

CONSTRUCTION AND DESIGN REGULATORY AGENCIES

On April 4, 2001, the U.S. Ninth Circuit Court of Appeals issued a decision in *In Re Dunbar*, 245 F.3d 1058, in which it upheld a 1999 ruling of its Bankruptcy Appellate Panel (BAP) vacating the bankruptcy court's decision that it was precluded from independently reviewing whether a CSLB disciplinary action (including an order to pay restitution and cost recovery) against a contractor who had filed Chapter 13 bankruptcy is subject to the automatic stay exception in 11 U.S.C. § 362(b)(4). [17:1 CRLR 104-05] The federal appellate court agreed that its bankruptcy courts are authorized to review whether CSLB's actions fall under the "police or regulatory powers" exception to the automatic bankruptcy stay embodied in 11 U.S.C. § 362(b)(4). Because the bankruptcy court failed to engage in that analysis, the Ninth Circuit remanded the matter to that court for further proceedings.

RECENT MEETINGS

At its July 2000 meeting, CSLB reelected contractor Joe Tavaglione as its Chair and elected public member Minnie Lopez-Baffo as its Vice-Chair.

Public comment at the Board's April 2001 meeting was dominated by complaints from numerous victims of Crown Builders, a San Diego-area remodeling company which closed its doors in November 2000 while in the midst of 70-90 remodeling projects. After the company's closure,

CSLB discovered that Crown owner Lee Ross had previously held a contractor's license in the early 1980s; that license was revoked after Ross was convicted of felony fraud involving Majestic Builders, another contracting business he previously owned. To become relicensed, Ross used a fake Social Security number and failed to disclose his earlier conviction. Because it lacks authority to require fingerprints of licensure applicants, CSLB was unable to detect either the false SSN or his prior conviction. Numerous Crown victims demanded that CSLB (1) secure fingerprinting authority immediately, (2) establish a recovery fund to provide some compensation to victims of contractor fraud, and (3) disclose pending complaints and investigations of contractors at an earlier point to help homeowners protect themselves. CSLB is working with the San Diego County District Attorney's Office to secure criminal charges against Ross and Crown.

FUTURE MEETINGS

2001: July 18 in San Diego; September 13 in Sacramento; October 23-24 in Sacramento.

2002: January 24 in San Francisco; April 18 in Los Angeles; June 6 in Riverside; October 4 in Monterey.

2003: January 23 in Sacramento; April 25 in San Francisco; June 5 in Riverside; September 12 in San Diego.

Board for Professional Engineers and Land Surveyors

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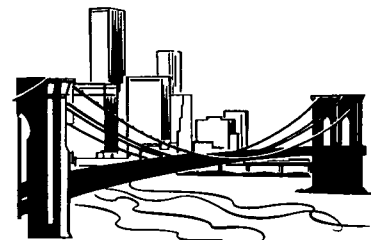
The Board for Professional Engineers and Land Surveyors (PELS) is a consumer protection agency within the state Department of Consumer Affairs (DCA). PELS regulates the practice of engineering and land surveying through its administration of the Professional Engineers Act, sections 6700-6799 of the Business and Professions Code, and the Professional Land Surveyors' Act, sections 8700-8806 of the Business and Professions Code. The Board's regulations are found in Division 5, Title 16 of the California Code of Regulations (CCR). The basic functions of the Board are to conduct examinations, issue licenses, set standards for the practice of engineering and land surveying, investigate complaints against licensees, and take disciplinary action as appropriate.

PELS administers a complicated licensing system under which land surveyors and fifteen categories of engineers are licensed and regulated. Land surveyors are licensed under section 8725 of the Business and Professions Code. Pursuant to section 6730 of the Business and Professions Code, professional engineers may be licensed under the three "practice act"

categories of civil, electrical, and mechanical engineering. Structural engineering and geotechnical engineering are "title authorities" linked with the civil engineering practice act; both require licensure as a civil engineer and passage of an additional examination. The "title act" categories of agricultural, chemical, control system, fire protection, industrial, manufacturing, metallurgical, nuclear, petroleum, and traffic engineering are licensed under section 6732 of the Business and Professions Code. PELS' "title acts" only restrict the use of a title; anyone (including an unlicensed person) may perform the work of a title act engineer so long as he/she does not use the restricted title.

The Board consists of thirteen members: seven public members, one land surveyor, four practice act engineers, and one title act engineer. The Governor appoints eleven of the members for four-year terms that expire on a staggered basis. Additionally, the Assembly Speaker and the Senate Rules Committee each appoint one public member.

The Board has established four standing committees (Administration, Enforcement, Examination/Qualifications,



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and Legislative), and appoints other special committees as needed. Pursuant to Business and Professions Code section 6726, PELS has also established several technical advisory committees (TACs) to provide advice and recommendations in various technical areas.

MAJOR PROJECTS

Board Survives Rocky Sunset Review

Under the "sunset review" process, the enabling act of every DCA licensing board contains a "sunset" date upon which the board will cease to exist unless—prior to that date—the Joint Legislative Sunset Review Committee (JLSRC) undertakes a comprehensive review of the board's necessity and performance and the legislature agrees to extend the sunset date. The review involves the board's preparation of a detailed report responding to issues raised by the JLSRC, a public hearing during which the board and the public are given an opportunity comment on the board's performance, and subsequent legislative action to extend the date and amend the board's enabling act to require it to address issues raised during sunset review.

PELS was first reviewed in 1996–97. At the conclusion of the review and upon the recommendation of the JLSRC, the legislature extended the Board's sunset date for only two years (as opposed to the usual four years) due to a considerable number of unresolved issues. SB 828 (Greene) (Chapter 828, Statutes of 1997) extended PELS' sunset date to July 1, 2000, requiring a new sunset hearing in the fall of 1998 and prompting PELS to publish an October 1, 1998 sunset report. SB

1306 (Committee on Business and Professions) (Chapter 656, Statutes of 1999) subsequently postponed PELS' sunset date to July 1, 2001, pushing the Board's sunset hearing to the fall of 1999 and requiring PELS to publish a follow-up sunset report dated October 1, 1999. Both reports were intended to update the JLSRC on PELS' progress in addressing the unresolved issues left over from its first sunset review. [17:1 CRLR 105–07; 16:2 CRLR 95–96; 16:1 CRLR 110–13]

◆ **The Board's Sunset Hearing.** At its sunset hearing on November 30, 1999, PELS was represented by immediate past president Myrna Powell and Executive Officer Cindi Christenson. In a wide-ranging hearing, the Board representatives were required to address PELS' progress on numerous issues identified by the JLSRC staff. Board testimony indicated that PELS had made some progress in resolving certain non-complex issues (such as creating a "retired status" license—see below). However, little progress was revealed on other more difficult issues identified during PELS' 1996–97 sunset review, including the following:

• **The Status of the "PE Act Rewrite."** Even before PELS' first sunset hearing, the excessive number and complexity of

its licensing categories and overall licensing system came under attack by outside groups; the Board president himself agreed, calling PELS' statute "internally inconsistent," "contradictory," "lacking in clarity," "ambiguous," and "bewildering." In the mid-1990s, PELS spent several years drafting and attempting to build consensus around a so-called "PE Act Rewrite," a dramatically different licensing structure for professional engineers which was amended into AB 969 (Cardenas) in 1998. However, PELS was unable to advance the rewrite through a single committee in the legislature, and dropped the vast bulk of the rewrite from AB 969 after three years of work. [16:1 CRLR 110–11] The JLSRC questioned whether the Board has given up entirely on the rewrite concept, and/or whether parts of the effort should be enacted to improve consumer protection and the clarity of engineer/land surveyor regulation in California.

In response to questioning by JLSRC Chair Senator Liz Figueroa, Powell noted that the legislature asked PELS to scale back AB 969 to address only a few areas of the greatest concern. Accordingly, PELS gutted the bill to simply eliminate three title acts (corrosion, quality, and safety engineering), largely because no national exams exist in these areas and PELS must expend considerable funds in creating exams. Powell noted that PELS remains committed to other provisions in the PE Act Rewrite, including the concept of permitting mechanical

and electrical engineers to perform "overlap" or "supplemental" engineering work that is incidental to mechanical/engineering work; the establishment and enforcement of a code of professional conduct by PELS; requiring engineer categories other than civil engineers to be examined in seismic

principles; and clarifying and further defining the Board's disciplinary authority as to both licensees and nonlicensees.

• **The Need for the Remaining Title Acts.** Following PELS' first sunset review, the JLSRC instructed the Board to evaluate the usefulness of its thirteen title acts under twelve specified criteria and make recommendations on which title acts could be eliminated without endangering the health, safety, property, or welfare of the public. Any recommendation for continuation of a title act must be accompanied by a specific justification.

In its sunset reports, PELS noted that three title acts had been abolished in AB 969 (see above). PELS further provided information and data indicating that the majority of the remaining ten title acts could be eliminated with no harm to the general public. Despite these data, PELS recommended that the ten title acts "remain in place...for the present." At the hearing, however, Executive Officer Christenson expressed frustration with the title act concept. She acknowledged that PELS is powerless to stop a title act engineer from practicing—even one who has performed negligently and/or incompetently and has harmed someone. The most PELS can do is

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revoke that person's right to use a particular title; there is no underlying license to discipline, and no way for the agency to protect the public from that practitioner. She stated her support for a reexamination of all the title acts and conversion of those that impact public health and safety to practice acts. She also noted that the reason PELS had not moved more forcefully to eliminate the remaining title acts was because former JLSRC Chair Senator Leroy Greene and the prior gubernatorial administration had opposed elimination of the title acts. According to Christenson, "we didn't think it would be prudent for us to go out on our own and conduct a study without the support of DCA and the JLSRC."

• *The "Overlap" Issue.* Currently, civil engineering is broadly defined in the Business and Professions Code, and civil engineers are expressly permitted to "overlap" into all other engineering disciplines under section 6737.2, so long as the "overlap" work is "in connection with or supplementary to" civil engineering studies or activities. However, mechanical and electrical engineering are not defined in statute; and mechanical, electrical, and title act engineers are prohibited from "overlapping" into supplemental or incidental engineering work outside their discipline—even where the very nature of certain engineering disciplines requires the incidental practice of practice act engineering. For years, these prohibitions have caused enormous confusion within the industry as to who can do what. The JLSRC questioned PELS' continued inaction on resolving these issues. At the hearing, Powell announced that PELS supports overlap among the practice act disciplines of civil, electrical, and mechanical engineering; however, PELS does not support overlap by title act engineers into practice act disciplines (and thus took an oppose position on SB 191 (Knight); see 2000 LEGISLATION). In response to questioning, Powell acknowledged that PELS had never put its overlap proposal into writing and/or communicated it to the legislature.

• *The Definitions of Electrical and Mechanical Engineering.* As noted above, only civil engineering is defined in statute. Electrical engineering (EE) and mechanical engineering (ME) are defined by the Board in regulation, and those definitions are circular and unclear. The authority of PELS to define the scope of practice for the EE and ME disciplines is unique and has created controversy. For years, PELS and its TACs have been involved in an effort to rewrite the definitions of both EE and ME, but with no success due to turf battles between competing disciplines. [17:1 CRLR 107] The JLSRC questioned whether this authority should be removed from the Board and scope of practice definitions should be placed in statute. PELS expressed no opposition to removing its definitions of EE and ME from regulation to statute.

• *"Board Policy Resolutions."* The JLSRC questioned PELS' use of so-called "Board Policy Resolutions" (BPRs)

rather than formal rulemaking to interpret its statute. Powell explained that, due to the complexity of its statutes and regulations, the Board frequently receives inquiries from licensees and the public as to scope of practice of the numerous categories of licensees under its jurisdiction. According to Powell, the Board historically responded to these inquiries by citing to statutes, regulations, and Attorney General's Opinions. Starting in 1995, after the Board received the same inquiries repeatedly, it began to formally adopt BPRs "to clarify—not change—the law." Powell emphasized that when its BPR process was challenged, PELS asked Deputy Attorney General Susan Ruff to issue an opinion on the legality of its BPRs. When Ruff issued her May 1999 opinion urging the Board to curtail its BPR practice, PELS immediately began to review all of its BPRs; it rescinded nine at its September 1999 meeting [17:1 CRLR 107-08] and was scheduled to review the eleven remaining BPRs at its December 1999 meeting.

• *PELS' Enforcement Program.* In her introductory remarks, Powell noted that the Board's enforcement program processed only 195 complaints in 1998-99, issued eight letters of warning, held five informal hearings, issued ten citations, and forwarded two cases to prosecutors for criminal prosecution. Additionally, PELS ordered restitution to be returned to consumers in the amount of \$24,525. The average age of pending disciplinary complaints had risen from 167 days to 267 days during 1998-99.

These statistics prompted many concerns on the part of JLSRC members. Senator Figueroa questioned why PELS spends \$2.8 million annually on discipline when so few complaints are referred for disciplinary action; why there has been an increase in the time it takes to investigate and prosecute cases; and why PELS makes so little use of its citation and fine authority. Christenson explained that PELS does not spend its \$2.8 million enforcement budget solely on complaint processing. It also funds consumer education efforts (for example, its *Consumer Guide to Professional Engineering and Land Surveying*, newsletter, roster of licensees and Web site) in an attempt to prevent problems before they occur. Senator Figueroa asked how much of the \$2.8 million is spent on consumer education as opposed to enforcement; Christenson replied that she did not have that figure on hand and would prefer to respond in writing.

As to the increase in the time it takes to process complaints, Christenson responded that PELS uses outside technical experts to review disciplinary complaints. Due to the "booming economy," these experts are quite busy in their practices and are not prompt in responding to PELS' requests for assistance. Further, Christenson stated that PELS had recently lost two enforcement personnel, and has had to train their replacements. According to Christenson, "right now,

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things are back on course. Our enforcement case processing time has been dropping lately.”

As to PELS’ use of its citation and fine authority, Christenson noted that PELS was then involved in the rulemaking process to expand its citation and fine program to include orders of abatement (see below). According to Christenson, PELS did not include orders of abatement in its existing citation and fine program because legal counsel had informed the Board it did not have that authority.

• *Use of National vs. State-Only Exams.* In its background paper, the JLSRC questioned the Board’s continued use of expensive state-developed exams in the structural engineering (SE) and professional land surveying (PLS) areas, especially in light of the facts that national exams developed by the National Council of Examiners for Engineering and Surveying (NCEES) are available and the pass rates on the national exams are much higher than the pass rates on the California-only exams. The JLSRC particularly focused on the pass rates on the PLS exam, which plummeted to 15% in 1993, 8% in 1995, 1.9% in 1998, and 14.4% in 1999. The PELS representatives did not have an opportunity to address this issue at the hearing but promised to submit follow-up information in writing.

• *Continued Need for the Board.* Senator Figueroa, Assemblymember Elaine Alquist, and Senator Maurice Johannessen repeatedly asked the PELS representatives why the Board should continue to exist, and why a DCA bureau would not be sufficient to regulate engineers and land surveyors. Powell responded that complete deregulation of engineering and land surveying would be “very detrimental to the public.” Drawing on her prior experience as a member of an advisory board to a DCA bureau, she stated opposition to the idea of converting PELS to a bureau assisted by an advisory board of engineers and land surveyors. She stated that engineering and land surveying are “highly technical professions and it would be extremely difficult to regulate these professions within a bureau setting. Requiring the Department to assume the responsibilities of the Board (including the administration of 15,000 exams per year) would be detrimental to the citizens of California.” In response to further questioning by Assemblymember Alquist, Powell also noted that a bureau run by a bureau chief generally lacks a public forum, whereas a multimember board provides a place and forum for public input into the board’s regulatory activities.

Following PELS’ presentation, Julie D’Angelo Fellmeth of the Center for Public Interest Law (CPIL) presented oral testimony on PELS’ performance. She noted that she did not bring written testimony: “CPIL submitted extensive written testimony at PELS’ first sunset hearing in 1996, and no new testimony is needed today because no changes of substance have occurred since 1996. The only changes that have occurred are the Board’s name and the elimination of three unnecessary title acts from the Board’s licensing scheme.” Fellmeth questioned the overall need for the licensure of engineers at all, considering the facts that (1) most “consum-

ers” of the services of engineers are government agencies, large corporations, developers, oil companies, and other sophisticated consumers “who have armies of attorneys and in-house experts and contractual requirements”; and (2) most engineers are employed by exempt industries or work in areas where licensure is not required—in fact, only 18% of the nation’s 2.2 million engineers are licensed or required to be licensed in order to do what they do. She critiqued the overly complicated Professional Engineers Act and PELS’ failure to meaningfully clarify it despite repeated pleas from its licensees who are confused by the statute, its complexity, and its failure to recognize or legitimize any “overlap” among the disciplines even where such overlap is to be expected.

As for the title acts, Fellmeth pointed to the Board’s own 1998 sunset report as “the best evidence for abolishing them.” PELS’ 1998 report contains a chart indicating that most title act engineers have been “grandfathered in” to licensure without taking an exam, and that they have not caused any disciplinary problems (PELS has never disciplined a title act engineer). The chart further documents the facts that (1) the vast majority of title act engineers are employed by exempt industries, (2) very few title act engineers consult to the general public (their “consumers” are largely government agencies and exempt employers); and (3) the government agencies that hire title act engineers in eight of the remaining ten title act categories do not require licensing or registration of any kind. According to Fellmeth, “if they never took an exam, are not harming consumers, are not hired by unsophisticated consumers, and even their government clients do not require licensure, then why are we doing this?” Fellmeth urged the JLSRC to require PELS to contract with an outside consultant to conduct an independent evaluation of the need for any of the remaining title acts; abolish those that are unnecessary; and convert those that are absolutely necessary to practice acts.

Fellmeth also noted that despite PELS’ assurances that it is acting to prevent problems before they occur, PELS has consistently refused to adopt perhaps the single most important preventive remedy—a written contract requirement similar to that imposed without problem in numerous other trades and professions (including architects, landscape architects, contractors, and attorneys). As far back as 1991, PELS staff indicated that more than half of the complaints received by PELS stem from the lack of a written contract; yet the Board has repeatedly refused to require its licensees to use written contracts or to otherwise govern the billing practices of its licensees. [11:2 CRLR 101] Fellmeth urged the JLSRC to impose a written contract requirement on PELS.

Finally, Fellmeth made a number of observations based on CPIL’s 18 years of monitoring PELS. She stated that for the past several years, the Board has spent most of its meeting time discussing not the important issues the JLSRC had instructed it to address, but comparatively trivial issues unrelated to consumer protection (such as the contents of the engineer’s official seal, comity/reciprocity issues that will

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enable California engineers to practice more readily in other states, and the "retired engineer" license status—see below). She opined that the Board seems more interested in issues of importance to the profession than issues of importance to the consumer. She criticized the Board's practice of delaying decisions on controversial "turf battle issues" by referring them to its TACs, and urged conversion of PELS into a board consisting of all public members or a bureau within DCA.

Representatives of Professional Engineers in California Government (PECG) also testified at the hearing. PECG expressing concern about the low pass rates on licensing exams written by the Board (especially the land surveyors exam), supported the concept of "minimal overlap" by mechanical and electrical engineers into other engineering functions, and urged the Committee to restructure the composition of the Board to include engineers employed by the public sector.

A representative of the Professional and Technical Consultants' Association agreed with CPIL's description of the "chaos" that reigns at the Board due to its inability to simplify its complex licensing scheme, and blamed the "lopsided" Board composition favoring civil engineers for part of the problem. He urged the JLSRC to lessen the number of civil engineers on the Board and add slots reserved for engineering academics; further, if any title acts are retained, he stated that more Board member slots should be filled with title act engineers. However, he agreed that "many title acts should go," and supported a meaningful reevaluation of the title acts and abolition of those that are not necessary to public safety; he opined that the fire protection and chemical engineering title acts should remain.

Consulting Engineers and Land Surveyors of California (CELSOC) representatives John Baker and Jim Corn expressed "adamant opposition" to the idea of converting PELS to a bureau for three reasons: (1) although there may be a "perceived efficiency" in decreasing government, PELS is supported by licensing fees and not the general fund; (2) a bureau structure provides no opportunity for the professions to represent themselves; and (3) conversion to a bureau would mean the loss of a public forum through which CELSOC and other interested parties may participate in PELS' regulation of engineering and land surveying. As to the title act issue, Corn expressed agreement with most prior speakers who advocated a full-scale reevaluation of the title acts and abolition of those that are not necessary to public protection; he also noted that PELS is forced to spend much of its revenue on examining and licensing title act engineers, and abolition of some of the title acts might free up revenue which could better be used on enforcement. On the "overlap" issue, CELSOC argued that practice act engineers should be able to overlap into other practice act areas, but title act engineers who want to practice civil, mechanical, or electrical engineering should take the relevant exam(s) and become registered. In response to the question why engineers should be licensed, Corn responded: "Civil, mechanical, and electrical engineers design public works. The failure of public works kills people.

It is better to prevent those deaths than to pay the families of the victims through a lawsuit later."

Steve Wilson of the California Land Surveyors Association (CLSA) urged continuation of the Board as it currently exists. As to the low pass rate on the land surveyors examination, he noted that CLSA had conducted a survey after the 1998 exam which only 1.9% of the examinees passed. Based on the results of the survey, he opined that the exam tests for underlying mathematical principles in which most land surveyor candidates are not educated or experienced because automation addresses those issues without requiring them to understand the underlying calculations. Candidates are not permitted to use computers on the exam, and are unfamiliar with the mathematical principles needed to perform the calculations in the absence of a computer—which is why they are failing the exam at such extraordinary rates, according to CLSA.

Don Reisner of the California Legislative Council of Professional Engineers, the sponsor of SB 191 (Knight) (see 2000 LEGISLATION), complained about PELS' "intransigence" in refusing to negotiate the bill or the concept behind the bill. He also complained that PELS supported the elimination of the corrosion engineer title act in AB 969 simply because it has grown tired of writing an exam in the field, and not because it performed any marketplace review to determine whether corrosion engineers protect public safety.

At the conclusion of the hearing, the Board representatives had not had an opportunity to address all of the issues presented to them—including questions surrounding the Board's budget deficit and the need for a fee increase. Senator Figueroa asked PELS to submit its remaining responses and follow-up information in writing.

◆ **PELS' December 1999 Meeting.** At a lengthy meeting on December 16, 1999, PELS President George Shambeck led a discussion of many of the issues raised at its two sunset hearings, with the following results:

• **The Status of the "PE Act Rewrite."** As noted by Myrna Powell at the Board's sunset hearing, PELS is still committed to several provisions of the PE Act Rewrite, including the allowance of supplemental practice by mechanical and electrical engineers, authorization for the Board to adopt a code of professional conduct for its licensees, the required examination of applicants other than civil engineer applicants in seismic principles and requirements, and further clarification of the Board's disciplinary authority as to both licensees and nonlicensees. PELS also agreed to pursue several "clean-up amendments" to the PE and PLS statutes that had been included in the PE Act Rewrite.

• **The Remaining Title Acts.** At the December 1999 meeting, several Board members insisted that PELS had already voted, on several occasions, to "do away with the title acts." CPIL's Julie D'Angelo Fellmeth commented that, if this were true, PELS had not communicated its decision to the legislature in either of its sunset reports (in which PELS recommended that the ten title acts "remain in place...for the present"). Fellmeth reminded PELS members of a 1993 leg-

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islative hearing in which the title act issue first surfaced [14:1 CRLR 76-77], and urged the Board to finally take action on this issue. Following discussion, PELS voted unanimously to hire an independent consultant to conduct an in-depth analysis of the need for the title acts, specifically focusing on which should be deregulated and which should become practice acts, and make recommendations to the legislature based upon the study. The Board's follow-up letter to the JLSRC stated that "the Board continues to believe strongly that the current method of only restricting the title but not the practice does little, if anything, to protect the citizens of California."

• *The "Overlap" Issue.* Board members generally agreed that practice act engineers should be able to perform incidental or supplemental work in another practice act discipline, and that the "overlap" issue is controversial only when it comes to permitting title act engineers to perform practice act work (as suggested in SB 191 (Knight)—see 2000 LEGISLATION). Following discussion, PELS concluded that the overlap issue would best be deferred until the conclusion of the title act study.

• *The Definitions of Electrical and Mechanical Engineering.* As to whether the definitions of EE and ME should be moved from Board regulation into statute, PELS voted to introduce a spot bill in early 2000 codifying the current regulatory definitions of EE and ME in statute. PELS also decided to hold public hearings on the definitions during the pendency of the legislation and then revise the legislation as appropriate.

• *Board Policy Resolutions.* DCA legal counsel Gary Duke stated that he and DAG Susan Ruff had reviewed each of the remaining 11 BPRs and recommended that PELS rescind all of them. Duke also opined that three of the policies (BPR #96-09, regarding statutes addressing checking procedures for records of survey; BPR #98-01, addressing the requirement that underground trench design be performed by or under the direction of a licensed civil engineer; and BPR #98-04, addressing the requirement that the design of utility systems located within joint utility trenches be performed by or under the direction of licensed professional engineers) exceed the Board's authority. PELS unanimously voted to rescind all remaining BPRs, and directed staff to look at all of the withdrawn BPRs and make recommendations as to whether any should be adopted in regulation or sponsored in legislation.

• *Written Contract Requirement.* With almost no discussion, PELS voted unanimously to sponsor legislation requiring engineers to use a written contract whenever they contract with someone other than another licensed professional (such as an architect or contractor). The Board agreed to base the requirement on Business and Professions Code section 5536.22, the written contract requirement sponsored by the California Architects Board in 1995.

• *The Continued Use of State-Only Exams.* In the structural engineering area, applicants must currently pass a

state-specific 16-hour examination, which is extremely expensive and time-consuming for PELS to develop and administer and has led to reciprocity problems with other states. PELS voted to develop an action plan replacing the current 16-hour SE exam with the use of NCEES' eight-hour "Structural II" exam plus an eight-hour California-specific exam effective in October 2002; in the meantime, PELS plans to work with NCEES to strengthen its Structural II exam.

Similarly, the Board administers its own state-specific exam to PLS applicants (with a 1.9% pass rate in 1998), while NCEES' PLS exam administered in 47 states enjoyed a 67.2% pass rate nationally in 1998. PELS agreed to hire an outside consultant to gather information comparing NCEES' PLS exam with California's PLS exam, and recommend whether PELS could move to use of the NCEES exam in conjunction with a shorter, California-specific exam starting in April 2001. The consultant will also look at the education and experience levels of recent PLS candidate pools and make recommendations on whether the education and/or experience requirements for licensure should be enhanced.

• *Enforcement Program.* PELS voted to take several actions aimed at clarifying and strengthening its enforcement program. First, it agreed to sponsor or support legislation requiring it to adopt regulations containing a code of professional conduct and to define the term "unprofessional conduct" in statute. PELS also directed its attorneys to draft language defining the terms "negligence" and "incompetence," both of which are grounds for discipline under the PE (section 6775) and PLS (section 8780) statutes, and to make recommendations whether these definitions should be included in statute or regulation.

• *Fee Increase.* At its December 1999 meeting, PELS reaffirmed its November 5, 1999 vote to seek a fee increase during 2000. Because the agency has not raised its license renewal or examination fees in the past ten years, and its revenue has been further cut by a decline in application fee revenue, it projects a deficit in its reserve fund by fiscal year 2001-02. [17:1 CRLR 107; 16:2 CRLR 96] PELS also voted to adjust its existing four-year renewal cycle to a two-year cycle (like most other

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DCA occupational licensing agencies); it believes the four-year cycle and the infrequency of license renewal are partly to blame for the number of delinquent licenses and the number of reinstatement requests it must handle.

◆ *JLSRC/DCA Findings and Recommendations.* In April 2000, the JLSRC and DCA issued final findings and recommendations as to PELS. The Joint Committee and the Department recommended that regulation of the engineering and land surveying professions by the Board be continued and that the Board's sunset date be extended for two years, until July 1, 2002. JLSRC/DCA made five additional joint

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recommendations: (1) the Department should be responsible for reviewing the issue of title act registration by overseeing a Board-funded objective analysis of title act registration by an independent consulting firm to include an analysis of the extent to which supplemental engineering work should be permitted for all branches of engineering; (2) the definitions of electrical and mechanical engineering should be established in statute in order to clarify the scope of practice for EE and ME; (3) PELS should seek statutory authority to adopt a professional code of conduct and ethics for the practice of engineering; (4) all BPRs and other mechanisms used by PELS that affect any aspect of its licensing authority must be codified as regulations or statutes to prevent "underground rulemaking" concerns; and (5) PELS should sponsor legislation establishing a written contract requirement for engineers.

The JLSRC made an additional five recommendations: (1) PELS should pursue legislation to make "clean-up" and non-controversial amendments to the PE and PLS statutes, as recommended by the Board during its December 1999 meeting; (2) PELS should phase out its use of its state-only SE and PLS exams, and confine its state-only exams in these disciplines to tests pertaining to California laws and regulations and practice that is unique to California; (3) PELS should ensure that all state and national examinations administered by the Board have been the subject of an occupational analysis within the past five years; (4) PELS should provide the appropriate justification for any fee increases to the Department and the legislature, and assure that it has considered other alternatives to deal with its projected budget deficit; and (5) PELS' composition should be changed so that one of the five licensed professional engineer members on the Board is from a local public agency and another is from a state agency.

◆ **PELS' Sunset Legislation.** Two bills—SB 2030 (Figueroa) and AB 2629 (Cox)—combined to implement the JLSRC/DCA recommendations as to PELS in 2000. In addition, a third bill—SB 1563 (Leslie)—requires the Board to adopt education and experience regulations for land surveyor applicants (see 2000 LEGISLATION for details on these bills). None of these bills contain license renewal or examination/application fee increases for PELS. At the Board's request, Senator Figueroa inserted an application fee increase into an early version of SB 2030, but that provision was deleted at the request of the Davis administration. At this writing, the Board is seeking substantial application fee increases in SB 136 (Figueroa) (see 2001 LEGISLATION).

Board Amends Examination Subversion Regulation

At its December 1999 meeting, PELS voted to initiate the rulemaking process to amend section 442, Title 16 of the CCR, addressing examination subversion. Board staff recommended these changes in order to incorporate policy pre-

viously contained in BPRs #95-03 and #96-01, which were withdrawn at the Board's September 1999 meeting [17:1 CRLR 108], and to address the requirements of Business and Professions Code section 123 (which describes acts constituting examination subversion). According to PELS staff, these amendments are necessary to effectively handle applicants found cheating and to discourage cheating in general.

On February 4, 2000, PELS published notice of its intent to amend section 442 to provide a detailed definition of examination subversion and set forth consequences that may apply to anyone found to have engaged in the prohibited activities at the discretion of the Executive Officer. The Board held a public hearing on the proposed regulation on April 7, 2000. Staff recommended minor changes to the proposed regulation in response to comments received. At its July 2000 meeting, the Board approved these changes and made an additional modification to include distributing secured examination questions or materials within the list of prohibited acts. The Board released the revised language for an additional 15-day comment period and adopted the language in its final form on October 19, 2000. On March 20, 2001, the Office of Administrative Law (OAL) approved the amended regulation.

Board Amends Land Surveyor Experience Regulations

As noted above, the pass rates on PELS' professional land surveyor examination have been extraordinarily low in recent years—15% in 1993, 9% in 1995, 1.9% in 1998, and 14% in 1999. The JLSRC focused on the issue during PELS' 1999-2000 sunset review (see above); the Board defended the validity of its exam and pointed to problems with the education and experience levels of the PLS candidate population as the reasons for the low pass rates. By law, candidates may qualify to sit for the PLS exam without any formal education in land surveying; in fact, most PLS candidates qualify to sit for the exam by virtue of experience rather than education. Under 1998 legislation, such candidates are required to have six years of "broad-based progressive experience" in land surveying, including one year of responsible field training and one year of responsible office training acceptable to the Board, and possession of a land-surveyor-in-training or engineer-in-training certificate. However, PELS has never defined the term "broad-based progressive experience" in regulation. [17: CRLR 111-12]

On April 21, 2000, PELS published notice of its intent to adopt new section 425 and amend sections 424 and 438, Title 16 of the CCR, to flesh out the criteria for "broad-based progressive experience," define the terms "responsible field training" and "responsible office training," and otherwise amend the experience requirements necessary to sit for the PLS examination.

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New section 425 implements the PLS experience requirements contained in Business and Professions Code sections 8741 and 8742. Section 425(b) requires all qualifying work experience to be performed under the direction and review of a person legally authorized to practice land surveying. Applicants must earn at least two years of actual responsible training in the land surveying activities defined in subsections (a)–(g) and (k)–(m) of Business and Professions Code section 8726; no more than one year of experience may be earned for activities described in subsections 8726(a), (b), and (m). Qualifying experience must be computed on an actual time worked basis, but not to exceed 40 hours per week. Section 425(c) describes ways in which qualifying education may be credited toward the six-year experience requirement necessary to sit for the PLS exam. Section 425(d) defines the term “responsible field training” and lists 12 different activities that fall within that definition. Section 425(e) defines the term “responsible office training” and lists 12 different activities that fall within that definition. Section 425(f) provides that computation of qualifying experience for a PLS license shall be to the date of the filing of the application, or it shall be to the final filing date announced for the examination if the application is filed within 30 days preceding the final filing date announced for such examination. Section 425(g) provides that a PLS applicant who is licensed as a civil engineer is exempt from the application requirements of section 425 provided that he/she submits sufficient documentation of at least two years of actual experience in land surveying.

PELS proposed to amend section 424 to remove a provision concerning experience requirements for land surveyors (which has been moved to section 425) and to confine section 424 to experience requirements for professional engineers. PELS also proposed to amend section 438 to clarify that an applicant for PLS licensure may only be required to appear for the second division of the PLS exam if he/she holds a valid license as a professional civil engineer in California.

PELS held a public hearing on these proposed regulatory changes on June 15, 2000; no comments were received. The Board approved the amendments on July 28, 2000. OAL approved them on January 25, 2001.

Update on Other PELS Rulemaking

The following is an update on recent PELS rulemaking proceedings, which are described in more detail in Volume 17, No. 1 (Winter 2000) of the *California Regulatory Law Reporter*:

◆ **Retired Status License.** Pursuant to SB 1307 (Committee on Business and Professions) (Chapter 983, Statutes of 1999), the Board is required to issue a retired professional engineer’s license and a retired land surveyor’s license to qualified candidates upon application and payment of a specified fee effective January 1, 2000. [17:1 CRLR 106, 112] On March 24, 2000, PELS published notice of its intent to amend section 407, Title 16 of the CCR, to establish an \$87.50 fee for a retired license, and to specify that no renewal or other

fee shall be charged for a retired license. At its February 2000 meeting, PELS approved the amendment; OAL approved the change on March 15, 2001.

◆ **Delinquent License Reinstatement Regulation.** After several modifications during the summer of 1999, PELS amended section 424.5, Title 16 of the CCR, to clarify the steps that a “delinquent” licensee (one whose license has not been renewed within three years after its expiration) must satisfy in order to qualify for license reinstatement and waiver of the examination otherwise required by Business and Professions Code sections 6796.3 or 8803. [17:1 CRLR 108–09]

Those steps include the filing of an application form; submission of reference forms; passage of an exam on California laws and regulations; passage of PELS’ seismic principles and engineering surveying exams if the applicant is a civil engineer who was initially licensed prior to January 1, 1988; payment of all accrued and unpaid renewal fees; and a demonstration that the applicant has not committed any acts or crimes constituting grounds for denial of licensure under Business and Professions Code section 480. PELS’ amendments to section 424.5 also state that any delinquent licensee who cannot satisfy the above steps must retake the licensing exam. They further state that the Board may pursue disciplinary action (including revocation, suspension, citation, and/or fine) if evidence obtained during the investigation reveals that the applicant has violated any provision of the Business and Professions Code, the California Code of Regulations, or other applicable laws and regulations related to the practice of professional engineering or land surveying during the period of delinquency, including but not limited to practicing or offering to practice with an expired or delinquent license. OAL approved these amendments on December 14, 1999.

◆ **Citation and Fine Regulations.** In July 1999, the Board adopted amendments to its citation and fine regulations, sections 472–473.4, Title 16 of the CCR. Specifically, these amendments: (1) clarify the existing regulations to permit PELS’ executive officer to issue a citation with an order of abatement and a fine for fairly serious violations; (2) eliminate specific ranges of fines that may be assessed, and expand the elements that must be considered when assessing a fine; (3) permit an extension of time for “good cause” when the cited person cannot abate the cited activity within the time ordered for reasons beyond his/her control; (4) allow the cited person the right to request an administrative hearing after being served with the affirmation of a citation following an informal conference with the executive officer; (5) clarify that an order to abate and/or pay a fine is stayed until after a requested informal conference or hearing is held; and (6) permit PELS to serve citations by personal service in addition to certified mail. [17:1 CRLR 109–10] OAL approved the amended regulations on December 23, 1999.

◆ **Notice to Clients of State Licensure.** SB 2238 (Committee on Business and Professions) (Chapter 879, Statutes of 1998) requires PELS and other DCA occupational licensing boards to adopt regulations requiring their licensees to

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provide notice to clients that they are licensed by the State of California. [16:1 CRLR 117] New section 463.5, Title 16 of the CCR, provides that a PELS licensee may provide notice to clients that he/she is licensed by the state through one or more of the following methods: (1) displaying his/her wall certificate in a public area, office, or individual work area of the premises where the licensee provides the licensed service; (2) providing a statement to each client, to be signed and dated by the client and retained in the licensee's records, stating that the client understands that the licensee is licensed by the Board; (3) including a statement that the licensee is licensed by PELS either on letterhead or on a contract for services; if included on a contract, the notice must be in at least 12-point type and located immediately above the client's signature line; or (4) posting a notice in a public area of the premises where the licensee provides the licensed services, in at least 48-point type, that states that the named licensee is licensed by the Board. [17:1 CRLR 110] OAL approved the new regulation on February 9, 2000.

◆ **Board Amends Rule 411 Regarding Seal and Signature.** In October 1999, PELS republished notice of its intent to amend section 411, Title 16 of the CCR, which sets forth the design, contents, and requirements of the official seal that must be affixed by practice act engineers and land surveyors on plans, specifications, and reports. [17:1 CRLR 110-11; 16:2 CRLR 93-94]

Following a December 1999 public hearing and two sets of modifications to the language, PELS finally arrived at an agreement on the regulatory language at its July 2000 meeting. Under the new language, PE licensees may use the terms "professional engineer," "registered professional engineer," or "licensed professional engineer" on their seal. The seal must either contain the licensee's name as it appears on his/her PELS license, or may contain an abbreviated form of the licensee's name or a combination of initials representing the licensee's name provided that the surname listed with the Board appears on the seal and in the signature. The seal must be capable of leaving "a permanent ink representation, an opaque and permanent impression, or an electronically-generated representation on the documents." The regulation prohibits the preprinting of blank forms with the seal or signature, the use of decals of the seal or signature, and the use of a rubber stamp of the signature. Finally, the regulatory language provides that "when signing and sealing documents containing work done by or under the responsible charge of two or more licensees, the signature and seal of each licensee in responsible charge shall be placed on the documents with a notation describing the work done under each licensee's responsible charge." Finally, the amendments require licensees to include the date of signing and sealing immediately below or next to the signature and seal. OAL approved the amended regulation on October 30, 2000.

2000 LEGISLATION

SB 2030 (Figueroa), as amended August 28, 2000, is one of two bills emerging from PELS' 1999-2000 sunset review (see MAJOR PROJECTS).

Among other things, SB 2030 amends Business and Professions Code section 6710 to extend PELS' sunset date to July 1, 2002; amends section 6712 to provide that one of PELS' engineer members must be from a local public agency and another must be from a state agency; amends section 6717 to preclude PELS from defining the scope of practice of mechanical and electrical engineers in regulation (and defines electrical engineering in new section 6731.5 and defines mechanical engineering in new section 6731.6); adds new section 6763.1, requiring PELS to use the national structural engineering examination by December 31, 2004; and amends section 8741.1, requiring PELS to use the national land surveying examination by April 1, 2003.

SB 2030 also adds section 6704.1 to the Business and Professions Code, which requires DCA to contract with an independent consulting firm to perform a comprehensive analysis of the Board's existing title act registration program; the Board must pay for the study (see RECENT MEETINGS). The contractor is required to (1) meet with representatives of each of the engineering branches and other professional groups; (2) examine the type of services and work provided

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by engineers in all branches of engineering and interrelated professions within the marketplace, to determine the interrelationship that exists between the various branches of engineers and other interrelated professions; (3) review and analyze educational requirements for engineers; (4) identify the degree to which supplemental or "overlapping" work between engineering branches and interrelated professions occurs; (5) review alternative methods of regulation of engineers in other states and what impact the regulations would have if adopted in California; (6) identify the manner in which local and state agencies utilize regulations and statutes to regulate engineering work; and (7) recommend changes to existing laws regulating engineers after considering how these changes may affect the health, safety and welfare of the public.

SB 2030 further amends sections 6735, 6735.3, and 6735.4 to provide that civil (including structural and geotechnical), electrical, and mechanical engineers are not responsible for damage caused by subsequent changes to or uses of engineering plans, calculations, specifications, and reports ("documents") if the subsequent changes or uses, including changes or uses made by state or local governmental agencies, were not authorized or approved by the registered engineer who originally signed the documents, provided that the engineering service rendered by the engineer who signed the documents was not also a proximate cause of the damage. SB 2030 also amends sections 6735, 6735.3, and 6735.4 to

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clarify that only final documents (those that have been permitted or released for construction) are required to be signed and stamped, and must include the date on which they were signed and stamped.

SB 2030 also amends sections 6760 and 8753 to allow PELS to grant a temporary license to an out-of-state engineer or land surveyor for 180 days (rather than the prior 60 days) under certain conditions, including the passage of an examination on California laws and Board regulations. SB 2030 also adds new sections 6775.1 and 8780.1, which authorize PELS to receive and investigate complaints concerning persons holding engineer-in-training or land surveyor-in-training certificates and to take disciplinary action against them for certain acts of misconduct. Additionally, the bill prohibits unlicensed persons from using any combination or abbreviation of words used in specified professional titles; and makes other changes regulating the use of professional titles. Finally, SB 2030 expands an existing "good Samaritan" immunity for engineers who voluntarily and without compensation provide structural inspection services at the scene of a declared emergency caused by earthquake, flood, riot, or fire. Governor Davis signed SB 2030 on September 29, 2000 (Chapter 1006, Statutes of 2000).

AB 2629 (Cox), as amended August 18, 2000, is another result of PELS' 1999-2000 sunset review, and was sponsored by PELS as a result of JLSRC/DCA's sunset recommendations. The bill adds section 6749 to the Business and Professions Code, which requires engineers to use a written contract when contracting to provide professional engineering services to a client. The written contract must be executed by the PE and the client or his/her representative, prior to the PE commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract must include (but is not limited to) all of the following: (1) a description of the services to be provided to the client by the PE; (2) a description of any basis of compensation applicable to the contract, and the method of payment agreed upon by the parties; (3) the name, address, and license or certificate number of the PE, and the name and address of the client; (4) a description of the procedure that the PE and the client will use to accommodate additional services; and (5) a description of the procedure to be used by any party to terminate the contract.

The written contract requirement does not apply to an arrangement whereby (1) the PE will provide professional services for which a client will not pay compensation; (2) the PE has a current or prior contractual relationship with the client to provide engineering services, and that client has paid the professional engineer all of the fees that are due under the contract; (3) the client knowingly states in writing after full disclosure of the written contract requirement that a written contract is not required; or (4) the PE is providing professional services to a licensed PE, LS, architect, contractor, geologist or geophysicist, a manufacturing, mining, public utility, research and development, or other industrial corpo-

ration (if the services are provided in connection with or incidental to the products, systems, or services of that corporation or its affiliates), or a public agency.

AB 2629 also expressly authorizes PELS to adopt regulations containing a code of professional conduct governing its licensees, so long as those regulations are not inconsistent with state or federal law. The regulations may include definitions of incompetence and negligence. Governor Davis signed AB 2629 on September 29, 2000 (Chapter 976, Statutes of 2000).

SB 1563 (Leslie), as amended August 24, 2000, sponsored by the California Land Surveyors Association, amends Business and Professions Code section 8741(a) to require PELS to prescribe by regulation educational or experience requirements necessary for admission to the first division of the exam, including two years of postsecondary education in land surveying, two years of experience in land surveying, or a combination of one year of postsecondary education and one year of experience in land surveying. The bill also requires county recorders to provide land surveyors with filing data within 10 days of the filing of a map. This bill makes changes to the requirements for maps or plats issued by a land surveyor or civil engineer. The bill was signed by Governor Davis on September 24, 2000 (Chapter 678, Statutes of 2000).

SB 1863 (Committee on Business and Professions), as amended August 21, 2000, amends Business and Professions Code section 8771 to clarify that the authority of a licensed land surveyor to decide whether to file either the required corner record or record of survey is applicable only when the record is required by a specific provision relating to the preservation of boundary monuments that are involved in a street construction or resurfacing; and amends section 8761 to provide that it is unlawful for any person to stamp or seal any map, plat, report, description, or other document with the seal after the certificate of the licensee that is named on the seal has expired or has been suspended or revoked, unless the certificate has been renewed or reissued. Governor Davis signed SB 1863 on September 30, 2000 (Chapter 1054, Statutes of 2000).

SB 1889 (Figueroa), as amended August 23, 2000, clarifies Business and Professions Code section 27, which currently requires PELS and other DCA agencies to post certain information on the Internet regarding their licensees. SB 1889 requires PELS to allow its licensees who use their home address as their official "address of record" to provide a post office box or other alternate address which will be posted on the Internet. The bill also specifies that it does not preclude an agency from also requiring a licensee who has provided an alternative mailing address as his/her address of record to also provide a physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet. This bill was signed by the Governor on September 29, 2000 (Chapter 927, Statutes of 2000).

SB 1216 (Hughes), as amended August 29, 2000, would have created a registration program for home inspectors within

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DCA. [17:1 CRLR 113] PELS opposed SB 1216 unless amended to preclude home inspectors from performing work that falls under the PE Act. Governor Davis vetoed this bill on September 29, 2000, finding that it would prohibit licensed contractors, engineers, and architects—many of whom currently perform home inspections—from using the title of home inspector or advertising that they perform home inspections unless they pass the examination required by the bill. According to the Governor, “this would place an unnecessary additional regulatory burden on licensed professionals who have already met extensive education, training, and examination requirements. Rather than benefitting consumers, this bill may expose them to increased costs resulting from the additional regulation of the home inspection industry.”

AB 1096 (Romero), as amended August 14, 2000, would have provided for the registration and regulation of interior designers by a Board of Interior Design created by this bill. [17:1 CRLR 113] PELS opposed AB 1096 unless amended to expressly preclude an interior designer from performing any work that falls under the PE Act. On September 10, 2000, Governor Davis vetoed the bill, stating: “This bill creates a new regulatory program for an industry where there is no demonstrated consumer harm. The creation of a new regulatory program and new state agency at a time when the Legislature is eliminating licensing boards and streamlining regulatory programs is inappropriate.”

SB 191 (Knight), as introduced in January 1999, would have repealed Business and Professions Code section 6717, which authorizes PELS to define, by regulation, the scope of each branch of professional engineering other than civil engineering for which registration is provided; and instead would have specifically authorized a professional engineer (including a title act engineer) to practice civil, electrical, or mechanical engineering if he/she is by education or experience fully competent and proficient in that discipline. [17:1 CRLR 106, 113] This bill died in committee in 2000.

2001 LEGISLATION

SB 26 (Figueroa), as amended March 8, 2001, is urgency legislation that would extend the date for DCA and PELS to submit the study on PELS’ title acts required by SB 2030 (Figueroa) (see above) from September 1, 2001 to September 1, 2002. [A. Desk]

SB 136 (Figueroa), as amended April 30, 2001, is a JLSRC omnibus bill that would extend PELS’ sunset date to July 1, 2004 (see MAJOR PROJECTS). The bill would also amend Business and Professions Code sections 6795 and 8801 to convert PELS’ license renewal cycle from a quadrennial cycle (renewals required every four years) to a biennial cycle (renewals required every two years); amend sections 6799 and 8805 to increase the PE and LS application fees to a maximum of \$400 (up from \$175), and increase the engineer-in-training and land surveyor-in-training application fees to a maximum of \$100 (up from \$60); and require PELS to administer the national examination in land surveying (instead

of its own written examination) by June 1, 2003 (instead of April 1, 2003). [A. B&P]

AB 269 (Correa), as amended April 5, 2001, would create the Division of Enforcement Oversight within DCA. Under the direction of the DCA Director, the Division would monitor and evaluate the consumer complaint and discipline system of each DCA board (including PELS). Further, the bill would require the executive officer of each DCA board to be appointed by a three-member panel comprised of a representative of the board, the DCA Director, and the Governor’s appointments secretary. [A. B&P]

RECENT MEETINGS

At its February 2000 meeting, PELS ratified an Enforcement Committee recommendation to approve new “Internal Management Policy #99-02” concerning Board member review of closed enforcement cases. The new “Internal Management Policy” replaces BPR #95-04, which was rescinded at PELS’ September 1999 meeting. [17:1 CRLR 108] Under the policy approved in February 2000, a two-member subcommittee of the Board’s enforcement committee will continue to review closed complaint cases to evaluate whether such cases have been promptly and fairly investigated. Cases that have been closed by PELS’ Enforcement Unit (including those closed after investigation by DCA’s Division of Investigation and review by a technical expert) must be made available for review by Board members; under the policy, “open, ongoing cases and cases which have been referred for further legal disciplinary action (District Attorney or Attorney General) shall not be available for review to avoid tainting the Board members.” Case reviews must be done at least once annually, and the reviewers will thereafter meet with Enforcement Unit staff to discuss their evaluations.

At its April 2000 meeting, PELS elected public member Kathy Hoffman as President and electrical engineer Vincent DiTomaso as Vice-President for 2000–01.

At its July 2000 meeting, PELS directed staff to determine what statutes would need to be amended in order to secure authorization to require applicants for licensure and in-training certificates to submit fingerprints so PELS can conduct adequate criminal history background checks. At PELS’ December 2000 meeting, staff reported that Business and Professions Code section 144 (which lists DCA agencies authorized to require fingerprints for licensure) would need to be amended to add PELS; further, the Board would have to seek an amendment to sections 6799 and 8740 to permit it to charge applicants a fee for fingerprint processing. In December 2000, PELS unanimously directed staff to seek a sponsor for the necessary legislative amendments. At its January 2001 meeting, however, PELS’ Legislative Committee recommended—and the full Board approved—that PELS defer the fingerprinting legislation due to cost concerns.

At its October 2000 meeting, PELS adopted a workplan for adopting regulations containing a code of professional conduct, as authorized by AB 2629 (Cox) (see above). The

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workplan requires staff to research codes of professional conduct in existence at other California agencies and at out-of-state engineering/land surveying regulatory programs and prepare recommendations for the Enforcement Committee by January 2001; PELS does not expect to publish the regulations for public comment until at least June 2001. Also in October 2000, staff briefed Board members on plans to publicize the new written contract requirement applicable to engineers in AB 2629 (Cox) (see above). Staff will feature the new requirement in a front-page article in the fall 2000 issue of PELS' *Bulletin* newsletter, request that professional societies publish notices regarding the requirement in their publications, and reprint PELS' *Consumer Guide* to include information on the new requirement.

Also in October 2000, PELS' Administrative Committee reviewed a cost estimate from CSU Sacramento's Institute for Social Research (ISR) to perform the title act study required by SB 2030 (Figueroa) under an interagency agreement (see above). Once projected at \$200,000, ISR's cost estimate rose to \$465,000 because the study is due on September 1, 2001. Board members expressed deep concern about the cost of the study, especially in light of the Board's projected deficit and its failure to obtain any fee increase in 2000. On the other hand, Board member Jim Foley noted that the study would cost \$5 per licensee and that, if well done, it could streamline the Board's licensing system and solve many fiscal and other problems for the Board in the future. The Administrative Committee recommended, and the full Board approved, a proposal to work with DCA and ISR to come up

with a reasonable scope of work for the project and a payment schedule that the Board can manage.

At PELS' December 2000 meeting, ISR Director Carole Barnes, Ph.D., and ISR Research Associate Nancy Bolton, Ph.D., made a presentation to PELS on the parameters of the title act study and noted that they had already gathered six boxes of materials from PELS staff on the title act issues. Dr. Barnes opined that the study is not as expansive as it appears on paper, and noted that ISR and DCA had adjusted the cost of the study to \$300,000. PELS was also notified that DCA is managing the study and that PELS members and staff should be sources of information. At PELS' April 2001 meeting, the Administrative Committee reported that the contract for the title act study with ISR had been finalized and that work had started on the project. At this writing, SB 26 (Figueroa) (which is urgency legislation) would postpone the due date for the study to September 1, 2002 (see 2001 LEGISLATION).

FUTURE MEETINGS

2001: June 7–8 in Sacramento; June 28 in Sacramento; July 26–27 in Los Angeles; September 6 in Burlingame; October 18 in Monterey; December 13–14 in Sacramento.

2002: January 24–25 in Van Nuys; March 7–8 in San Francisco; April 25–26 in San Diego; June 13–14 in Sacramento; July 25–26 in Arcadia; November 14–15 in Glendale.

2003: January 23–24 in Anaheim; April 24–25 in northern California; June 12–13 in Sacramento; July 24–25 in San Diego; September 4–5 in Monterey; October 16–17 in Los Angeles; December 11–12 in Sacramento.

Board for Geologists and Geophysicists

Executive Officer: Paul Sweeney ♦ (916) 263-2113 ♦ Internet: www.dca.ca.gov/geology

The Board for Geologists and Geophysicists (BGG) is created in the Geologist and Geophysicist Act, Business and Professions Code section 7800 *et seq.* The Board was established to regulate geologists in 1969; in 1972, its jurisdiction was extended to include geophysicists. BGG, whose regulations are found in Division 29, Title 16 of the California Code of Regulations (CCR), is a consumer protection agency within the Department of Consumer Affairs (DCA). In 2000, the name of the agency was changed from "Board of Registration for Geologists and Geophysicists" to "Board for Geologists and Geophysicists" by SB 2028 (Figueroa) (Chapter 393, Statutes of 2000) (see 2000 LEGISLATION).

The Board registers geologists and geophysicists, and certifies engineering geologists and hydrogeologists. Candidates for registration as geologists must pass both parts (Fundamentals of Geology and Practice of Geology) of the examination prepared by the National Association of State Boards of Geology (ASBOG), as well as a California-spe-

cific examination developed and administered by BGG. Applicants must also fulfill specified undergraduate educational requirements and have the equivalent of seven years of relevant professional experience. The experience requirement may be satisfied by a combination of qualifying academic study, research, teaching, and professional experience.

BGG is authorized to investigate and discipline registrants who act in violation of its statutes or regulations. The Board may issue a citation to registrants or unlicensed persons for violations of Board rules; an administrative fine of up to \$2,500 may accompany such a citation.

BGG maintains five standing committees: Enforcement Oversight, Examination, Executive, Legislative, and Technical Advisory. Several of these committees include non-Board members. The Board's staff currently consists of five full-time employees and one part-time employee. BGG's \$900,000 annual budget is funded by license fees.

