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supersede the Bagley-Keene Act. One provision of the Brown Act, Government Code section 54952.3, states that the term "legislative body" does not include "a committee composed solely of members of the governing body of a local agency which are less than a quorum of such governing body"—an exception which has come to be known as the "less than a quorum" exception. The Bagley-Keene Act has no corresponding provision. Although section 11121.8 of the Bagley-Keene Act applicable to the Funeral Board permits two-member committees to meet in private by providing that only an advisory committee consisting of "three or more persons" created by the Board is a "state body" subject to the Act, the court applied the "less than a quorum" exception. Relying on a 1989 open meetings brochure prepared by the Attorney General's Office, the court found that the exception "has been applied administratively for many years to state agencies operating under the Bagley-Keene Act..." and rejected FSP's final claim. FSP plans to appeal this ruling.

In another case, the court has scheduled a hearing date on the Board's motion for permanent injunction against FSP for alleged violations of preneed reporting laws (No. 205308, Riverside County Superior Court). (See CRLR Vol. 11, No. 2 (Spring 1991) pp. 74-75 for background information on the issuance of the preliminary injunction in this proceeding.) The permanent injunction hearing is scheduled for the first three weeks in September.

At this writing, the California Supreme Court has yet to schedule oral argument in *Christensen, et al. v. Superior Court*, No. S016890. The Supreme Court granted the request for review by real party in interest Pasadena Crematorium, and will examine the Second District Court of Appeal's June 1990 decision which substantially expanded the plaintiff class in this multimillion-dollar tort action against several Board licensees. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 75; Vol. 11, No. 1 (Winter 1991) p. 62; and Vol. 10, No. 4 (Fall 1990) pp. 61 and 75 for background information.)

On April 4, Ventura County Superior Court Judge Frederick Jones dismissed a murder charge against David Wayne Sconce, who operated Pasadena Crematorium and Lamb Funeral Home in Pasadena. Sconce had been charged with the murder of Timothy Waters, a rival mortician; prosecutors had alleged that Sconce slipped Waters a lethal dose of oleander to keep him from revealing illegal goings-on at Sconce's establishments. However, prosecutors subse-

quently conceded that new scientific tests showed no trace of poison from the oleander plant in Waters' exhumed remains. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 62 for background information.)

RECENT MEETINGS:

At its March 28 meeting, the Board addressed complaints which it has received over the past few years concerning unlicensed individuals who provide mortuary accommodation and transportation services. The Board considered the possibility of requiring these individuals to be separately licensed by the state, but instead decided to contact such unlicensed businesses and direct them to cease and desist from the unlicensed practice. Board counsel Robert Miller reminded the Board that it has the authority to adopt regulations that would allow the Board's Executive Officer to issue citations and assess fines against unlicensed businesses performing acts for which a license is required.

Also at its March 28 meeting, the Board approved in concept a proposal from the National Funeral Directors Association regarding mutual aid agreements, which would allow licensed funeral directors from one state to work in another state in times of disaster. Under such agreements, in the event of a major disaster or emergency where human death is likely to occur, persons licensed by either reciprocal state as a funeral director or embalmer would be temporarily authorized to practice funeral directing and/or embalming in a reciprocal state where they are not so licensed, provided that such services are rendered as a member of a "Disaster Mortuary Team" authorized by local or federal authorities to provide such services. However, only funeral directors and/or embalmers licensed in the state where the disaster or emergency has occurred would be able to sign death certificates. It is anticipated that California will enter into mutual aid agreements with its neighboring states.

FUTURE MEETINGS:

September 26 in Eureka.

November 21 in Brea.

BOARD OF REGISTRATION FOR GEOLOGISTS AND GEOPHYSICISTS

Executive Officer: Frank Dellechiaie (916) 445-1920

The Board of Registration for Geologists and Geophysicists (BRGG) is mandated by the Geology 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 experience 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 two full-time employees (Executive Officer Frank Dellechiaie and his secretary) and two part-time personnel. The Board's committees include the Professional Practices, Legislative, and Examination Committees. BRGG is funded by the fees it generates. Currently, two public member positions on BRGG are vacant.

MAJOR PROJECTS:

BRGG Considers Draft Regulatory Amendments. At its April 16 meeting, the Board discussed draft changes to sections 3005, 3025, 3036, and 3037, Division 29, Title 16 of the CCR. The changes would increase the Board's revenue and hopefully enable it to administer its licensing exams twice per year—a



very sore spot for BRGG and would-be geologists.

Section 3005 sets forth BRGG's fee schedule. With its current licensing fees, the Board projects it will be unable to maintain an aggressive enforcement program and keep a reserve balance in its contingent fund equal to four months of its annual authorized operating expenditures by the end of the 1991-92 fiscal year. BRGG's draft amendments would increase the fee for each application for geologist or geophysicist registration from \$60 to \$100; the fee for each application for specialty geologist registration from \$40 to \$100; the temporary registration fee for a geologist or specialty geologist from \$40 to \$80; the duplicate certificate fee from \$3 to \$6; and the renewal fee for a specialty geologist or specialty geophysicist from \$20 to \$50.

Section 3025 currently provides that if an applicant for registration as a specialty geologist is found by the Board to lack the qualifications required for admission to the examination for such registration, the Board shall refund to him/her one-half of the amount of his/her application fee. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 76 for background information.) According to BRGG's draft statement of reasons, the cost of processing the refund for an unqualified applicant exceeds \$120, while the amount of the refund is only \$20. As a result, the Board is considering repealing section 3025 "to release staff resources for enforcement work and administering the three examinations."

Section 3036 currently provides that an applicant who fails to obtain a passing grade in the written examination may inspect his/her examination papers within a thirty-day period after receipt of notice by the applicant of his/her failure to pass the examination. Section 3037 currently provides that within thirty days after the date notice of the examination results has been mailed to him/her, an applicant who was unsuccessful in the examination may appeal to the Board for a review of his/her examination papers.

According to the draft statement of reasons, of the 363 individuals who failed the 1989 geologist examination, 324 requested to inspect their examinations, and 133 appealed for a Board review of their examinations. According to BRGG, "the Board diverts precious staff resources in the complicated and cumbersome review and appeal process that could allow the Board to administer the examination more frequently than once a year."

BRGG is considering amendments to section 3036 which would provide that

an applicant who obtains a failing grade of at least 60% on the written examination may inspect his/her examination, thus prohibiting applicants who score below 60% from inspecting their examinations. The draft amendments to section 3037 would similarly provide that only applicants who obtained a failing grade of at least 60% would be allowed to appeal to the Board for a review of his/her examination, prohibiting applicants who score below 60% from appealing their examination results.

At this writing, BRGG has not yet published notice of its intent to pursue these revisions in the *California Regulatory Notice Register*.

BRGG Examination Validation Process Update. BRGG has been authorized to spend a considerable amount of money (\$77,000 in fiscal year 1990-91, \$77,000 in fiscal year 1991-92, and \$52,000 in fiscal year 1992-93) for the purpose of examination development and validation. In order to accomplish these functions, BRGG intended to contract with a private testing firm to undertake the entire project. (See CRLR Vol. 11, No. 2 (Spring 1991) pp. 75-76 for background information.) However, BRGG realized early this year that the project was substantially behind schedule, and thus reassessed its plan for the project's implementation. According to the Board, if it purchases the appropriate hardware and software enhancements, most of the examination development could be accomplished in-house this year.

The Board contends that performing its own examination development will be more efficient and cost-effective. Instead of contracting with a vendor to conduct major examination overhauling, development, and validation, the selected vendor will perform only a validation of the resulting examination. According to the Board, this reduction in outside services will result in a savings such that the \$77,000 budgeted for fiscal year 1991-92 for the second examination review will be sufficient to fund two validation studies, and BRGG will be back on schedule by the end of fiscal year 1991-92. Further, the Board claims that in fiscal year 1990-91, instead of incurring \$77,000 in examination contract costs, the Board could conduct examination development for \$20,000-\$32,000 (including \$12,000 in software/hardware enhancements and \$8,000-\$20,000 in additional temporary help so that existing staff will be able to focus on examination development).

Practice Areas and Conflicts Update. In response to Orange County's apparent misinterpretation of the law governing a

civil engineer's ability to practice geology, BRGG and the Board of Registration for Professional Engineers and Land Surveyors (PELS) drafted a joint letter to Orange County officials discussing the issue. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 76; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 92; and Vol. 9, No. 4 (Fall 1989) p. 77 for background information.) At its April 16 meeting, BRGG reviewed a draft version of the letter, which states that "[i]t is the collective opinion of [BRGG] and [PELS] that registered civil engineers, competent to practice geotechnical engineering, may investigate, prepare and/or review in-situ geotechnical reports involving soils and engineering geology when such work is incidental to an engineering project. Registered civil engineers may not practice or offer to practice geology, engineering geology or geophysics insofar as such work is not incidental to an engineering project." Further, the draft letter states that Business and Professions Code section 7835 requires all geologic reports, maps and documents to be signed by a registered geologist. The boards base their conclusions in part on 1975 and 1988 California Attorney General opinions, which state that civil engineers are allowed to perform only incidental geological work.

LEGISLATION:

AB 892 (Tanner), as amended May 15, would rename the Geologist and Geophysicist Act as the Earth Scientist Act and would revise and recast specified provisions to include regulation of the practice of groundwater hydrology. BRGG would become the Board of Registration for Earth Scientists and would provide for the registration of groundwater hydrologists. This bill is pending in the Assembly Ways and Means Committee.

SB 958 (Rogers), as amended April 11, would amend Public Resources Code section 2774, which currently specifies that those conducting surface mine inspections must be state-registered geologists, state-registered civil engineers, state-licensed architects, or state-registered foresters. SB 958 would delete the requirement for state registration or licensure, and states that the proposed inspections would be conducted by a qualified professional with experience in land reclamation. This bill is pending in the Senate Committee on Natural Resources and Wildlife.

RECENT MEETINGS:

At its April 16 meeting, the Board discussed the costs and benefits of a new specialty classification for hydrogeologists



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and resolved to work with Assembly-member Sally Tanner to evaluate the problem and the need for a new specialty certification (*see supra* LEGISLATION). A representative of the Association of Engineering Geologists (AEG) commented that two-thirds of AEG's Los Angeles area members are opposed to a new hydrogeology specialty.

FUTURE MEETINGS:

To be announced.

BOARD OF GUIDE DOGS FOR THE BLIND

Executive Officer: Manuel Urena (916) 445-9040

The Board of Guide Dogs for the Blind has three primary functions. The Board protects the blind guide dog user by licensing instructors and schools to ensure that they possess certain minimum qualifications. The Board also enforces standards of performance and conduct of these licensees as established by law. Finally, the Board polices unlicensed practice.

The Board, authorized by Business and Professions Code section 7200 *et seq.*, consists of seven members, two of whom must be dog users. In carrying out its primary responsibilities, the Board is empowered to adopt and enforce regulations, which are codified in Division 22, Title 16 of the California Code of Regulations (CCR).

The Board currently licenses three guide dog schools and 48 trainers.

LEGISLATION:

AB 567 (Hunter), as amended April 18, would abolish the Board of Guide Dogs for the Blind and require trainers of guide, signal, or service dogs to register with the Department of Consumer Affairs (DCA); these registered trainers would be permitted to authorize other persons to train the dogs. DCA would be required to establish and maintain a registry of these persons and issue certificates of registration. This bill is pending in the Assembly Human Services Committee.

SB 756 (Marks), as introduced March 6, would change the composition of the Board by providing that one member shall be the Director of the Department of Rehabilitation or his/her representative, one shall be a veterinarian, one shall be a member of the general public, and the remaining members shall be blind persons who use guide dogs. This bill is pending in the Senate Business and Professions Committee.

RECENT MEETINGS:

Following its meeting on May 3, the Board administered an examination to a prospective guide dog trainer. According to the DCA Annual Report, the Board did not administer any exams during the 1989-90 fiscal year.

FUTURE MEETINGS:

To be announced.

BUREAU OF HOME FURNISHINGS AND THERMAL INSULATION

Chief: Gordon Damant (916) 920-6951

The Bureau of Home Furnishings and Thermal Insulation (BHF) is charged with regulating the home furnishings and insulation industries in California. As a division of the state Department of Consumer Affairs (DCA), the Bureau's mandate is to ensure that these industries provide safe, properly labeled products which comply with state standards. Additionally, the Bureau is to protect consumers from fraudulent, misleading, and deceptive trade practices by members of the home furnishings, insulation, and dry cleaning industries. The Bureau is established in Business and Professions Code section 19000 *et seq.*

The Bureau establishes rules regarding furniture and bedding labeling and sanitation. To enforce its regulations, which are codified in Division 3, Title 4 of the California Code of Regulations (CCR), the Bureau has access to premises, equipment, materials, and articles of furniture. The Bureau may issue notices of violation, withhold products from sale, and refer cases to the Attorney General or local district attorney's offices for possible civil penalties. The Bureau may also revoke or suspend a licensee's registration for violation of its rules.

The Bureau is also charged with the registration of dry cleaning plants throughout the state. The registration process includes submission of information regarding the plant's onsite storage, treatment, and disposal of toxic wastes. The Bureau, however, has no enforcement authority regarding this function.

The Bureau is assisted by a thirteen-member Advisory Board consisting of seven public members and six industry representatives.

MAJOR PROJECTS:

Governor Appoints New Deputy Chief. On May 2, Governor Pete Wilson announced the appointment of Maria

Guzman-Kennedy of Vallejo as Deputy Chief of BHF. Kennedy, a former business analyst with Cordoba Corporation, will receive an annual salary of \$55,836. Gordon Damant of Sacramento will continue to serve as BHF Chief; he has held this position since 1978 and currently earns an annual salary of \$64,728.

Status of Proposed Increase in License Fees. On May 17, the Bureau submitted its proposed regulatory changes to section 1107, Title 4 of the CCR, to the Office of Administrative Law (OAL) for approval; the changes would increase BHF license fees to the maximum levels authorized by law. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 78 and Vol. 11, No. 1 (Winter 1991) pp. 64-65 for background information.) At this writing, BHF is awaiting OAL's response. If approved, the regulatory changes will become effective August 1.

In its review of the fee changes, DCA's Budget Office projected that BHF will face a deficit by the end of the 1993-94 fiscal year, despite the additional revenue from the proposed fee increase. Since the proposed regulatory amendments would raise fees to the maximum levels allowed by law, the Bureau will need to obtain a statutory change before it may increase its fees further.

Furniture Flammability Standards. On May 16, BHF submitted its proposed regulatory changes to sections 1374 and 1374.3, Title 4 of the CCR, to DCA for approval. The proposed revisions would establish higher flammability standards for furniture in public buildings. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 78; Vol. 11, No. 1 (Winter 1991) p. 64; and Vol. 10, No. 4 (Fall 1990) p. 77 for background information.) BHF expects official approval from DCA by mid-June; the Bureau will then submit the regulatory package to OAL for final approval, which is expected in late July. If the regulations are approved, they are scheduled to go into effect January 1, 1992.

Proposed Revisions to the Insulation Quality Standards. BHF has proposed revisions to its Standards for Insulation Material to update existing standards and expand the present types and forms of insulation. The Insulation Quality Standards (IQS) program is a state-mandated program developed to establish standards which protect consumers from unsafe insulation products, minimize fraudulent labeling, and set guidelines for quality control to ensure that maximum energy savings are safely achieved for each energy conservation dollar spent by the consumer. Examples of new types of insulation which would be