clarify exactly what Misconduct of a Licensed Government Employee is and the method of reporting and to whom. I have made my reports. I have made them TO the President.

If I worked for the President, who would I file a complaint with IF i had an issue with the President? Should I send it to the Presidents office?

Should I "CALL THE GOVERNOR" as my wife always says...???
She always makes me laugh when she says that.

Perhaps we can call all the Local Surveyors HERE to determine What is Misconduct HERE in OUR area- It may be different in yours.

Like Clydell Avenue ORIGINAL UNDISTURBED IDENTIFIED CALLED FOR AND VERIFIED MONUMENT
Recall?

You said (and I am just recalling not your exact words...)"Your City Surveyor would know better than me IF Surveyors should use UNDISTURBED ORIGINAL IDENTIFIED CALLED FOR and VERIFIED Monuments" or something like that.

How long are you accountable for the things you say?

You or me?

or Write in an Email?

Is that what this Professional Misconduct is about?

Is this another item to embellish future complaints against the Small Business to crush them when you file a complaint?

I vote NO

--

Ken Anderson, LS 7523
Licensed Land Surveyor
Bay Land Consulting
[REDACTED]

--

Ken Anderson, LS 7523
Licensed Land Surveyor
Bay Land Consulting
[REDACTED]

**BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS,
AND GEOLOGISTS**

NOTICE OF PROPOSED REGULATORY ACTION

**Title 16, California Code of Regulations
Sections 416 and 3060 – Substantial Relationship Criteria
Sections 418 and 3061 – Criteria for Rehabilitation**

NOTICE IS HEREBY GIVEN that the Board for Professional Engineers, Land Surveyors, and Geologists (Board) is proposing to take the action described in the Informative Digest.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under “Contact Person” in this Notice.

COMMENT PERIOD

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under “Contact Person” in this Notice, must be **received by the Board at its office no later than April 27, 2020**, or must be received by the Board at the public hearing, if one is requested and scheduled. Oral comments will be accepted at the hearing, if one is requested and scheduled.

AVAILABILITY OF MODIFICATIONS

The Board, upon its own motion or at the insistence of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as the Contact Person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 481, 482, 493, 6716, 7818, and 8710 of the Business and Professions Code (BPC), and to implement, interpret, or make specific BPC sections 141, 475, 480, 481, 482, 488, 490, 492, 493, 6775, 6775.1, 6777, 6779, 7860, 7862, 7863, 7864, 8780, 8780.1, 8783, and 8784, the Board is considering amending Sections 416, 418, 3060, and 3061 of Title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST

The Board regulates professional engineers, land surveyors, geologists, and geophysicists. BPC sections 6716, 7818, and 8710 authorize the Board to adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Professional Engineers Act (Business and Professions Code section 6700, et seq.), the Geologist and Geophysicist Act (Business and Professions Code section 7800, et seq.), and the Professional Land Surveyors' Act (Business and Professions Code section 8700, et seq.).

BPC section 141 allows for the use of disciplinary action taken in other jurisdictions to be considered by the Board.

Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), amended BPC sections 475, 480, 481, 482, 488, 490, 492, and 493 relative to substantial relationship and rehabilitation criteria in the use of criminal history, disciplinary history, professional misconduct, or prior acts evidence in initial licensing approvals or denials, and decisions to suspend, revoke, or discipline licensees. The new provisions will go into effect July 1, 2020.

The primary purpose of this proposal is to implement, interpret, and make specific the provisions of BPC sections 141, 475, 480, 481, 482, 488, 490, 492, and 493 relative to substantial relationship and rehabilitation criteria in the use of criminal history, disciplinary history, professional misconduct, or prior acts evidence in initial licensing approvals or denials, and decisions to suspend, revoke, or discipline licensees. The Board is proposing the following changes:

Amend Sections 416 and 3060 of Article 1 of Division 5 and Article 5 of Division 29, respectively, of Title 16 of the California Code of Regulations (Substantial Relationship Criteria):

The proposed amendments, for purposes of denial, suspension, or revocation of a license, would add professional misconduct and out-of-state discipline as grounds requiring the Board to consider the substantially related criteria, and require the Board, in making the substantial relationship determination for a crime, to consider the following criteria: (1) the nature and gravity of the offense; (2) the number of years elapsed since the date of the offense; and (3) the nature and duties of a person holding the license. The proposal would also add that substantially related crimes, professional misconduct, or acts would include violating other state or federal laws governing the practices of professional engineering, land surveying, geology, and geophysics.

Amend Sections 418 and 3061 of Article 1 of Division 5 and Article 5 of Division 29, respectively, of Title 16 of the California Code of Regulations (Criteria for Rehabilitation):

The proposed amendments would clarify that the Board, when considering a license denial or discipline on the ground that the applicant or licensee was convicted of a crime, would have to determine whether the applicant or licensee made a showing of rehabilitation and is presently eligible for a license, if the applicant or licensee completed the criminal sentence without a violation of parole or probation. In making that

determination, the proposal would require the Board to consider the nature and gravity of the crime, the length of the parole or probation period, the extent to which the parole or probation period was shortened or lengthened, and the reasons therefor, the terms or conditions of parole or probation and the extent to which they bear on the applicant's or licensee's rehabilitation, and the extent to which the terms or conditions of parole were modified, and why. The proposal would require a broader set of rehabilitation criteria to be considered for applicants and licensees who had not completed the criminal sentence without a violation of parole or probation, did not sufficiently demonstrate their rehabilitation under the narrower set of criteria, or when the denial or discipline was based on something other than a conviction.

POLICY STATEMENT OVERVIEW/ANTICIPATED BENEFITS OF PROPOSAL

As specified in the legislative analyses of AB 2138, this proposal seeks to reduce barriers to licensure for individuals with prior criminal convictions, which may reduce recidivism and provide economic opportunity to California's residents. In addition, the proposal seeks to improve clarity, transparency, and consistency for applicants and licensees in the Board's use of their criminal histories. Furthermore, by reducing barriers to licensure, the Board anticipates there may be benefits to consumers who may have greater access to licensed professionals.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing these regulations and amendments, the Board has conducted a search of any similar regulations of these topics and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies:

The Board anticipates that there may be an increased cost to the state as a result of amending the sections identified in the regulatory proposal. By further defining the substantial relationship and rehabilitation criteria for criminal convictions, Board staff may see an increased workload to research convictions and to substantiate that rehabilitation has been achieved. The Board anticipates that any additional workload would be absorbable within existing resources. Should the workload be greater than anticipated, the Board will seek additional resources through the annual budget process.

Cost or Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None

Business Impact:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses in the state of California as the Board licenses individuals, not businesses, and the proposed amendments affect only individuals who are applying for licensure or who are already licensed and who have been convicted of a crime or had disciplinary action taken against them in another jurisdiction.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have an impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

Benefits of Regulation:

The Board has determined that this proposal may benefit individuals, who would have greater access to licensure, reduce criminal recidivism, and provide economic opportunity to California residents with a criminal history. The public may benefit from the proposal with increased access to licensed professionals, which may benefit the health, safety, and welfare of California's consumers. The regulatory proposal does not affect worker safety or the state's environment.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The following alternatives to this proposal were considered:

- Option 1: To pursue a regulatory change that requires the Board to find rehabilitation if the applicant completed their terms of their criminal probation or parole. Courts give little weight to the fact that an applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole since they are under the direct supervision of correctional authorities and are required to behave in an exemplary fashion. As such, the Board believes that reviewing each individual on the basis of multiple criteria is the better indicator of whether individuals are rehabilitated and not a danger to the public's health, safety, and welfare. For these reasons, the Board rejected this option.
- Option 2: Do nothing, meaning the Board would not adopt the regulations. The Board opted not to pursue this option because, pursuant to AB 2138, the Board is mandated to adopt proposed regulations by July 1, 2020.

Any interested person may submit comments to the Board in writing relevant to the above determinations addressed to the individuals listed under "Contact Person" in this Notice.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the individuals listed under "Contact Person" in this Notice.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All of the information upon which the proposed regulatory action is based is contained in the rulemaking file which is available for public inspection by contacting the individuals listed under "Contact Person" in this Notice.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the Contact Person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Nancy Eissler, Assistant Executive Officer
Address: Board for Professional Engineers, Land Surveyors,
and Geologists
2535 Capitol Oaks Drive, Suite 300
Sacramento, CA 95833
Telephone No.: 916-263-2241
Fax No.: 916-263-2221
E-Mail Address: Nancy.Eissler@dca.ca.gov

The backup contact person is:

Name: Jeff Alameida, Administrative Services Manager
Address: Board for Professional Engineers, Land Surveyors,
and Geologists
2535 Capitol Oaks Drive, Suite 300
Sacramento, CA 95833
Telephone No.: 916-263-2269
Fax No.: 916-263-2221
E-Mail Address: Kara.Williams@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.bpelsq.ca.gov.

Eissler, Nancy@DCA

From: Vinuta Naik <[REDACTED]>
Sent: Monday, April 27, 2020 4:12 PM
To: Eissler, Nancy@DCA; Alameida, Jeff@DCA
Cc: Faride Perez
Subject: Professional Engineers' Board AB 2138 Implementation Comments
Attachments: 2020.4.27-Prof. Engineers regs.pdf

[EXTERNAL]: [REDACTED]

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Dear Nancy Eissler and Jeff Alameida,

Please find our attached comments with regards to the existing Professional Engineers Board regulations implementing AB 2138.

Please do not hesitate to contact either Faride or me if you have any questions.

Best,
Vinuta

--
VINUTA NAIK | SENIOR ATTORNEY, ECONOMIC ADVANCEMENT PROGRAM

Pronouns: she/her/hers

Community Legal Services in East Palo Alto

www.clsepa.org

Email: [REDACTED] | Phone: [REDACTED] | Fax: [REDACTED]

1861 Bay Road | East Palo Alto, CA 94303

Google Voice: [REDACTED]

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COMMUNITY
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IN EAST PALO ALTO



Center for
Employment
Opportunities

April 27, 2020

Via Email

California Department of Consumer Affairs
Board for Professional Engineers, Land Surveyors, and Geologists
ATTN: Nancy Eissler and Jeff Alameida
2535 Capitol Oaks Drive, Suite 300
Sacramento, CA 95833
E-Mail: Nancy.Eissler@dca.ca.gov
Jeff.Alameida@dca.ca.gov

RE: Comments in Response to Dept. of Consumer Affairs, California Board for Professional Engineers, Land Surveyors, and Geologists Regulatory Action Concerning the Implementation of AB 2138, Proposal to Amend Sections 416 and 418 of Division 5 of Title 16 and Sections 3060 and 3061 of Division 29 of Title 16 of the California Code of Regulations

Dear Nancy Eissler and Jeff Alameida:

Thank you for the opportunity to submit comments to the Department of Consumer Affairs (“DCA”), Board for Professional Engineers, Land Surveyors, and Geologists (“Board”) regarding proposed regulations to implement AB 2138.

Assembly Bill 2138 was authored by Assemblymembers David Chiu and Evan Low to help formerly incarcerated people have a fair chance at obtaining occupational licensure. AB 2138 was sponsored by the Anti-Recidivism Coalition, East Bay Community Law Center, Legal Services for Prisoners with Children, Root & Rebound and supported by a coalition of 50 organizations. Thanks to the passage of AB 2138 in 2018, the roughly 1 in 3 or 8 million Californians with arrest or conviction records will face fewer barriers to employment and will help to fill the much needed occupational employment gaps in the State.

Formerly incarcerated workers strive to obtain permanent, stable, and living wage jobs, however around 30% of jobs require licensure, clearance, or oversight by a governing body. This oversight, while intended to protect public safety, disproportionately impacts people of color, low-income, and indigent communities of people. These communities have been disproportionately impacted by over-policing and over-criminalization resulting in contacts with law enforcement that bar these applicants from later obtaining the licensure they require to pursue employment under DCA’s regulation. Moreover, applicants have been deterred by the lengthy process, lack of clarity, and obstacles to obtaining licensure – problems that AB 2138 seeks to rectify to offer a fair chance to all people.

However, across the state of California, there are only a handful of organizations that support low-income and indigent people seeking occupational licensure. Licensure applicants look for help answering questions about general eligibility, the initial application, appeals, probationary and restricted licenses, and license revocations or suspensions. The lack of clarity in this process and lack of low-cost or free service providers, leads many people facing differing levels of adversity to give up entirely. We believe that our direct experience with clients who are undergoing this difficult process, along with our involvement in the drafting and passage of AB 2138, makes us equipped to understand the proper implementation of this bill.

The undersigned organizations commend the Board for its action to implement AB 2138 and thereby reduce discrimination against people of color in California, who are disproportionately denied job opportunities because of occupational licensing-related conviction background checks. We support amendments to sections 416 and 418 of Division 5 of Title 16 and Sections 3060 and 3061 of Division 29 of Title 16 of the California Code of Regulations to reflect the

passage of Assembly Bill 2138, Chiu, but believe the proposed amendments should be clarified and go further in order to fully implement the intention and spirit of the AB 2138 text.

The proposed regulations leave some gaps in the regulatory scheme under the changes to CA Business and Professions Code sections 480, 481, 482, and 493 as modified by AB 2138. These proposed regulations fail to meet and implement CA B&P Code sections 480, 481, 482, and 493 and are not, as currently written, valid. The proposed regulations also fall short of the intent of the bill, which includes combating discrimination against people with records that have demonstrated rehabilitation and seek to establish themselves professionally.

Specifically, the proposed regulations do not comply with AB 2138 as follows:

- Sections 416(c) and 3060(c) states that certain acts and convictions are substantially related regardless of the time that has passed or the nature and gravity of the offense in contravention of AB 2138 Business and Professions Code section 481. AB 2138 allows the Board discretion to determine which crimes are substantially related on an individual basis. Moreover, these sections fail to note that criminal history that resulted in the applicant obtaining a Certificate of Rehabilitation, pardon, dismissal per Penal Code section 1203.4 *et seq.*, or an arrest that resulted in a disposition other than a conviction **shall** not be denied a license. See Business and Professions Code section 480(b)-(d).
- Sections 418 and 3061, as written, rely too heavily on law enforcement's reports and determination of the applicant's progress. Rehabilitation can and does take many forms that the current language does not fully embrace. Please see number 5 below for examples of rehabilitation to expand the proposed regulations.

Further, we urge the Board to incorporate the full extent of AB 2138 by including the following provisions:

1. The proposed regulations should include the 7 year washout period for consideration of convictions or discipline which are not statutorily considered serious felonies under the Cal. Penal Code. 1192.7. See Cal Business and Professions Code section 480(a).
2. The proposed regulations should provide that a person with a criminal history **shall not** be denied a license if the applicant has obtained a Certificate of Rehabilitation, dismissal per Penal Code section 1203.4, 1203.4a, 1203.41, or 1203.42, or an arrest which led to an infraction/citation or a disposition other than a conviction, or juvenile adjudication. See Cal Business and Professions Code section 480(b)-(d).

3. The proposed regulations fail to include that the board shall not require an applicant to disclose any information or documentation regarding the applicant's criminal history. See Cal Business and Professions Code section 480(f)(2).
4. The proposed regulations fails to include that the board shall notify the applicant in writing if the applicant is denied or disqualified from licensure. The Board must provide procedures describing the process for the applicant to challenge the decision or to request re-consideration, that the applicant has a right to appeal the board's decision, and the process of requesting a complete conviction history. See Cal Business and Professions Code section 480(f)(3).
5. The intent of AB 2138 was not to incorporate mere probation or parole reports into the occupational licensing determinations. Merely looking to law enforcement will not adequately show how an applicant would do on the job. Rather, rehabilitation can and does take many forms that extend beyond mere law enforcement supervision. To better define rehabilitation, we recommend that the board provide additional examples of evidence of mitigating circumstances and rehabilitation efforts to assist both the Board and licensing applicants.

For instance, the Board should consider adding the following rehabilitation criteria:

- Volunteer service;
 - Successful employment in a related field;
 - A history of work experience in an employment social enterprise;
 - Unpaid work in the community;
 - Furthered education;
 - Abstinence from controlled substances and/or alcohol;
 - Stability of family life, fulfillment of parental and familial responsibilities;
 - New and different social and business relationships from those which existed at the time of the underlying charges at issue;
 - Change in attitude of the applicant as evidenced by:
 - Personal testimony,
 - Evidence of rehabilitation submitted by the applicant,
 - Evidence from family, friends, and/or other persons familiar with the applicant's previous behavior patterns and subsequent attitude and behavioral changes, and;
 - Other markers of rehabilitation.
6. The proposed regulations fail to include any mention of requirements to obtain statistical information on the number of applicants with a criminal record who apply and receive notice of denial/disqualification of licensure, provided evidence of mitigation or

rehabilitation, the final disposition of the application, and demographic information. See Cal Business and Professions Code section 480(g).

Adequate implementation of the changes to California Business and Professions Code sections 480, 481, 482, and 493 will go a long way toward restoring hope and opportunity for the nearly 1 in 3 or 8 million Californians who have an arrest or conviction record. Thank you for your consideration.

If you have any questions regarding the content of these comments, please contact Faride Perez-Aucar (Root and Rebound) or Vinuta Naik (Community Legal Services in East Palo Alto).

Sincerely,

/s/ Faride Perez-Aucar

/s/ Vinuta Naik

Faride Perez-Aucar



Vinuta Naik



Organizations:

A New Way of Life Reentry Project
Californians for Safety and Justice
Center for Employment Opportunities
Center for Living and Learning
Community Legal Services in East Palo Alto
Criminal Justice Clinic, UC Irvine School of Law
East Bay Community Law Center
Legal Aid at Work
Legal Services for Prisoners with Children, All of Us or None
Los Angeles Regional Reentry Project
National Association of Social Workers, California Chapter
REDF
The Record Clearance Project, San Jose State University
Root and Rebound
Rubicon Programs
Underground Scholars Initiative

VI. Legislation

B. Discussion of Legislation for 2020 (Possible Action)

AB 2028 State agencies: meetings.

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

AB 3334 Professional Land Surveyors' and Professional Engineers Acts.

SB 1057 Land.

Summary of Legislation
Updated 5/5/2020

AB 2028 State agencies: meetings. (Aguiar-Curry)

3/12/2020 – Watch (there should be some exceptions for matters that are urgent or have changed within the 10-day notice period)

* 5/7/2020 – Action needed – recommend changing to OPPOSE UNLESS AMENDED

AB 2113 Refugees, asylees, and immigrants: professional licensing. (Low)

3/12/2020 – Watch

NOTE: Amended 5/4/2020 to specifically state applicants under this section must meet all requirements for licensure.

* 5/7/2020 – No action needed

AB 3334 Professional Land Surveyors' Act. (Chen)

3/12/2020 – Watch (directed staff to work with the author and sponsor on any proposed amendments in order to address the concerns previously expressed by the Board relating to SB 556)

NOTE: Amended 5/4/2020 to amend Sections 6731.1, 8726, and 8729, relating to the definitions of civil engineering and land surveying and to land surveying businesses.

* 5/7/2020 – Action needed – recommend changing position to OPPOSE UNLESS AMENDED

SB 1057 Land. (Jones)

3/12/2020 – Oppose unless Amended to remove amendments to Section 8726 (Board is requesting bill be amended because it believes it needs more time to review, through its LSTAC, the definition of cadastral surveying and what definition, if any, would be appropriate to be included in Section 8726)

* 5/7/2020 – Action needed – recommend changing position to OPPOSE UNLESS AMENDED

AB 2028 (Aguiar-Curry, D-Napa)
State agencies: meetings.

Status: 2/14/2020 – Referred to Assembly Committee on Government Organization.

Location: 4/23/2020 – Assembly Committee on Government Organization

Introduced: 1/30/2020

Board Position: Watch (as of 3/12/2020)

Board Staff Analysis: 5/5/2020

Bill Summary: Existing law, the Bagley-Keene Open Meeting Act, requires that all meetings of a state body, as defined, be open and public and that all person be permitted attend any meeting of a state body, except as otherwise provided in the act. Existing law also requires the state body to provide notice of the meeting, including specified information and a specific agenda of the meeting, as provided, to any person who requests that notice in writing and to make that notice available on the internet at least 10 days in advance of the meeting. Additionally, existing law requires a state body to provide an opportunity for members of the public to directly address the state body on each agenda item; however, existing laws provides an exemption from this requirement for, among other things, an agenda item that has already been considered by a committee composed exclusively of members of the state body at a public meeting where members of the public were afforded an opportunity to address the committee on the item.

This bill would require that the notice of the meeting also include all writings or materials provided for the meeting to a member of the state body by the staff of a state agency, board, or commission or by another member of the state body that are in connection with a matter subject to discussion or consideration at the meeting. These writings or materials would be required to be made available on the internet at least 10 days in advance of the meeting and to any person who requests that notice in writing. A state body would be allowed to distribute or discuss writings or materials at a meeting of the state body only if it had complied with this provision. These requirements would not apply to writings or materials prepared for a matter to be discussed in closed session. This bill would also delete the exemption relating to public comment, thus providing the public with an opportunity to address the state body on any agenda item, even if the public had already had an opportunity to address it at a public meeting of a committee of the state body.

Staff Comment: The “writings or materials” referred to in this bill are what this Board refers to as the “meeting materials.” The meeting materials prepared by staff are provided to the Board members and posted on the Board’s website approximately seven days (one week) before the meeting. If new or updated information becomes available after the meeting materials packet is distributed, the new information is distributed to the Board members and made available to the public, either by posting on the Board’s website if time allows or by having them available as handouts at the meeting. Current law requires that writings, as defined, that are distributed to members of the state body prior to or during a meeting pertaining to an item to be considered during the meeting be made available for public inspection at the meeting if prepared by the state body or a member of the state body. The Department of Consumer Affairs’ Legal Office has previously indicated that this means any written materials the Board will review or discuss at a meeting must be made available to the public at any time prior to the Board’s discussion, which allows for handouts of updated information to be provided at meetings. This bill would require that any writings or materials that are to be reviewed or discussed by the Board members at a meeting be made available to the public at least 10 days prior to the meeting, which would preclude the opportunity for new or updated information to be provided to the Board within that 10-day period.

At its March 12, 2020, meeting, the Board took a position of “Watch” on this bill. However, the Board does believe there should be exceptions for matters that are urgent or have changed within the 10-day notice period.

As of May 5, 2020, the bill has not been amended or scheduled for hearing. However, staff believes the Board should change its position to “Oppose Unless Amended” and request that the bill be amended to exempt materials relating to budgetary, legislative, and regulatory matters.

Staff Recommendation: Staff recommends that the Board take a position of “Oppose Unless Amended” on AB 2028 and request that the bill be amended to exempt materials relating to budgetary, legislative, and regulatory matters.

Laws: An act to amend Sections 11125 and 11125.7 of the Government Code, relating to public meetings.

ASSEMBLY BILL

No. 2028

Introduced by Assembly Member Aguiar-Curry

January 30, 2020

An act to amend Sections 11125 and 11125.7 of the Government Code, relating to public meetings.

LEGISLATIVE COUNSEL'S DIGEST

AB 2028, as introduced, Aguiar-Curry. State agencies: meetings.

Existing law, the Bagley-Keene Open Meeting Act, requires that all meetings of a state body, as defined, be open and public, and that all persons be permitted to attend any meeting of a state body, except as otherwise provided in that act. Existing law requires the state body to provide notice of its meeting, including specified information and a specific agenda of the meeting, as provided, to any person who requests that notice in writing and to make that notice available on the internet at least 10 days in advance of the meeting.

This bill would, except for closed sessions, require that this notice include all writings or materials provided for the noticed meeting to a member of the state body by staff of a state agency, board, or commission, or another member of the state body, that are in connection with a matter subject to discussion or consideration at the meeting. The bill would require these writings and materials to be made available on the internet at least 10 days in advance of the meeting. The bill would provide that a state body may only distribute or discuss these writings or materials at a meeting of the state body if it has complied with these requirements.

Existing law requires that a state body provide an opportunity for members of the public to directly address the body on each agenda item.

Existing law exempts from this requirement, among other things, an agenda item that has already been considered by a committee composed exclusively of members of the state body at a public meeting where members of the public were afforded an opportunity to address the committee on the item.

This bill would delete this exception, thereby making the requirement to provide an opportunity to address the state body applicable to an agenda item for which the public had an opportunity to address it at a public meeting of a committee of the state body.

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

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

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) The Bagley-Keene Open Meeting Act (Article 9
- 3 (commencing with Section 11120) of Chapter 1 of Part 1 of
- 4 Division 3 of Title 2 of the Government Code) (hereafter
- 5 “Bagley-Keene”) was intended to implement Section 3 of Article
- 6 I of the California Constitution, which states in part, “The people
- 7 have the right of access to information concerning the conduct of
- 8 the people’s business, and, therefore, the meetings of public bodies
- 9 and the writings of public officials and agencies shall be open to
- 10 public scrutiny.”
- 11 (b) Bagley-Keene was written to protect public meetings and
- 12 public notice and to ensure the transparency of actions taken by
- 13 state agencies, boards, and commissions.
- 14 (c) Californians have the right to participate in state body
- 15 deliberations. This includes the public’s ability to comment on all
- 16 agenda items discussed at a meeting of the state body, regardless
- 17 of whether an item has been discussed previously in a committee
- 18 of the state body.
- 19 (d) The purpose of public notice is so that state bodies give the
- 20 public adequate time for review of the substance of a state body
- 21 meeting and for comment.
- 22 (e) Public notice must also include any writings or materials
- 23 provided by a state body’s staff or by a member of the state body
- 24 to other members of the state body for a noticed meeting of the
- 25 body held at least 10 days prior to the meeting.

1 (f) Bagley-Keene affirms these rights by stating in Section 11120
2 of the Government Code, “The people of this state do not yield
3 their sovereignty to the agencies which serve them. The people,
4 in delegating authority, do not give their public servants the right
5 to decide what is good for the people to know and what is not good
6 for them to know. The people insist on remaining informed so that
7 they may retain control over the instruments they have created.”

8 SEC. 2. Section 11125 of the Government Code is amended
9 to read:

10 11125. (a) The state body shall provide notice of its meeting
11 to any person who requests that notice in writing. Notice shall be
12 given and also made available on the ~~Internet~~ *internet* at least 10
13 days in advance of the meeting, and shall include the name,
14 address, and telephone number of any person who can provide
15 further information prior to the meeting, but need not include a
16 list of witnesses expected to appear at the meeting. The written
17 notice shall additionally include the address of the ~~Internet~~ *internet* site
18 *internet website* where notices required by this article are made
19 available.

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

30 (c) (1) *Except as otherwise provided in paragraph (4), any*
31 *notice provided pursuant to subdivision (a) shall include all*
32 *writings or materials provided for the noticed meeting to a member*
33 *of the state body by the staff of a state agency, board, or*
34 *commission, or another member of the state body, that are in*
35 *connection with a matter subject to discussion or consideration*
36 *at the meeting.*

37 (2) *The writings or materials described in paragraph (1) shall*
38 *be made available on the internet at least 10 days in advance of*
39 *the meeting, and to any person who requests that notice in writing.*

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

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

7 ~~(e)~~

8 (d) Notice of a meeting of a state body that complies with this
9 section shall also constitute notice of a meeting of an advisory
10 body of that state body, provided that the business to be discussed
11 by the advisory body is covered by the notice of the meeting of
12 the state body, provided that the specific time and place of the
13 advisory body's meeting is announced during the open and public
14 state body's meeting, and provided that the advisory body's
15 meeting is conducted within a reasonable time of, and nearby, the
16 meeting of the state body.

17 ~~(e)~~

18 (e) A person may request, and shall be provided, notice pursuant
19 to subdivision (a) for all meetings of a state body or for a specific
20 meeting or meetings. In addition, at the state body's discretion, a
21 person may request, and may be provided, notice of only those
22 meetings of a state body at which a particular subject or subjects
23 specified in the request will be discussed.

24 ~~(e)~~

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

27 ~~(f)~~

28 (g) The notice shall be made available in appropriate alternative
29 formats, as required by Section 202 of the Americans with
30 Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal
31 rules and regulations adopted in implementation thereof, upon
32 request by any person with a disability. The notice shall include
33 information regarding how, to whom, and by when a request for
34 any disability-related modification or accommodation, including
35 auxiliary aids or services may be made by a person with a disability
36 who requires these aids or services in order to participate in the
37 public meeting.

38 SEC. 3. Section 11125.7 of the Government Code is amended
39 to read:

1 11125.7. (a) Except as otherwise provided in this section, the
2 state body shall provide an opportunity for members of the public
3 to directly address the state body on each agenda item before or
4 during the state body's discussion or consideration of the item.
5 ~~This section is not applicable if the agenda item has already been~~
6 ~~considered by a committee composed exclusively of members of~~
7 ~~the state body at a public meeting where interested members of~~
8 ~~the public were afforded the opportunity to address the committee~~
9 ~~on the item, before or during the committee's consideration of the~~
10 ~~item, unless the item has been substantially changed since the~~
11 ~~committee heard the item, as determined by the state body.~~ Every
12 notice for a special meeting at which action is proposed to be taken
13 on an item shall provide an opportunity for members of the public
14 to directly address the state body concerning that item prior to
15 action on the item. In addition, the notice requirement of Section
16 11125 shall not preclude the acceptance of testimony at meetings,
17 other than emergency meetings, from members of the public if no
18 action is taken by the state body at the same meeting on matters
19 brought before the body by members of the public.

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

25 (c) (1) Notwithstanding subdivision (b), when a state body
26 limits time for public comment the state body shall provide at least
27 twice the allotted time to a member of the public who utilizes a
28 translator to ensure that non-English speakers receive the same
29 opportunity to directly address the state body.

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

33 (d) The state body shall not prohibit public criticism of the
34 policies, programs, or services of the state body, or of the acts or
35 omissions of the state body. Nothing in this subdivision shall confer
36 any privilege or protection for expression beyond that otherwise
37 provided by law.

38 (e) This section is not applicable to ~~closed~~ *any of the following*:

39 (1) *Closed* sessions held pursuant to Section 11126.

40 (f) ~~This section is not applicable to decisions~~

1 (2) *Decisions* regarding proceedings held pursuant to Chapter
2 5 (commencing with Section 11500), relating to administrative
3 adjudication, or to the conduct of those proceedings.
4 ~~(g) This section is not applicable to hearings~~
5 (3) *Hearings* conducted by the California Victim Compensation
6 Board pursuant to Sections 13963 and 13963.1.
7 ~~(h) This section is not applicable to agenda~~
8 (4) *Agenda* items that involve decisions of the Public Utilities
9 Commission regarding adjudicatory hearings held pursuant to
10 Chapter 9 (commencing with Section 1701) of Part 1 of Division
11 1 of the Public Utilities Code. For all other agenda items, the
12 commission shall provide members of the public, other than those
13 who have already participated in the proceedings underlying the
14 agenda item, an opportunity to directly address the commission
15 before or during the commission’s consideration of the item.

**AB 2113 (Introduced by Assembly Member Low, D-Cupertino;
Coauthors: Assembly Members Carrillo, D-Los Angeles; Medina, D-Riverside;
and Blanca Rubio, D-West Covina)
Refugees, asylees, and immigrants: professional licensing.**

Status: 2/27/2020 – Referred to Assembly Committee on Business and Professions.

Location: 4/23/2020 – Assembly Committee on Business and Professions

Introduced: 2/6/2020

Amended: 5/4/2020

Board Position: Watch (as of 3/12/2020)

Board Staff Analysis: 5/4/2020

Bill Summary: This bill would add Section 135.4 to the Business and Professions Code. This new section would require that a board within the Department of Consumer Affairs “shall expedite, and may assist, the initial licensure process” for applicants who supply satisfactory evidence that they have been admitted to the United States as a refugee or granted political asylum under specified provisions of the United States Code or who have a special immigrant visa (SIV) that has been granted a status under specified provisions of the Public Law.

Staff Comment: Existing Section 115.4 of the Business and Professions Code uses this same “shall expedite, and may assist, the initial licensure process” for applicants who were honorably discharged from active duty military service. Existing Section 115.5 of the Business and Professions Code states “shall expedite the initial licensure process” for applicants who are spouses or domestic partners of active duty military members. Under these sections, the applicants must still meet all of the requirements for licensure specified in the applicable licensing act.

This bill would provide for the same expedited licensure process for refugees, individuals granted political asylum, and individuals with an SIV. As with the provisions of law pertaining to former military members and military spouses, applicants under this provision would still have to meet all of the requirements for licensure specified in the Professional Engineers Act, the Professional Land Surveyors’ Act, and the Geologist and Geophysicist Act.

AB 2113 was amended on May 4, 2020, to add a subdivision that specifically states “(b) Nothing in this section shall be construed as changing existing licensure requirements. A person applying for expedited licensure under subdivision (a) shall meet all applicable statutory and regulatory licensure requirements.” This amendment does not alter the process or have any effect on how the Board would handle applications under this section of law; it simply makes it clear that anyone apply under this section must still meet all licensure requirements. As such, there is no need for the Board to take any action on this bill.

Staff Recommendation: No action needed at this time.

Laws: An act to add Section 134.5 to the Business and Professions Code, relating to professions and vocations.

AMENDED IN ASSEMBLY MAY 4, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 2113

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

February 6, 2020

An act to add Section 135.4 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2113, as amended, Low. Refugees, asylees, and immigrants: professional licensing.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law prohibits an entity within the department from denying licensure to an applicant based upon their citizenship or immigration status.

This bill, notwithstanding any other law, would require a board within the department to expedite, and authorize it to assist, the initial licensure process for an applicant who supplies satisfactory evidence to the board that they are a refugee, have been granted political asylum, or have a special immigrant visa, as specified. The bill would authorize a board to adopt regulations necessary to administer these provisions.

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

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

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

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

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

18 ~~(b)~~

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

AB 3334 (Chen, R-Brea)
Professional Land Surveyors' and Professional Engineers Acts

Status: 2/24/2020 – Read first time.

Location: 4/23/2020 – In Assembly.

Introduced: 2/21/2020

Amended: 5/4/2020

Board Position: Watch (as of 3/12/2020)

Board Staff Analysis: 5/5/2020

Bill Summary: This bill would amend Section 8726 of the Business and Professions Code, which is the section that defines land surveying. The amendments in the introduced version of the bill are non-substantive.

Staff Comment: According to the author's office, this is a spot bill; the intent is to amend the bill to include update the definition due to technological changes in the field. The author's staff advised that the California and Nevada Civil Engineers and Land Surveyors Association (CELSA) is the sponsor.

In January, Board staff was advised that Senator Richard Pan had decided not to move forward with Senate Bill 556, which was the bill co-sponsored by CELSA that would have added a requirement for land surveying businesses to obtain registration; the Board was opposed to this policy concept and to SB 556. Subsequently, representatives from CELSA reached out to Board staff to advise that they planned to move forward with amending Section 8726, which had been proposed in earlier versions of SB 556. The representatives indicated they plan to develop language that will clarify the definition of land surveying and would like to work with the Board and staff in developing language that would address the concerns the Board had previously expressed when definitional language was included in SB 556. We indicate our willingness to continue working with them based on the previous input and direction from the Board. We also conveyed this willingness to work on the bill to the author's staff, which was graciously accepted.

At its March 12, 2020, meeting, the Board took a position of "Watch" on AB 3334, as introduced, and directed staff to work with the author and sponsor on any proposed amendments in order to address the concerns previously expressed by the Board regarding SB 556. Board staff has had preliminary discussions with the sponsor.

AB 3334 was amended on May 4, 2020. This version proposes to amend Section 6731.1, which contains the definition of that portion of civil engineering referred to as "engineering surveying"; Section 8726, which contains the definition of land surveying; and Section 8729, which deals with land surveying businesses.

The proposed changes to Sections 6731.1 and 8726 are very similar to ones proposed in various versions of SB 556. At the time, the Board had concerns with the wording and confusion that could be caused in determining what constitutes the practices of engineering surveying and land surveying. However, the Board believed its concerns could be addressed with some amendments and had directed Board staff to work with the sponsors. SB 556 was then amended to remove the definitional sections, so the changes recommended by Board staff did not have the opportunity to be fully discussed. In current discussions between Board staff and CELSA, CELSA has indicated they are willing to consider presenting further amendments to the author to address the concerns with the language as amended into AB 3334.

The change proposed to Section 8729 in AB 3334 would remove the subdivision that allows for non-land surveying businesses to contract with someone legally authorized to perform land surveying. This subdivision is often misread and, therefore, misinterpreted, as allowing non-land surveying businesses to offer (contract for) land surveying services and then hire or sub-contract with a person legally authorized to perform land surveying. This misinterpretation seems to be at the heart of the concerns of CELSA, and many others, relating to unlicensed individuals operating businesses through which they offer land surveying services. As such, staff believes this amendment would help to reduce the confusion over who may offer land surveying services.

Staff is recommending that the Board take a position of “Oppose Unless Amended” on AB 3334, as amended May 4, 2020, and submit the language included with this analysis as the amendments it is requesting. Since CELSA has indicated a willingness to work with the Board on further amendments, and there is a possibility that the bill might be amended and heard prior to the June 2020 Board Meeting, staff also recommends that the Board delegate to Board Members Steve Wilson, PE, PLS, and Andrew Hamilton the authority to change the Board’s position on the bill should it be amended to address the Board’s concerns prior to the next Board meeting.

Staff Recommendation: Staff recommends the Board take a position of “Oppose Unless Amended” on AB 3334, as amended May 4, 2020, and submit the language included with this analysis as the amendments it is requesting. Staff further recommends the Board delegate to Board Members Steve Wilson, PE, PLS, and Andrew Hamilton the authority to change the Board’s position on the bill should it be amended to address the Board’s concerns prior to the next Board meeting.

Laws: An act to amend Sections 6731.1, 8726, and 8729 of the Business and Professions Code, relating to professions and vocations.

PROPOSED AMENDMENTS TO AB 3334
As Prepared by Board Staff

Section 6731.1 of the Business and Professions Code is amended to read:

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

(a) (1) Locates, relocates, establishes, reestablishes, ~~or retraces the alignment~~ retraces, or lays out, through the use of mathematical or physical measurements, the reference points or lines for the location, alignment, or elevation ~~for~~ of any of the fixed works embraced within the practice of civil engineering, as described in Section 6731.

(2) Nothing in subdivision (a)(1) is to be construed as prohibiting a contractor, licensed under Chapter 9 (commencing with Section 7000) of Division 3, from performing the layout of interior building components using the reference points or lines described in subdivision (a)(1).

(b) Determines the configuration or contour of the earth's ~~surface~~ surface, the benthic surface below water bodies, the measuring for volumetric calculations of earthwork, or the position of manmade or natural fixed objects above, on, or below the surface of earth by applying the principles of ~~trigonometry or photogrammetry.~~ mathematics or by using photogrammetric methods.

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

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

Section 6738 of the Business and Professions Code, as amended by Section 1 of Chapter 150 of the Statutes of 2018, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 6738 of the Business and Professions Code, as amended by Section 2 of Chapter 150 of the Statutes of 2018, is amended to read:

(a) This chapter does not prohibit one or more civil, electrical, or mechanical engineers from practicing or offering to practice, within the scope of their license, civil (including geotechnical

and structural), electrical, or mechanical engineering as a sole proprietorship, partnership, firm, or corporation (hereinafter called business), if all of the following requirements are met:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A person who does any of the following is guilty of a misdemeanor:

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

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

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

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

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

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

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

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

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

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

Section 8726 of the Business and Professions Code is amended to read:

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

(a) (1) Locates, relocates, establishes, reestablishes, ~~or retraces the alignment~~ retraces, or lays out, through the use of mathematical or physical measurements, the reference points or lines for the location, alignment, or elevation ~~for~~ of any of the fixed works embraced within the practice of civil engineering, as described in Section 6731.

(2) Nothing in subdivision (a)(1) is to be construed as prohibiting a contractor, licensed under Chapter 9 (commencing with Section 7000) of Division 3, from performing the layout of interior building components using the reference points or lines described in subdivision (a)(1).

(b) Determines the configuration or contour of the earth's surface, ~~the benthic surface below water bodies,~~ the measuring for volumetric calculations of earthwork, or the position of manmade or natural fixed objects above, on, or below the surface of the earth by applying the principles of mathematics or photogrammetry.

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

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

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

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

(g) Determines the information shown or to be shown on any map or document prepared or furnished in connection with any one or more of the functions described in subdivisions (a), (b), (c), (d), (e), and (f).

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

(i) Procures or offers to procure land surveying work for ~~himself, herself, themselves~~ or others.

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

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

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

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

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

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

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

Section 8729 of the Business and Professions Code, as amended by Section 3 of Chapter 150 of the Statutes of 2018, is amended to read:

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

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

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

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

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

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

(d) A person not licensed under this chapter or licensed as a civil engineer in this state prior to 1982 may also be a partner or an officer of a land surveying business if the conditions of subdivision (a) are satisfied. Nothing in this section shall be construed to permit a person who is

not licensed under this chapter or licensed as a civil engineer in this state prior to 1982 to be the sole owner or officer of a land surveying business, unless otherwise exempt under this chapter.

~~(e) This chapter does not prevent an individual or business engaged in any line of endeavor, other than the practice of land surveying, from employing or contracting with a licensed land surveyor or a licensed civil engineer to perform the respective land surveying services incidental to the conduct of business.~~

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

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

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

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

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

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

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

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

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

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

Section 8729 of the Business and Professions Code, as amended by Section 4 of Chapter 150 of the Statutes of 2018, is amended to read:

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

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

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

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

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

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

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

~~(e) This chapter does not prevent an individual or business engaged in any line of endeavor, other than the practice of land surveying, from employing or contracting with a licensed land surveyor or a licensed civil engineer to perform the respective land surveying services incidental to the conduct of business.~~

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

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

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

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

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

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

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

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

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

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

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

A person who does any of the following is guilty of a misdemeanor:

- (a) Unless the person is exempt from licensure under this chapter, practices, or offers to practice, land surveying in this state without legal authorization.
- (b) Presents as their own the license of a professional land surveyor unless they are the person named on the license.
- (c) Attempts to file as their own any record of survey under the license of a professional land surveyor.
- (d) Gives false evidence of any kind to the board, or to any board member, in obtaining a license.
- (e) Impersonates or uses the seal, signature, or license number of a professional land surveyor or who uses a false license number.
- (f) Uses an expired, suspended, surrendered, or revoked license.
- (g) Represents themselves as, or uses the title of, professional land surveyor, or any other title whereby that person could be considered as practicing or offering to practice land surveying, unless the person is correspondingly qualified by licensure as a land surveyor under this chapter.
- (h) Uses the title, or any combination of that title, of “professional land surveyor,” “licensed land surveyor,” “land surveyor,” or the titles specified in Sections 8751 and 8775, or “land surveyor-in-training,” or who makes use of any abbreviation of that title that might lead to the belief that the person is a licensed land surveyor or holds a certificate as a land surveyor-in-training, without being licensed or certified as required by this chapter.
- (i) Unless appropriately licensed, manages, or conducts as manager, proprietor, or agent, any place of business from which land surveying work is solicited, performed, or practiced, except as authorized pursuant to Section ~~6731.2 and subdivision (e) of Section 8729.~~ 6731.2.
- (j) Violates any provision of this chapter.

AMENDED IN ASSEMBLY MAY 4, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 3334

Introduced by Assembly Member Chen

February 21, 2020

An act to amend ~~Section 8726~~ Sections 6731.1, 8726, and 8729 of the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 3334, as amended, Chen. Professional Land Surveyors' Act. and Professional Engineers Act.

(1) The Professional Engineers Act and the Professional Land Surveyors' Act provide for the licensure and regulation of professional engineers and land surveyors by the Board for Professional Engineers, Land Surveyors, and Geologists. Under those acts, a land surveyor includes a person who engages in specified practices, and civil engineering is defined to include a person who locates, relocates, establishes, reestablishes, or retraces the alignment or elevation for any of the fixed works embraced within the practice of civil engineering, as defined, determines the configuration or contour of the earth's surface, or the position of fixed objects above, on, or below the surface of the earth by applying the principles of mathematics or photogrammetry, or engages in geodetic or cadastral surveying, as defined.

This bill would include within the practices that subject a person to those acts, with regard to the practice of identifying the alignment or elevation for any exterior location of buildings, as defined, or building control lines through the use of mathematics or measurements, reference points, or lines that control the location, alignment, or elevation for

the construction of those buildings or other fixed works embraced within the practice of civil engineering. The bill would expand the practice of land surveying and civil engineering to include determining the benthic surface below water bodies and the measuring for volumetric calculations of earthwork. The bill, with respect to the practice of making determinations regarding the position of objects, would expand that practice to include such a determination made by applying the principles of mathematics, photogrammetry, or remote sensing, as defined. The bill would further revise that practice so that the determination regarding the position of objects is made regarding either manmade or natural objects, instead of fixed objects. The bill would modify the definition of geodetic surveying for purposes of the Professional Land Surveyors' Act to mean performing surveys by using techniques or methods of 3-dimensional data acquisitions, and make conforming changes to that effect.

(2) The Professional Land Surveyors' Act provides that it does not prevent an individual or business engaged in any line or endeavor, other than the practice of land surveying, from employing or contracting with a licensed land surveyor or a licensed civil engineer to perform the respective land surveying services incidental to the conduct of business.

This bill would delete that provision.

(3) Existing law makes any violation of the Professional Engineers Act or the Professional Land Surveyors' Act a misdemeanor.

By expanding the scope of practices subject to the Professional Engineers Act and the Professional Land Surveyors' Act, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law, the Professional Land Surveyors' Act, provides for the licensure and regulation of land surveyors by the Board for Professional Engineers, Land Surveyors, and Geologists. Existing law defines land surveying for purposes of the act.~~

~~This bill would make nonsubstantive changes to that definition.~~

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

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

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

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

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

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

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

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

31 (c) Creates, prepares, or modifies electronic or computerized
32 data in the performance of the activities described in subdivisions
33 (a) and (b).

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

36 **SECTION 1.**

37 **SEC. 2.** *Section 8726 of the Business and Professions Code is*
38 *amended to read:*

1 8726. A person, including any person employed by the state
 2 or by a city, county, or city and county within the state, practices
 3 land surveying within the meaning of this chapter who, either in
 4 a public or private capacity, does or offers to do any one or more
 5 of the following:

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

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

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

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

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

35 (d) Makes any survey for the subdivision or resubdivision of
 36 any tract of land. For the purposes of this subdivision, the term
 37 “subdivision” or “resubdivision” shall be defined to include, but
 38 not be limited to, the definition in the Subdivision Map Act
 39 (Division 2 (commencing with Section 66410) of Title 7 of the

1 Government Code) or the Subdivided Lands Law (Chapter 1
2 (commencing with Section 11000) of Part 2 of Division 4).

3 (e) By the use of the principles of land surveying determines
4 the position for any monument or reference point which marks a
5 property line, boundary, or corner, or sets, resets, or replaces any
6 monument or reference point.

7 (f) Geodetic *surveying* or cadastral surveying. As used in this
8 chapter, geodetic surveying means performing surveys, *by using*
9 *techniques or methods of three-dimensional data acquisition* in
10 which account is taken of the figure and size of the earth to
11 determine or predetermine the horizontal or vertical positions of
12 fixed objects thereon or related thereto, geodetic control points,
13 monuments, or stations for use in the practice of land surveying
14 or for stating the ~~position~~ *establishment of three-dimensional*
15 *positions* of fixed objects, geodetic control points, monuments, or
16 stations by California Coordinate System ~~coordinates~~ *coordinates*
17 *in accordance with Chapter 1 (commencing with Section 8801) of*
18 *Division 8 of the Public Resources Code.*

19 (g) Determines the information shown or to be shown on any
20 map or document prepared or furnished in connection with any
21 one or more of the functions described in subdivisions (a) to (f),
22 inclusive.

23 (h) Indicates, in any capacity or in any manner, by the use of
24 the title “land surveyor” or by any other title or by any other
25 representation that the person practices or offers to practice land
26 surveying in any of its branches.

27 (i) Procures or offers to procure land surveying work for
28 themselves or others.

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

32 (k) Coordinates the work of professional, technical, or special
33 consultants in connection with the activities authorized by this
34 chapter.

35 (l) Determines the information shown or to be shown within
36 the description of any deed, trust deed, or other title document
37 prepared for the purpose of describing the limit of real property
38 in connection with any one or more of the functions described in
39 subdivisions (a) to (f), inclusive.

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

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

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

11 The review, approval, or examination by a governmental entity
 12 of documents prepared or performed pursuant to this section shall
 13 be done by, or under the direct supervision of, a person authorized
 14 to practice land surveying.

15 *SEC. 3. Section 8729 of the Business and Professions Code,*
 16 *as amended by Section 3 of Chapter 150 of the Statutes of 2018,*
 17 *is amended to read:*

18 8729. (a) This chapter does not prohibit one or more licensed
 19 land surveyors or civil engineers licensed in this state prior to 1982
 20 (hereinafter called civil engineers) from practicing or offering to
 21 practice, within the scope of their licensure, land surveying as a
 22 sole proprietorship, partnership, limited liability partnership, firm,
 23 or corporation (hereinafter called business), if the following
 24 conditions are satisfied:

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

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

30 (3) If the business name of a California land surveying business
 31 contains the name of a person, then that person shall be licensed
 32 by the board as a land surveyor or licensed by the board in any
 33 year as a civil engineer. Any offer, promotion, or advertisement
 34 by the business that contains the name of any individual in the
 35 business, other than by use of the name of the individual in the
 36 business name, shall clearly and specifically designate the license
 37 discipline of each individual named.

38 (b) An out-of-state business with a branch office in this state
 39 shall meet the requirements of subdivision (a) and shall have an
 40 owner, partner, or officer who is in charge of the land surveying

1 work in this state, who is licensed in this state, and who is
2 physically present at the branch office in this state on a regular
3 basis. However, the name of the business may contain the name
4 of a person not licensed in this state, if that person is appropriately
5 licensed or registered in another state. Any offer, promotion, or
6 advertisement that contains the name of any individual in the
7 business, other than by use of the name of the individual in the
8 business name, shall clearly and specifically designate the license
9 or registration discipline of each individual named.

10 (c) The business name of a California land surveying business
11 may be a fictitious name. However, if the fictitious name includes
12 the names of any person, the requirements of paragraph (3) of
13 subdivision (a) shall be met.

14 (d) A person not licensed under this chapter or licensed as a
15 civil engineer in this state prior to 1982 may also be a partner or
16 an officer of a land surveying business if the conditions of
17 subdivision (a) are satisfied. Nothing in this section shall be
18 construed to permit a person who is not licensed under this chapter
19 or licensed as a civil engineer in this state prior to 1982 to be the
20 sole owner or office of a land surveying business, unless otherwise
21 exempt under this chapter.

22 ~~(e) This chapter does not prevent an individual or business~~
23 ~~engaged in any line of endeavor, other than the practice of land~~
24 ~~surveying, from employing or contracting with a licensed land~~
25 ~~surveyor or a licensed civil engineer to perform the respective land~~
26 ~~surveying services incidental to the conduct of business.~~

27 ~~(f)~~

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

33 ~~(g)~~

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

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

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

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

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

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

17 ~~(h)~~

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

19 ~~(i)~~

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

23 ~~(j)~~

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

26 *SEC. 4. Section 8729 of the Business and Professions Code,*
27 *as amended by Section 4 of Chapter 150 of the Statutes of 2018,*
28 *is amended to read:*

29 8729. (a) This chapter does not prohibit one or more licensed
30 land surveyors or civil engineers licensed in this state prior to 1982
31 (hereinafter called civil engineers) from practicing or offering to
32 practice within the scope of their licensure, land surveying as a
33 sole proprietorship, partnership, firm, or corporation (hereinafter
34 called business), if the following conditions are satisfied:

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

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

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

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

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

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

33 ~~(e) This chapter does not prevent an individual or business~~
34 ~~engaged in any line of endeavor, other than the practice of land~~
35 ~~surveying, from employing or contracting with a licensed land~~
36 ~~surveyor or a licensed civil engineer to perform the respective land~~
37 ~~surveying services incidental to the conduct of business.~~

38 (f)

39 (e) This section shall not prevent the use of the name of any
40 business engaged in rendering land surveying services, including

1 the use by any lawful successor or survivor, that lawfully was in
 2 existence on June 1, 1941. However, the business is subject to the
 3 provisions of paragraphs (1) and (2) of subdivision (a).

4 ~~(g)~~

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

8 (1) The person’s name had been used in the name of the
 9 business, or a predecessor in interest of the business, prior to the
 10 death or retirement of the person.

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

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

18 (4) The person, if retired, has consented to the use of the name
 19 and does not permit the use of the name in the title of another land
 20 surveying business in this state during the period of that consent,
 21 except that a retired person may use ~~his or her~~ *their* name as the
 22 name of a new or purchased business, if that business is not
 23 identical in every respect to that person’s name as used in the
 24 former business.

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

27 ~~(h)~~

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

29 ~~(i)~~

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

33 ~~(j)~~

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

35 *SEC. 5. No reimbursement is required by this act pursuant to*
 36 *Section 6 of Article XIII B of the California Constitution because*
 37 *the only costs that may be incurred by a local agency or school*
 38 *district will be incurred because this act creates a new crime or*
 39 *infraction, eliminates a crime or infraction, or changes the penalty*
 40 *for a crime or infraction, within the meaning of Section 17556 of*

- 1 *the Government Code, or changes the definition of a crime within*
- 2 *the meaning of Section 6 of Article XIII B of the California*
- 3 *Constitution.*

O

SB 1057 (Jones, R-El Cajon)
Land.

Status: 3/18/2020 – March 30, 2020, hearing postponed by the Senate Committee on Business, Professions and Economic Development.

Location: 4/23/2020 – Senate Committees on Business, Professions and Economic Development and Governance and Finance

Introduced: 2/18/2020

Board Position: Oppose Unless Amended to remove Section 8726 (as of 3/12/2020)

Board Staff Analysis: 5/5/2020

Bill Summary: This bill would amend Sections 8726, 8764, and 8780 of the Business and Professions Code; these sections are part of the Professional Land Surveyors' Act, which is under this Board's authority to enforce. The bill would also amend Sections 4529 and 66452.5 of the Government Code.

Section 8726 defines land surveying. It currently contains a subdivision that indicates that a person practices land surveying if they do or offer to do "geodetic or cadastral surveying"; that subdivision also provides a definition of "geodetic surveying," as that phrase is used in the Professional Land Surveyors' Act. There is no specific definition of "cadastral surveying" provided. This bill would add a definition of "cadastral surveying," as that phrase is used in the Professional Land Surveyors' Act. This bill would also reletter and renumber the subdivisions and subparagraphs in Section 8726 and make conforming changes.

Section 8764 specifies what information must be shown on a Record of Survey. It currently includes a subdivision that indicates "any other data necessary for the intelligent interpretation of the various items and locations of the points, lines, and areas shown, or convenient for the identification of the survey or surveyor, as may be determined by the civil engineer or land surveyor preparing the record of survey." This bill would add the phrase "in graphic or narrative form" after "any other data" so that the provision would read "any other data, in graphic or narrative form," This bill would also reletter and renumber the subdivisions and subparagraphs in Section 8764.

Section 8780 authorizes the Board to investigate complaints against licensees and to take disciplinary action against licensees on certain grounds, as specified. One of the subdivisions states "Any negligence or incompetence in his or her practice of land surveying." This bill would separate this provision into two separate provisions: one would include negligence, and the other would include incompetence. This bill would also reletter and renumber the subdivisions and subparagraphs in Section 8780 and make grammatical changes.

Government Code section 4529 relates to the qualifications based selection (QBS) process. Government Code section 66452.5 is part of the Subdivision Map Act. The changes proposed to these sections do not impact the Board's regulation of the practice of land surveying.

Staff Comment:

Section 8726

This bill proposes to add the following as the definition of "cadastral surveying:"

"Cadastral surveying means a survey that creates, marks, defines, retraces, or reestablishes the boundaries and subdivision of the public land of the United States, or any other field survey of a cadaster that is a public record, survey, or map of the extent and ownership of land."

The Bureau of Land Management (BLM) provides the following information on its website regarding cadastral surveys:

The BLM's Cadastral Survey Program provides one of the oldest and most fundamental functions of the U.S. Government. Originating with the Land Ordinance of 1785, cadastral surveys create, define, mark, and re-establish the boundaries and subdivisions of the public lands of the United States. (The word "cadastral" is derived from cadastre, meaning a public record, survey, or map of the value, extent, and ownership of land as a basis of taxation.) These surveys provide public land managers and the public with essential information needed to correctly determine ownership rights and privileges and facilitate good land management decisions.

The proposed definition seems to be a combination of the BLM's definitions of "cadastral surveying" and "cadastre" (or "cadaster").

There appears to be a grammatical issue between the first and second clauses of the definition. The first clause says "cadastral surveying means a survey ...," while the second clause says "... or [cadastral surveying] means any other field survey" The phrase "any other" refers back to the first clause and its reference to "a survey"; however, the second clause contains the word "field" that the first clause does not. If the intent is that the surveys that constitute cadastral surveying be field surveys, then the word "field" would need to be added to the first clause. However, if the intent is to make a distinction between types of surveys (one that is not a field survey and one that is), then the phrase "any other field survey" in the second clause would need to be changed to "a field survey."

The Board needs to determine if it believes the definition of "cadastral surveying," as currently written, is appropriate and necessary. For example, is it necessary to include a definition of "cadastral surveying" in the law, or is the term sufficiently understood in the profession without a specified definition? Is the definition as written clear and understandable, or will it cause confusion within the profession? Does the definition expand or contract the existing scope of practice, and if it does either, is that appropriate for the protection of the health, safety, welfare, and property of the public?

Section 8764

Since current law does not specify in what form the "any other data" referenced in Section 8764 must be shown, staff believes the law already allows for the data to be shown in graphic or narrative form.

Section 8780

Staff has heard that there are concerns with the law including both negligence and incompetence in the same subdivision, even with the word "or," because it gives some people the impression that the subject of an investigation, citation, or formal disciplinary action has committed both negligence and incompetence. Changing Section 8780 so that negligence and incompetence are in separate subdivisions would not change the Board's ability to investigate complaints or take action against licensees for either or both.

At its March 12, 2020, meeting, the Board took a position of Oppose Unless Amended to remove Section 8726 from the bill. The Board took this position because it is concerned with the definition of "cadastral surveying" as written in the bill and believes that more time should be allowed for the Board, likely through its Land Surveying Technical Advisory Committee (LSTAC) to discuss the definition. Staff relayed this position to the sponsors and discussed the concerns with the confusing nature of the definition as presented in the bill. While the sponsors did not seem inclined to want to remove

Section 8726 from the bill, they did indicate that they were willing to have further discussions regarding the wording of the definition.

Board staff has drafted language that it believes would serve as an appropriate definition of “cadastral surveying” for the practice of land surveying in California. This language is based on the definition provided by the Bureau of Land Management (BLM). At this time, staff is recommending that the Board change its position to “Oppose Unless Amended” to amend the definition of “cadastral surveying” to the language included with this analysis as the amendments the Board is requesting, rather than requesting that Section 8726 be removed in its entirety. Since there is a possibility that the bill might be amended and heard prior to the June 2020 Board Meeting, staff also recommends that the Board delegate to Board Members Steve Wilson, PE, PLS, and Andrew Hamilton the authority to change the Board’s position on the bill should it be amended to address the Board’s concerns prior to the next Board meeting.

Staff Recommendation: Staff recommends that the Board change its position on SB 1057 to “Oppose Unless Amended” to amend the definition of “cadastral surveying” to the language included with this analysis. Staff further recommends the Board delegate to Board Members Steve Wilson, PE, PLS, and Andrew Hamilton the authority to change the Board’s position on the bill should it be amended to address the Board’s concerns prior to the next Board meeting.

Laws: An act to amend Sections 8726, 8764, and 8780 of the Business and Professions Code, and to amend Sections 4529 and 66452.5 of the Government Code, relating to land.

PROPOSED AMENDMENTS TO SB 1057
As Prepared by Board Staff

Section 8726 of the Business and Professions Code is amended to read:

...

(6) Geodetic surveying or cadastral surveying. As used in this chapter:

...

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

Introduced by Senator JonesFebruary 18, 2020

An act to amend Sections 8726, 8764, and 8780 of the Business and Professions Code, and to amend Sections 4529 and 66452.5 of the Government Code, relating to land.

LEGISLATIVE COUNSEL'S DIGEST

SB 1057, as introduced, Jones. Land.

(1) Existing law, the Professional Land Surveyors' Act, provides for the licensure and regulation of land surveyors by the Board for Professional Engineers, Land Surveyors, and Geologists, and makes it unlawful to practice land surveying without a license, except as specified. Existing law includes within the practice of land surveying cadastral surveying.

This bill would define cadastral surveying for purposes of the act.

Existing law requires a record of survey filed with the county surveyor by a licensed surveyor or licensed civil engineer to include, among other information, any data necessary for the intelligent interpretation of the various items and locations of the points, lines, and areas shown, or convenient for the identification of the survey or surveyor.

This bill would provide that this data may be in graphic or narrative form. The bill would make nonsubstantive changes relating to licensed land surveyors and civil engineers.

(2) Existing law requires a state or local agency head, as defined, to select professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. Existing law makes

those provisions inapplicable where the state or local agency head determines that the services needed are more of a technical nature and involve little professional judgment and that requiring bids would be in the public interest.

This bill would require a state or local agency head who makes that determination to be licensed in the discipline for which they are making that determination if licensure is required in that discipline.

(3) The Subdivision Map Act authorizes a subdivider, or any tenant of the subject property in specified circumstances, to appeal from an action of the advisory agency relating to a tentative map to the appeal board or legislative body, as specified, and provides for the appeal from the decision of the appeal board to the legislative body. The act further authorizes any interested person adversely affected by a decision of the advisory agency or appeal board to appeal the decision with the legislative body. Existing law requires a hearing to be held after an appeal is filed pursuant to those provisions within 30 days after the request is filed by the appellant.

This bill would instead require a hearing to be held within 45 days after the request is filed and would make conforming changes.

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

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

1 SECTION 1. Section 8726 of the Business and Professions
 2 Code is amended to read:
 3 8726. (a) A person, including any person employed by the
 4 state or by a city, county, or city and county within the state,
 5 practices land surveying within the meaning of this chapter who,
 6 either in a public or private capacity, does or offers to do any one
 7 or more of the following:
 8 (a)
 9 (1) Locates, relocates, establishes, reestablishes, or retraces the
 10 alignment or elevation for any of the fixed works embraced within
 11 the practice of civil engineering, as described in Section 6731.
 12 (b)
 13 (2) Determines the configuration or contour of the earth's
 14 surface, or the position of fixed objects above, on, or below the
 15 surface of the earth by applying the principles of mathematics or
 16 photogrammetry.

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

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

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

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

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

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

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

39 (h)

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

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

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

6 ~~(a)~~

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

10 ~~(b)~~

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

13 ~~(c)~~

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

16 ~~(d)~~

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

19 ~~(e)~~

20 (5) Memorandum of oaths.

21 ~~(f)~~

22 (6) Statements required by Section 8764.5.

23 ~~(g)~~

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

29 ~~The~~

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

34 ~~The~~

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

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

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

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

5 ~~By~~

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

12 ~~(a)~~

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

15 ~~(b)~~

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

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

19 ~~(c)~~

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

21 ~~(d)~~

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

24 ~~(e)~~

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

28 ~~(f)~~

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

32 ~~(g)~~

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

35 ~~(h)~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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