



a funeral director, cemetery authority, or crematory, after one year, by burial at sea, after certain notification requirements are met. [S. B&P]

LITIGATION

On October 21, the California Supreme Court granted both sides' petitions for review of the Third District Court of Appeal's decision in *Funeral Security Plans v. Board of Funeral Directors and Embalmers*, 16 Cal. App. 4th 1672 (July 1, 1993), an important case interpreting several provisions of the Bagley-Keene Open Meeting Act, Government Code section 11120 *et seq.* Among other things, the Third District interpreted section 11126(q) (the "pending litigation" exception to the Act's open meeting requirement) and section 11126(d) (the section which permits a state body to meet in closed session for purposes of deliberating on an adjudicative matter). The court also interpreted section 11121.7 to require even two-member advisory committees of a state body to meet in public so long as one of the members is a member of the state body, is serving on the advisory committee in his/her capacity as a representative of the state body, and the state body is funding, in whole or in part, the member's participation in the advisory committee. [13:4 CRLR 49; 13:2&3 CRLR 70; 13:1 CRLR 1]

FUTURE MEETINGS

To be announced.

BOARD OF REGISTRATION FOR GEOLOGISTS AND GEOPHYSICISTS

Executive Officer: John Parrish
(916) 445-1920

The Board of Registration for Geologists and Geophysicists (BRGG) is mandated by the Geologist and Geophysicist Act, Business and Professions Code section 7800 *et seq.* The Board was created by AB 600 (Ketchum) in 1969; its jurisdiction was extended to include geophysicists in 1972. The Board's regulations are found in Division 29, Title 16 of the California Code of Regulations (CCR).

The Board licenses geologists and geophysicists and certifies engineering geologists. In addition to successfully passing the Board's written examination, an applicant must have fulfilled specified undergraduate educational requirements and have the equivalent of seven years of relevant professional experience. The experi-

ence requirement may be satisfied by a combination of academic work at a school with a Board-approved program in geology or geophysics, and qualifying professional experience. However, credit for undergraduate study, graduate study, and teaching, whether taken individually or in combination, cannot exceed a total of four years toward meeting the requirement of seven years of professional geological or geophysical work.

The Board may issue a certificate of registration as a geologist or geophysicist without a written examination to any person holding an equivalent registration issued by any state or country, provided that the applicant's qualifications meet all other requirements and rules established by the Board.

The Board has the power to investigate and discipline licensees who act in violation of the Board's licensing statutes. The Board may issue a citation to licensees or unlicensed persons for violations of Board rules. These citations may be accompanied by an administrative fine of up to \$2,500.

The eight-member Board is composed of five public members, two geologists, and one geophysicist. BRGG's staff consists of five full-time employees. The Board's committees include the Professional Practices, Legislative, and Examination Committees. BRGG is funded by the fees it generates.

MAJOR PROJECTS

BRGG Selects New Executive Officer. On November 17, BRGG appointed John Parrish to fill the Board's vacant Executive Officer position; Parrish has twenty years of experience as a geologist, primarily in petroleum-related areas. Before coming to BRGG, Parrish managed oil exploration projects, with particular experience in the Pacific Coast area. Parrish has a Ph.D. in marine geology from the University of Wales, an M.B.A. from California State University at Bakersfield, an M.S. in geology from the University of Houston, and a B.S. in geology from the University of Redlands. According to BRGG, Parrish is well qualified for the position and will be sensitive to the confluence of professional, public, and legislative policies and concerns which relate to the Board.

Legislative Oversight Hearing. On November 10, BRGG and the Board of Registration for Professional Engineers and Land Surveyors (PELS) were required to present testimony to the Senate Subcommittee on Efficiency and Effectiveness in State Boards and Commissions, chaired by Senator Dan McCorquodale,

on several issues related to the possible restructuring of the boards. Specifically, the Subcommittee requested comments on (1) whether geologists, geophysicists, engineers, and land surveyors should be deregulated and both boards abolished; (2) whether the two boards should be merged; and (3) whether either or both boards should be transformed into bureaus which lack a multi-member policymaking board and operate under the direct control of the Director of the Department of Consumer Affairs (DCA).

Board President Art Letter testified on behalf of BRGG, arguing that the Board should be retained in its present structure. Letter stated that BRGG has been "totally revamped...from top to bottom during the last three years," in that the Board has revised its examinations and expanded its enforcement programs. Sensitive to the fiscal crisis currently confronting the state, BRGG has transformed itself—according to Letter—into "a reconstructed lean and mean regulatory machine."

Subcommittee members were skeptical of BRGG's "totally revamped" enforcement program, which (although it consumes 48% of the Board's budget) received only 40 complaints in fiscal year in 1992-93 and took no disciplinary action against any licensee; BRGG filed only one accusation during that time period. Additionally, Senator Dan Boatwright chastised the Board for its failure to adopt citation and fine regulations to address minor violations by licensees and unlicensed practice by nonlicensees, although it has had citation and fine authority since 1986. Letter responded that BRGG began the process of adopting citation and fine regulations for licensees and nonlicensees earlier this year. [13:4 CRLR 51; 13:2&3 CRLR 73]

Center for Public Interest Law Supervising Attorney Julianne D'Angelo testified that both BRGG and PELS fulfill only one of the three traditional responsibilities of an occupational licensing agency: They administer a barrier to entry into a profession and register people. According to D'Angelo, neither board has established any standards of professional conduct through rulemaking, and neither has an active enforcement program. In response to BRGG's claim about its citation and fine regulations, D'Angelo stated that the proposed rules do not (as drafted) apply to unlicensed persons and are defective in that they refer to a repealed statute (former Business and Professions Code section 125.95). Quoting from a report published in *Oil and Gas World Network* and distributed by the Society of Exploration Geophysicists, D'Angelo stated that only 14



states register geologists, and California is the only state which separately registers geophysicists. D'Angelo urged the Subcommittee to transform both boards into a bureau, which could offer the same regulatory program currently provided by BRGG and PELS but at much greater efficiency and lesser cost to the state.

At this writing, the Subcommittee is expected to release a final report on the hearing and its recommendations in early 1994.

BRGG Adopts Hydrogeology Specialty Certification Regulations. At its December 3 meeting, BRGG finally adopted proposed amendments to section 3001 and new section 3042, Title 16 of the CCR, which define the term "hydrogeology" and establish a specialty certification program within BRGG for hydrogeologists. If approved by DCA and the Office of Administrative Law (OAL), persons may not use the term "hydrogeologist" without being certified by BRGG. [13:4 CRLR 50; 13:2&3 CRLR 72]

In adopting the regulatory changes, BRGG rejected a request by PELS to reopen the public comment period on the proposed rulemaking, to enable PELS to express its concerns over "the growing number of Title Act registrations and possible conflicts with the Professional Engineers Act." In denying the request, the Board stated that PELS raised no new information in its request and noted that the request was made at the eleventh hour in the rulemaking process. BRGG members stated that, once the hydrogeology specialty is effective, they would contact PELS and seek its cooperation in defining the specialty area as it relates to the jurisdiction of both boards. BRGG also adopted the certification scheme over the objection of Consulting Engineers and Land Surveyors of California, which complained that BRGG lacks a compelling interest justifying creation of the specialty certification program, is intruding into several engineering disciplines, is underestimating the fiscal and small business impact of its action, and seeks to profit from job growth in this area. At this writing, BRGG has not yet submitted the rulemaking file on the proposed action to DCA or OAL.

At this writing, BRGG also continues to sponsor SB 433 (Craven), which would authorize the Board to "grandparent in" currently registered geologists as certified hydrogeologists without examination if they have specified experience (see LEGISLATION). However, because SB 433 appears to have stalled in the legislature due to the Assembly Consumer Protection Committee's hostility to the "grandpar-

ent" provision [13:4 CRLR 50], BRGG's new regulatory package does not contain a "grandparent" clause. The Board will discuss SB 433 and whether to pursue "grandparenting" authority at a future meeting.

Cite and Fine Update. The Board's effort to adopt sections 3062 and 3063, its citation and fine regulations, was kicked into high gear after Senator Boatwright criticized BRGG's failure to implement this authority at the November 10 hearing of the Subcommittee on Efficiency and Effectiveness in State Boards and Commissions (see above). Although the Board published proposed citation and fine regulations in February 1993 and held a public hearing on them in March 1993, it has never adopted them. [13:4 CRLR 51; 13:2&3 CRLR 73] Further, some question has been raised about whether the regulations proposed in February permit BRGG to issue citations and fines to unlicensed persons practicing geology (see above).

At its December 3 meeting, BRGG reviewed a new draft of the regulatory language regarding citations and fines for unlicensed practice. Among other things, the draft language provides the following:

- the Board's Executive Officer may issue citations against any unlicensed person who is acting in the capacity of a licensee under BRGG's jurisdiction;

- each citation may contain an assessment of an administrative fine, an order of abatement fixing a reasonable period of time for abatement of the violation, or both;

- at the time an administrative fine and an order of abatement is issued, the Executive Officer may notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in unlawful advertising; and

- each citation shall be in writing, shall describe with particularity the nature of the violation (including specific reference to the provision of law determined to have been violated), shall be served in accordance with specified provisions of law, and shall inform the cited person that if he/she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the Board within thirty days of the issuance of the citation or assessment.

The draft language also provides a range of fines for specified violations; the minimum fine for any violation is \$1,000 and the maximum is \$2,500. The draft language also provides that in assessing an administrative fine or issuing an order of abatement, the Board's Executive Officer shall give due consideration to the gravity

of the violation; the good or bad faith of the cited person or entity; any history of previous violations; evidence that the violation was or was not willful; the extent to which the cited person or entity has cooperated with the Board's investigation; and the extent to which the cited person or entity has mitigated or attempted to mitigate any damage or injury caused by the violation. Also, the draft language provides that when an order of abatement is not contested or if the order is appealed and the person or entity cited does not prevail, failure to abate the violation charged within the time specified in the citation shall constitute a violation and failure to comply with the order of abatement; the time allowed for the abatement of a violation shall begin when the order of abatement is final and has been served in accordance with specified provisions of law.

Because the Board will not have time to hold another hearing and adopt the new citation and fine language prior to the one-year deadline in Government Code section 11346.4(b), it decided to allow the February 1993 notice lapse and renote the citation and fine regulations for a new public comment period and hearing in the near future.

BRGG Considers ASBOG Membership. BRGG Vice-President Robert Lindblom attended the fourth annual meeting of the Association of State Boards of Geology (ASBOG) held on November 11-13 in Phoenix; BRGG believes that by joining ASBOG, it will promote interstate licensing reciprocity, reduce license processing time, enhance the exam process, and improve its image with the state legislature. However, BRGG is concerned about the cost to join ASBOG, which could exceed \$20,000; the Board has also expressed concern that the ASBOG exam—which it would be required to administer—does not adequately address California's unique geology. [13:4 CRLR 51] The BRGG Examination Committee has recommended that BRGG pursue ASBOG membership; the Board is expected to make a final decision at its next meeting.

Enforcement Update. BRGG recently released a summary of its enforcement activities during calendar year 1993. Among other things, the summary indicated that from January 1 through December 31, BRGG received 34 complaints; closed 141 cases; had 33 cases under review; forwarded four cases to DCA's Division of Investigation; forwarded two cases to the Attorney General's Office; and issued three warnings. One BRGG licensee surrendered his/her license for cause.



LEGISLATION

SB 433 (Craven), as amended July 13, would provide that prior to January 1, 1994, professional geological work shall qualify an applicant seeking certification as a hydrogeologist if performed under the supervision of a geologist qualified in hydrogeology. The bill would require BRGG to define, by regulation, professional geological work for purposes of persons seeking certification in hydrogeology; require BRGG to establish, by regulation, criteria to determine whether a geologist is qualified in hydrogeology for purposes of supervising persons seeking certification in hydrogeology; allow BRGG to waive the examination requirement for certification as a hydrogeologist if the applicant is registered as a geologist and has specified experience, prior to January 1, 1994; and exempt from registration any person, other than a registered geologist, who does not use the title of a registered certified hydrogeologist and who is licensed by this state and whose licensed scope of practice includes those activities performed by a registered certified hydrogeologist, insofar as he/she practices within the scope of his or her licensed practice.

The Geologist and Geophysicist Act exempts certain individuals from registration under the Act; the Act requires applicants for certification in a specialty in geology to have certain experience in professional geological work. This bill would exempt from registration any person, other than a registered geologist, who does not use the title of a registered certified specialty geologist and who is licensed by this state and whose licensed scope of practice includes those activities performed by a registered certified specialty geologist, insofar as he/she practices within the scope of his/her licensed practice. [A. CPGE&ED]

SB 746 (Rogers). Under the Geologist and Geophysicist Act, the terms "geology" and "responsible charge of work" are defined. As amended August 26, this bill would revise the definition of the term "geology." This bill would also revise the definition of the term "responsible charge of work" to include supervision or review and approval of geologic or geophysical work on behalf of the public.

Existing law provides that the State Personnel Board (SPB) shall prescribe classifications in the state civil service, as well as create and adjust classes of positions. This bill would require the SPB, in cooperation with BRGG, to revise the job specifications for certain engineering geologist positions to require certification by

BRGG as an engineering geologist. [S. B&P]

AB 1807 (Bronshvag), as amended September 8, would authorize BRGG to issue citations if, upon investigation, it has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services without being properly licensed, and to require the violator to cease the unlawful advertising.

The Contractors State License Law provides that it does not apply to licensed architects, professional engineers, or structural pest control operators. This bill would also make that law inapplicable to BRGG licensees operating within the scope of the Geologist and Geophysicist Act.

Existing law authorizes the refund of 50% of the amount of the application fee for a geologist or geophysicist that BRGG finds lacks the qualifications required for admission to the examination for registration. This bill would repeal that provision. [13:1 CRLR 40] [A. Inactive File]

AB 1392 (Speier), as amended July 1, would—among other things—provide that BRGG's executive officer is to be appointed by the Governor, subject to Senate confirmation, and that the Board's executive officer and employees are under the control of the Director of the Department of Consumer Affairs. [S. B&P]

RECENT MEETINGS

At its December 3 meeting in Los Angeles, BRGG revised its Guidelines for Geophysical Reports, Geologic Guidelines for Earthquake and/or Fault Hazard Reports, Guidelines for Groundwater Investigation Reports, and Guidelines for Engineering Geologic Reports. The guidelines, which BRGG issues for informational purposes only, present the general procedures used by geologists in reporting on the various areas of investigation; while they do not constitute a complete listing of all the reporting methods for such studies, the guidelines attempt to cover all major topics for the particular field.

FUTURE MEETINGS

To be announced.

BOARD OF LANDSCAPE ARCHITECTS

Executive Officer: Jeanne Brode (916) 445-4954

Authorized in Business and Professions Code section 5615 *et seq.*, the Board of Landscape Architects (BLA) licenses

those who design landscapes and supervise implementation of design plans. Prior to 1993, applicants were required to pass the written examination of the national Council of Landscape Architectural Registration Boards (CLARB) in order to qualify for licensure. However, following years of dissatisfaction, BLA decided in May 1992 to discontinue its use of CLARB's exam; commencing in 1993, applicants must instead pass the Board's own Professional Examination for Landscape Architects (PELA) in order to qualify for licensure. [12:4 CRLR 86] In addition, an applicant must have the equivalent of six years of landscape architectural experience. This requirement may be satisfied by a combination of education at a school with a Board-approved program in landscape architecture and field experience.

In addition to licensing landscape architects, the Board investigates verified complaints against landscape architects, prosecutes violations of the Practice Act, and establishes criteria for approving schools of landscape architecture. BLA's regulations are codified in Division 26, Title 16 of the California Code of Regulations (CCR).

BLA consists of seven members who serve four-year terms. One of the members must be a resident of and practice landscape architecture in southern California, and one member must be a resident of and practice landscape architecture in northern California. Three members of the Board must be licensed to practice landscape architecture in the state of California. The other four members are public members and must not be licentiates of the Board.

MAJOR PROJECTS

Legislative Oversight Hearings. On October 20, BLA and the Board of Architectural Examiners (BAE) presented testimony to the Senate Subcommittee on Efficiency and Effectiveness in State Boards and Commissions, chaired by Senator Dan McCorquodale, on several issues related to the possible restructuring of the boards. Specifically, the Subcommittee requested comments on (1) whether architects and landscape architects should be deregulated and both boards abolished; (2) whether the two boards should be merged; and (3) whether either or both boards should be transformed into bureaus which lack a multi-member policymaking board and operate under the direct control of the Director of the Department of Consumer Affairs (DCA). The Legislative Analyst's Office (LAO) has already called for the abolition of BLA. [13:2&3 CRLR 77]