



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 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 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 Escapes Merger with PELS—
For Now.** Following the November 1993

oversight hearing on BRGG's performance by the Senate Subcommittee on Efficiency and Effectiveness in State Boards and Commissions [14:1 CRLR 44-45], Senator Dan McCorquodale introduced SB 2036, which would establish a "sunset" review process for all occupational licensing agencies within the Department of Consumer Affairs (DCA). He also amended SB 2038 (McCorquodale) to include a provision merging BRGG with the Board of Registration for Professional Engineers and Land Surveyors (PELS).

Senator McCorquodale's bills adopted the recommendations of the Subcommittee in its final report released on April 11, in which it found that BRGG's enforcement activity is "non-existent" and that "the Board does not set standards for the profession." The Subcommittee concluded that "no serious public harm would result if the Geologists and Geophysicists were merged with the Engineers Board."

In anticipation of a May 9 Senate Business and Professions Committee hearing on both bills, BRGG issued a ten-page, single-spaced memorandum defending its existence and its record, and opposing the proposed merger on grounds "there is no evidence, either fiscally, organizationally, or scientific in nature to support the merging of these two boards; to the contrary, there is very strong evidence to advocate the continued separation of these two boards based on performance responses of the organizations (effectiveness and efficiency), fiscal planning and allocation, diversity of professional responsibilities, and service to the public." Representatives of both boards and affected trade associations intensely lobbied Senator McCorquodale and the members of the Committee against SB 2038. At the May 9 hearing, Committee members agreed to postpone the merger of the two boards, but scheduled them for early "sunset" review under SB 2036 (*see* LEGISLATION).

Citation and Fine Regulations. On April 1, BRGG published notice of its intent to adopt new sections 3062, 3062.1, 3062.2, 3062.3, 3062.4, 3063, 3063.1, 3063.2, 3063.3, and 3063.4, Title 16 of the CCR. The proposed regulations would implement BRGG's authority under Business and Professions Code sections 125.9 and 148 by establishing a citation and fine system for the intermediate discipline of registrants and certificants for minor violations and of nonregistrants and noncertificants for engaging in activity for which registration or certification is required. [14:1 CRLR 46]

The Board's publication of these regulations stems in part from criticism of its enforcement program levied at the No-

vember 1993 Senate Subcommittee hearing (*see above*). In its 24-year history, BRGG has received a total of 466 complaints. Of these, 332 were against unlicensed practitioners who were outside the Board's jurisdiction until 1986, when SB 2335 (Montoya) (Chapter 1379, Statutes of 1986) authorized the Board to adopt a citation and fine scheme to police unlicensed practice. This leaves only 134 complaints lodged against licensees in 24 years—about five per year. During this 24-year period, BRGG revoked two licenses; two others were surrendered. The Board places the blame for its enforcement record on its enforcement options (an expensive and time-consuming license revocation proceeding or a meaningless warning), which have been described by BRGG members as a choice between "nuclear weapons or bad breath." The proposed regulations are designed to remedy this deficiency by providing an appropriate sanction for intermediate violations.

Under the proposed regulatory scheme, BRGG's Executive Officer would be empowered to issue citations, which may be accompanied by orders of abatement and/or a fine of at least \$500 but not more than \$2,500; the regulations specify ranges of fines for particular violations. In determining the fine, the Executive Officer must consider the gravity of the violation, the good faith of the person cited, and the history of previous violations. The citation must be in writing, must describe with particularity the offense for which it is being issued, must be served by certified mail on the cited individual, and must inform the cited individual of his/her right to appeal the citation by requesting an informal conference with the Executive Officer. If the Executive Officer affirms the citation after the informal conference, the cited individual is entitled to request a hearing before an administrative law judge. The proposed regulations also implement the Board's new authority under AB 1807 (Bronshvag) (Chapter 26, Statutes of 1994) (*see* LEGISLATION) by permitting BRGG, once it has investigated a complaint and found unlicensed practice by a person who is advertising those unlicensed services in a telephone directory, to issue an order requiring the cited individual to ask the telephone company to disconnect the service to that business telephone number.

At this writing, the Board's Professional Affairs Committee is scheduled to hold a public hearing on the proposed citation and fine regulations on May 19, and the full Board is slated to consider them at its June 3 meeting.



REGULATORY AGENCY ACTION

Following OAL Rejection, BRGG Modifies Hydrogeology Specialty Certification Regulations. On March 8, the Office of Administrative Law (OAL) rejected BRGG's proposed amendments to section 3001 and adoption of new section 3042, Title 16 of the CCR, which would define the term "hydrogeology" and establish a specialty certification program within BRGG for hydrogeologists. The Board had adopted these proposed regulatory amendments at its December 1993 meeting. [14:1 CRLR 46; 13:4 CRLR 50; 13:2&3 CRLR 72]

OAL's rejection of the proposed regulatory changes was based on its findings that section 3042(c) was unclear, and that BRGG failed to properly respond to all of the comments received during the public comment period. On April 6, BRGG released a modified version of the rulemaking file on the proposed regulatory changes to meet OAL's objections. The changes clarify section 3042(c) to require applicants for hydrogeology certification to obtain and submit with their application three references from registered hydrogeologists or registered geologists who have a minimum of five years' experience in responsible charge of hydrogeological work. The public comment period on these modifications lasted until April 21; at this writing, BRGG is scheduled to vote on the modified version of this regulatory package at its June meeting.

BRGG Votes to Join ASBOG When Funds are Available. At its March 4 meeting, the Board officially voted to join the Association of State Boards of Geology (ASBOG). [14:1 CRLR 46] However, because of the high cost of membership (which could exceed \$20,000), it will be at least a year before BRGG has sufficient funds in its budget for the membership fee. In the meantime, the Board will continue to research and identify the differences between ASBOG's licensing exam, which BRGG would be required to administer, and the Board's current examination. Specifically, there is concern that the ASBOG exam fails to strenuously test on geology topics related to earthquakes and landslides, two areas which are considered important in California geological practice. There have been some indications that ASBOG is eager to have California as a member state and would be willing to compromise on both membership fees and exam questions.

LEGISLATION

SB 2036 (McCorquodale), as amended May 18, would create a "sunset" review process for occupational licensing agencies within DCA, requiring each to be

comprehensively reviewed every four years. SB 2036 would impose an initial "sunset" date of July 1, 1997 for BRGG; create a Joint Legislative Sunset Review Committee within the legislature, which would review BRGG's performance approximately one year prior to its sunset date; and specify 11 categories of criteria under which BRGG's performance will be evaluated. Following review of the agency and a public hearing, the Committee would make recommendations to the legislature on whether BRGG should be abolished, restructured, or redirected in terms of its statutory authority and priorities. The legislature may then either allow the sunset date to pass (in which case BRGG would cease to exist and its powers and duties would transfer to DCA) or pass legislation extending the sunset date for another four years. (See agency report on DCA for related discussion of the "sunset" concept.) [S. *Appr*]

SB 2038 (McCorquodale), as amended April 5, would have merged BRGG with PELS (see MAJOR PROJECTS). At a May 9 hearing of the Senate Business and Professions Committee, representatives of BRGG, PELS, and the affected trade associations expressed support for SB 2036 (see above) and lobbied tenaciously against SB 2038, urging Senator McCorquodale to delete the merger provision and allow them to participate in the SB 2036 sunset process on an expedited basis. Senator McCorquodale agreed to delete the merger provision in SB 2038 and amend SB 2036 to establish sunset dates of July 1, 1997 for BRGG and July 1, 1998 for PELS; that language appears in the May 18 version of the bills. [S. *Appr*]

The following is a status update on bills reported in detail in CRLR Vol. 14, No. 1 (Winter 1994) at page 47:

AB 1807 (Bronshvag), as amended March 23, authorizes BRGG to issue a citation 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 also makes 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 from a geologist or geophysicist whom BRGG finds to lack the qualifications required for admission to the examination

for registration. This bill repeals that provision. [13:1 CRLR 40] This bill was signed by the Governor on March 30 (Chapter 26, Statutes of 1994).

AB 1392 (Speier), as amended July 1, 1993, 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*]

SB 433 (Craven), as amended July 13, 1993, would have required BRGG to define, by regulation, professional geological work for purposes of persons seeking certification in hydrogeology and criteria to determine whether a geologist is qualified in hydrogeology for purposes of supervising persons seeking certification in hydrogeology; allowed 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 exempted 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. This bill was dropped by its author. [114:1 CRLR 46; 13:4 CRLR 50]

SB 746 (Rogers), which would have revised the definition of the term "geology," and would have revised 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, died in committee.

RECENT MEETINGS

At its March 4 meeting in San Francisco, BRGG held a roundtable discussion with geologists to discuss the problems facing the Board and the direction it should take in the future. A number of geologists were invited to speak and the Board held a question and answer session with the audience, which consisted almost entirely of geologists. Prominent topics included the hydrogeology specialty, the dilemma faced by a geologist when considering whether to report a fellow geologist to the Board for violations of the Act, and the poor passage rate of licensure candidates on BRGG's exam. Although the statutory purpose of the Board is to protect the consumer, most of the discussion centered on what geologists, not consumers, would like the Board to do.