



## REGULATORY AGENCY ACTION

cision and determine whether to proceed to a formal hearing. Finally, the section fails to explain the consequences of a dismissal of the citation, even though it sets out the consequences which follow the affirmation or modification of a citation.

OAL found that both sections fail the necessity requirement because the rulemaking file did not explain the reasons for the addition of criteria not included in the Business and Professions Code. The Code states that in assessing a fine, the Board shall give due consideration to the appropriateness of the amount of the fine with respect to such factors as the gravity of the violation, the good faith of the licensee, and the history of previous violations. Section 3488 expands this list of factors to eight, one of which calls for the assessment of a fine when justice would so require. OAL found that the discretionary nature of this factor so expands the application of the regulation that a showing of necessity for the expansion of the statutory criteria is essential before it may be enforced.

### LEGISLATION:

*SB 1494 (Dills)* would dissolve the Board as a division of the Department of Consumer Affairs and would recreate it as a program within the Department of Justice. Existing Business and Professions Code provisions providing for the licensing and regulation of polygraph examiners would be recast and revised in the Penal Code, and the name of the board would become the Polygraph Examiners Commission.

The bill is in response to both the Board's scheduled sunset date of January 1, 1990, and recent federal legislation which eliminates a majority of non-criminal polygraph examinations. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 61 for background information.) This move is expected to be more cost-efficient because fewer staff members are required to operate a commission than are required to operate a board. This bill is pending in the Senate Business and Professions Committee.

### RECENT MEETINGS:

The Board's meeting scheduled for February 10 in Newport Beach was cancelled.

### FUTURE MEETINGS:

To be announced.

### BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

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The Board of Registration for Professional Engineers and Land Surveyors regulates the practice of engineering and land surveying through its administration of the Professional Engineers Act and the Professional Land Surveyors' Act.

The basic functions of the Board are to conduct examinations, issue certificates and/or licenses and appropriately channel complaints against its licensees. The Board is additionally empowered to suspend or revoke certificates or licenses. On a routine basis, the Board considers the proposed decisions of administrative law judges who hear appeals of applicants who are denied registration and licensees who have had their licenses suspended or revoked for violations.

The Board consists of thirteen members: seven public members, one licensed land surveyor, four registered practice act engineers and one title act engineer. Eleven of the members are appointed by the Governor for four-year terms which expire on a staggered basis. One public member is appointed by the Speaker of the Assembly and one by the Senate President pro Tempore.

The Board has established seven standing committees dealing with land surveying and the various branches of engineering. These committees, each composed of three Board members, approve or deny applications for examinations and register applicants who pass the examinations. Their actions must have the approval of the entire Board, which is routinely forthcoming.

Professional engineers are now licensed through the three Practice Act categories of civil, electrical and mechanical engineering under section 6730 of the Business and Professions Code, and the Title Act categories of agricultural, chemical, control system, corrosion, fire protection, industrial, manufacturing, metallurgical, nuclear, petroleum, quality, safety, and traffic engineering.

Structural engineering and soil engineering are linked to the civil Practice Act and require an additional examination after qualification as a Practice Act engineer.

### MAJOR PROJECTS:

*Exam Revision.* At its January 27 meeting, the Board considered a proposal to change its test procedures to

improve exam administration and possibly eliminate the two-hour Special Civil Examination recently added by state law.

In 1985, the Governor signed SB 128 (Montoya), which requires engineering applicants to pass a two-hour Special Civil Examination on seismic principles and engineering surveying, in addition to the eight-hour National Council of Engineering Examiners (NCEE) exam. In addition, the applicant is required to pass a take-home test concerning knowledge of state law and Board regulations. Since the passage of that bill, the Board has delayed compliance and struggled with its implementation. (See CRLR Vol. 7, No. 2 (Spring 1987) p. 66 for background information.)

The two-hour Special Civil Examination was finally administered for the first time in April 1988. The addition of this California-required portion increased the time required for administration of the exam from one day to two. Of the 995 candidates who passed the NCEE portion, only 131 passed the California addition.

The Board had the exam rewritten and the format changed before its second administration in October 1988. In the April exam, the questions were all subjective or "design type". The October exam consisted of both subjective and objective, multiple-choice questions. Results of the October examination are not yet available.

Since the last administration of the exam, the Board has considered a consolidation of the NCEE exam and the California addition to reduce the total test time to eight hours and the administration time from two days to one. Board staff members have indicated that this alternative would save administrative costs due to reduced proctor and site fees. Disadvantages of this plan, according to Board staff, include the added difficulty in the tracking of exam questions and the limitation of being able to offer the test only twice each year.

At its January 27 meeting, the Board rejected a proposal to consolidate the two exams, and instead decided to continue to administer the test as a two-day process. The Board will issue a request for proposals for a test validation study and for a contractor to assist in formatting and publishing the exam. The staff has also written a revised study guide to be distributed to all test candidates.

The Department of Finance approved a deficiency request by the Board to fund the administration of the two-hour Special Civil Exam during fiscal year



1988-89, and the Board plans to make a second request if it decides it needs additional funding.

*Rulemaking Decision Delayed.* The Board declined to take any action on the adoption of proposed regulations concerning qualifications for structural engineers, qualifying experience, and references. (See Vol. 9, No. 1 (Winter 1989) p. 62 and Vol. 8, No. 4 (Fall 1988) pp. 71-72 for detailed background information.) These regulations were first considered at a November 1988 hearing, were later amended, and have been pending a decision since the closing of the public comment period in December. The Board was expected to act on these regulations at its May 5 meeting in Palm Springs.

## LEGISLATION:

*SB 419 (Greene, L.).* Under current law, state and local agencies contracting for professional services from engineering, land surveying or construction management firms, or private architects, are required to select the provider of those services on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services. SB 419 would allow heads of state and local agencies to make the decision as to qualifications. This bill has passed the Senate Committee on Governmental Organization, and is pending in the Senate Appropriations Committee.

*SB 423 (Stirling)* would amend section 6737.1 of the Business and Professions Code, section 66490 and 66491 of the Government Code, and section 17953 of the Health and Safety Code to permit a city and/or county to require that a registered civil engineer employed by any of their departments or agencies be qualified to use the title of geotechnical engineer. This bill, which is now pending in the Senate Committee on Business and Professions, would also require that the preliminary soils report mandated by law be prepared by a registered civil engineer who is qualified to use the title of geotechnical engineer.

*SB 581 (Green).* Existing law exempts certain lot line adjustments between adjacent parcels from regulations of the Subdivision Map Act (Government Code Sections 66410 *et seq.*) if the adjustment is approved by local authorities, as provided, and requires that adjustments be reflected in a deed or recorded record of survey. This bill would change the reference in existing law from "lot line adjustments" to "boundary line adjustments" and would delete the requirement that

the adjustment be reflected in a record of survey. The bill would instead require that if a survey is performed for the adjustment, it must be conducted in conformance with provisions of the Professional Land Surveyors' Act. Violation of these laws would be a misdemeanor.

Existing law also requires that parcel maps and final maps be prepared and certified by or under the direction of a registered civil engineer or licensed land surveyor. The new language would require that those maps be in conformance with the Professional Land Surveyors' Act. At this writing, this bill is pending in the Senate Committee on Housing and Urban Affairs.

*AB 517 (McClintock),* pending in the Assembly Committee on Governmental Efficiency and Consumer Protection, would amend the Professional Engineers Act to include the grading of land within the definition of work only to be performed by persons registered as civil engineers. Under already-existing law, it is a misdemeanor to engage in the practice of civil engineering without that registration.

*AB 709 (Bradley).* The Professional Land Surveyors' Act provides all that maps, plats, reports, descriptions, or other documents issued by a licensed land surveyor or engineer must bear the seal or stamp of the licensee or registrant along with the expiration date of the license or registration. This bill would amend sections 8761, 8764.5, and 8801 of the Business and Professions Code to change every reference to "expiration date" of those licenses or registrations to "renewal date". This bill is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

*AB 1162 (Ferguson).* Whenever a realty subdivision requires the preparation of a parcel map, existing law requires that the map be based upon a field survey performed in conformity with the Professional Land Surveyors' Act, or under specified conditions, compiled from existing filed or recorded data. Violation of these provisions is a misdemeanor. This bill would amend section 66448 of the Government Code to require that the parcel map be prepared on the basis of a land survey performed under the Professional Land Surveyors' Act and would only permit under certain circumstances a parcel map to be compiled from record data when sufficient survey information exists on filed maps to locate and retrace the exterior boundary lines of the parcel map. At this writing, this bill is pending

in the Assembly Committee on Local Government.

*AB 1537 (Bradley).* Existing law requires that in any civil action concerning a claim of professional negligence, the plaintiff's attorney is required to attempt to obtain consultation with at least one appropriate professional who is not a party to the action. The attorney is then required to file a certificate declaring that on the basis of that consultation, there is reasonable cause for the filing of the action, and if the consultation was not obtained, why it was not. The attorney is not required to reveal the name, address, or telephone number of the person consulted. This bill, which is pending in the Assembly Judiciary Committee at this writing, would change that nondisclosure rule to instead require that the certificate be signed by the professional and contain his/her name, address, and telephone number.

*AB 1748 (Chandler).* Under current law, persons who are applying to become land surveyors and are registered as professional engineers, or have passed an engineer-in-training program, are exempted from taking the first part of the two-part examination. This bill, which has been converted to a two-year bill, would eliminate that exemption and require a civil engineer who passed the first part of the exam to have one year of responsible field training and one year of responsible office training before he/she could qualify to take the second division of the examination.

*AB 1789 (Cortese)* would add Chapter 8 (commencing with section 3081.1) to the Civil Code. This bill would give architects, engineers, and design professionals a lien on real property for which a work of improvement is planned, and for which governmental approval is obtained, in the amount of the contract fee earned. The lien would function much as a mechanics' lien operates under current law, and would be subordinate to encumbrances of construction lenders. This bill is pending in the Assembly Judiciary Committee.

## FUTURE MEETINGS:

July 14 in Sacramento.

September 29 in Sonoma County.

December 1 in San Francisco.