

# Deputizing Software Professionals: One case for settling the lawless Digital Wild West in the Golden State

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## 1. ABSTRACT

At this time, data and computer scientists often encounter vexing difficulties when their professional work is applied within national legal systems, other than common and civil law systems, that do not clearly respect human rights protections or consistently guarantee legal accountability to its citizens. Further concerns might arise as software employers assign tasks during the software development lifecycle or within big data analytics projects while most often neglecting consistent use of clear brightline tests for employees to quickly determine what activities arising from a project are illegal, questionably legal or clearly legal but may be objectionable as being personally immoral, unethical or unprofessional. As the actual builders of the internet that the majority of all people around the world access on a daily basis, software professionals as individuals trained in data and computer science today are not adequately, uniformly informed of the relevance of legal, professional, and ethical regulations that benefit the greater public good

during the critical time while software applications are being created apart from varied, *ad hoc* suggestions of relevance received by their employers. In other words, within the contemporary digital wild west, the data privacy and security rights legally assigned to the greater online public good are currently no match for the massive economic motivations, often lacking in accountability, that has built-out the present internet landscape thus far.

Software professionals are on the frontlines when it comes to developing new online applications for consumers all over the world where regulatory officiating by lawyers and lawmakers, especially in terms of data privacy and digital ethics, invariably occurs ***retroactively*** - that is ***after*** the software has been extensively developed and implemented. To develop a universal baseline understanding of legal, ethical, and professional individual behaviors much needed for today's software professionals, this paper advocates for the direct inclusion of, as well as for educational standards of, software professionals in the present legal conversation regarding digital ethics, professionalism, security and data privacy policy, and other online laws along with lawmakers, lawyers, CEOs, politicians, the media, and law enforcement for the 21<sup>st</sup> Century.

Namely, this paper principally advocates for extending existing State of California professional licensure protocols to further include formally educated software professionals so as to ***proactively*** achieve higher levels of data privacy regulatory awareness and digital ethics implemented at the very start of the software development process and within big data analytics projects. As an optional benefit to this proposed professional licensure, this paper further surmises one possibility of an enhanced role for these licensed software professionals with regard to creating opportunities under the proposed license to actually assist with enforcing digital ethics and data privacy laws as "digital deputies" alongside lawyers and other legal professionals. Such digital deputies could provide an undeniably missing perspective up to this point from highly technical voices in a collaborative effort toward untangling the present digital disarray of unwanted behaviors on the internet by enforcing existing laws as well as providing critical input for future impactful legislation for regulating online activity.

Along with lawyers, California licensed software professionals will bring much needed data privacy legal and ethical policy implementation and thus giving rise to the notion of Wild West-style deputizing of individuals to assist with cyber law enforcement. As Northern California is the principle hub to world's software development industry, a state licensure regime targeted for software professionals that adheres to the highest ethical and technical standards imposed by regulatory legislation ensures, policywise, that the general public and their data is safe within legislatively designated online software platforms and the tech industry at large.

## 2. PROLOGUE – THE DIGITAL WILD WEST

As technology within the digital domain continues to rapidly expand and affect our everyday lives, building resonate and inspirational communities on the Internet frontier is arguably one of the most noteworthy efforts in recent human history. By its very nature, creation is a messy process where a sense of wonder,

lawlessness, amusement, love, deceit, and anger can all be seen all at once during this Internet “Wild West” period.

Presently, many communities across the Internet are struggling for a shared moral, ethical, and legal ethos for a fair, consensus of agreeable conduct that can be reliably enforced – a search for an innate digital sense of right and wrong. All online communities tend to agree that there should be baseline understanding of respect and accountability, although there are many approaches for how this understanding should be enforced.<sup>1</sup>

Illustratively, groups of entities, namely individuals, corporations, and nations, have recently charted quite different paths toward this unified goal for cyberspace. In many instances, online communities of individuals develop guidelines for conduct within their corresponding fields of interest. For example, in making a small, solitary pledge at Softwareethics.org,<sup>2</sup> individuals working within their professional occupations are in the process of actively developing codes of ethics for software and social engineering on the Internet. Other individuals are compelled toward online activism and even vigilantism to address many digital and physical world objectives, through the actions of such groups as Anonymous; Never Again’s “Tech Pledge”<sup>3</sup> and with social engineering certification training programs for hackers.<sup>4</sup>

With the absence of uniform behaviors for defining good conduct within digital realm as well as lack of online norms that consistently advocate respect for basic individual human liberties, tech companies across the globe are frequently initiating and enforcing standards of good conduct within their specific online communities often ahead of many national and formal governments that must also react to the same. On the other hand, many enforcement efforts by these same tech platforms are arguably far less than what is needed online today to the point where these platforms have evaded public accountability from national governments regarding management of individual privacy data and digital ethics among other instances. Presently, tech platforms remain only accountable to their investors and shareholders and not to the general public good in the same manner that democratic lawmakers must serve the public and of the online public zeitgeist.

Arguably, the present moral compass for online behavior often narrowly points toward greater investor returns over individual rights. Without intervention, software projects steered by this current moral compass will continue to produce software platforms that are exclusively profit-driven that will considerably remain highly exposed to national strategic and economic harms that include massive digital data breaches in all aspects of health, business, and government information as well as the unfettered use and resale of many individuals’ information without a users’ truly affirmative consent. As discussed further below, existing online data privacy and security laws created by some governments are arguably are not entirely enforced at this time to the extent that during the course of building software applications on a daily basis, many software professionals are often not uniformly trained on relevant laws and ethical issues beyond that was received from their employers. Again, these employers ultimately remain only accountable to their corresponding investors and not either online public or individual interests. In other words, there appears to be no overarching governmental law in place that

ensures software professionals become routinely and uniformly knowledgeable about relevant laws, regulations, professionalism, and digital ethics as related to the software development lifecycle as well as for big data projects such as provisioning data lakes associated with data science and analytics.

## I. LICENSED SOFTWARE PROFESSIONALS – Once Case for Enforcement of Digital Ethics

### 3. To Assist Lawyers, Lawmakers & Law Enforcement Professionals in Collectively Taming the Digital Wild West -- *Enter the Licensed Software Professional*

Given today's sustained need for a greater level of respect for digital ethics and data privacy rights within the existing Digital Wild West, we should look to the past instance of the California Gold Rush where a vigorous collaboration among a diversity of adventurers and gold prospectors from all over who enterprisingly chose to settle and enrich the state of California resulting with a vibrant energy of its citizenry and thriving economy based on innovation that has unquestionably brought a collective wealth of novel ideas having paid greater dividends to the entire world well beyond the actual market value received from the veins of gold ore so highly sought after over 170 years ago. In this light, as a variety of people contributed to the successes of the Golden State, software professionals should too become directly engaged in contemporary legal conversations regarding digital data privacy and ethics along with lawmakers, politicians, lawyers, CEOs, and law enforcement professionals as many of highly valuable opportunities from the internet continues to unfold and amaze the world and exceptionally change human history as this century advances.

By laying down rail lines with electronic rail ties and spikes of digitally encoded instructions these software professionals have built the infrastructure of the online digital domain that we all access on a daily basis and, thus, should be included in the present legal conversation regarding internet laws, digital data privacy, and ethics that will settle the digital wild west. Software professionals provide an undeniably missing perspective up to this point providing highly technical voices in a collaborative effort toward untangling the present digital disarray of unwanted behaviors on the internet currently managed by CEOs, lawyers, and lawmakers alone. Each profession would clearly benefit from such collaboration. For example, the software workplace culture often encourages collaborative, iterative advancements with well-defined roles and tasks that would favorably welcome bright-line tests to manage legal and regulatory requirements while working within the software development cycle or data project. Contrastingly, legal workplace culture predominately excels at interpreting the gray areas of a given dispute and corresponding rule all within a quintessential adversarial workplace culture. Moreover, lawyers and lawmakers have little formal or working technical knowledge as do software developers on how software tools and technology are implemented to develop the software applications that the general population grows more reliant on as a basic function of today's economy.

Accordingly, two impactful means for the collaborative inclusion of software professionals in contemporary legal conversations are: (A) using the existing California State Law to enact the first-ever legal certification of software

professionals to ensure regular continued education in digital ethics and professionalism beyond a proposed initial board examination for licensure; and, (B) along with the existing California law of Consumer data privacy, licensed software professionals can potentially further assist with legal enforcement of digital security and data privacy laws as well as ethical conduct by all software companies, especially where such employers in Silicon Valley and beyond may not be so clearly informed on the day-to-day implementation of state licensed ethics and professionalism rules and regulations as well as digital data privacy laws in all stages of the software development cycle or of a data engineering project.

#### 4. Licensed Software Professionals - Given Similar Legal Precedence for Licensing and Maintaining Licenses as implemented by Professional Engineers

As proposed, California State licensed software professionals by optionally taking a license entrance or, commonly called, “board” exam as well as maintain their California state license through annual coursework that will thus require professionalism and ethics classes having practitioner materials geared toward helping the greater public good just as state licensed professional engineers, lawyers, doctors etc. already do. Along with lawyers, California licensed software professionals could bring much needed data privacy legal and ethical policy implementation and enforcement through contributing highly technical perspectives and techniques in a uniquely proactive manner. Currently, as lawyers and professional engineers with state-issued professional licenses must adhere to and continue to take ethics and professionalism classes as a condition for renewing their licenses, this paper provides a proposed Digital Deputy Act legislation (as Appended)\*\* for California software professionals who should so choose to both take an optional state licensure board exam and continue to take digital ethics and professionalism classes as a condition of maintaining a state professional license. Thus, giving rise to the notion of *Wild West-style* deputizing of individuals to assist with ethical cyber law enforcement on the ground level at the time software is being developed – thereby ensuring that digital ethics are implemented at the wellspring of software development here in Silicon Valley and beyond.

The legal concept of professional engineering licensure in the United States first came about in Western state of Wyoming in 1907 as non-engineers, such as lawyers and notaries, were making poor quality technical bids to the State of Wyoming for access to water.<sup>5</sup> Today, unlike the fact that all practicing lawyers must be licensed by a state bar, state licensed, registered or “professional” engineers, “P.E.’s”, is an optional process administered by each state board where refraining from this P.E. exam process does not prohibit engineering graduates from working within their chosen field. Generally, professional licensure for engineers is a two-step process:<sup>6</sup> first a “bar exam”-like test or tests that includes passing a combined engineering ethics and legal exam (as discussed below) in this examination process. The second step requires a professional engineer candidate to accumulate a few years of practical engineering work experience as an Engineer in Training (EIT). To maintain state law licensure, the majority of U.S. states require an accumulated combination of continuing education and professional development credits for licensure compliance and renewal for professional engineers<sup>7</sup> in a

manner similar to lawyers' activities for earning minimum continuing legal education (MCLE) requirements for annual bar renewals.

For formally trained computer and data scientists, software engineers, and information technologists state professional licensures similar to that of engineers presently do not exist. Arguably, these "software professionals" can receive certifications of varying competency from various commercial vendors such as those directly from tech companies like Microsoft<sup>8</sup> and Oracle or from industry associations<sup>9</sup> but these commercial certifications lack legislative input that both promotes and embeds public policy, ethics, and other non-commercial standards that benefit the greater public welfare, including privacy of individual digital information, as requirements for licensure certification. Although tech companies have made efforts to collectively impart ethical training to software professionals, these corporate efforts often lack enforcement of accountability that includes traditional civil and criminal penalties by justice systems of various established governing bodies.

Today's continuing media saga of tech CEOs appearing and yet reappearing before U.S. Congressional oversight hearings regarding digital data privacy, posting of misinformation, and antitrust issues presumably signals that lawmakers are not entirely satisfied with state of data privacy and other online behaviors at this time - but are seemingly confounded at times in finding suitable conventional avenues for widely regulating digital data privacy and other wild west online issues.<sup>10</sup> This early 21<sup>st</sup> Century power interplay between big tech companies and government for ultimate control of online governance is not over and the U.S. Congress has indeed levied fines against big tech as a gesture toward reigning in poor behaviors in pursuit of online accountability of software platforms.<sup>11</sup> However, this "top-down" Congressional oversight of tech CEOs approach may not entirely succeed in terms of online accountability as this paper notably provides yet another dimension to government lawmaker and regulator oversight, namely a complementary "bottom-up" approach of continuously educating software professionals on ethical and legal principles through licensure. This paper further surmises one extended possibility of granting "digital deputy" add-on status to the proposed licensure of software professionals as a viable enforcement mechanism for ethical and legal principles while software and data is being developed and transformed within the context of daily tech workflows.

Like engineers, software professionals are highly trained technical professionals that are coveted by employers everywhere. Both of these groups of technical professions in engineering and software take pride in their hard work and sincerely want their work product to better daily lives of the greater community. In practice, however at this time, software professionals are not always mindful of the actual legal regulations and ethical conduct that should be adhered to during software development with what is really being required by their employers in terms of digital rights and data privacy concerns that may not always match up perfectly to the law. Often the task at hand for software professionals involves successfully building-out "use cases" in an iterative, and highly rapid manner that, in practice, is rarely conducive to oversight by legal departments or regulatory bodies during software development or within big data analytics projects.

## 5. THE LEGAL AFFECTS OF AN OPTIONALLY LICENSED SOFTWARE PROFESSIONAL

Possibly, for the State of California to legislate professional licensure of software professionals and of their sustained oversight by a state licensing board, yields at least two general benefits arising from such a licensed software professional, they are: (1) a high likelihood that a licensed software professional would enjoy nearly the same benefits as a professional engineer under the California Professional Engineers Act (“the Act”)<sup>12</sup> and supporting Board Rules;<sup>13</sup> and (2), possibly, licensed software professionals would be legislatively granted the optional added authority to legally enforce and provide unique feedback to various computer and internet laws, including for example a designated role of Data Protection Officer similar to the EU’s GDPR but lacking in California’s current effective first version of the CCPA.

### a. Foreseen benefits as with Professional Engineers & Responsible Charge:

Many professional engineering organizations have elaborated on the benefits of professional engineering licensure. Because engineers and software professionals are both highly technical career fields that typically require formal education, it is likely that licensed software professionals would enjoy nearly the same the benefits as professional engineers do today. Accordingly, the two most commonly noted benefits are that licensed professional engineers get about 5% more pay than other engineers and that professional engineers are highly esteemed by their engineering colleagues.<sup>14</sup> The job market typically pays more for professional engineers as their optional accomplishment of successfully navigating an arduous licensure process as well as maintaining a continued professional education, including ethics, demonstrates a bright and highly motivated professional that would make an ideal employee and leader that is always heavily sought out in the marketplace.

Exclusive job opportunities are provided to certain professional engineers. A licensed engineer can readily enjoy private consulting work, including exclusive projects that require an engineer to “sign-off” and affix a “seal” on a project, namely the legal concept of “Responsible Charge”.<sup>15</sup> Accordingly, in terms of state legislatures and other governing bodies, large municipal projects that use public money require engineering plans to be designed and executed toward providing a benefit to the greater public. As such, state legislatures and other governing bodies look to professionally licensed engineers to act on each municipal project with the utmost care and applying the highest possible standards as stewards of such public projects. Specifically, the ongoing governmental policy directives implemented by licensed professional engineers often are meant to apply higher standards of ethical care, quality, and specialized technical skills toward a specially

designated project that is widely and safely accessed by general public, such as bridges, airports, and high-rise elevators for example.

One example, widely known to the general public, often highlights the activities of civil engineers. In particular, only professional civil engineers can “sign-off” on the formal engineering plans for a bridge or other public works project before starting. Certain governmental engineering project opportunities will only be granted so long as a licensed civil engineer or other professional engineer assumes signature or responsible charge on such work.

b. Licensed software professionals are continuously incentivized to demonstrably practice the highest ethical and professional behaviors within software industry:

Cyclical renewal of professional licenses through state boards as well as disciplinary boards that render disciplinary opinions on individuals’ professional licensure could become a regulatory means for incentivizing optimal ethical and professional behaviors within a community of licensed software professionals based on currently legislated, peer approved ethical and professional rules of conduct.

c. Known shortcomings associated licensed professional engineers

On the other hand, becoming an optionally licensed professional engineer does include some well-known difficulties. Firstly, the professional engineers’ licensure process requires completion of multiple requirements within at least four or more years until conferring a professional license where often this process formidably includes passing at least two state board exams and working as an engineer for a defined period in the California.<sup>16</sup> Notably, of these many current requirements, all licensed professional engineer applicants for a Professional Engineers’ License must currently pass a test on “California State Laws and Board Rules” which could be an ideal venue for expanded testing of ethical and professional rules of conduct for licensing of software professionals proposed by this paper.<sup>17</sup>

Another difficulty often arises in the process of calculating work experience credits as a qualification to sit for the initial board exam as a viable substitute for those professional engineering applicants who may not have received a formal engineering degree from an approved university.<sup>18</sup> Furthermore, there are even additional experience requirements of project management and field experience for those professional engineers, namely civil, electrical, and mechanical engineers, who will receive “sign-off” or responsible charge authority arising from their California state professional licenses.<sup>19</sup> Indeed, this optional process toward becoming a licensed professional engineer is arduous but a well-respected path in the industry.

It must also be noted that the benefits associated with responsible charge may also detrimentally incur liability,<sup>20</sup> by design, for instances where licensed professional engineers act in an illegal or unethical manner. In particular, a violation of the Code of Professional Conduct is grounds for disciplinary action including an investigation by the licensing board for licensed California professional engineers.<sup>21</sup> Illustratively, such grounds for

disciplinary action include non-compliance with applicable laws to a project, misrepresentation of professional engineering qualifications, and breach of confidentiality received while working under a professional license.<sup>22</sup>

Similarly, lawyers who carry professional liability or malpractice insurance are well aware of the privilege and power of “signing-off” on a client’s court document bears the added responsibility to always act professionally, ethically, and legally to the benefit of the client with all transactions arising on the client’s behalf. As professional engineers’ and lawyers’ livelihoods rely on best professional and ethical practices, liability remains a practical means for strictly promoting ethically and professionally favorable behaviors within those professional workplace cultures. Furthermore, professional malpractice insurance carriers that underwrite lawyers and professional engineers also directly and actively engage with licensed practitioners to promote and educate behaviors that avoid professional malpractice liabilities often as part of their insurance underwriting services as well.

## B. LICENSED SOFTWARE PROFESSIONALS AS “DIGITAL DEPUTIES” bringing valuable technical knowledge to assist with *Enforcement of Digital Ethics & Professionalism as well as Security & Data Privacy Laws*

### 6. A CASE FOR DEPUTIZING SOFTWARE PROFESSIONALS

Arguably, as the 21<sup>st</sup> century Internet infrastructure as often compared a public utility such as municipal electric and water systems, there exists a government policy interest to ensure the general public and their data is safe in a variety of online circumstances or other digitally-related instances.<sup>23</sup> Illustratively, in terms of data privacy, there is a small patchwork of existing federal and state laws that, in policy, protect data privacy in only some commercial industries, such as with healthcare and financial data. Moreover, this disparate patchwork of laws is typically enforced by a mere handful of federal agencies having narrow jurisdiction and limited means for full recourse, such as the U.S. Federal Trade Commission’s enforcement of online advertising and data privacy of individual financial data<sup>24</sup> as well as the U.S. Department of Health & Human Service’s Office of Civil rights for enforcing health data privacy.<sup>25</sup> It should be added, that the U.S. Congress is aware of a need for a harmonized, national privacy law framework but the particulars have been debated for quite some time<sup>26</sup> whereas, in the interim, the National Institute of Standards (NIST) has released a “NIST Privacy Framework” audit guide for organizations wishing to identify internal privacy risks as this guide provides a tool that substantively harmonizes, i.e. standardizes, applicable privacy violations cited under the patchwork of existing federal privacy laws and regulations.<sup>27</sup>

Within most tech companies, legal departments presently assume much of the responsibility of ensuring implementation of such digital security and data privacy laws and policy. In practice, most all lawyers have no formal technical education so as to effectively communicate and educate data policy restrictions and laws directly to software professionals on their own highly technical terms that includes highly specialized terms and vastly different work culture to that of

lawyers. Oftentimes, communicating legal concepts to software professionals is but one of a myriad of other roles that in-house lawyers engage on the behalf of a typical software company at any given time. As evidenced by a large number of online massive security breaches and policy mishaps demonstrated in the daily news regarding tech companies to financial institutions, the current channels of communication and implementation of legal and regulatory policy between the legal departments and software teams needs improvement beyond today's methods.<sup>28</sup>

Effectively, a strong argument can be made that deputizing software professionals fundamentally encourages techies to be mindful, knowledgeable, and help enforce digital data privacy laws within their environment where software products are first created and perfected. The idea of digital deputization enables licensed software professionals to become legal vanguards that work along with existing legal departments, lawmakers, and law enforcement and to possibly further provide greater assurances to the general public that public information will be safely kept within certain online software platforms. Specifically, reminiscent of Old Western lore, deputizing software professionals to either become legal assistants or, alternatively, practice within a highly narrow field of law in need of uniquely technical expertise is a proactive approach toward designing online software systems that could encourage better online behaviors from users. Like the field of engineering today, granting optional licenses to software professionals of the highest technical and ethical standards will come with financial and reputational rewards as well possibly acting under a new legal role within their software profession. Creating Digital Deputies out of technical professionals will expand state legal enforcement operations as techies can quickly and accurately identify legal vulnerabilities in software from the moment code is created, tested, and implemented.

Moreover, extending this notion further, there is even a long-standing, successful prescient for non-lawyer, highly-technical professionals to narrowly practice law that specifically lies within the exception granted by act of U.S. Congress where U.S. Patent Agents work on patent matters before the U.S. Patent and Trademark Office (USPTO).<sup>29</sup> Similar to what this paper proposes, qualified engineers and scientists pass a licensure exam provided by a federal agency of the U.S. Department of Commerce, the USPTO, to practice administrative legal matters regarding patents within the USPTO. To this end, strictly within this narrow scope of patent matters at the USPTO, registered patent agents must abide by a code of ethics as well as by patent agent-client confidentiality and privileges in the same manner as attorney-client confidentiality and privilege.<sup>30</sup> Accordingly, as proposed in this paper, there is prescient to afford limited legal capacity to highly technical non-lawyer individuals so as to deputize software professionals to help implement and enforce data privacy laws proactively, under the CCPA and CRPA among other examples, as software is being created -- and not after the fact which is often the current retroactive domain applied exclusively to lawyers and lawmakers today.

Although this present notion of establishing a state license for software professionals falls short of endowing each U.S. citizen with a constitutional right to individual privacy, including digital privacy, such California state legislation proposed by this paper provides a direct, quick, practical, and effective way to

change the cultural norms of an entire industry with continuous regulatory enforcement of some actions performed by licensed software professional to benefit the digital data privacy rights of the general public. At this time, where it is both incohesive and well-lobbied by disparate special interests, the U.S. Congress is effectively far from adopting a Digital Bill of Rights or Amending the U.S. Constitution to bestow a right of individual privacy to all citizens as what the current Constitution of the European Union provides.

First, along the lines of state legislation proposed by this paper, California should enact laws that provide for optional professional licenses for software professionals along with establishing an overseeing state licensure board. Secondly, to further persuade software professionals who obtain an optional state license in a manner similar to the current conveyance of responsible charge authority to Professional Civil Engineers or even perhaps permitting non-lawyers to practice law under narrowly defined uniquely technical situations as mentioned with the US Patent & Trademark Office, the California legislature and the Office of the State Attorney General must strongly consider the proposal of California licensed software professionals to further bestow the optional possibility of “Digital Deputy” law enforcement credentials. Specifically, Digital Deputy credentials arising from a proposed California software professional licensure will permit software professionals to proactively assist with data privacy law enforcement efforts in association with the new California Privacy Protection Agency established by CRPA as well as possibly advocate for as well as assist law and policy makers with new laws for internet governance with invaluable technical insights and vision.<sup>31</sup>

## 7. ONE LEGAL CASE FOR ENFORCMENT OF DIGITAL ETHICS THROUGH CALIFORNIA’S CCPA & CRPA

As professional, individual, and business communities take positive steps to apply codes of digital ethical conduct or become signatories to online petitions, such ethical actions may not be entirely enforceable under the vast, expansive skies and natural landscapes of the lawless Digital Wild West. One must fundamentally realize that justice or fairness is a subset of the concept of ethics and not the law. Specifically, a “just” decision is a fair decision to the extent that each individual within a community is treated equally in terms of what they need or deserve.<sup>32</sup> In other words, justice is a principle by which “we render to each what is due and treat like cases alike.”<sup>33</sup> Modern democratic legislatures, the courts although to a lesser extent, and similar governing bodies decide what emergent ethical principles, including principles of justice, should be transformed to written law.<sup>34</sup>

Illustratively, the European Union (EU)’s General Data Protection Regulation (GDPR)<sup>35</sup> is one recent and notable transformation of digital ethics to written law to combat recurring digital data breeches by corporations through ensuring commercial regulatory compliance. The GDPR serves as one pioneering roadmap for digital data privacy and protection of EU citizens’ personal data that has been in legal effect. Leveraging on the European Union’s fundamental right to individual data privacy,<sup>36</sup> much of the GDPR enforces a notion of personal privacy by default where users must opt-in to be tracked by the accessed software. Notably, the GDPR provides regulations requiring a data breaching company’s designated Data

Protection Officer<sup>37</sup> to promptly report a data breach directly to the EU Member States, for example Spain or Germany, designated GDPR Supervisory Authority.

While in legal effect thus far, GDPR enforcement activity and fines for digital data breaches, especially as applied to Silicon Valley big tech, has fallen below initial EU policymakers' expectations.<sup>38</sup> Larger institutions, such as law enforcement agencies and big businesses alike, currently implementing GDPR compliance appear to be overwhelmed by the scope of reporting involved, technical nature of digital data privacy and limited number of "data compliance experts" such that a pricey, in-demand cottage-industry has subsequently mushroomed among privacy lawyers and other data experts to fill these compliance needs.<sup>39</sup> As one practical, low-cost, business-friendly solution to these current enforcement deficiencies, this paper's proposal of possibly deputizing software professionals to assist with law enforcement of such digital privacy laws similar to the GDPR would thus conscript multitudes of technically trained individuals whose volume should satisfy market demands for "data compliance experts" so as to drive the expert cost considerably lower than the present market demands. Ultimately, one can envision a future with low cost data compliant experts with broader online law enforcement coverage arising from the collaborative efforts of both the present data privacy and security experts and lawyers who look to law enforcement of data privacy and other online laws retroactively as well as to the proposed California licensed software professionals who could assist with digital law enforcement proactively in the day-to-day project management activities of software development and data analytics.

Recognizing that in the United States privacy is not a fundamental civil liberty as in the EU, the U.S. State of California used the GDPR as the primary template for enacting the California Consumer Privacy Act of 2018 (CCPA)<sup>40</sup> that enables California consumers to be aware as to how their electronic data is managed by software companies and the right to opt-out of corporate accounting of personal data. Contrastingly, the CCPA does not provide for a role of a Data Protection Officer as the GDPR, although the CCPA permits strong deterrent remedies against a would-be data breach. For example, the CCPA provides for individual or a class action of consumers to additionally recover statutory damages if the breaching data company failed to implement a reasonable data security assessment and plan.<sup>41</sup>

- a. Under the CCPA, Authority to Provide Objective 3<sup>rd</sup> Party Data Security Assessment Consultations:

As yet another possible component to the state of California endowing responsible charge upon licensed software professionals, exam material and professional coursework might further foster the ability to conduct and sign-off on third party Data Security Assessments as currently required by the CCPA. To avoid court class-action lawsuits under the CCPA by mitigating or eliminating trial pleadings for statutory damages, licensed software professionals can arguably play an active role in implementing and maintaining a comprehensive information security programs as a state-licensed third party consultant.<sup>42</sup> Interestingly, on a federal level, the U.S. Federal Trade Commission (FTC) in its 2019 Privacy and Data Security Update challenged businesses to review whether their actual

data practices align with user expectations and online public facing terms and conditions statements in a manner very similar to the CCPA's encouragement of maintaining comprehensive security programs.<sup>43</sup> Accordingly, there would be a great benefit to employers that must implement and maintain a comprehensive information security programs required by the CCPA and further encouraged nationally by the FTC if such California legislation would further grant "Digital Deputy" status to licensed software professionals. This notion would indeed provide greater incentive toward becoming a licensed software professional with regulatory authorities that could extend even beyond those presently granted to licensed professional engineers – especially at the time while software is being created -- where licensed software professionals would bring technical, ethical, and regulatory knowledge to the daily project management routines for developing software applications.

b. Under the CPRA, Authority to Enforce Compliance and Accountability during the software development or data analytics life cycle:

As yet another possible component to the state of California endowing responsible charge or other online law enforcement ability to licensed software professionals as proposed in this paper, the California Privacy Rights Act of 2020 (nicknamed CCPA 2.0 and formally Prop 24 on the California November ballot)<sup>44</sup> provides robust mechanisms for enforcement of the original CCPA of 2018 beyond present voluntary self-compliance with enhancements toward greater fines and enforcements including the first ever dedicated independent agency of its kind in the United States, the California Privacy Protection Agency, CPPA, which will become active after January 31, 2024. In addition to assisting the California Attorney General with enforcing the CCPA with civil actions, a CPPA Chief Privacy Auditor will conduct compliance audits in the state as well as "other states, territories, and countries" as well as promoting public awareness of such online laws.<sup>45</sup> Notably, under the CPPA enforcement fines may be imposed for violations beyond what are deemed as known violations in a civil action even beyond the lapsed time that the original administrative fines were imposed.<sup>46</sup>

One could argue that the timing could not be any more perfect but to consider the notion of a future CPPA extending its enforcement reach to include activity whereby proposed licensed software professionals could assist with digital law enforcement proactively and granularly in the day-to-day project management activities of software development and data analytics projects that use consumer data and rely on upholding good digital ethical practices. Further, such a

relationship between the CPPA and this paper's proposed licensed software professionals would be mutually beneficial in that this new agency, that is also responsible for educational outreach, could routinely help the licensing board for software professionals with relevant topics for a licensure entrance exam and annual course requirements for licensed software professionals. Specifically, in addition to this paper's proposed ACM's and IEEE's educational feedback, this feedback from the CPPA could directly apply to a software professional exam that is similar to the current "California State Laws and Board Rules" exam that professional engineers must pass to receive their licensure as mentioned above. Therefore, making digital deputies out of licensed software professionals fosters a strong mutually beneficial educational relationship with the CPPA but also fundamentally uses licensed software professionals to affordably extend the CPPA's law enforcement outreach beyond that pioneering agency's budget, *per se*.

#### 8. EPILOGUE – BRINGING LAW & ORDER TO THE DIGITAL WILD WEST

One often hears the popular adage, "So California goes, so goes the nation". Given that the Santa Clara Valley of Northern California, i.e. "Silicon Valley", is the software capital for the world at this time, therefore so as California legislatively moves to provide optional licensure to software professionals, then so will the nation as well as the world as most software companies headquartered or with research and development in Silicon Valley would need to comply with California law in the due course of business. In this manner, the marketplace would financially reward these software professionals who adhere to a stricter level of technical as well as ethical and professional competence to ensure the general public and their digital data is safe as a matter of public policy. As much of the world's software corporate headquarters and technical talent resides in California, enacting state legislation for optional licensing would ensure continuous training of licensed software professionals on ethical and professional policy determined by the state. Therefore in practice, California, and not the U.S. Congress, would be at the vanguard of establishing digital privacy ethical norms and behaviors, regulations, and laws to the entire global software industry, beginning with administering the initial board exams as well as regulating professionally accredited coursework on licensure renewal for software professionals.

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\*\* APPENDIX (Below) [“DIGITAL DEPUTY ACT” (AS PROPOSED BY THIS PAPER)  
PROPOSED AMENDMENTS TO EXISTING CALIFORNIA STATE LAW]

ENDNOTES:

1. See e.g. Rule of Law as a key concept in digital ecosystem during Internet Governance Forum – interview 1:2. UNESCO. (02 July 2020). <https://en.unesco.org/news/rule-law-key-concept-digital-ecosystem-during-internet-governance-forum-interview-12>; Digital Constitutionalism: Using the Rule of Law to Evaluate the Legitimacy of Governance by Platforms. Nicolas Suzor (17 July 2018). Digital Object Identifier (DOI.org). <https://journals.sagepub.com/doi/10.1177/2056305118787812> ; and Building Social Norms on the Internet. Daniel B. Levin. Yale Law Journal of Law and Technology Vol. 4 issue 1 (2002). <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1006&context=yjolt> .
2. Software Professional Code of Ethics. SoftwareEthics.org. <http://www.softwareethics.org/>
3. Our pledge. neveragain.tech. <http://neveragain.tech/>
4. Learn Social Engineering from Scratch: Learn how to hack accounts and personal devices & and how to secure yourself from hackers. Udemy.com/course/learn-social-engineering-from-scratch. <https://www.udemy.com/course/learn-social-engineering-from-scratch/>
5. From humble beginnings in a Western outpost, licensed professional engineers have spent the past 100 years building a reputation for competence, integrity, and service in the public interest. Doug McGuiry, The Magazine for Professional Engineers, pp 25-29 (June 2007) National Society of Professional Engineers. [https://www.nspe.org/sites/default/files/resources/pdfs/pemagazine/june2007\\_the\\_professional\\_engineering.pdf](https://www.nspe.org/sites/default/files/resources/pdfs/pemagazine/june2007_the_professional_engineering.pdf)
6. See What is a PE? <https://www.nspe.org/resources/licensure/what-pe>
7. The Benefits of Earning and Maintaining a Professional Engineer License. InnovationAtWork.ieee.org <https://innovationatwork.ieee.org/the-benefits-of-earning-and-maintaining-a-professional-engineer-license/>
8. Browse Certifications and Exams: Learn new skills to boost your productivity and enable your organization to accomplish more with Microsoft Certifications. Microsoft.com. <https://www.microsoft.com/en-us/learning/browse-all-certifications.aspx>.

9. *See also* IT certification association, CompTIA industry association.  
<https://www.comptia.org/certifications> .
10. *See e.g.* Congress doesn't know how Facebook works and other things we learned from Mark Zuckerberg's testimony. Kurt Wagner. Recode (Vox, 11 April 2018). <https://www.vox.com/2018/4/11/17226742/congress-senate-house-facebook-ceo-zuckerberg-testimony-hearing> .
11. FTC Imposes \$5 Billion Penalty and Sweeping New Privacy Restrictions on Facebook. FTC.gov. <https://www.ftc.gov/news-events/press-releases/2019/07/ftc-imposes-5-billion-penalty-sweeping-new-privacy-restrictions> (The largest ever penalty imposed on any company for violating consumer's privacy).
12. Professional Engineers Act (Business and Professions Code §§ 6700-6799), Cal. Bus. & Prof. Code, §§6700 *et seq.*
13. Title 16, California Code of Regulations §§ 407- 476 (Board Rules under the Professional Engineers Act), 16 CRR §§400-476.
14. *See generally*, The Benefits of Earning and Maintaining a Professional Engineer License. *Id.*
15. Cal. Bus. & Prof. Code, §6703; 16 CCR §404.1; *see also* BPELS Enforcement Unit Staff, Guide to Engineering and Land Surveying for City and County Officials. (California Board for Professional Engineers and Land Surveyors 2019) pp 6, 24. <https://assets.jsheld.com/uploads/Practice-Guide-for-California.pdf?mtime=20190708202135>
16. *See generally*, Instructions on How to Apply for a California Professional Engineer License (Department of Consumer Affairs Board of Professional Engineers, Land Surveyors, and Geologists), <https://www.bpelsg.ca.gov/applicants/appinstpe.shtml>
17. Cal. Bus. & Prof. Code, §6755.1 (Bay area chapters of the largest software professional organizations, the Association for Computing Machinery (ACM) and the Institute of Electrical and Electronic Engineers (IEEE) expressed an interest in facilitating input on questions regarding ethical rules and professionalism, *See* existing ethics rules Software Engineering Code <https://ethics.acm.org/code-of-ethics/software-engineering-code/> ; IEEE Computer Society Code of Ethics <https://www.computer.org/education/code-of-ethics> ; *See also* Digital Deputy Act: A commitment to digital ethics by Software Professionals. Rafa Baca. SF Bay Area Chapter of the ACM. YouTube (18 November 2020). <https://www.youtube.com/watch?v=vvaiWljSxYE>

18. *See e.g.*, Title 16, California Code of Regulations § 424 (Board Rules under the Professional Engineers Act), 16 CRR §424. (This current Professional Engineers board rule in permitting the substitution of work experience for accredited formal education would be very helpful to those who seek a similar professional licensure in the software industry. Software companies regularly hire qualified programmers and data scientists without formal, U.S.-accredited baccalaureate credentials based on computer skills alone such that §424 would permit those in the workforce through workforce merit to sit for a board exam for professional licensure.)

19. Title 16, California Code of Regulations § 426.13 (Board Rules under the Professional Engineers Act), 16 CRR §426.13.

20. *See generally* Cal. Statutes 2010, Ch. 698; Cal Code Civ Proc §§ 996.310-996.360; Bus. & Prof. Code, §7071.6.5 (business entities of licensed professionals are required to obtain a surety bond, insurance).

21. Cal. Bus. & Prof. Code, §6755; Title 16, California Code of Regulations § 475 (Board Rules under the Professional Engineers Act), 16 CRR §475.

22. *Id.*

23. *cf* Is Broadband a Public Utility? Let's hope not. Scott Wallsen. Technology Policy Institute. (21 May 2020). <https://techpolicyinstitute.org/2020/05/21/is-broadband-a-public-utility-lets-hope-not/>. The pandemic makes it clear it's time to treat the internet as a utility. David Lazarus. Los Angeles Times. (23 October 2020). <https://www.latimes.com/business/story/2020-10-23/coronavirus-internet-is-a-utility>.

24. FED. TRADE COMM'N, 2019, PRIVACY AND DATA SECURITY UPDATE, at p12 ("Advocacy

25. HIPAA Enforcement. hhs.gov/hipaa. <https://www.hhs.gov/hipaa/for-professionals/compliance-enforcement/index.html>

26. *See e.g.* S. 1158 – 114<sup>th</sup> Congress (2015-16) Consumer Privacy Protection [Bill of Rights] Act of 2015 – S. 2968 – 116<sup>th</sup> Congress (2019-20) Consumer Online Privacy Rights Act – 2019.

27. *See* NIST PRIVACY FRAMEWORK: A Tool for Improving Privacy Through Enterprise Risk Management (Version 1.0) National Institute of Standards and Technology (NIST) (16 January 2020).

28. *See generally* List of Data Breaches. Wikipedia.org. [https://en.wikipedia.org/wiki/List\\_of\\_data\\_breaches](https://en.wikipedia.org/wiki/List_of_data_breaches); The 10 Biggest Data Breaches of All Time – From Equifax to Yahoo. Christian Cawley. Tech Radar. (July 23, 2020). <https://www.techradar.com/news/the-10-biggest-data-breaches-of-all->

[time](#) . Cybersecurity: The 50 Biggest Data Breaches [Updated for 2020]. Upguard.com. <https://www.upguard.com/blog/biggest-data-breaches> ; *See e.g.* Facebook Zuckerberg just survived 10 hours of questioning by Congress. Tony Romm. The Washington Post (April 11, 2018). <https://www.washingtonpost.com/news/the-switch/wp/2018/04/11/zuckerberg-facebook-hearing-congress-house-testimony/> ; 6 Fresh Horrors from the Equifax CEO's Congressional Hearing: With each new revelation about the devastating Equifax breach, the company's defenses and response appear increasingly inadequate. Lily Hay Newman. (18 March 2017). <https://www.wired.com/story/equifax-ceo-congress-testimony/>

29. *In re Queen's Univ. at Kingston*, No. 2015-145, at p. 23 (Fed. Cir. Mar. 7, 2016). [https://foiadocuments.uspto.gov/federal/15-145\\_1.pdf](https://foiadocuments.uspto.gov/federal/15-145_1.pdf)

30. *Id.*

31. *See generally* Four Key Takeaways to the CRPA, California's latest privacy law. Mozilla Blog (20 November 2020). <https://blog.mozilla.org/netpolicy/2020/11/20/here-are-four-key-takeaways-to-cpra-californias-latest-privacy-law/>

32. *Morality, Ethics, and Law: Introductory Concepts*, Jennifer Horner, Ph.D., J.D., Seminars in Speech and Language, Vol. 24, No. 4, pp. 263 -274 (2003); p. 267.

33. *Id.* at p. 268.

34. *Law Morals & Ethics*, Geoffrey C. Hazard, Jr., Yale Law School, 19 S. Ill. L. U. L. J. 447-458 (1994-1995); at p. 456.

35. (GDPR) – Regulations (EU) 2016/672.

36. Charter of Fundamental Rights of the European Union: 2010 O.J. (C83) 389, Article 8 Right to Protection of Personal Data.

37. *Id.* at Art. 37-39.

38. A Year in the Life of the GDPR: Must-Know Stats and Takeaways. Rob Sobers. Veronis.com Inside Out Security Blog. (17 June 2020) <https://www.varonis.com/blog/gdpr-effect-review/>

39. *Id.*

40. Cal. Civ. Code §1798.100 *et seq.* (California Consumer Privacy Act of 2018). Title 1.81.5 Ch. 5, Sec. 3 California Consumer Privacy Act of 2018 Sec. 1798.100 *et seq.*

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1798.100.&lawCode=CIV](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1798.100.&lawCode=CIV)

41. Cal. Civ. Code §1798.50.

42. Cal. Civ. Code §1798.150.

43. FED. TRADE COMM'N, 2019, PRIVACY AND DATA SECURITY UPDATE, at p12 (“Advocacy”).

44. California Consumer Privacy Act of 2020, Cal. Civ. Code §1798.100. See <https://oag.ca.gov/system/files/initiatives/pdfs/19-0021A1%20%28Consumer%20Privacy%20-%20Version%203%29%201.pdf>.

45. *Id.* at §1798.199.40(l).

46. *Id.* at §§1798.199.75; 1798.199.80(a).

**APPENDIX**  
“DIGITAL DEPUTY ACT” (AS PROPOSED BY THIS PAPER)  
PROPOSED AMENDMENTS TO EXISTING CALIFORNIA STATE LAW

**SUMMARY:** This proposed **DIGITAL DEPUTY ACT** may be one of many concerted proactive actions to ensure digital ethics and privacy rights are expanded while software professionals continue to create software and computer systems that further develop the internet for our daily public use.

Using the State Law to enact legal certification of software professionals ensures regular continued education in digital ethics and professionalism beyond the proposed initial board examination, creates a fully engaged community of experts, namely licensed software professionals of the highest quality motivated by not losing their professional livelihoods conveyed through a California-issued License, licensed software professionals that develop software ethically and can optionally help legislators, lawyers and law enforcement with highly technical insights for creating future legislation and enforcing digital privacy laws like the California Consumer Privacy Act (CCPA) that protect the general public. In effect, the Digital Deputy Act provides a viable means for software professionals to directly be accountable to and be a great asset to the general public by assisting to ensure digital privacy and other software laws are implemented – even where instructions from their employers may not be so clear as that of state-licensed ethics and professionalism rules and regulations.

Specifically, the DIGITAL DEPUTY ACT comprises two Amendments A & B discussed below. Accordingly, these are proposed amendments to California State Law to include “Software Engineers” for legal certification or “licensure” by the state to: (1) ***create an optional community of highly esteemed and technically trained software professionals that act ethically and enforce ethical principals in software development;*** and (2) ***enable licensed software professionals to help the general public (All Citizens of the State of California), along with lawyers and law enforcement, in enforcing laws regarding digital information privacy and ethical practices in software development at the ground-level beginnings.***

The Amended Laws below are intended as a template for California Law makers to enact, and include:

**AMENDMENT A:**

**PROFESSIONAL ENGINEERS ACT**

**(Business and Professions Code §§ 6700 – 6799)**

**INCLUDES AMENDMENTS MADE DURING THE 2019 LEGISLATIVE  
SESSION (Effective January 1, 2020, unless otherwise noted)**

**AMENDMENT B:**

**Board Rules and Regulations Relating to the Practices  
of Professional Engineering and Professional Land  
Surveying**

**California Code of Regulations Title 16, Division 5  
§§ 400-476**

The perceived simplest way to implement a licensure regimen for Software Professionals is to add wording to the Professional Engineers Act (AMENDMENT A) that further includes and defines “software engineers” to the existing list of engineers, scientists and technologists under the Act. Alternatively, Software Professionals may need to have a different Act altogether that along with the Professional Engineers Act, Professional Land Surveyor’s Act, and Geologist and Geophysicist Act are governed and received California Professional Licenses from the Board Rules (AMENDMENT B) implemented by the existing California State [Board of Professional Engineers, Land Surveyors, and Geologists](#).

# AMENDMENT A

Proposed Amendments in UNDERLINE  
Representative Active Ethical Parts of Act in ***BOLD ITALIC***

# **PROFESSIONAL ENGINEERS ACT**

**(Business and Professions Code §§ 6700 – 6799)**

**INCLUDES AMENDMENTS MADE DURING THE 2019 LEGISLATIVE  
SESSION (Effective January 1, 2020, unless otherwise noted)**

## **CHAPTER 7. PROFESSIONAL ENGINEERS**

### **Article 1. General Provisions**

#### **6700. Professional Engineers Act**

This chapter constitutes the chapter on professional engineers. It may be cited as the Professional Engineers Act.

#### **6701. Professional engineer defined**

“Professional engineer,” within the meaning and intent of this act, refers to a person engaged in the professional practice of rendering service or creative work requiring education, training and experience in engineering sciences and the application of special knowledge of the mathematical, physical and engineering sciences in such professional or creative work as consultation, investigation, evaluation, planning or design of public or private utilities, structures, machines, processes, circuits, buildings, equipment or projects, and supervision of construction for the purpose of securing compliance with specifications and design and supporting software for any such work.

#### **6702. Civil engineer defined**

“Civil engineer” as used in this chapter means a professional engineer in the branch of civil engineering and refers to one who practices or offers to practice civil engineering in any of its phases.

#### **6702.1. Electrical engineer defined**

“Electrical engineer” as used in this chapter means a professional engineer in the branch of electrical engineering and refers to one who practices or offers to practice electrical engineering in any of its phases.

#### **6702.2. Mechanical engineer defined**

“Mechanical engineer” as used in this chapter means a professional engineer in the branch of mechanical engineering and refers to one who practices or offers to practice mechanical engineering in any of its phases.

#### **6702.3. Software engineer defined**

“Software engineer” as used in this chapter means a professional engineer in the branch of software engineering, computer science, data science and information technology sciences and refers to one who practices or offers to practice software engineering in any of its phases.

### **6703. Responsible charge of work defined**

The phrase “responsible charge of work” means the independent control and direction, by the use of initiative, skill, and independent judgment, of the investigation or design of professional engineering work or the direct engineering control of such projects. The phrase does not refer to the concept of financial liability.

#### **6703.1. Supervision of construction defined**

“Supervision of the construction of engineering structures” means the periodic observation of materials and completed work to determine general compliance with plans, specifications, and design and planning concepts. However, “supervision of construction of engineering structures” does not include responsibility for the superintendence of construction processes, site conditions, operations, equipment, personnel, or the maintenance of a safe place to work or any safety in, on, or about the site.

For purposes of this subdivision, “periodic observation” means visits by an engineer, or his or her agent, to the site of a work of improvement.

### **6704. Defines who may use engineer titles**

(a) In order to safeguard life, health, property, and public welfare, no person shall practice civil, electrical, ~~or mechanical~~ mechanical or software engineering unless appropriately licensed or specifically exempted from licensure under this chapter, and only persons licensed under this chapter shall be entitled to take and use the titles “consulting engineer,” “professional engineer,” or “registered engineer,” or any combination of those titles or abbreviations thereof, and according to licensure with the board the engineering branch titles specified in Section 6732, or the authority titles specified in Sections 6736 and 6736.1, or the title “engineer-in-training.”

(b) The provisions of this section shall not prevent the use of the title “consulting engineer” by a person who has qualified for and maintained exemption for using that title under the provisions of Section 6732.1, or by a person licensed as a photogrammetric surveyor.

#### **6704.1. Title Act Review {Repealed, Ch. 630, Stats.2019}**

### **6705. Subordinate defined**

A subordinate is any person who assists a registered professional engineer in the practice of professional engineering without assuming responsible charge of work.

**6706. Good Samaritan immunity**

(a) An engineer who voluntarily, without compensation or expectation of compensation, provides structural inspection services at the scene of a declared national, state, or local emergency at the request of a public official, public safety officer, or city or county building inspector acting in an official capacity shall not be liable in negligence for any personal injury, wrongful death, or property damage caused by the engineer's good faith but negligent inspection of a structure used for human habitation or owned by a public entity for structural integrity or nonstructural elements affecting life and safety.

The immunity provided by this section shall apply only for an inspection that occurs within 30 days of the declared emergency.

Nothing in this section shall provide immunity for gross negligence or willful misconduct.

(b) As used in this section:

(1) "Engineer" means a person registered under this chapter as a professional

engineer, including any of the branches thereof.

(2) "Public safety officer" has the meaning given in Section 3301 of the Government

Code.

(3) "Public official" means a state or local elected officer.

**6706.3. References to registered engineer deemed to refer to licensed engineer**

Any reference in any law or regulation to a registered engineer, or to a registered civil, electrical, ~~or mechanical~~ mechanical or software engineer, is deemed to refer to a licensed engineer, or to a licensed civil, electrical, ~~or mechanical~~ mechanical or software engineer, as the case may be.

**Article 2. Administration**

**6710. Board name and composition; reference to previous name; sunset dates**

(a) There is in the Department of Consumer Affairs a Board for Professional Engineers, Land Surveyors, and Geologists, which consists of 15 members.

(b) Any reference in any law or regulation to the Board of Registration for Professional Engineers and Land Surveyors, or to the Board for Professional Engineers and Land Surveyors, is deemed to refer to the Board for Professional Engineers, Land Surveyors, and Geologists.

(c) This section shall remain in effect only until January 1, 2024, and as of that date is repealed. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

*{Amended, Ch. 630, stats.2019}*

### **6710.1 Legislative intent – protection of the public**

Protection of the public shall be the highest priority for the Board for Professional Engineers, Land Surveyors, and Geologists in exercising its licensing, regulatory, and disciplinary functions. Whenever protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

### **6711. Qualifications of board members**

Each member of the board shall be a citizen of the United States. Five members shall be registered under this chapter. One member shall be licensed under the Professional Land Surveyors' Act, Chapter 15 (commencing with Section 8700), one member shall be licensed under the Geologist and Geophysicist Act, Chapter 12.5 (commencing with Section 7800), and eight shall be public members who are not registered under this act, licensed under the Geologist and Geophysicist Act, or licensed under the Professional Land Surveyors' Act. Each member, except the public members, shall have at least 12 years active experience and shall be of good standing in his or her profession. Each member shall be at least 30 years of age, and shall have been a resident of this state for at least five years immediately preceding his or her appointment.

### **6712. Appointments; term; qualifications of board members**

(a) All appointments to the board shall be for a term of four years. Vacancies shall be filled by appointment for the unexpired term. Each appointment thereafter shall be for a four- year term expiring on June 30 of the fourth year following the year in which the previous term expired.

(b) Each member shall hold office until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs. No person shall serve as a member of the board for more than two consecutive terms.

(c) The Governor shall appoint professional members so that one is licensed to practice engineering as a civil engineer, one as an electrical engineer, one as a mechanical engineer, one as a software engineer, another is authorized to use the title of structural engineer, and one is a member of one of the remaining branches of engineering. One of the professional members licensed under this chapter, under Chapter 12.5 (commencing with Section 7800), or under Chapter 15 (commencing with Section 8700) shall be from a local public agency, and one shall be from a state agency.

(d) The Governor shall appoint six of the public members and the professional members qualified as provided in Section 6711. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.

**6713. Removal of board members**

The Governor may remove any member of the board for misconduct, incompetency or neglect of duty.

**6714. Appointment of executive officer; salary**

The board shall appoint an executive officer at a salary to be fixed and determined by the board with the approval of the Director of Finance.

This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

*{Amended, Ch. 630, Stats.2019}*

**6715. Roster of licensees**

The board shall compile and maintain, or may have compiled and maintained on its behalf, a register of all licensees that contains information showing the name, address of record, type of branch license, license number, the date the license was issued, and the date the license will expire.

**6716. Rules and regulations; meetings; quorum**

(a) The board may adopt rules and regulations consistent with law and necessary to govern its action. These rules and regulations shall be adopted in accordance with the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The board may adopt rules and regulations of professional conduct that are not inconsistent with state and federal laws. The rules and regulations may include definitions of incompetence and negligence. Every person who holds a license or certificate issued by the board pursuant to this chapter shall be governed by these rules and regulations.

(c) The board shall hold at least two regular meetings each year. Special meetings shall be held at those times that the board rules provide. A majority of the board constitutes a quorum.

**6717. Authority to define scope of practice**

The board may, by regulation, define the scope of each branch of professional engineering other than civil, electrical, ~~and mechanical~~ mechanical, and software engineering for which registration is provided under this chapter.

#### **6718. Oaths and testimony**

Any member of the board may administer oaths and may take testimony and proofs concerning all matters within the board's jurisdiction.

#### **6719. Board seal**

The board shall adopt and have an official seal which shall be affixed to all certificates of registration.

#### **6720. Per diem; expenses of board members**

Each member of the board shall receive a per diem and expenses as provided in Section 103.

#### **6721. Establish relations with other regulatory bodies**

The board shall establish relations with bodies that regulate the practice of professional engineering, or closely related professions, or that register or license professional engineers in other states, and may establish relations with those bodies in other countries, for the purposes of working toward uniformly high professional standards and mutual recognition of registration and licensure.

#### **6726. Technical advisory committees; functions**

The board may establish one or more technical advisory committees to advise and assist the board with respect to the following:

- (1) Application review and verification for any level of registration, licensure, authority, or title.
- (2) Evaluation and investigation of potential violations of the act.
- (3) Amendment, repeal, adoption, or revision of board rules, regulations, policies, and procedures.

##### **6726.1. Membership of technical advisory committee**

Each member of each technical advisory committee shall be appointed by the board and shall serve at the pleasure of the board. Each committee shall be composed of no more than five members.

### **6726.2. Qualifications of technical advisory committee members**

Each member of each technical advisory committee shall be an expert in the branch of engineering within the committee's jurisdiction and shall be licensed under this chapter.

### **6726.3. Per diem; expenses for technical advisory committee members**

All the members of each technical advisory committee shall serve without compensation but shall receive per diem and expenses as provided in Section 103.

### **6726.4. Immunity from liability for technical advisory committee members**

Each member of each technical advisory committee shall be granted the same immunity as is granted to a public employee pursuant to Article 3 (commencing with Section 820) of Chapter 1 of Part 2 of Division 3.6 of Title 1 of the Government Code.

## **Article 2.3 Professional Engineers Review Committees**

### **6728. Establishment; duration**

The board, when it deems necessary, may establish professional engineers review committees to hear all matters assigned by the board, including, but not limited to, any contested case which is assigned by the board. Each committee shall exist so long as the board deems that it is necessary.

### **6728.1. Members; appointment; qualifications**

Each review committee shall consist of no fewer than three registered professional engineers appointed by the board. Each member of a committee shall have the same qualifications and shall be subject to the same rules and regulations as if he were a member of the board.

### **6728.2. Per diem and expenses**

Each member of a committee shall receive a per diem and expenses as provided in Section 103 of this code.

### **6728.3. Hearings; conduct; presence of hearing officer**

Except as otherwise provided in this article, all hearings which are conducted by a committee shall be conducted in accordance with the provisions of Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code.

If a contested case is heard by a committee, the hearing officer who presided at the hearing shall be present during the committee's consideration of the case and, if requested, shall assist and advise the committee.

#### **6728.4. Proposed decisions**

At the conclusion of any hearing which is conducted by a committee, the committee shall prepare a proposed decision, in such form that it may be adopted by the board as the decision in the case, and shall transmit it to the board. The proposed decision shall be subject to the same procedure as the proposed decision of a hearing officer under subdivisions (b) and (c) of Section 11517 of the Government Code.

#### **6728.5. Authority for rules and regulations**

The board may adopt, amend or repeal, in accordance with the provisions of Chapter 3.5 (commencing with Section 11340), Part 1, Division 3, Title 2 of the Government Code, such rules and regulations as are necessary to implement these sections.

#### **6728.6. Immunity**

Each member of a professional engineers review committee or other board-appointed committee and any board-appointed representative of the board shall be granted the same immunity as is granted to a public employee pursuant to Article 3 (commencing with Section 820) of Chapter 1 of Part 2 of Division 3.6 of Title 1 of the Government Code.

### **Article 3. Application of Chapter**

#### **6730. Requirement for licensure to practice civil engineering, electrical engineering, ~~and mechanical~~ mechanical and software engineering**

In order to safeguard life, health, property and public welfare, any person, either in a public or private capacity, except as in this chapter specifically excepted, who practices, or offers to practice, civil engineering, electrical engineering ~~or mechanical engineering~~, mechanical engineering or software engineering, in any of its branches in this state, including any person employed by the State of California, or any city, county, or city and county, who practices engineering, shall submit evidence that he is qualified to practice, and shall be licensed accordingly as a civil engineer, electrical engineer ~~or mechanical engineer~~, mechanical engineer or software engineer by the board.

#### **6730.2. Legislative intent - requirement for responsible charge at state and local government entities**

(a) It is the intent of the Legislature that the licensure requirements that are imposed upon private sector professional engineers and engineering partnerships, firms, or corporations shall be imposed upon the state and any city, county, or city and county that shall adhere to those requirements. Therefore, for the purposes of Section 6730 and this chapter, at

least one licensed engineer shall be designated the person in responsible charge of professional engineering work for each branch of professional engineering practiced in any department or agency of the state, city, county, or city and county.

(b) Any department or agency of the state or any city, county, or city and county that has an unlicensed person in responsible charge of engineering work on January 1, 1985, shall be exempt from this requirement until that time as the person currently in responsible charge is replaced.

(c) The designated person in responsible charge of professional civil engineering work of any department or agency of the state, city, county, city and county, district, or special district pursuant to this section is responsible for compliance with subdivisions (b) and (c) of Section 8771.

### **6731. Civil engineering defined**

Civil engineering embraces the following studies or activities in connection with fixed works for irrigation, drainage, waterpower, water supply, flood control, inland waterways, harbors, municipal improvements, railroads, highways, tunnels, airports and airways, purification of water, sewerage, refuse disposal, foundations, grading, framed and homogeneous structures, buildings, or bridges:

(a) The economics of, the use and design of, materials of construction and the determination of their physical qualities.

(b) The supervision of the construction of engineering structures.

(c) The investigation of the laws, phenomena and forces of nature.

(d) Appraisals or valuations.

(e) The preparation or submission of designs, plans and specifications and engineering reports.

(f) Coordination of the work of professional, technical, or special consultants.

(g) Creation, preparation, or modification of electronic or computerized data in the

performance of the activities described in subdivisions (a) through (f).

Civil engineering also includes city and regional planning insofar as any of the above features are concerned therein.

Civil engineers registered prior to January 1, 1982, shall be authorized to practice all land

surveying as defined in Chapter 15 (commencing with Section 8700) of Division 3.

[NOTE: The last registration number issued to a civil engineer registered before

January 1, 1982 was 33,965.]

### **6731.1. Civil engineering – additional authority for engineering surveying**

Civil engineering also includes the practice or offer to practice, either in a public or private capacity, all of the following:

(a) Locates, relocates, establishes, reestablishes, or retraces the alignment or elevation for any of the fixed works embraced within the practice of civil engineering, as described in Section 6731.

(b) Determines the configuration or contour of the earth's surface or the position of fixed objects above, on, or below the surface of earth by applying the principles of trigonometry or photogrammetry.

(c) Creates, prepares, or modifies electronic or computerized data in the performance of the activities described in subdivisions (a) and (b).

(d) Renders a statement regarding the accuracy of maps or measured survey data pursuant to subdivisions (a), (b), and (c).

#### **6731.2. Civil engineer – authority to offer to practice or procure land surveying**

Any registered civil engineer may offer to practice, procure, and offer to procure, land surveying work incidental to his or her civil engineering practice, even though he or she is not authorized to perform that work, provided all the land surveying work is performed by, or under the direction of, a licensed land surveyor or registered civil engineer authorized to practice land surveying. Further, any registered civil engineer may manage or conduct as manager, proprietor, or agent, a civil engineering practice which offers to practice, procure, and offers to procure, such incidental land surveying work.

#### **6731.3 Civil engineer – authority to practice or offer construction project management**

##### **services**

A registered civil engineer may also practice or offer to practice, either in a public or private capacity, construction project management services, including, but not limited to, construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project.

#### **6731.4 Civil engineer – responsibility for construction management services**

If a registered civil engineer provides construction management services pursuant to Section 6731.3, Section 6703.1 shall not limit the responsibility of the engineer for the services actually provided.

#### **6731.5. Electrical engineering defined**

(a) Electrical engineering is that branch of professional engineering described in Section 6734.1 that embraces studies or activities relating to the generation, transmission, and utilization of electrical energy, including the design of electrical, electronic, and magnetic circuits, and the technical control of their operation and of the design of electrical gear. It is concerned with the research, organizational, and economic aspects of the above.

(b) The design of electronic and magnetic circuits is not exclusive to the practice of electrical engineering, as defined in subdivision (a).

### **6731.6. Mechanical engineering defined**

Mechanical engineering is that branch of professional engineering described in Section 6734.2 that deals with engineering problems relating to generation, transmission, and utilization of energy in the thermal or mechanical form and also with engineering problems relating to the production of tools, machinery, and their products, and to heating, ventilation, refrigeration, and plumbing. It is concerned with the research, design, production, operational, organizational, and economic aspects of the above.

### **6731.7 Software engineering defined**

Software engineering embraces the following studies or activities in connection with fixed works for software development and programming, analytics, informatics, architecture, test & quality systems, artificial intelligence systems, software or technical support, security and encrypted systems, and super or quantum computing systems.

(a) The economics of, the use and design of, custom software development and programming projects.

(b) The supervision of the construction of engineered database systems including cloud-based.

(c) The investigation of the laws, phenomena and forces of nature.

(d) Appraisals or valuations of software systems and database information systems.

(e) The preparation or submission of designs, plans and specifications and engineering reports.

(f) Coordination of the work of professional, technical, or special consultants.

(g) Creation, preparation, or modification of electronic or computerized data in the performance of the activities described in subdivisions (a) through (f).

Software engineering also includes city and regional planning insofar as any of the above features are concerned therein.

### **6731.8 Software engineering – additional authority for digital information & data privacy system surveys**

Software engineering also includes the practice or offer to practice, either in a public or private capacity, all of the following:

(a) Locates, relocates, establishes, reestablishes, or retraces the security applied to any of the fixed works embraced within the practice of software engineering, as described in Section 6731.

(b) Determines the configuration of the digital security system applied to any of the fixed works and of potential security vulnerabilities to such software systems.

(c) Creates, prepares, or modifies electronic or computerized data in the performance of the activities described in subdivisions (a) and (b).

(d) Renders a statement regarding the level of digital security offered by surveyed software systems pursuant to subdivisions (a), (b), and (c).

**6731.9 Software engineer – authority to practice or offer software development project management services.** A registered software engineer may also practice or offer to practice, either in a public or private capacity, software development project management services, including, but not limited to, project design review and evaluation, mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a software development project.

#### **6731.10 Software engineer – responsibility for construction management services**

If a registered software engineer provides software development project management services pursuant to Section 6731.9, Section 6731.10 shall not limit the responsibility of the engineer for the services actually provided.

#### **6732. Use of seal, stamp, or title by unlicensed persons; titles restricted for use by licensed**

##### **persons**

It is unlawful for anyone other than a professional engineer licensed under this chapter to stamp or seal any plans, specifications, plats, reports, or other documents with the seal or stamp of a professional engineer, or in any manner, use the title “professional engineer,” “licensed engineer,” “registered engineer,” or “consulting engineer,” or any of the following branch titles: “agricultural engineer,” “chemical engineer,” “civil engineer,” “control system engineer,” “electrical engineer,” “software engineer,” “fire protection engineer,” “industrial engineer,” “mechanical engineer,” “metallurgical engineer,” “nuclear engineer,” “petroleum engineer,” or “traffic engineer,” or any combination of these words and phrases or abbreviations thereof unless licensed under this chapter.

### **6732.1. Exemption for use of title “Consulting Engineer”**

Any person who has been granted permission to use the title “consulting engineer” pursuant to legislation enacted at the 1963, 1965, or 1968 Regular Session is exempt from the provisions of Section 6732 as it restricts the use of the title “consulting engineer”, and such exemption shall apply so long as the applicant remains in practice and advises the board of any change of address within 30 days of such change. The board may adopt such rules under provisions of the Administrative Procedure Act as are necessary to implement this section.

The provisions of Articles 5 (commencing with Section 6775), 6 (commencing with Section 6785), and 7 (commencing with Section 6795) of this chapter shall apply to all persons who are granted permission to use the title “consulting engineer” pursuant to legislation enacted in 1963 and 1965 and the amendments to this section enacted at the 1968 Regular Session.

### **6732.2 Authority for use of title “Consulting Engineer” by holder of certificate to practice photogrammetry**

Any person who possesses a valid certificate to practice photogrammetry issued to him under the provisions of Chapter 15 (commencing with Section 8700) of this division may apply for, and be issued, a certificate of authority to use the title “consulting engineer,” if all of the following requirements are satisfied:

- (a) Application is made on a form provided by the board and is accompanied by the fees prescribed in Section 8805.
- (b) Information submitted evidences to the satisfaction of the board that the applicant has had five years of independent control in furnishing consulting photogrammetric, geodetic, or topographic surveying services or consulting surveying services in connection with fixed works as defined in Section 6731.

Authority to use the title “consulting engineer” granted under this section does not affect authorizations made under the several provisions provided in Section 6732.1.

Authority to use the title “consulting engineer” granted under this section shall remain valid only while its holder’s basic license is valid, and if it lapses it may be renewed only as provided in Article 7 (commencing with Section 6795).

The provisions of Article 5 (commencing with Section 6775), Article 6 (commencing with Section 6785), and Article 7 (commencing with Section 6795), of this chapter, shall apply to the certificates issued as provided in this section and to the persons so certificated.

### **6732.3. Continued use of titles for persons licensed in corrosion, manufacturing, quality, or safety engineering**

(a) Any person who has received from the board a license in corrosion, manufacturing, quality, or safety engineering, and who holds a valid license under this chapter, may continue to use the branch title of the branch in which the professional engineer is legally licensed. A person holding a license in corrosion, manufacturing, quality, or safety engineering is subject to the license renewal provisions of this chapter.

(b) The professional engineer also may continue to use the title of "professional engineer," "licensed engineer," "registered engineer," or "consulting engineer."

#### **6732.4. Discontinuance of examinations for licensure as corrosion, manufacturing, quality, or safety engineer**

(a) Notwithstanding any other provision of law, any person who has applied for registration as a corrosion, quality, or safety engineer, and who has completed the written examination in one or more of these branch titles prior to January 1, 1999, shall be issued registration in the branch title for which the applicant was examined, provided that he or she has met all other qualifications for registration. The board shall not administer any examination for registration as a corrosion, quality, or safety engineer on or after January 1, 1999.

(b) Notwithstanding any other provision of law, any person who has applied for registration as a manufacturing engineer, and who has completed the written examination for this branch title prior to January 1, 2004, shall be issued a registration as a manufacturing engineer, provided that he or she has met all other qualifications for registration. The board shall not administer any examination for registration as a manufacturing engineer on or after January 1, 2004.

#### **6732.5. Discontinuance of national examination; continued use of branch titles**

(a) Upon the discontinuance of a national examination for a branch specified in this chapter, the board shall not be required to administer an examination for a license in that branch or be required to issue licenses in that branch.

(b) Any person who has received from the board a license in a branch for which the nation examination is discontinued, and who holds a valid license under this chapter, may continue to use the branch title of the branch in which the professional engineer is legally licensed. A person holding a license in the affected branch of engineering is subject to the license renewal provisions of this chapter. The professional engineer may also continue to use the title of "professional engineer," "licensed engineer," "registered engineer," or "consulting engineer."

#### **6733. Use of stamp or seal when certificate not in force**

It is unlawful for anyone to stamp or seal any plans, specifications, plats, reports, or other documents with the seal after the certificate of the registrant, named thereon, has expired or has been suspended or revoked, unless the certificate has been renewed or reissued.

### **6734. Practice of civil engineering**

Any person practices civil engineering when he professes to be a civil engineer or is in responsible charge of civil engineering work.

#### **6734.1. Practice of electrical engineering**

Any person practices electrical engineering when he professes to be an electrical engineer or is in responsible charge of electrical engineering work.

#### **6734.2. Practice of mechanical engineering**

Any person practices mechanical engineering when he professes to be a mechanical engineer or is in responsible charge of mechanical engineering work.

#### **6734.3. Practice of software engineering**

Any person practices software engineering when he professes to be a software engineer or is in responsible charge of software engineering work.

### **6735. Preparation, signing, and sealing of civil engineering documents**

(a) All civil (including structural and geotechnical) engineering plans, calculations, specifications, and reports (hereinafter referred to as "documents") shall be prepared by, or under the responsible charge of, a licensed civil engineer and shall include his or her name and license number. Interim documents shall include a notation as to the intended purpose of the document, such as "preliminary," "not for construction," "for plan check only," or "for review only." All civil engineering plans and specifications that are permitted or that are to be released for construction shall bear the signature and seal or stamp of the licensee and the date of signing and sealing or stamping. All final civil engineering calculations and reports shall bear the signature and seal or stamp of the licensee, and the date of signing and sealing or stamping. If civil engineering plans are required to be signed and sealed or stamped and have multiple sheets, the signature, seal or stamp, and date of signing and sealing or stamping, shall appear on each sheet of the plans. If civil engineering specifications, calculations, and reports are required to be signed and sealed or stamped and have multiple pages, the signature, seal or stamp, and date of signing and sealing or stamping shall appear at a minimum on the title sheet, cover sheet, or signature sheet.

(b) Notwithstanding subdivision (a), a licensed civil engineer who signs civil engineering documents shall not be responsible for damage caused by subsequent changes to or uses of those documents, if the subsequent changes or uses, including changes or uses made by state or local governmental agencies, are not authorized or approved by the licensed civil engineer who originally signed the documents, provided that the engineering service rendered by the civil engineer who signed the documents was not also a proximate cause of the damage.

### **6735.0. Signing and sealing of software engineering documents**

(a) All software engineering plans, specifications, calculations, and reports (hereinafter referred to as "documents") prepared by, or under the responsible charge of, a licensed software engineer shall include his or her name and license number. Interim documents shall include a notation as to the intended purpose of the document, such as "preliminary," "not for construction," "for plan check only," or "for review only." All software engineering plans and specifications that are permitted or that are to be released for construction shall bear the signature and seal or stamp of the licensee and the date of signing and sealing or stamping. All final software engineering calculations and reports shall bear the signature and seal or stamp of the licensee and the date of signing and sealing or stamping. If software engineering plans are required to be signed and sealed or stamped and have multiple sheets, the signature, seal or stamp, and date of signing and sealing or stamping shall appear on each sheet of the plans. If software engineering specifications, calculations, and reports are required to be signed and sealed or stamped and have multiple pages, the signature, seal or stamp, and date of signing and sealing or stamping shall appear at a minimum on the title sheet, cover sheet, or signature sheet.

(b) Notwithstanding subdivision (a), a licensed software engineer who signs software engineering documents shall not be responsible for damage caused by subsequent changes to or uses of those documents, if the subsequent changes or uses, including changes or uses made by state or local governmental agencies, are not authorized or approved by the licensed software engineer who originally signed the documents, provided that the engineering service rendered by the software engineer who signed the documents was not also a proximate cause of the damage.

### **6735.1. Civil engineering – no legal duty to provide construction supervision**

The signing of civil engineering plans, specifications, reports, or documents which relate to the design of fixed works shall not impose a legal duty or responsibility upon the person signing the plans, specifications, reports, or documents to supervise the construction of engineering structures or the construction of the fixed works which are the subject of the plans, specifications, reports, or documents. However, nothing in this section shall preclude a civil engineer and a client from entering into a contractual agreement which includes a mutually acceptable arrangement for the provision of construction supervision services. Nothing contained in this subdivision shall modify the liability of a civil engineer who undertakes, contractually or otherwise, the provision of construction supervision services for rendering those services.

### **6735.3. Signing and sealing of electrical engineering documents**

(a) All electrical engineering plans, specifications, calculations, and reports (hereinafter referred to as "documents") prepared by, or under the responsible charge of, a licensed electrical engineer shall include his or her name and license number. Interim documents shall include a notation as to the intended purpose of the document, such as "preliminary," "not for construction," "for plan check only," or "for review only." All

electrical engineering plans and specifications that are permitted or that are to be released for construction shall bear the signature and seal or stamp of the licensee and the date of signing and sealing or stamping. All final electrical engineering calculations and reports shall bear the signature and seal or stamp of the licensee and the date of signing and sealing or stamping. If electrical engineering plans are required to be signed and sealed or stamped and have multiple sheets, the signature, seal or stamp, and date of signing and sealing or stamping shall appear on each sheet of the plans. If electrical engineering specifications, calculations, and reports are required to be signed and sealed or stamped and have multiple pages, the signature, seal or stamp, and date of signing and sealing or stamping shall appear at a minimum on the title sheet, cover sheet, or signature sheet.

(b) Notwithstanding subdivision (a), a licensed electrical engineer who signs electrical engineering documents shall not be responsible for damage caused by subsequent changes to or uses of those documents, if the subsequent changes or uses, including changes or uses made by state or local governmental agencies, are not authorized or approved by the licensed electrical engineer who originally signed the documents, provided that the engineering service rendered by the electrical engineer who signed the documents was not also a proximate cause of the damage.

#### **6735.4. Signing and sealing of mechanical engineering documents**

(a) All mechanical engineering plans, specifications, calculations, and reports (hereinafter referred to as "documents") prepared by, or under the responsible charge of, a licensed mechanical engineer shall include his or her name and license number. Interim documents shall include a notation as to the intended purpose of the document, such as "preliminary," "not for construction," "for plan check only," or "for review only." All mechanical engineering plans and specifications that are permitted or that are to be released for construction shall bear the signature and seal or stamp of the licensee and the date of signing and sealing or stamping. All final mechanical engineering calculations and reports shall bear the signature and seal or stamp of the licensee and the date of signing and sealing or stamping. If mechanical engineering plans are required to be signed and sealed or stamped and have multiple sheets, the signature, seal or stamp, and date of signing and sealing or stamping shall appear on each sheet of the plans. If mechanical engineering specifications, calculations, and reports are required to be signed and sealed or stamped and have multiple pages, the signature, seal or stamp, and date of signing and sealing or stamping shall appear at a minimum on the title sheet, cover sheet, or signature sheet.

(b) Notwithstanding subdivision (a), a licensed mechanical engineer who signs mechanical engineering documents shall not be responsible for damage caused by subsequent changes to or uses of those documents, if the subsequent changes or uses, including changes or uses made by state or local governmental agencies, are not authorized or approved by the licensed mechanical engineer who originally signed the documents, provided that the engineering service rendered by the mechanical engineer who signed the documents was not also a proximate cause of the damage.

### **6735.5. Use of the word “certify” or “certification”**

The use of the word “certify” or “certification” by a registered professional engineer in the practice of professional engineering or land surveying constitutes an expression of professional opinion regarding those facts or findings which are the subject of the certification, and does not constitute a warranty or guarantee, either expressed or implied.

### **6735.6. “As built,” “as constructed,” or “record” plans**

If a registered civil engineer is required to provide as built, as constructed, or record plans for improvements or grading, which plans show changes during the construction process, the following shall apply:

(a) If the registered civil engineer provided construction phase services on the project that include supervision of the construction of engineering structures, the plans shall be based upon the field observations of the registered civil engineer and his or her agents, and information received from the project owner, project contractors, and public agencies.

(b) If the registered civil engineer did not provide construction phase services on the project that include supervision of the construction of engineering structures, the plans shall be based on information received from the project owner, project contractors, and public agencies, but need not be based upon a field verification or investigation of the improvements or grades, unless the registered civil engineer is engaged to provide such field verification services.

(c) The registered civil engineer shall not be required to include a certificate or statement on as built, as constructed, or record plans that is inconsistent with or varies from the provisions of this section.

### **6736. Use of title “Structural Engineer”**

No person shall use the title, “structural engineer,” or any combination of these words or abbreviations thereof, unless he or she is a licensed civil engineer in this state and unless he or she has been found qualified as a structural engineer according to the rules and regulations established for structural engineers by the board.

#### **6736.1. Use of title “Soil Engineer,” “Soils Engineer,” or “Geotechnical Engineer”**

(a) No person shall use the title, “soil engineer,” “soils engineer,” or “geotechnical engineer,” or any combination of these words or abbreviations thereof, unless he or she is a licensed civil engineer in this state and files an application to use the appropriate title with the board and the board determines the applicant is qualified to use the requested title.

(b) The board shall establish qualifications and standards to use the title “soil engineer,” “soils engineer, or “geotechnical engineer.” However, each applicant shall demonstrate a

minimum of four years qualifying experience beyond that required for licensure as a civil engineer, and shall pass the examination specified by the board.

(c) For purposes of this section, “qualifying experience” means proof of responsible charge of soil engineering projects in at least 50 percent of the major areas of soil engineering, as determined by the board.

(d) Nothing contained in this chapter requires existing references to “soil engineering,” “soils engineering,” “geotechnical engineering,” “soil engineer,” “soils engineer,” or “geotechnical engineer,” in local agency ordinances, building codes, regulations, or policies, to mean that those activities or persons must be registered or authorized to use the relevant title or authority.

### **6737. Exemption – licensed architects**

An architect, who holds a certificate to practice architecture in this State under the provisions of Chapter 3 of Division 3 of this code insofar as he practices architecture in its various branches, is exempt from registration under the provisions of this chapter.

#### **6737.1. Exemption from licensure for preparation of plans, drawings, or specifications for certain types of structures; requirement for licensure upon deviation from codes**

(a) This chapter does not prohibit any person from preparing plans, drawings, or specifications for any of the following:

- (1) Single-family dwellings of woodframe construction not more than two stories and basement in height.
- (2) Multiple dwellings containing no more than four dwelling units of woodframe construction not more than two stories and basement in height. However, this paragraph shall not be construed as allowing an unlicensed person to design multiple clusters of up to four dwelling units each to form apartment or condominium complexes where the total exceeds four units on any lawfully divided lot.
- (3) Garages or other structures appurtenant to buildings described under subdivision (a), of woodframe construction not more than two stories and basement in height.
- (4) Agricultural and ranch buildings of woodframe construction, unless the building official having jurisdiction deems that an undue risk to the public health, safety or welfare is involved.

(b) If any portion of any structure exempted by this section deviates from substantial

compliance with conventional framing requirements for woodframe construction found in the most recent edition of Title 24 of the California Code of Regulations or tables of limitation for woodframe construction, as defined by the applicable building code duly

adopted by the local jurisdiction or the state, the building official having jurisdiction shall require the preparation of plans, drawings, specifications, or calculations for that portion by, or under the responsible charge of, a licensed engineer, or by, or under the responsible control of, an architect licensed pursuant to Chapter 3 (commencing with Section 5500). The documents for that portion shall bear the stamp and signature of the licensee who is responsible for their preparation.

### **6737.2. Supplementary practice by civil engineer**

Nothing in this chapter shall prohibit a civil engineer, registered under the provisions of this chapter, from practicing or offering to practice any engineering in connection with or supplementary to civil engineering studies or activities as defined in Section 6731.

### **6737.3. Exemption – licensed contractors**

A contractor, licensed under Chapter 9 (commencing with Section 7000) of Division 3, is exempt from the provisions of this chapter relating to the practice of electrical, software or mechanical engineering so long as the services he or she holds himself or herself out as able to perform or does perform, which services are subject to the provisions of this chapter, are performed by, or under the responsible charge of a registered electrical, software or mechanical engineer insofar as the electrical, software or mechanical engineer practices the branch of engineering for which he or she is registered.

This section shall not prohibit a licensed contractor, while engaged in the business of contracting for the installation of electrical, software or mechanical systems or facilities, from designing those systems or facilities in accordance with applicable construction codes and standards for work to be performed and supervised by that contractor within the classification for which his or her license is issued, or from preparing electrical, software or mechanical shop or field drawings for work which he or she has contracted to perform. Nothing in this section is intended to imply that a licensed contractor may design work which is to be installed by another person.

### **6738. Engineering businesses**

(a) This chapter does not prohibit one or more civil, electrical, software or mechanical engineers from practicing or offering to practice, within the scope of their license, civil (including geotechnical and structural), electrical, software or mechanical engineering as a sole proprietorship, partnership, limited liability partnership, firm, or corporation (hereinafter called business), if all of the following requirements are met:

(1) A civil, electrical, software or mechanical engineer currently licensed in this state is an owner, partner, or officer in charge of the engineering practice of the business.

(2) All civil, electrical, software or mechanical engineering services are performed by or under the responsible charge of a professional engineer licensed in the appropriate branch of professional engineering.

(3) If the business name of a California business contains the name of any person, then that person shall be licensed as a professional engineer, a licensed land surveyor, a licensed architect, or a geologist registered under the Geologist and Geophysicist Act (Chapter 12.5 (commencing with Section 7800)). Any offer, promotion, or advertisement by the business that contains the name of any individual in the business, other than by use of the name of an individual in the business name, shall clearly and specifically designate the license or registration discipline of each individual named.

(b) An out-of-state business with a branch office in this state shall meet the requirements

of subdivision (a) and shall have an owner, partner, or officer who is in charge of the engineering work in the branch in this state, who is licensed in this state, and who is physically present at the branch office in this state on a regular basis. However, the name of the business may contain the name of any person not licensed in this state if that person is appropriately registered or licensed in another state. Any offer, promotion, or advertisement that contains the name of any individual in the business, other than by use of the names of the individuals in the business name, shall clearly and specifically designate the license or registration discipline of each individual named.

(c) The business name of a California engineering business may be a fictitious name. However, if the fictitious name includes the name of any person, the requirements of paragraph (3) of subdivision (a) shall be met.

(d) A person not licensed under this chapter may also be a partner or an officer of a civil, electrical, software or mechanical engineering business if the requirements of subdivision (a) are met. Nothing in this section shall be construed to permit a person who is not licensed under this chapter to be the sole owner of a civil, electrical, software or mechanical engineering business, unless otherwise exempt under this chapter.

(e) This chapter does not prevent an individual or business engaged in any line of endeavor other than the practice of civil, electrical, software or mechanical engineering from employing or contracting with a licensed civil, electrical, software or mechanical engineer to perform the respective engineering services incidental to the conduct of business.

(f) This section shall not prevent the use of the name of any business engaged in rendering civil, electrical, software or mechanical engineering services, including the use by any lawful successor or survivor, that lawfully was in existence on December 31, 1987. However, the business is subject to paragraphs (1) and (2) of subdivision (a).

(g) A business engaged in rendering civil, electrical, software or mechanical engineering services may use in its name the name of a deceased or retired person provided all of the following conditions are satisfied:

(1) The person's name had been used in the name of the business, or a predecessor in interest of the business, prior to and after the death or retirement of the person.

(2) The person shall have been an owner, partner, or officer of the business, or an owner, partner, or officer of the predecessor in interest of the business.

(3) The person shall have been licensed as a professional engineer, or a land surveyor, or an architect, or a geologist, (A) by the appropriate licensing board if that person is operating a place of business or practice in this state, or (B) by the applicable state board if no place of business existed in this state.

(4) The person, if retired, has consented to the use of the name and does not permit the use of the name in the title of another professional engineering business in this state during the period of the consent. However, the retired person may use his or her name as the name of a new or purchased business if it is not identical in every respect to that person's name as used in the former business.

(5) The business shall be subject to the provisions of paragraphs (1) and (2) of subdivision (a).

(h) This section does not affect the provisions of Sections 6731.2 and 8726.1.

(i) A current organization record shall be filed with the board for all businesses engaged

in rendering civil, electrical, software or mechanical engineering services.

(j) This section shall remain in effect only until January 1, 2026, and as of that date is

repealed.

#### **6739. Exemption – federal officers and employees**

Officers and employees of the United States of America practicing solely as such officers or employees are exempt from registration under the provisions of this chapter.

#### **6740. Exemption – subordinates**

A subordinate to a civil, electrical, software or mechanical engineer licensed under this chapter, or a subordinate to a civil, electrical, software or mechanical engineer exempted from licensure under this chapter, insofar as he acts solely in that capacity, is exempt from licensure under the provisions of this chapter. This exemption, however, does not permit any such subordinate to practice civil, electrical, software or mechanical engineering in his own right or to use the titles listed in Section 6732, 6736, and 6736.1.

#### **6741. Exemption – nonresidents**

Any person, firm, partnership, or corporation is exempt from registration under the provisions of this chapter who meets all the following:

(a) Is a nonresident of the State of California.

(b) Is legally qualified in another state to practice as a civil, electrical, software or mechanical engineer.

(c) Does not maintain a regular place of business in this state.

(d) Offers to but does not practice civil, electrical, software or mechanical engineering in this state.

**6742. Exemption – real estate broker or salesperson making appraisals and valuations**

Any person, firm, or corporation holding a license as real estate broker or real estate salesperson, when making appraisals and valuations of real estate properties, while engaged in the business or acting in the capacity of a real estate broker or a real estate salesperson, within the meaning of the Real Estate Law is exempt from registration under the provisions of this chapter.

**6743. Effect of chapter on professional land surveyors**

This chapter does not affect Chapter 15 of Division 3 of this code, relating to surveyors, except insofar as this chapter is expressly made applicable.

**6744. Exemption – land owner**

This chapter does not require registration for the purpose of practicing civil engineering, by an individual, a member of a firm or partnership, or by an officer of a corporation on or in connection with property owned or leased by the individual, firm, partnership, or corporation, unless the civil engineering work to be performed involves the public health or safety or the health and safety of employees of the individual, firm, partnership or corporation.

**6745. Exemption from licensure for certain building alterations**

This chapter does not prohibit any person, firm or corporation from furnishing, either alone or with subcontractors, labor and materials, with or without plans, drawings, specifications, instruments of service or other data covering such labor and materials:

(a) For store fronts, interior alterations or additions, fixtures, cabinet work, furniture or other appliances or equipment.

(b) For any work necessary to provide for their installation.

(c) For any alterations or additions to any building necessary to or attendant upon the installation of such store fronts, interior alterations or additions, fixtures, cabinet work, furniture, appliances or equipment; provided, such alterations do not affect the structural safety of the building.

## **6746. Exemption – communications companies under the Public Utilities Commission**

Plans, specifications, reports and documents relating to communication lines and equipment prepared by employees of communications companies which come under the jurisdiction of the Public Utilities Commission, and by employees of contractors while engaged in work on communication equipment for communications companies which come under the jurisdiction of the Public Utilities Commission, are not subject to the provisions of this chapter.

### **6746.1. Exemption – employees of the communications industry**

The provisions of this act pertaining to licensure of professional engineers other than civil engineers, do not apply to employees in the communication industry, nor to the employees of contractors while engaged in work on communication equipment. However, those employees may not use any of the titles listed in Section 6732, 6736, and 6736.1, unless licensed.

### **6747. Exemption – industrial corporations and public utilities**

(a) This chapter, except for those provisions that apply to civil engineers and civil engineering, shall not apply to the performance of engineering work by a manufacturing, mining, public utility, research and development, or other industrial corporation, or by employees of that corporation, provided that work is in connection with, or incidental to, the products, systems, or services of that corporation or its affiliates.

(b) For purposes of this section, “employees” also includes consultants, temporary employees, contract employees, and those persons hired pursuant to third-party contracts.

### **6748. Nuclear power plants**

(a) Notwithstanding Section 6747, this chapter applies to engineering work approved by a person employed by a privately or publicly owned utility in the planning, designing, construction, operation, or maintenance of a nuclear powerplant which is owned or operated by the utility.

(b) Any engineering work subject to subdivision (a) shall be approved by a professional engineer registered in the applicable discipline of engineering specified in Section 6732.

### **6749. Written contracts**

(a) A professional engineer shall use a written contract when contracting to provide professional engineering services to a client pursuant to this chapter. The written contract shall be executed by the professional engineer and the client or the client’s representative prior to the professional engineer commencing work, unless the client knowingly states in

writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following:

- (1) A description of the services to be provided to the client by the professional engineer.
- (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 professional engineer, and the name and address of the client.
- (4) A description of the procedure that the professional engineer and the client will use to accommodate additional services.
- (5) A description of the procedure to be used by both parties to terminate the contract.

(b) This section shall not apply to any of the following:

- (1) Professional engineering services rendered by a professional engineer for which

the client will not pay compensation.

- (2) A professional engineer who 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) If the client knowingly states in writing after full disclosure of this section that a contract which complies with the requirements of this section is not required.

- (4) Professional engineering services rendered by a professional engineer to any of the following:

(A) A professional engineer licensed or registered under this chapter.

(B) A land surveyor licensed under Chapter 15 (commencing with Section 8700). (C) An architect licensed under Chapter 3 (commencing with Section 5500).

(D) A contractor licensed under Chapter 9 (commencing with Section 7000).

(E) A geologist or a geophysicist licensed under Chapter 12.5 (commencing with

Section 7800).

(F) A manufacturing, mining, public utility, research and development, or other

industrial corporation, if the services are provided in connection with or incidental to the products, systems, or services of that corporation or its affiliates.

(G) A public agency.

(c) "Written contract" as used in this section includes a contract that is in electronic form.

## **Article 4. Registration**

### **6750. Application for certification as an engineer-in-training or licensure as a professional engineer; examination fees**

(a) An application for licensure as a professional engineer or certification as an engineer-in-training shall be made to the board on the prescribed form, with all statements made therein under oath, and shall be accompanied by the fee prescribed by this chapter. An application for licensure as a professional engineer shall specify, additionally, the branch of engineering in which the applicant desires licensure.

(b) The board may authorize an organization specified by the board pursuant to Section 6754 to receive directly from applicants payment of the examination fees charged by that organization as payment for examination materials and services.

### **6751. Qualifications for certification as an engineer-in-training or licensure as a professional engineer**

(a) The applicant for certification as an engineer-in-training shall comply with all of the following:

(1) Not have committed acts or crimes constituting grounds for denial of licensure

under Section 480.

(2) Successfully pass the first division of the examination.

(3) Satisfactorily complete three years or more of postsecondary engineering education, three years or more of engineering experience, or a combination of postsecondary education and experience in engineering totaling three years.

(b) The board need not verify the applicant's eligibility for certification as an engineer-in-training other than to require the applicant to sign a statement of eligibility on the application form.

(c) The applicant for licensure as a professional engineer shall comply with all of the

following:

(1) Not have committed acts or crimes constituting grounds for denial of licensure

under Section 480.

(2) Furnish evidence of six years or more of qualifying experience in engineering work satisfactory to the board evidencing that the applicant is competent to practice the character of engineering in the branch for which he or she is applying for licensure.

(3) Be certified as an engineer-in-training in this state, be certified as an engineer-in-training or engineer intern in another state or territory of the United States, or be exempt therefrom.

(4) Successfully pass the second division of the examination.

### **6751.2. Foreign applicants**

The board may consider the professional experience and education acquired by applicants outside the United States which in the opinion of the board is equivalent to the minimum requirements of the board established by regulation for professional experience and education in this state.

### **6751.5. Rules for approval of engineering school curricula**

The board shall by rule establish the criteria to be used for approving curricula of schools of engineering.

### **6752. Civil engineer applicants – experience**

An applicant for registration as a civil engineer must have gained his experience under the direction of a civil engineer legally qualified to practice.

### **6753. Equivalents for experience; education; teaching**

With respect to applicants for licensure as professional engineers, the board:

(a) Shall give credit as qualifying experience of four years, for graduation with an engineering degree including computer science, data science and information technology from a college or university the curriculum of which has been approved by the board.

(b) May at its discretion give credit as qualifying experience up to a maximum of two years, for graduation with an engineering degree including computer science, data science and information technology from a nonapproved engineering curriculum or graduation with an engineering technology degree in an approved engineering technology curriculum.

(c) May at its discretion give credit as qualifying experience of up to one-half year, for each year of successfully completed postsecondary study in an engineering curriculum including computer science, data science and information technology up to a maximum of four years credit. A year of study shall be at least 32 semester units or 48 quarter units.

(d) May at its discretion give credit as qualifying experience not in excess of five years, for a postgraduate degree in a school of engineering including computer science, data science and information technology with a board-approved undergraduate or postgraduate curriculum.

(e) May at its discretion give credit as qualifying experience for engineering teaching, not in excess of one year, if of a character satisfactory to the board.

The sum of qualifying experience credit for subdivision (a) to (e), inclusive, shall not exceed five years.

#### **6753.5. Experience in the armed forces**

All applicants shall be given equal credit for engineering experience in the armed forces of United States as with any other comparable engineering experience.

#### **6754. Examinations in general**

Examination for licensure shall be held at such times and places as the board shall determine.

The second division of the examination for all branches specified in Section 6732 shall be administered at least once each year.

Work of the board relating to examination and licensure may be divided into committees as the board shall direct. The scope of examinations and the methods of procedure may be prescribed by board rule.

The board may make arrangements with a public or private organization to conduct the examination. The board may contract with a public or private organization for materials or services related to the examination.

#### **6755. Examination requirements; waivers**

(a) Examination duration and composition shall be designed to conform to the following general principle: The first division of the examination shall test the applicant's knowledge of appropriate fundamental engineering subjects, including mathematics and the basic sciences; the second division of the examination shall test the applicant's ability to apply his or her knowledge and experience and to assume responsible charge in the professional practice of the branch of engineering in which the applicant is being examined.

(b) The board may by rule provide for a waiver of the first division of the examination for applicants whose education and experience qualifications substantially exceed the requirements of subdivision (a) of Section 6751.

(c) The board may by rule provide for a waiver of the second division of the examination for persons eminently qualified for licensure in this state by virtue of their standing in the engineering community, their years of experience, and those other qualifications as the board deems appropriate.

#### **6755.1. Additional second division examination requirements**

(a) The second division of the examination for registration as a professional engineer shall include questions to test the applicant's knowledge of state laws and the board's rules and regulations regulating the practice of professional engineering. The board shall administer the test on state laws and board rules regulating the practice of engineering in this state as a separate part of the second division of the examination for registration as a professional engineer.

(b) On and after April 1, 1988, the second division of the examination for registration as a civil engineer shall also include questions to test the applicant's knowledge of seismic principles and engineering surveying principles as defined in Section 6731.1. No registration for a civil engineer shall be issued by the board on or after January 1, 1988, to any applicant unless he or she has successfully completed questions to test his or her knowledge of seismic principles and engineering surveying principles.

The board shall administer the questions to test the applicant's knowledge of seismic principles and engineering surveying principles as a separate part of the second division of the examination for registration as a civil engineer.

It is the intent of the Legislature that this section confirm the authority of the board to issue registrations prior to April 1, 1988, to applicants based on examinations not testing the applicant's knowledge of seismic principles and engineering surveying principles as defined in Section 6731.1.

#### **6756. Certification as an engineer-in-training**

(a) An applicant for certification as an engineer-in-training shall, upon meeting all of the requirements prescribed in subdivisions (a) and (b) of Section 6751, relating to fundamental engineering subjects, be issued a certificate as an engineer-in-training. A renewal or other fee, other than the application and examination fees, shall not be charged for this certification. The certificate shall become invalid when the holder has qualified as a professional engineer as provided in Section 6762.

(b) An engineer-in-training certificate does not authorize the holder thereof to practice or offer to practice civil, electrical, software or mechanical engineering work, in his or her own right, or to use the titles specified in Sections 6732, 6736, and 6736.1.

(c) It is unlawful for anyone other than the holder of a valid engineer-in-training certificate issued under this chapter to use the title of "engineer-in-training" or any abbreviation of that title.

#### **6757. Separate applications for licensure in each branch of engineering**

Applicants who profess to be qualified in more than one branch of engineering shall be required to file an application for each branch in which they wish to be registered.

#### **6758. Re-examination**

An applicant failing in an examination may be examined again upon filing a new application and the payment of the fee fixed by this chapter.

### **6759. Comity applicants**

The board, upon application therefor, on its prescribed form, and the payment of the fee fixed by this chapter, may issue a certificate of registration as a professional engineer, without written examination, to any person holding a certificate of registration issued to him or her by any state or country when the applicant's qualifications meet the requirements of this chapter and rules established by the board. The board shall not require a comity applicant to meet any requirement not required of California applicants. For purposes of this section, equivalent second division examinations shall be written examinations prepared by or administered by a state or territory either by single or combined branch at the level generally administered by the board to persons who passed or were exempted from the first division examination. Applicants who have passed an equivalent second division combined branch or a single branch examination in a branch not recognized for registration in California shall be registered in the branch in which their experience and education indicate the closest relationship.

### **6762. Licensure as a professional engineer**

Any applicant for licensure as a professional engineer, upon meeting all of the requirements prescribed in subdivision (c) of Section 6751 and who and has otherwise qualified hereunder as a professional engineer, shall have a certificate of registration issued to him or her as a professional engineer in the particular branch for which he or she is found qualified.

#### **6762.5. Retired license**

(a) The board shall issue, upon application and payment of the fee established by Section 6799, a retired license (registration), to an engineer who has been licensed by the board for a minimum of 5 years within California and a minimum of 20 years within the United States or territory of the United States, and who holds a license that is not suspended, revoked, or otherwise disciplined, or subject to pending discipline under this chapter.

(b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active engineer's license is required. An engineer holding a retired license shall be permitted to use the titles "retired professional engineer," "professional engineer, retired," or either of those titles with the licensee's branch designation inserted for the word "professional" for example, "retired civil engineer" or "civil engineer, retired."

(c) The holder of a retired license shall not be required to renew that license.

(d) In order for the holder of a retired license issued pursuant to this section to restore his or her license to active status, he or she shall pass the second division examination that is required for initial licensure with the board.

### **6763. Structural engineer title authority; soil engineer, soils engineer, or geotechnical engineer title authority**

Application for authority to use the title “structural engineer,” “soil engineer,” “soils engineer,” or “geotechnical engineer” shall be made to the board on forms prescribed by it and shall be accompanied by the fee fixed by this chapter.

An applicant for authority to use the title “structural engineer,” “soil engineer,” “soils engineer,” or “geotechnical engineer” who has passed the examination prescribed by the board, or an applicant for authority to use the title “soil engineer,” “soils engineer,” or “geotechnical engineer” whose application is submitted prior to July 1, 1986, and who has otherwise demonstrated that he or she is qualified, shall have a certificate of authority issued to him or her.

For purposes of this chapter, an authority to use the title “structural engineer,” “soil engineer,” “soils engineer,” or “geotechnical engineer” is an identification of competence and specialization in a subspecialty of civil engineering and necessitates education or experience in addition to that required for registration as a civil engineer.

#### **6763.1. Structural engineer examination requirements**

An applicant to use the title “structural engineer” shall have successfully passed a written examination for structural engineering that is administered by a nationally recognized entity approved by the board.

#### **6763.5. Refund to unqualified applicants**

If an applicant for licensure as a professional engineer, for certification as an engineer-in-training, or for authorization to use the title “structural engineer” or “soil engineer” is found by the board to lack the qualifications required for admission to the examination for such licensure, certification, or authorization, the board may, in accordance with the provisions of Section 158 of this code, refund to him or her one-half of the amount of his or her application fee.

#### **6764. Seal or stamp**

Each professional engineer licensed under this chapter shall, upon licensure, obtain a seal or stamp of a design authorized by the board bearing the licensee’s name, number of his or her certificate or authority, the legend “professional engineer” and the designation of the particular branch or authority in which he or she is licensed.

#### **6765. Duplicate certificate or license**

A duplicate certificate of registration to replace one lost, destroyed, or mutilated may be issued subject to the rules and regulations of the board. The duplicate certificate fee fixed by this chapter shall be charged.

#### **6766. Evidence of licensure**

An unsuspended, unrevoked and unexpired certificate and endorsement of registry made under this chapter, is presumptive evidence in all courts and places that the person named therein is legally registered.

### **Article 4.5. Reporting Requirements**

#### **6770. Licensees required to report criminal convictions, civil action judgments, settlements, arbitration awards, and administrative actions**

(a) A licensee shall report to the board in writing the occurrence of any of the following events that occurred on or after January 1, 2008, within 90 days of the date the licensee has knowledge of the event:

(1) The conviction of the licensee of any felony.

(2) The conviction of the licensee of any other crime that is substantially related to the qualifications, functions, and duties of a licensed professional engineer.

(3) A civil action settlement or administrative action resulting in a settlement against the licensee in any action alleging fraud, deceit, misrepresentation, breach or violation of contract, negligence, incompetence, or recklessness by the licensee in the practice of professional engineering if the amount or value of the settlement is greater than fifty thousand dollars (\$50,000).

(4) A civil action judgment or binding arbitration award or administrative action resulting in a judgment or binding arbitration award against the licensee in any action alleging fraud, deceit, misrepresentation, breach or violation of contract, negligence, incompetence, or recklessness by the licensee in the practice of professional engineering if the amount or value of the judgment or binding arbitration award is twenty-five thousand dollars (\$25,000) or greater.

(b) The report required by subdivision (a) shall be signed by the licensee and set forth the facts that constitute the reportable event. If the reportable event involves the action of an administrative agency or court, the report shall set forth the title of the matter, court or agency name, docket number, and the date the reportable event occurred.

(c) A licensee shall promptly respond to oral or written inquiries from the board concerning the reportable events, including inquiries made by the board in conjunction with license renewal.

(d) Nothing in this section shall impose a duty upon any licensee to report to the board the occurrence of any of the events set forth in subdivision (a) either by or against any other licensee.

(e) Failure of a licensee to report to the board in the time and manner required by this section shall be grounds for disciplinary action.

(f) For the purposes of this section, a conviction includes the initial plea, verdict, or finding of guilt; a plea of no contest; or pronouncement of sentence by a trial court even though the conviction may not be final or sentence actually imposed until all appeals are exhausted.

### **6770.1. Courts required to report of convictions of licensees**

Within 30 days of entry of a conviction described in paragraphs (1) and (2) of subdivision (a) of Section 6770, a settlement described in paragraph (3) of subdivision (a) of Section 6770, or a judgment described in paragraph (4) of subdivision (a) of Section 6770, by a court of this state that has been notified that the defendant is a licensee of the board, the court that rendered the conviction, settlement, or judgment shall report that fact to the board and provide the board with a copy of the conviction or judgment and any orders or opinions of the court accompanying or ordering the conviction, settlement, or judgment.

### **6770.2. Professional liability insurers required to report of civil action judgments, settlements, or arbitration awards against licensees**

(a) Within 30 days of payment of all or any portion of any civil action judgment, settlement, or binding arbitration award described in Section 6770 against a licensee of the board, any insurer providing professional liability insurance to that licensee shall report to the board the name of the licensee; the amount or value of the judgment, settlement, or binding arbitration award; the amount paid by the insurer; and the identity of the payee.

(b) Within 30 days of payment of all or any portion of any civil action judgment, settlement, or binding arbitration award described in Section 6770 against a licensee of the board, any state or local government agency that self-insures that licensee shall report to the board the name of the licensee; the amount or value of the judgment, settlement, or binding arbitration award; the amount paid; and the identity of the payee.

### **6770.3. Applicability of Sections 6770, 6770.1, and 6770.2**

The requirements of Sections 6770, 6770.1, and 6770.2 shall apply if a party to the civil action, settlement, or arbitration award is or was a sole proprietorship, partnership, firm, corporation, or state or local government agency in which the licensee is or was an owner, partner, member, officer, or employee and is or was the licensee in responsible charge of that portion of the project that was the subject of the civil judgment, settlement, or arbitration award.

#### **6770.4. Effect of article on confidential agreements**

(a) Notwithstanding any other provision of law, a licensee shall not be considered to have violated a confidential settlement agreement or other confidential agreement by providing a report to the board as required by this article.

#### **6770.5. Authority to adopt regulations**

The board may adopt regulations to further define the reporting requirements of Sections 6770, 6770.1, and 6770.2.

#### **6770.6. Operation of article**

This article shall become operative on January 1, 2008, only if an appropriation is made from the Professional Engineer's and Land Surveyor's Fund for the 2007-08 fiscal year in the annual Budget Act to fund the activities of this article, and sufficient hiring authority is granted to the board pursuant to a budget change proposal to provide sufficient staffing to implement this article.

### **Article 5. Disciplinary Proceedings**

#### **6775. Complaints; investigations; board action against the license of a professional engineer**

The Board may, upon its own initiative or upon the receipt of a complaint, investigate the actions of any professional engineer licensed under this chapter and make findings thereon.

*By a majority vote, the board may publicly reprove, suspend for a period not to exceed two years, or revoke the certificate of any professional engineer licensed under this chapter on any of the following grounds:*

*(a) Any conviction of a crime substantially related to the qualifications, functions and duties of a licensed professional engineer, in which case the certified record of conviction shall be conclusive evidence thereof.*

*(b) Any deceit, misrepresentation, or fraud, in his or her practice.*

*(c) Any negligence or incompetence in his or her practice.*

*(d) A breach or violation of a contract to provide professional engineering services.*

*(e) Any fraud, deceit, or misrepresentation in obtaining his or her certificate as a professional engineer.*

*(f) Aiding or abetting any person in the violation of any provision of this chapter or any regulation adopted by the board pursuant to this chapter.*

*(g) A violation in the course of the practice of professional engineering of a rule or*

***regulation of unprofessional conduct adopted by the board.***

(h) A violation of any provision of this chapter or any other law relating to or involving the practice of professional engineering.

**6775.1. Complaints; investigations; board action against the certificate of an engineer-in-training**

The board may, upon its own initiative or upon the receipt of a complaint, investigate the actions of any engineer-in-training and make findings thereon.

By a majority vote, the board may revoke the certificate of any engineer-in-training:

- (a) Who has been convicted of a crime as defined in subdivision (a) of Section 480.
- (b) Who has committed any act that would be grounds for denial of licensure pursuant to Section 480 or 496.
- (c) Who has committed any act of fraud, deceit, or misrepresentation in obtaining his or her engineer-in-training certificate or certificate of registration, certification, or authority as a professional engineer.
- (d) Who aids or abets any person in the violation of any provision of this chapter or any regulation adopted by the board pursuant to this chapter.
- (e) Who violates Section 119 with respect to an engineer-in-training certificate.
- (f) Who commits any act described in Section 6787.
- (g) Who violates any provision of this chapter or any regulation adopted by the board pursuant to this chapter.

**6775.2. Failure or refusal of a licensee to respond in an investigation**

The failure of, or refusal by, a licensee or a certificate holder to respond to a written request from a representative of the board to cooperate in the investigation of a complaint against that licensee or certificate holder constitutes a cause for disciplinary action under Section 6775 or 6775.1.

*{Amended, Ch. 630, Stats.2019}*

**6776. Conduct of proceedings**

The proceedings under this article shall be conducted in accordance with Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

**6777. Reinstatement of revoked license**

The board may reissue a certificate of registration, certification, or authority, to any person whose certificate has been revoked if a majority of the members of the board vote in favor of such reissuance for reasons the board deems sufficient.

#### **6779. Revocation upon conviction**

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a registered professional engineer is deemed to be a conviction within the meaning of this article. The board may order the certificate suspended or revoked, or may decline to issue a certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

#### **6780. Petitions for reinstatement of revoked license or modification of penalty**

(a) A petitioner may petition the board for reinstatement or modification of penalty, including reduction, modification, or termination of probation, after the following minimum periods have elapsed from the effective date of the decision ordering the disciplinary action, or if the order of the board or any portion of it is stayed by a court of law, from the date the disciplinary action is actually implemented in its entirety:

(1) Except as otherwise provided in this section, at least three years for reinstatement of a certificate that was revoked or surrendered. However, the board may, in its sole discretion, specify in its order of revocation or surrender a lesser period of time that shall be at minimum one year.

(2) At least two years for early termination of a probation period of three years or more.

(3) At least one year for early termination of a probation period of less than three years.

(4) At least one year for reduction or modification of a condition of probation.

(b) The board shall notify the Attorney General of the filing of the petition. The

petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition, and the petitioner and the Attorney General shall be given the opportunity to present both oral and documentary evidence and argument to the board. The petitioner shall at all times have the burden of proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.

(c) The board itself or an administrative law judge, if one is designated by the board, shall hear the petition and shall prepare a written decision setting forth the reasons supporting the decision.

(d) The board may grant or deny the petition or may impose any terms and conditions that it reasonably deems appropriate as a condition of reinstatement or reduction or modification of the penalty.

(e) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

(f) The board may, in its discretion, deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

(g) Judicial review of the board's decision following a hearing under this section may be sought by way of a petition for writ of administrative mandamus pursuant to Section 1094.5 of the Code of Civil Procedure. The party seeking to overturn the board's decision shall have the burden of proof in any mandamus proceeding. In the mandamus proceeding, if it is alleged that there has been an abuse of discretion because the board's findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in light of the whole record.

(h) The following definitions apply for purposes of this section:

(1) "Certificate" includes certificate of registration or license as a professional engineer; certificates of authority to use the titles "structural engineer," "geotechnical engineer," "soil engineer," "soils engineer," or "consulting engineer;" and certification as an engineer-in-training.

(2) "Petitioner" means a professional engineer or an engineer-in-training whose certificate has been revoked, suspended, or surrendered or placed on probation.

## **Article 6. Offenses Against the Chapter**

### **6785. Authority to investigate**

The board shall have the power, duty, and authority to investigate violations of the provisions of this chapter.

### **6786. Duty to prosecute**

It is the duty of the respective members of the legal system to prosecute all persons charged with the violation of any of the provisions of this chapter.

It is the duty of the executive officer of the board, under the direction of the board, to aid these officers in the enforcement of this chapter.

**6787. Acts constituting a misdemeanor**

*A person who does any of the following is guilty of a misdemeanor:*

*(a) Unless the person is exempt from licensure under this chapter, practice or offer to practice civil, electrical, software or mechanical engineering in this state according to the provisions of this chapter without legal authorization.*

*(b) Present or attempts to file the person's own the certificate of licensure of a licensed professional engineer unless they are the person named on the certificate of licensure.*

*(c) Give false evidence of any kind to the board, or to any board member, in obtaining a certificate of licensure.*

*(d) Impersonate or use the seal, signature, or license number of a licensed professional engineer or use a false license number.*

*(e) Use an expired, suspended, surrendered, or revoked license.*

*(f) Represent themselves as, or uses the title of, a licensed or registered civil, electrical, software or mechanical engineer, or any other title whereby that person could be considered as practicing or offering to practice civil, electrical, software or mechanical engineering in any of its branches, unless they are correspondingly qualified by licensure as a civil, electrical, software or mechanical engineer under this chapter.*

*(g) Unless appropriately licensed, manages, or conducts as manager, proprietor, or agent, any place of business from which civil, electrical, software or mechanical engineering work is solicited, performed, or practiced, except as authorized pursuant to subdivision (e) of Section 6738 and Section 8726.1.*

*(h) Use the title, or any combination of that title, of "professional engineer," "licensed engineer," "registered engineer," or the branch titles specified in Section 6732, or the authority titles specified in Sections 6736 and 6736.1, or "engineer-in-training," or use any abbreviation of such title that might lead to the belief that the person is a licensed engineer, is authorized to use the titles specified in Section 6736 or 6736.1, or holds a certificate as an engineer-in-training, without being licensed, authorized, or certified as required by this chapter.*

*(i) Use the title "consulting engineer" without being licensed as required by this chapter or without being authorized to use that title pursuant to legislation enacted at the 1963, 1965 or 1968 Regular Session.*

*(j) Violate any provision of this chapter.*

*{Amended, Ch. 630, Stats.2019}*

### **6788. Repair fraud**

Any person who violates any provision of subdivisions (a) to (j), inclusive, of Section 6787 in connection with the offer or performance of engineering services for the repair of damage to a residential or nonresidential structure caused by a disaster for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code, or for which an emergency or major disaster is declared by the President of the United States, shall be punished by a fine up to ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, or for two or three years, or by both the fine and imprisonment, or by a fine up to one thousand dollars (\$1,000), or by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.

*{Amended, Ch. 630, Stats.2019}*

### **6789. Licensees allowed to report potential violations**

***(a) If a licensee who is retained as an expert witness enters into a nondisclosure agreement, that agreement shall not be construed to prevent the licensee from reporting a potential violation of the Professional Engineers Act to the board.***

(b) This section shall not be construed to be, or act as, a waiver of any applicable attorney-client or attorney work product privileges.

*{Added, Ch. 145, Stats.2019}*

## **Article 7. Revenue**

### **6795. Certificate renewal time periods**

Certificates of registration as a professional engineer, and certificates of authority, shall be valid for a period of two years from the assigned date of renewal. Biennial renewals shall be staggered on a quarterly basis. To renew an unexpired certificate, the certificate holder shall, on or before the date of expiration indicated on the renewal receipt, apply for renewal on a form prescribed by the board, and pay the renewal fee prescribed by this chapter.

#### **6795.1. Notice of pending expiration; contents; second notice**

Within 60 to 90 days prior to the expiration of a certificate of registration or certificate of authority, the board shall mail to the registrant or authority holder a notice of the pending expiration. That notice shall include application forms for renewal. If there is no response by the expiration date, the board shall provide a second notice to the registrant's or authority holder's address.

### **6795.2. Assessment to reinforce knowledge of state laws and board rules and regulations**

(a) At the time of renewal specified in Section 6795 or 6796, the board shall administer an assessment of the certificate holder to reinforce the certificate holder's knowledge of state laws and the board's rules and regulations. Failure to complete this assessment within 60 days after the date of expiration of the certificate may result in disciplinary action under Section 6775, but shall not affect the renewal of the certificate.

(b) The crime in subdivision (j) of Section 6787 shall not apply to this section.

(c) The board shall not charge the certificate holder a fee for the administration or development of the assessment.

(d) For the purposes of this section, "assessment" means an online program that contains educational reading material and questions. The material shall be based on state law and the board's rules and regulations relating to the practice of professional engineers. The scope of the assessment shall be limited to the board's top five types of violations related to the administrative and procedural aspects of the practice of professional engineers and any changes or additions to existing law related to such administrative and procedural aspects.

### **6796. Renewal of expired certificate within five years**

Except as otherwise provided in this article, certificates of registration as a professional engineer and certificates of authority may be renewed at any time within five years after expiration on filing of application for renewal on a form prescribed by the board and payment of all accrued and unpaid renewal fees. If the certificate is renewed more than 60 days after its expiration, the certificate holder, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs.

The expiration date of a certificate renewed pursuant to this section shall be determined pursuant to Section 6795.

#### **6796.1. Expiration of suspended certificate; renewal**

A suspended certificate is subject to expiration and shall be renewed as provided in this article, but such renewal does not entitle the holder of the certificate, while it remains suspended and until it is reinstated, to engage in the activity to which the certificate relates, or in any other activity or conduct in violation of the order or judgment by which it was suspended.

#### **6796.2. Expiration of revoked certificate**

A revoked certificate is subject to expiration as provided in this article, but it may not be renewed. If it is reinstated after its expiration, the holder of the certificate, as a condition precedent to its reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

### **6796.3. Failure to renew certificate within five years**

(a) Certificates of registration as a professional engineer, and certificates of authority to use the title “structural engineer,” “soil engineer,” or “consulting engineer” that are not renewed within five years after expiration may not be renewed, restored, reinstated, or reissued. After five years after expiration, the holder of a certificate may apply for and obtain a new certificate subject to the following:

(1) He or she has not committed any acts or crimes constituting grounds for denial of licensure under Section 480.

(2) He or she takes and passes the examination, if any, that would be required of him or her if he or she were then applying for the certificate for the first time.

(b) The board may, by regulation, provide for the waiver or refund of all or any part of the application fee in those cases in which a certificate is issued without an examination pursuant to this section.

### **6796.5. Effect of renewal of expired or delinquent certificate**

Once an expired or delinquent certificate of registration or certificate of authority is renewed pursuant to Section 6796, all of the following shall apply:

(a) The board shall continue to have full jurisdiction and authority over the certificate holder as if the authority had not expired or become delinquent.

(b) The work performed by the certificate holder during a period of expiration or delinquency shall be deemed lawful and validly performed as to persons or entities other than the authority holder.

(c) The renewal of a registration or certificate of authority shall not affect liability issues regarding work performed during a period of expiration or delinquency, nor does the fact of performance during a period of expiration or delinquency affect liability issues.

### **6797. Accounting and deposit of funds**

(a) The department shall receive and account for all money derived from the operation of this chapter and, at the end of each month, shall report such money to the Controller and shall pay it to the Treasurer, who shall keep the money in a separate fund known as the Professional Engineer’s, Land Surveyor’s, and Geologist’s Fund.

(b) For accounting and recordkeeping purposes, the Professional Engineer's, Land Surveyor's, and Geologist's Fund shall be deemed to be a single special fund, and shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.

(c) The fees and civil penalties received under this chapter shall be deposited in the Professional Engineer's, Land Surveyor's, and Geologist's Fund. All moneys in the fund are hereby appropriated for the purposes of this chapter.

(d) This section shall become operative on July 1, 2016.

### **6798. Refunds**

The board may make refunds of all fees in accordance with Section 158 of this code.

### **6799. Fee schedule**

(a) The amount of the fees prescribed by this chapter shall be fixed by the board in accordance with the following schedule:

(1) The fee for filing each application for licensure as a professional engineer and each application for authority level designation at not more than four hundred dollars (\$400) and for each application for certification as an engineer-in-training at not more than one hundred dollars (\$100).

(2) The fee to take an examination administered by a public or private organization pursuant to Section 6754 shall be no greater than the actual cost of the development and administration of the examination and may be paid directly to the organization by the applicant.

(3) The renewal fee for each branch of professional engineering in which licensure is held, and the renewal fee for each authority level designation held, at no more than four hundred dollars (\$400).

(4) The fee for a retired license at not more than 50 percent of the professional engineer application fee in effect on the date of application.

(5) The delinquency fee at not more than 50 percent of the renewal fee in effect on the date of reinstatement.

(6) The board shall establish by regulation an appeal fee for examination. The regulation shall include provisions for an applicant to be reimbursed the appeal fee if the appeal results in passage of examination. The fee charged shall be no more than the costs incurred by the board.

(7) All other document fees are to be set by the board by rule.

(b) Applicants wishing to be examined in more than one branch of engineering shall be required to pay the additional fee for each examination after the first.

# AMENDMENT B

Proposed Amendments in UNDERLINE  
Representative Active Ethical Parts of Act in ***BOLD ITALIC***

# **Board Rules and Regulations Relating to the Practices of Professional Engineering and Professional Land Surveying**

## **California Code of Regulations Title 16, Division 5 §§ 400-476**

### **Article 1. General Provisions**

#### **400. Introduction.**

These regulations are adopted by the Board in order to implement and make specific the Professional Engineers Act and the Professional Land Surveyors' Act, Business and Professions Code Sections 6700, et seq., and 8700, et seq., respectively.

#### **401. Declaratory Decisions.**

No decision or opinion issued by or on behalf of the Board for Professional Engineers, Land Surveyors, and Geologists shall be considered a declaratory decision pursuant to Government Code section 11465.10 through 11465.70 unless the decision or opinion specifically states that it is a declaratory decision issued pursuant to Government Code sections 11465.10 through 11465.70.

#### **403. Location of Offices.**

The principal office of the Board is 2535 Capitol Oaks Drive, Suite 300, Sacramento, 95833-2944. All correspondence relating to the activities of the Board, including applications, renewals, and remittances, shall be directed to the Board's office.

#### **404. Definitions.**

For the purpose of the rules and regulations contained in this chapter, the following terms are defined. No definition contained herein authorizes the practice of engineering as defined in the Professional Engineers Act.

(a) "ABET" means ABET, Inc., formerly known as the Accreditation Board for Engineering and Technology.

(b) "Agricultural engineering" is that branch of professional engineering which requires such education and experience as is necessary to understand and apply engineering principles to the design, construction, and use of specialized equipment, machines structures and materials relating to the agricultural industry and economy. It requires knowledge of the engineering sciences relating to physical properties and biological variables of foods and fibers; atmospheric phenomena as they are related to agricultural

operations; soil dynamics as related to traction, tillage and plant-soil-water relationships; and human factors relative to safe design and use of agricultural machines. The safe and proper application and use of agricultural chemicals and their effect on the environment are also concerns of the agricultural engineers. The above definition of agricultural engineering shall not be construed to permit the practice of civil, electrical, ~~or mechanical~~ mechanical or software engineering, nor professional forestry.

(c) “Approved Cooperative Work-Study Engineering Curriculum” refers to any curriculum under an ABET accredited cooperative work-study engineering program.

(d) “Approved Cooperative Work-Study Land Surveying Curriculum” refers to any curriculum under an ABET accredited cooperative work-study surveying program.

(e) “Approved Engineering Curriculum” refers to any curriculum under an ABET accredited engineering program leading to a baccalaureate degree in engineering.

(f) “Approved Engineering Technology Curriculum” refers to any curriculum under an ABET accredited engineering program leading to a four-year degree or a baccalaureate degree in technology.

(g) “Approved Land Surveying Curriculum” refers to any curriculum under an ABET accredited program leading to a baccalaureate degree.

(h) “Approved Post-Graduate Engineering Curriculum” refers to any curriculum under an ABET accredited engineering program leading to a master’s degree in engineering or to a post-graduate degree earned from an engineering program where the baccalaureate degree program is accredited by ABET.

(i) “Board” means the Board for Professional Engineers, Land Surveyors, and Geologists.

(j) “Chemical engineering” is that branch of professional engineering which embraces studies or activities relating to the development and application of processes in which chemical or physical changes of materials are involved. These processes are usually resolved into a coordinated series of unit physical operations and unit chemical processes. It is concerned with the research, design, production, operational, organizational, and economic aspects of the above. The above definition of chemical engineering shall not be construed to permit the practice of civil, electrical ~~or mechanical~~ mechanical or software engineering.

(k) “Civil engineer” refers to a person who holds a valid license in the branch of civil engineering, as defined in Section 6702 of the Code.

(l) “Civil engineering” is that branch of professional engineering as defined in Section 6731 of the Code.

(m) “Code” means the Business and Professions Code.

(n) “Consulting engineer” refers to any professional engineer who holds a valid license under the provisions of the code, or a person who possesses a valid authorization issued pursuant to Section 6732.2 of the Code, or a person who holds a valid exemption from provisions of the chapter as provided for in Sections 6704 and 6732.1 of the Code.

(o) “Control system engineering” is that branch of professional engineering which requires such education and experience as is necessary to understand the science of instrumentation and automatic control of dynamic processes; and requires the ability to apply this knowledge to the planning, development, operation, and evaluation of systems of control so as to insure the safety and practical operability of such processes. The above definition of control system engineering shall not be construed to permit the practice of civil, electrical, ~~or mechanical~~ mechanical or software engineering.

(p) “Corrosion engineering” is that branch of professional engineering which requires such education and experience as is necessary to understand the environmental corrosion behavior of materials; and requires the ability to apply this knowledge by recommending procedures for control, protection and cost effectiveness, resulting from the investigation of corrosion causes or theoretical reactions. The above definition of corrosion engineering shall not be construed to permit the practice of civil, electrical, ~~or mechanical~~ mechanical or software engineering.

(q) “Electrical engineer” refers to a person who holds a valid license in the branch of electrical engineering, as defined in Section 6702.1 of the Code.

(r) “Electrical engineering” is that branch of professional engineering as defined in Section 6731.5 of the Code.

(s) “Engineer-in-training” refers to a person who has been granted a certificate as an “engineer-in-training” in accordance with Section 6756 of the Code.

(t) “Fire protection engineering” is that branch of professional engineering which requires such education and experience as is necessary to understand the engineering problems relating to the safeguarding of life and property from fire and fire-related hazards; and requires the ability to apply this knowledge to the identification, evaluation, correction, or prevention of present or potential fire and fire related panic hazards in buildings, groups of buildings, or communities, and to recommend the arrangement and use of fire resistant building materials and fire detection and extinguishing systems, devices, and apparatus in order to protect life and property. The above definition of fire protection engineering shall not be construed to permit the practice of civil, electrical, ~~or mechanical~~ mechanical or software engineering.

(u) For the sole purpose of investigating complaints and making findings thereon under Sections 6775 and 8780 of the Code, “incompetence” as used in Sections 6775 and 8780 of the Code is defined as the lack of knowledge or ability in discharging professional obligations as a professional engineer or land surveyor.

(v) “Industrial engineering” is that branch of professional engineering which requires such education and experience as is necessary to investigate, to design, and to evaluate systems of persons, materials and facilities for the purpose of economical and efficient production, use, and distribution. It requires the application of specialized engineering knowledge of the mathematical and physical sciences, together with the principles and methods of engineering analysis and design to specify, predict, and to evaluate the results to be obtained from such systems. The above definition of industrial engineering shall not be construed to permit the practice of civil, electrical, ~~or mechanical~~ mechanical or software engineering.

(w) “Land surveying” is that practice defined in Section 8726 of the Code.

(x) “Land surveyor” refers to a person who holds a valid license as a land surveyor, as defined in Section 8701 of the Code.

(y) “Land surveyor-in-training” refers to a person who has been granted a certificate as a “land surveyor-in-training” in accordance with Section 8747 (a) of the Code.

(z) “Manufacturing engineering” is that branch of professional engineering which requires such education and experience as is necessary to understand and apply engineering procedures in manufacturing processes and methods of production of industrial commodities and products; and requires the ability to plan the practices of manufacturing, to research and develop the tools, processes, machines, and equipment, and to integrate the facilities and systems for producing quality products with optimal expenditure. The above definition of manufacturing engineering shall not be construed to permit the practice of civil, electrical, ~~or mechanical~~ mechanical or software engineering.

(aa) “Mechanical engineer” refers to a person who holds a valid license in the branch of mechanical engineering, as defined in Section 6702.2 of the Code.

(bb) “Mechanical engineering” is that branch of professional engineering as defined in Section 6731.6 of the Code.

(cc) “Metallurgical engineering” is that branch of professional engineering, which requires such education and experience as is necessary to seek, understand and apply the principles of the properties and behavior of metals in solving engineering problems dealing with the research, development and application of metals and alloys; and the manufacturing practices of extracting, refining and processing of metals. The above definition of metallurgical engineering shall not be construed to permit the practice of civil, electrical, ~~or mechanical~~ mechanical or software engineering.

(dd) For the sole purpose of investigating complaints and making findings thereon under Sections 6775 and 8780 of the Code, “negligence” as used in Sections 6775 and 8780 of the Code is defined as the failure of a licensee, in the practice of professional engineering or land surveying, to use the care ordinarily exercised in like cases by duly licensed professional engineers and land surveyors in good standing.

(ee) “Non-Approved Engineering Curriculum” refers to any engineering program that has not been accredited by ABET.

(ff) “Non-Approved Land Surveying Curriculum” refers to any land surveying program that has not been accredited by ABET.

(gg) “Nuclear engineering” is that branch of professional engineering which requires such education and experience as is necessary to apply the principles of nuclear physics to the engineering utilization of nuclear phenomena for the benefit of mankind; it is also concerned with the protection of the public from the potential hazards of radiation and radioactive materials. Nuclear engineering is primarily concerned with interaction of radiation and nuclear particles with matter. Nuclear engineering requires the application of specialized knowledge of the mathematical and physical sciences, together with the principles and methods of engineering design and nuclear analysis to specify, predict and evaluate the behavior of systems involving nuclear reactions, and to ensure the safe, efficient operation of these systems, their nuclear products and by-products. Nuclear engineering encompasses, but is not limited to, the planning and design of the specialized equipment and process systems of nuclear reactor facilities; and the protection of the public from any hazardous radiation produced in the entire nuclear reaction process. These activities include all aspects of the manufacture, transportation and use of radioactive materials. The above definition of nuclear engineering shall not be construed to permit the practice of civil, electrical, ~~or mechanical~~ mechanical or software engineering.

(hh) “Petroleum engineering” is that branch of professional engineering which embraces studies or activities relating to the exploration, exploitation, location, and recovery of natural fluid hydrocarbons. It is concerned with research, design, production, and operation of devices, and the economic aspects of the above. The above definition of petroleum engineering shall not be construed to permit the practice of civil, electrical, ~~or mechanical~~ mechanical or software engineering.

(ii) “Professional engineer” refers to a person engaged in the practice of professional engineering as defined in Section 6701 of the Code.

(jj) “Professional engineering” within the meaning of this chapter comprises the following branches: agricultural engineering, chemical engineering, civil engineering, control system engineering, corrosion engineering, electrical engineering, fire protection engineering, industrial engineering, manufacturing engineering, mechanical engineering, metallurgical engineering, nuclear engineering, petroleum engineering, quality engineering, safety engineering, software engineering, and traffic engineering.

(kk) “Quality engineering” is that branch of professional engineering which requires such education and experience as is necessary to understand and apply the principles of product and service quality evaluation and control in the planning, development and operation of quality control systems, and the application and analysis of testing and inspection procedures; and requires the ability to apply metrology and statistical methods

to diagnose and correct improper quality control practices to assure product and service reliability and conformity to prescribed standards. The above definition of quality engineering shall not be construed to permit the practice of civil, electrical, ~~or mechanical~~ mechanical or software engineering.

(ll) “Safety engineering” is that branch of professional engineering which requires such education and experience as is necessary to understand the engineering principles essential to the identification, elimination and control of hazards to people and property; and requires the ability to apply this knowledge to the development, analysis, production, construction, testing, and utilization of systems, products, procedures and standards in order to eliminate or optimally control hazards. The above definition of safety engineering shall not be construed to permit the practice of civil, electrical, ~~or mechanical~~ mechanical or software engineering.

(mm) “Soil engineer” refers to a civil engineer who holds a valid authorization to use the title “soil engineer,” as provided in Section 6736.1 of the Code.

(nn) “Soil engineering,” as it relates to the authorization to use the title “soil engineer,” is the investigation and engineering evaluation of earth materials including soil, rock, groundwater and man-made materials and their interaction with earth retention systems, structural foundations and other civil engineering works. The practice involves application of the principles of soil mechanics and the earth sciences, and requires a knowledge of engineering laws, formulas, construction techniques and performance evaluation of civil engineering works influenced by earth materials.

The terms “geotechnical engineer” and “soils engineer” are deemed to be synonymous with the term “soil engineer.”

(oo) “Structural engineer” refers to a civil engineer who holds a valid authorization to use the title “structural engineer,” as provided in Section 6736 of the Code.

(pp) “Structural engineering” for the purposes of structural authority is the application of specialized civil engineering knowledge and experience to the design and analysis of buildings (or other structures) which are constructed or rehabilitated to resist forces induced by vertical and horizontal loads of a static and dynamic nature. This specialized knowledge includes familiarity with scientific and mathematical principles, experimental research data and practical construction methods and processes. The design and analysis shall include consideration of stability, deflection, stiffness and other structural phenomena that affect the behavior of the building (or other structure).

(qq) “Traffic engineering” is that branch of professional engineering which requires such education and experience as is necessary to understand the science of measuring traffic and travel and the human factors relating to traffic generation and flow; and requires the ability to apply this knowledge to planning, operating, and evaluating streets and highways and their networks, abutting lands and interrelationships with other modes of travel, to provide safe and efficient movement of people and goods. The above definition

of traffic engineering shall not be construed to permit the practice of civil, electrical, ~~or mechanical~~ mechanical or software engineering.

**(rr) “Software engineer” refers to a person who holds a valid license in the branch of software engineering, as defined in Section 6702.3 of the Code.**

(ss) “Software engineering” is that branch of professional engineering defined in Section 6731.7 of the Code.

#### **404.1. Responsible Charge– Professional Engineering.**

(a) As used in the Professional Engineers Act, the term “responsible charge” directly relates to the extent of control a professional engineer is required to maintain while exercising independent control and direction of professional engineering services or creative work and to the engineering decisions which can be made only by a professional engineer.

(1) Extent of Control. The extent of control necessary to be in responsible charge shall be such that the engineer:

(A) Makes or reviews and approves the engineering decisions defined and described in subdivision (a)(2) below.

(B) In making or reviewing and approving the engineering decisions, determines the applicability of design criteria and technical recommendations provided by others before incorporating such criteria or recommendations.

(2) Engineering Decisions. The term “responsible charge” relates to engineering decisions within the purview of the Professional Engineers Act.

Engineering decisions which must be made by and are the responsibility of the engineer in responsible charge are those decisions concerning permanent or temporary projects which could create a hazard to life, health, property, or public welfare, and may include, but are not limited to:

(A) The selection of engineering alternatives to be investigated and the comparison of alternatives for the project.

(B) The selection or development of design standards or methods, and materials to be used.

(C) The decisions related to the preparation of engineering plans, specifications, calculations, reports, and other documents for the engineered works.

(D) The selection or development of techniques or methods of testing to be used in evaluating materials or completed projects, either new or existing.

(E)The review and evaluation of manufacturing, fabrication or construction methods or controls to be used and the evaluation of test results, materials and workmanship insofar as they affect the character and integrity of the completed project.

(F)The development and control of operating and maintenance procedures.

(3) Reviewing and Approving Engineering Decisions. In making or reviewing and approving engineering decisions, the engineer shall be physically present or shall review and approve through the use of communication devices the engineering decisions prior to their implementation.

(b) Responsible Charge Criteria. In order to evaluate whether an engineer is in responsible charge, the following must be considered: The professional engineer who signs engineering documents must be capable of answering questions asked by individuals who are licensed by the Board in the appropriate branch of professional engineering relevant to the project and who are fully competent and proficient by education and experience in the field or fields of professional engineering relevant to the project. These questions would be relevant to the engineering decisions made during the individual's participation in the project, and in sufficient detail to leave little question as to the engineer's technical knowledge of the engineering performed. It is not necessary to defend decisions as in an adversarial situation, but only to demonstrate that the individual in responsible charge made, or reviewed and approved, them and possessed sufficient knowledge of the project to make, or review and approve, them.

Examples of questions to be answered by the engineer could relate to criteria for design, methods of analysis, methods of manufacture and construction, selection of materials and systems, economics of alternate solutions, and environmental considerations. The individual should be able to clearly express the extent of control and how it is exercised and to demonstrate that the engineer is answerable within said extent of control.

(c) Successor Licensee. In situations when the professional engineer in responsible charge of an engineering project is unavailable to complete the project or when the project is a site specific adaptation of a previous design, a professional engineer (hereinafter referred to as the "successor licensee") may assume responsible charge of the project as long as the successor licensee exercises the requisite extent of control and assumes responsibility for the engineering decisions as required by subdivision (a) and meets the criteria described in subdivision (b), as well as meeting the requirements of the Professional Engineers Act and Sections 411 and 415. Except as provided in Sections 6735, 6735.3, and 6735.4 of the Code, the original licensee is not relieved of any responsibility arising from the engineering services of which he or she was in responsible charge.

(d) Portions of Projects. Nothing in this section prohibits a professional engineer from providing services for portions of or to add to or to modify an engineering project engineered under the responsible charge of another licensee as long as the professional engineer exercises the requisite extent of control and assumes responsibility for the

engineering decisions as required by subdivision (a) and meets the criteria described in subdivision (b), as well as meeting the requirements of the Professional Engineers Act and Sections 411 and 415. The professional engineer need only be in responsible charge of the portions, additions, or modifications or the portion of the project affected by the addition or modification and not of the entire project. Except as provided in Sections 6735(b), 6735.3(b), and 6735.4(b) of the Code, the original licensee is not relieved of any responsibility arising from the engineering services of which he or she was in responsible charge.

(e) The term “responsible charge” does not refer to any of the following:

(1) the concept of financial liability;

(2) management control in a hierarchy of professional engineers except as each of

the individuals in the hierarchy exercises independent engineering judgment and thus responsible

charge;

(3) such administrative and management functions as accounting, labor relations,

personnel performance standards, marketing of services, or goal setting. While an engineer may also have such duties in this position, it should not enhance or decrease one’s status of being in responsible charge of the engineering.

#### **404.2. Responsible Charge– Professional Land Surveying.**

(a) The term “responsible charge” directly relates to the extent of control a licensed land surveyor or civil engineer legally authorized to practice land surveying (hereinafter referred to as “legally authorized civil engineer”) is required to maintain while exercising independent control and direction of land surveying work or services, and the land surveying decisions which can be made only by a licensed land surveyor or legally authorized civil engineer.

(1) Extent of Control. The extent of control necessary to be in responsible charge shall be such that the land surveyor or legally authorized civil engineer:

(A) Makes or reviews and approves the land surveying decisions defined and described in subdivision (a)(2) below.

(B) In making or reviewing and approving the land surveying decisions, determines the applicability of survey criteria and technical recommendations provided by others before incorporating such criteria or recommendations.

(2) Land Surveying Decisions. The term “responsible charge” relates to land surveying decisions within the purview of the Professional Land Surveyors’ Act.

Land surveying decisions which must be made by and are the responsibility of the land surveyor or legally authorized civil engineer in responsible charge are those decisions concerning permanent or temporary work which could create a hazard to life, health, property, or public welfare, and may include, but are not limited to:

- (A) Selecting the methods, procedures, and tolerances of field work.
- (B) Determining calculation and adjustment methods.
- (C) Determining and specifying the information to be shown on maps or

documents furnished in connection with land surveying services, including the format of the information and the format of the maps or documents.

(D) The decisions related to the preparation of maps, plats, land surveying reports, descriptions, and other land surveying documents furnished in connection with the land surveying services.

(E) Reviewing the sufficiency and accuracy of the work product.

(3) Reviewing and Approving Land Surveying Decisions. In making or reviewing and approving land surveying decisions, the land surveyor or legally authorized civil engineer shall be physically present or shall review and approve through the use of communication devices the land surveying decisions prior to their implementation.

(b) Responsible Charge Criteria. In order to evaluate whether a person authorized to practice land surveying is in responsible charge, the following must be considered: The land surveyor or legally authorized civil engineer who signs surveying documents must be capable of answering questions asked by licensees of the Board who are fully competent and proficient by education and experience in the field or fields of professional land surveying relevant to the project. These questions would be relevant to the decisions made during the individual's participation in the project, and in sufficient detail to leave little question as to the land surveyor's or legally authorized civil engineer's technical knowledge of the work performed. It is not necessary to defend decisions as in an adversarial situation, but only to demonstrate that the individual in responsible charge made, or reviewed and approved, them and possessed sufficient knowledge of the project to make, or review and approve, them.

Examples of questions to be answered by the land surveyor or legally authorized civil engineer could relate to criteria for measurement, surveying methods, analysis, and conclusions made including, but not limited to, the retracement of government surveys, interpretation and construction of deed descriptions, conflicts between construction drawings and actual conditions, determination of the proper control datum and epoch, application of proportion methods and analysis of evidence related to written and unwritten property rights. The individual shall be able to clearly express the extent of control and how it is exercised and to demonstrate that the land surveyor or legally authorized civil engineer is answerable within said extent of control.

(c) Successor Licensee. In situations when the professional land surveyor or legally authorized civil engineer in responsible charge of a land surveying project is unavailable to complete the project, a professional land surveyor or legally authorized civil engineer (hereinafter referred to as the “successor licensee”) may assume responsible charge of the project as long as the successor licensee exercises the extent of control and assumes responsibility for the surveying decisions as required by subdivision (a) and meets the criteria described in subdivision (b), as well as meeting the requirements of the Professional Land Surveyors’ Act and Sections 411 and 415. Except as provided in Section 8761.2 of the Code, the original licensee is not relieved of any responsibility arising from the land surveying services of which he or she was in responsible charge.

(d) Portions of Projects. Nothing in this section prohibits a professional land surveyor or legally authorized civil engineer from providing services for portions of or to add to or to modify a land surveying project performed under the responsible charge of another licensee as long as the professional land surveyor or legally authorized civil engineer exercises the requisite extent of control and assumes responsibility for the land surveying decisions as required by subdivision (a) and meets the criteria described in subdivision (b), as well as meeting the requirements of the Professional Land Surveyors’ Act and Sections 411 and 415. The professional land surveyor or legally authorized civil engineer need only be in responsible charge of the portions, additions, or modifications or the portion of the project affected by the addition or modification and not of the entire project. Except as provided in Section 8761.2 of the Code, the original licensee is not relieved of any responsibility arising from the land surveying services of which he or she was in responsible charge.

(e) The term “responsible charge” does not refer to any of the following:

(1) the concept of financial liability;

(2) management control in a hierarchy of land surveyors or legally authorized civil

engineers except as each of the individuals in the hierarchy exercises independent land surveying judgment and thus responsible charge;

(3) such administrative and management functions as accounting, labor relations, personnel performance standards, marketing of services, or goal setting. While a land surveyor or legally authorized civil engineer may also have such duties in this position, it should not enhance or decrease one’s status of being in responsible charge of the work.

#### **405. Delegation of Certain Functions.**

(a) Whenever it is stated in these rules that the “Board” may or shall exercise or discharge any power, duty, purpose, function, or jurisdiction, the Board specifically has reserved the same for its own, exclusive action.

(b) Whenever it is stated the “executive officer” may or shall exercise or discharge any power, duty, purpose, function, or jurisdiction, the executive officer of the Board has the authority to act thereon.

(c) Any party in interest may appeal to the Board for review of the actions and decisions of the executive officer.

(d) Nothing herein prohibits the executive officer from re delegating to his/her subordinates as provided in Section 18572 of the Government Code.

(e) The power and discretion conferred by law upon the Board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code, issue subpoenas and subpoenas duces tecum, set and calendar cases for hearing and perform other functions necessary to the businesslike dispatch of the business of the Board in connection with proceedings under the provisions of Sections 11400 through 11529 of the Government Code, prior to the hearing of such proceedings; and the certification and delivery or mailing of copies of decisions under Section 11518 of said Code are hereby delegated to and conferred upon the executive officer, or to his/her designee.

#### **407. Fees.**

(a) All fees required by provisions of the code as implemented by the board shall be transmitted by money order, bank draft, cash or check, payable to the Department of Consumer Affairs, at Sacramento.

(b) The following is the prescribed application fee for:

(1) Authority to use the title "structural engineer" \$125 (2) Authority to use the title "geotechnical engineer" \$125 (3) Licensure as a professional engineer \$125 (4) Licensure as a professional land surveyor \$125 (5) Certification as an engineer-in-training or as a

land surveyor-in-training \$50

(c) The following is the prescribed examination fee for state-specific examinations:

(1) California Special Civil Seismic Principles \$150 (2) California Special Civil Engineering Surveying \$150 (3) Geotechnical Engineering \$150 (4) California State-Specific Land Surveying \$150 (5) Traffic Engineering \$150

(d) The two-year biennial renewal fee for a license that expires on or after July 1, 2012, shall be \$115. The two-year biennial renewal fee for a license that expires between October 1, 2005, and June 30, 2012, shall be \$125.

(e) The fee for an examination appeal filed pursuant to Rule 444 shall be \$134.00.

(f) The fee for each retired license shall be \$62.50; no renewal fee or other fee shall be charged for the retired license. (As used in this subdivision, "license" includes certificate of registration or license as a professional engineer, licensure as a professional land surveyor, and certificates of authority to use the titles "structural engineer," "geotechnical engineer," "soil engineer," "soils engineer," or "consulting engineer.")

(g) Fees required under provisions of this rule transmitted through the United States mail shall be deemed filed on the date shown by the post office cancellation mark stamped on the envelope containing it, or on the date mailed if satisfactory proof is made that mailing occurred on an earlier date.

(h) Renewal applications filed with the Board more than thirty (30) days after 12 midnight on the expiration date pursuant to the Professional Land Surveyors' Act and more than sixty (60) days after 12 midnight on the expiration date pursuant to the Professional Engineers Act and not accompanied by the prescribed delinquent penalty fee equal to 50 percent of the renewal fee, shall be returned by the executive officer with a statement of the reason therefor.

(i) Refund of fees submitted to the Board shall be made only as follows:

(1) Any application fees or penalties imposed and collected illegally, by mistake,

inadvertence or error shall be refunded in full.

#### **408. Meetings.**

(a) The board will meet at times and places within California designated by the board and shall hold at least two regular meetings each year.

(b) Special meetings of the board shall be called from time to time by the Board president when necessary. Special meetings shall also be called by the executive officer upon a written request signed by two board members.

(c) All meetings will be noticed in accordance with the requirements of the Bagley-Keene Open Meeting Act (Government Code Sections 11120 et seq.).

#### **410. Certificates.**

(a) Certificates and licenses will be issued in the order in which the applicants qualify.

(b) A duplicate of a certificate issued in accordance with Section 6765 of the Professional Engineers Act or Section 8749 of the Professional Land Surveyors' Act shall be issued only to replace one lost, destroyed, or mutilated, upon a written request accompanied by a fee of \$10 and an affidavit verifying the loss, destruction or mutilation of the previous certificate. The affidavit of lost license must be submitted on a form provided by the Board.

#### **411. Seal and Signature.**

(a) The seal required by Section 6764 of the Code shall be not less than one and one-half (1 1/2) inches in diameter and shall contain the following information:

(1) Within the top border of seal: Either “Professional Engineer,” “Registered Professional Engineer,” or “Licensed Professional Engineer.”

(2) Within the bottom border of seal: “State of California.” (3) In the center of seal:

(A) Licensee’s name as it appears on the certificate issued by the Board or as abbreviated pursuant to subdivision (d);

(B) Number of certificate or authority; and,

(C) Branch or authority of engineering in which licensed.

The seal shall be of a design similar to those shown below and shall bear at minimum those elements specified above.

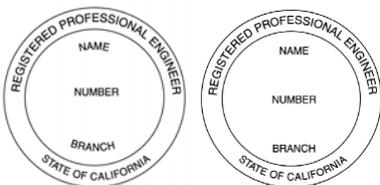
(b) The seal authorized by Section 8750 of the Code shall be not less than one and one-half (1 1/2) inches in diameter and shall contain the following information:

(1) Within the top border of the seal: Either “Professional Land Surveyor” or “Licensed Land Surveyor.”

(2) Within the bottom border of the seal: “State of California.” (3) In the center of the seal:

(A) Licensee’s name as it appears on the certificate issued by the Board or as abbreviated pursuant to subdivision (d); and,

(B) Number of certificate.



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The seal shall be of a design similar to those shown below and shall bear at minimum those elements specified above.

(c) The seal may be obtained by the licensee from any source.

(d) The seal may contain an abbreviated form of the licensee’s given name or a combination of initials representing the licensee’s given name provided the surname listed with the Board appears on the seal and in the signature.

(e) The seal shall be capable of leaving a permanent ink representation, a permanent impression, or an electronically-generated representation on the documents. The signature may be applied to the documents electronically.

(f) Preprinting of blank forms with the seal or signature, the use of decals of the seal or signature, or the use of a rubber stamp of the signature is prohibited.

(g) (1) All professional engineering plans, specifications, reports, or documents (hereinafter referred to as “documents”) shall be signed and sealed in accordance with the requirements of the Professional Engineers Act and any other laws related to the practice of professional engineering and shall be signed and sealed in a manner such that all work can be clearly attributed to the licensee(s) in responsible charge of the work.

(2) All maps, plats, reports, descriptions, or other professional land surveying documents (hereinafter referred to as “documents”) shall be signed and sealed in accordance with the requirements of the Professional Land Surveyors’ Act and any other laws related to the practice of professional land surveying and shall be signed and sealed in a manner such that all work can be clearly attributed to the licensee(s) in responsible charge of the work.

(3) 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.

(h) Each licensee shall include the date of signing and sealing immediately below or next to the signature and seal.

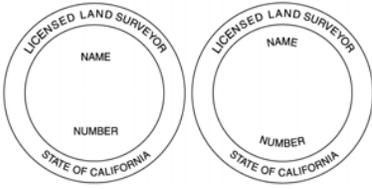
#### **412. Address Change.**

Each person who is an applicant for or a holder of a certificate or license issued by the Board shall file his or her address of record with the Board. Within thirty (30) days after any change to his or her address of record, he or she shall notify the Board in writing of such change.

#### **415. Practice Within Area of Competence.**

A professional engineer or land surveyor licensed under the Code shall practice and perform engineering or land surveying work only in the field or fields in which he/she is by education and/or experience fully competent and proficient.

Nothing in this regulation shall be construed: (1) to prohibit a professional engineer from signing plans which include engineering work in areas other than that in which he/she is fully



competent and proficient, if such work was performed by other engineers who were fully competent and proficient in such work; (2) to prohibit a professional engineer from performing engineering work or a land surveyor from performing land surveying work in areas which involve the application of new principles, techniques, ideas or technology; (3) to prohibit a professional engineer from supervising other engineers or a land surveyor from supervising other land surveyors who may respectively be performing engineering work or land surveying work in areas other than those in which the supervising professional engineer or supervising land surveyor is fully competent and proficient; and (4) to prohibit a professional engineer from signing plans which include engineering work, portions of which were designed or required by any governmental agency.

#### **416. Substantial Relationship Criteria.**

For the purpose of denial, suspension, or revocation of the license of a professional engineer or a land surveyor pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions, and duties of a professional engineer or land surveyor if, to a substantial degree, it evidences present or potential unfitness of a professional engineer or land surveyor to perform the functions authorized by his or her license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, those involving the following:

- (a) For professional engineers, any violations of the provisions of the Professional Engineers Act or aiding and abetting any person in such a violation;
- (b) For land surveyors, any violations of the provisions of the Professional Land Surveyors' Act or aiding and abetting any person in such a violation;
- (c) A conviction of a crime arising from or in connection with the practice of professional engineering or land surveying.

#### **418. Criteria for Rehabilitation.**

- (a) When considering the denial of an application for certification as an engineer-in-training or a land surveyor-in-training, or for licensure as a professional engineer, or for licensure as a professional land surveyor, or for authority to use the title "structural engineer," or for authority to use the title "geotechnical engineer," under Section 480 of the Code, the Board will consider the following criteria in evaluating the rehabilitation of the applicant and his or her present eligibility for such a licensure or authority:

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
  - (2) Evidence of any act(s) committed prior to or subsequent to the act(s) or crime(s) under consideration as grounds for denial which could also be considered as grounds for denial under Section 480 of the Code.
  - (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
  - (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
  - (5) Any evidence of rehabilitation submitted by the applicant.
  - (6) Total criminal record.
  - (7) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (b) When considering the suspension or revocation of the certification of an engineer-in-training or a land surveyor-in-training, or the license of a professional engineer or a professional land surveyor, or the authority to use the title “structural engineer,” or the authority to use the title “geotechnical engineer” under Section 490 of the Code, the Board will consider the following criteria in evaluating the rehabilitation of such person and his or her present eligibility to retain his or her license:
- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for suspension or revocation.
  - (2) Evidence of any act(s) committed prior to or subsequent to the act(s) or crime(s) under consideration as grounds for suspension or revocation which could also be considered as grounds for suspension or revocation under Section 490 of the Code.
  - (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
  - (4) The extent to which the licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the licensee.
  - (5) Any evidence of rehabilitation submitted by the licensee.
  - (6) Total criminal record.
  - (7) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(c) When considering a petition for reinstatement of the certification of an engineer-in-training or a land surveyor-in-training, or the license of a professional engineer or a professional land surveyor, or the authority to use the title “structural engineer,” or the authority to use the title “geotechnical engineer,” the Board shall evaluate evidence of rehabilitation submitted by the petitioner, including but not limited to the following:

(1) Educational courses, including college-level courses, seminars, and continuing professional development courses, completed after the effective date of the Board’s decision ordering revocation.

(2) Professional engineering or land surveying work done under the responsible charge of a licensee in good standing or under the direction of a person legally authorized to practice.

(3) Payment of restitution to the consumer(s) by the petitioner.

(4) Actual or potential harm to the public, client(s), employer(s), and/or employee(s) caused by the action(s) that led to the revocation or that could be caused by the reinstatement of the certificate, license, or authority.

(5) The criteria specified in subsection (b)(1) through (7), as applicable.

(6) Disciplinary history, other than criminal actions, after the revocation.

(7) Recognition by the petitioner of his or her own actions and/or behavior that led to the revocation.

(8) Correction of the petitioner’s actions and/or behavior that led to the revocation.

#### **419. Disciplinary Orders.**

For violations of Business and Professions Code sections 6775 and/or 8780 which result in an order issued in accordance with Chapters 4.5 and 5 of Part 1 of Division 3 of Title 2 of the Government Code against a professional engineering and/or a professional land surveying license, *the following provisions shall apply to disciplinary orders contained in decisions of the*

***Board:***

***(a) The minimum disciplinary order shall be reproof. The maximum disciplinary order***

***shall be revocation of the license.***

***(b) If warranted by extenuating and/or mitigating factors in the matter, the disciplinary***

***order may be stayed by an express condition that the respondent comply with probationary conditions. The minimum time period in which the respondent shall have to comply with the conditions shall be two years. For purposes of this section, this time period shall be known as the “period of probation.”***

***(c) All decisions containing stayed disciplinary orders as described in subdivision (b) shall include the following probationary conditions:***

***(1) The respondent shall obey all laws and regulations related to the practices of professional engineering and professional land surveying.***

(2) The respondent shall submit such special reports as the Board may require.

(3) The period of probation shall be tolled during the time the respondent is practicing exclusively outside the state of California. If, during the period of probation, the respondent practices exclusively outside the state of California, the respondent shall immediately notify the Board in writing.

***(4) If the respondent violates the probationary conditions in any respect, the Board, after giving the respondent notice and the opportunity to be heard, may vacate the stay and reinstate the disciplinary order which was stayed. If, during the period of probation, an accusation or petition to vacate stay is filed against the respondent, or if the matter has been submitted to the Office of the Attorney General for the filing of such, the Board shall have continuing jurisdiction until all matters are final, and the period of probation shall be extended until all matters are final.***

(5) Upon successful completion of all of the probationary conditions and the expiration of the period of probation, the respondent's license shall be unconditionally restored.

(d) All decisions containing stayed disciplinary orders as described in subdivision (b)

may include one or more of the following probationary conditions:

***(1) The respondent's license shall be suspended for a period not to exceed two years.***

If a suspension of the license is ordered, it shall begin on the effective date of the decision.

(2) Within 60 days of the effective date of the decision, the respondent shall successfully complete and pass the California Laws and Board Rules examination, as administered by the Board.

(3) The respondent shall successfully complete and pass a course in professional ethics, approved in advance by the Board or its designee. The probationary condition shall include a time period in which this course shall be successfully completed which time period shall be at least 60 days less than the time period ordered for the period of probation.

(4) Within 30 days of the effective date of the decision, the respondent shall provide the Board with evidence that he or she has provided all persons or entities with whom he or she has a contractual or employment relationship such that the relationship is in the area of practice of professional engineering and/or professional land surveying in which the violation occurred with a copy of the decision and order of the Board and shall provide

the Board with the name and business address of each person or entity required to be so notified. During the period of probation, the respondent may be required to provide the same notification to each new person or entity with whom he or she has a contractual or employment relationship such that the relationship is in the area of practice of professional engineering and/or land surveying in which the violation occurred and shall report to the Board the name and address of each person or entity so notified.

(5) The respondent shall provide verifiable proof to the Board that restitution has been paid as ordered. The probationary condition shall include a time period in which the verifiable proof shall be provided to the Board which time period shall be at least 60 days less than the time period ordered for the period of probation.

(e) In addition to the conditions as may be ordered pursuant to subdivisions (c) and/or

***(d), the following conditions shall be included for the following specific violations:***

***(1) Incompetency in the practice of professional engineering and/or professional land surveying:***

(A) The respondent shall successfully complete and pass, with a grade of “C” or better, a minimum of one and a maximum of three college-level courses, approved in advance by the Board or its designee. Such courses shall be specifically related to the area of violation. For purposes of this subdivision, “college-level course” shall mean a course offered by a community college or a four-year university of three semester units or the equivalent; “college-level course” does not include seminars. The probationary condition shall include a time period in which the course(s) shall be successfully completed which time period shall be at least 60 days less than the time period ordered for the period of probation.

(B) The respondent shall take and achieve the passing score as set by the Board for the second division examination (including the seismic principles and engineering surveying examinations for civil engineers), provided that in the event the respondent holds multiple licenses, the Board shall select the examination in the area of practice of professional engineering and/or professional land surveying in which the violation occurred and in the area of professional engineering and/or professional land surveying in which the respondent is licensed. The Board or its designee may select the specific examination questions such that the questions relate to the specific area of violation and comprise an examination of the same duration as that required of an applicant for licensure. The respondent shall be required to pay the application fee as described in Section 407 and shall be afforded all examination appeal rights as described in Sections 407, 443, and 444. The probationary condition shall include a time period in which the examination(s) shall be successfully completed which time period shall be at least 60 days less than the time period ordered for the period of probation.

(C) During the period of probation, the respondent may practice professional engineering and/or professional land surveying only under the review of a professional engineer and/or professional land surveyor licensed in the same branch as the respondent. This person or persons shall be approved in advance by the Board or its designee. Such

reviewing professional engineer and/or professional land surveyor shall initial every stamped or sealed document in close proximity to the respondent's stamp or seal.

***(2) Negligence in the practice of professional engineering and/or professional land surveying:***

(A) The respondent shall successfully complete and pass, with a grade of "C" or better, a minimum of one and a maximum of three college-level courses, approved in advance by the Board or its designee. Such courses shall be specifically related to the area of violation. For purposes of this subdivision, "college-level course" shall mean a course offered by a community college or a four-year university of three semester units or the equivalent; "college-level course" does not include seminars. The probationary condition shall include a time period in which the course(s) shall be successfully completed which time period shall be at least 60 days less than the time period ordered for the period of probation.

***(3) Violation and/or breach of contract in the practice of professional engineering and/or professional land surveying:***

(A) The respondent shall successfully complete and pass, with a grade of "C" or

better, a minimum of one and a maximum of three college-level courses, approved in advance by the Board or its designee. Such courses shall be specifically related to the area of violation. For purposes of this subdivision, "college-level course" shall mean a course offered by a community college or a four-year university of three semester units or the equivalent; "college-level course" does not include seminars. The probationary condition shall include a time period in which the course(s) shall be successfully completed which time period shall be at least 60 days less than the time period ordered for the period of probation.

***(4) Failure to file a record of survey and/or corner record in the practice of professional land surveying:***

(A) For any records of survey and/or corner records found not to have been filed and recorded, the respondent shall file or record, as appropriate, the required record(s) with the appropriate governmental agency within 90 days of the effective date of the decision. The respondent shall provide the Board with verifiable proof that the required record(s) have been filed or recorded, as appropriate, by the governmental agency within 30 days of such filing or recordation. If an actual suspension of the respondent's license is ordered as a probationary condition, the record(s) required by this subdivision shall be the only professional land surveying work the respondent is allowed to perform during the suspension.

(f) If the respondent is a civil engineer who is legally authorized to practice professional land surveying and the violation involves negligence and/or incompetency in the practice of professional land surveying and if warranted by aggravating factors in the matter, the disciplinary order shall include the following condition:

(1) The existing civil engineer license shall be revoked; a new civil engineer license shall be issued which does not authorize the respondent to practice professional land surveying. Before being permitted to practice professional land surveying, the respondent shall complete and comply with all of the legal requirements for licensure as a professional land surveyor, including, but not limited to, supplying the appropriate application documents and fees and taking and passing the entire second-division examination in professional land surveying.

In addition to the disciplinary orders described in this section, all decisions shall address recovery of the Board's investigation and enforcement costs, as described in and authorized by Business and Professions Code section 125.3.

Notwithstanding this section, non-conforming terms and conditions may be included as part of the disciplinary order, including such other further or lesser action as the Board deems appropriate, in the interest of protecting the public health, safety, and welfare.

As used in this section, "license" includes certificate of registration or license as a professional engineer, licensure as a professional land surveyor, and certificates of authority to use the titles "structural engineer," "geotechnical engineer," "soil engineer," "soils engineer," or "consulting engineer."

## **Article 2. Applications**

### **420. Applications.**

(a) Applications for certification, for licensure, or for a certificate of authority shall be:

- (1) Filed on a form prescribed by the executive officer and shall be typewritten.
- (2) Filed at the office of the Board and accompanied by the required application fee.
- (3) Made out properly in every respect and must contain full information.

(4) Subscribed and certified to "under penalty of perjury" as provided by Section 2015.5 of the Code of Civil Procedure.

(b) An application made otherwise will not be accepted by the Board and it may be returned by the executive officer with a statement of the reason therefor.

(c) Upon evaluation of the applicant's qualifications, his/her examination results and any other supporting data, his/her application will be either:

- (1) Denied without prejudice, and the application fee retained by the Board for the

Professional Engineers' Fund.

- (2) Approved, and he/she will be granted the certification for which application was made.

(d) The Board may request each applicant to provide the Board with a current photograph after an applicant has become licensed.

#### **420.1. Applicant Fingerprint Submittal.**

(a) Pursuant to Section 144 of the Business and Professions Code, the Board has the authority to obtain and review criminal offender record information. The information obtained as a result of the fingerprinting shall be used in accordance with Section 11105 of the Penal Code and to determine whether the applicant is subject to denial of license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code or Sections 6751, 6762.5, 6796.3, 8747.5, or 8803 of the Business and Professions Code.

(b) As a condition of application for a license, each applicant shall furnish to the Department of Justice a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal level criminal offender record information search conducted through the Department of Justice.

(c) The applicant shall pay any costs for furnishing the fingerprints and conducting the searches.

(d) The applicant shall certify when applying for a license whether his or her fingerprints have been furnished to the Department of Justice in compliance with this section.

(e) Failure to comply with the requirements of this section renders the application for license incomplete, and the application shall not be considered until the applicant demonstrates compliance with all requirements of this section.

(f) Notwithstanding any other provision of law, the results of any criminal offender record information request by either state or federal law enforcement authorities shall not be released by the Board except in accordance with state and federal requirements.

(g) This section shall apply to all applicants, including those applicants who submit applications pursuant to Sections 6750, 6758, 6759, 6763, 6796.3, 8740, 8746, 8748, and 8803 of the Business and Professions Code.

(h) As used in this section, "license" includes certification as an engineer-in-training or a land surveyor-in-training, certificate of registration or license as a professional engineer, licensure as a professional land surveyor, and certificates of authority to use the titles "structural engineer," "geotechnical engineer," "soil engineer," "soils engineer," or "consulting engineer."

(i) As used in this section, the term "applicant" shall have the meaning given to it by Section 144(c) of the Business and Professions Code, which states, "the term 'applicant' shall be limited to an initial applicant who has never been registered or licensed by the board or to an applicant for a new licensure or registration category."

#### **421. Refile Application.**

(a) The executive officer may prescribe a short application form for use of those applicants who, failing an examination, apply within a reasonable period of time after the

date of the examination previously failed, for re-examination. This application form may be known as a refile application form. The applicant and his application for re-examination shall be subject to the same provisions of the code and rules of the board, whenever applicable, as govern the filing of an original application.

(b) The applicant for re-examination shall be assigned by the executive officer to the next scheduled examination for which his/her application qualifies him/her.

#### **422. Final Filing Date.**

(a) An application filed with the board after the final filing date announced for an examination shall not be considered for such examination.

(b) Whenever the final filing date announced for an examination falls upon a Saturday, Sunday or holiday, it shall be extended to the next business day following.

(c) If an application is filed with the board through the United States mail, it shall be deemed filed on the date shown by the post office cancellation mark stamped on the envelope containing it, or on the date mailed if satisfactory proof is made that the mailing occurred on an earlier date.

#### **424. Experience Requirements – Professional Engineers.**

*(a) The engineering branches and title authorities described in Section 404, herein, overlap and some activities are common to two or more engineering branches and title authorities. The minimum number of years of qualifying experience in such overlapping engineering branches and title authorities may be used in securing licensure in any applicable engineering branch or title authority but cannot be used more than once. The only exception to this is experience credit for education. Qualifying education entitles a candidate to experience credit and this experience credit may be used again even though it has already been used to qualify for another examination.*

*(b) An applicant for licensure as a professional engineer shall be granted credit towards the experience requirement, as stated in subdivision (a), for the following education curriculum:*

(1) Four (4) years experience credit for graduation from an approved engineering curriculum.

(2) Two (2) years experience credit for graduation from a non-approved engineering curriculum or from an approved engineering technology curriculum.

(3) Five (5) years of experience credit for graduation from an approved cooperative work-study engineering curriculum.

(4) Five (5) years of experience credit for graduation from an approved post-graduate engineering curriculum.

(5) One-half (1/2) year of education credit for each year of study completed in an approved engineering curriculum that did not result in the awarding of a baccalaureate degree, except that the maximum of such experience shall be two (2) years. “Life Experience Degrees” are not acceptable and will not be counted towards the education credit. The additional actual work experience required to meet the six (6) years of experience

requirement shall have been gained after graduation, except for cooperative work study experience and post-graduate education.

The sum of qualifying experience credit for education and engineering teaching experience shall not exceed five years.

(c) Qualifying experience is that experience satisfactory to the Board which has been gained while performing engineering tasks under the responsible charge of a person legally qualified to practice in an applicant’s branch of engineering.

(1) For the purposes of this section, “legally qualified” means having an appropriate license as a professional engineer; or by being an employee of the Federal Government; or, except for civil engineers, by virtue of being an employee of a manufacturing, mining, public utility, research and development, or other industrial corporation; or by, except for civil engineers, holding an appropriate license as a contractor.

(2) Qualifying experience shall be computed on an actual time worked basis, but not to exceed forty hours per week.

(3) Applied engineering research is an engineering task for the purposes of determining qualifying experience.

(d) Computation of qualifying experience for licensure as a professional engineer or for authority to use the title “structural engineer” or “geotechnical engineer” shall be to the date of filing of the application; or it shall be to the final filing date announced for the examination if the application is filed within a period of thirty (30) days preceding the final filing date announced for such examination.

#### **425. Experience Requirements - Professional Land Surveyors.**

(a) An applicant for licensure as a professional land surveyor shall be granted credit towards the experience requirements contained in Sections 8741 and 8742 of the Code, for the following education curriculum:

(1) Four (4) years experience credit for graduation from an approved land surveying curriculum.

(2) Two (2) years experience credit for graduation from a non-approved land surveying curriculum.

(3) Five (5) years of experience credit for graduation from an approved cooperative work-study land surveying curriculum.

(4) One-half (1/2) year of education credit for each year of study completed in an approved land surveying curriculum that did not result in the awarding of a baccalaureate degree, except that the maximum of such experience shall be two (2) years. A year of study shall be at least 32 semester units or 48 quarter units, no less than 10 semester units or 15 quarter units of which shall be from classes clearly identified as being land surveying subjects.

“Life Experience Degrees” are not acceptable and will not be counted towards the education credit.

(b) All qualifying work experience in land surveying shall be performed under the responsible charge of a person legally authorized to practice land surveying. An applicant shall possess at least two years of actual responsible training experience in land surveying which shall involve at least four of the land surveying activities specified in subdivisions (a) – (g) and (k) – (n) of Section 8726 of the Code. Qualifying experience in activities specified in subdivision (a), (b), (k), (m), and (n) of Section 8726 shall not exceed one year in total. Qualifying experience shall be computed on an actual time worked basis, but not to exceed forty hours per week.

(c) For purposes of Section 8742 of the Code, the terms “responsible field training” and “responsible office training” include the land surveying activities specified in subdivisions (a) – (g) and (k) – (n) of Section 8726 of the Code performed in a field or office environment. Responsible training means the exercise of independent judgment under the responsible charge of a person legally authorized to practice land surveying.

(d) Computation of qualifying experience for a license as a professional land surveyor shall be to the date of filing of the application, or it shall be to the final filing date announced for the examination if the application is filed within a period of thirty (30) days preceding the final filing date announced for such examination.

(e) An applicant for licensure as a land surveyor who holds a valid and unexpired license as a civil engineer is exempt from the application requirements of subdivisions (b) and (c) of this section provided he or she submits sufficient documentation that he or she has a minimum of two years of actual broad based progressive experience in land surveying as required by Business and Professions Code Section 8742(a)(3). For purposes of this subdivision and Section 8742(a)(3) of the Code, “actual broad based progressive experience in land surveying” shall involve at least four of the land surveying activities specified in subdivisions (a) – (g) and (k) – (n) of Section 8726 of the Code. All qualifying work experience in land surveying shall be performed under the responsible charge of a person legally authorized to practice land surveying. Qualifying experience in activities specified in subdivisions (a), (b), (k), (m), and (n) of Section 8726 shall not exceed six months in total. Qualifying experience shall be computed on an actual time worked basis, but not to exceed forty hours per week. Time used to qualify for the civil

engineer license, including that given for educational credit, shall not be used to qualify for the land surveyor license, except for the six months allowed for the activities specified in subdivisions (a), (b), (k), (m), and (n) of Section 8726.

#### **426.10. Qualification Requirements for Structural Authority.**

An applicant for authority to use the title “structural engineer” shall comply with all of the following requirements:

- (a) The applicant shall hold an unexpired, valid California license as a civil engineer.
- (b) The applicant shall submit evidence satisfactory to the Board that the applicant has been in responsible charge of structural engineering qualifying experience, as defined in Section 426.11 and/or Section 426.12, for a minimum of three years subsequent to the date of licensure as a California civil engineer or as provided in Section 426.14.

#### **426.11. Qualifying Experience for Structural Authority.**

“Structural Engineering qualifying experience” is defined as acceptable professional practice in responsible charge of structural engineering projects as related to buildings (or other structures) and shall include structural design experience in all areas as specified in subdivisions (a)-(f) below because the stability of a structure is dependent upon the interaction of the individual structural components as well as the structure as a whole:

- (a) Common Construction Materials - Steel, Concrete, Wood and Masonry: A structural engineer shall have experience in the use of three of the four common construction materials of steel, concrete, wood, and masonry as they relate to the design, rehabilitation and/or investigation of buildings (or other structures);
- (b) Determination of Lateral Forces: A structural engineer shall have experience regarding structural design to resist lateral forces;
- (c) Selection of Framing Systems: A structural engineer shall have experience regarding the selection of framing systems, including the consideration of alternatives and the selection of an appropriate system for the interaction of structural components to support vertical and lateral loads;
- (d) Selection of Foundation Systems: A structural engineer shall have experience in the selection of foundation systems, including the consideration of alternatives and the selection of an appropriate type of foundation system to support the structure;
- (e) Application of Code Requirements: A structural engineer shall have experience in applying local, state and federal requirements relating to design loads, materials, and detailing;

and

(f) Multi-story Buildings or Equivalent Multi-level Structures: A structural engineer

shall have experience with the design and detailing for the transfer of forces between stories in multi-story buildings. A multi-story building is a building which is more than one story in height and which is not exempted pursuant to Section 6737.1 of the code.

#### **426.12. Experience for Checking Structural Plans.**

The Board shall consider the following experience as structural engineering qualifying experience, in lieu of that experience defined in Section 426.11: Professional level employment performing the checking of structural engineering plans and calculations, when performed under the immediate supervision of, and certified to by, either a civil engineer who holds a valid California license with the authority to use the title “structural engineer” in this state or a Professional Engineer who is authorized to use the title “structural engineer” registered or licensed outside of this state but registered or licensed in a state which has a comity agreement with the State of California related to structural engineering. However, an applicant who applies for authority to use the title “structural engineer” under this section shall furnish the Board with a verification of employment from each employer which lists the name(s) of the immediate supervisor of the applicant during the period of employment used as qualifying experience under this section.

#### **426.13. Supplemental Evidence of Responsible Charge for Structural Authority.**

(a) The board shall consider the following as supplemental evidence, if submitted for consideration, to assist in determining whether an applicant for structural authority possesses the *requisite three (3) years of structural engineering qualifying experience at the level of responsible charge as required in Section 426.10 and defined in Sections 426.11 and 426.12:*

*(1) Project management experience:*

*(A) Coordination with other disciplines such as civil, electrical, mechanical and software engineers and/or architects;*

*(B) Production of construction document packages such as calculations, drawings and specifications; and,*

*(C) Supervision and/or coordination of staff.*

*(2) Field experience:*

*(A) Familiarity with techniques, methods and means of construction;*

*(B) Field observation of construction for compliance to drawings and specifications; and,*

*(C) Field investigation of existing structures for evaluation or forensic purposes.*

*(b) Notwithstanding subsections (a)(1) and (a)(2), other types of experience deemed*

equivalent to project management or field experience may be considered on a case-by-case basis to assist in determining whether an applicant possesses the three (3) years of

structural engineering qualifying experience at the level of responsible charge as required in Section 426.10.

(c) Any experience submitted pursuant to this section shall not be considered as a substitute for the mandatory types of qualifying experience required by Section(s) 426.11 and/or 426.12.

**426.14. Experience for Structural Engineering Gained Out of State.**

(a) The Board may consider an application for authority to use the title “structural engineer” from an applicant who does not possess three (3) years of qualifying experience subsequent to the date of licensure as a California civil engineer but who possesses experience equivalent to that provided in Section 426.11 based upon either:

(1) A minimum of three (3) years of structural engineering qualifying experience gained after the applicant’s registration or licensure as a civil engineer in another state.

(2) A minimum of three (3) years of structural engineering qualifying experience which was gained while exempt from licensure pursuant to Section 6739 of the Code or while employed or registered or licensed in another country. Such experience shall be in addition to the experience required for licensure as a civil engineer in this state.

(b) Applicants seeking approval of their structural engineering qualifying experience,

pursuant to this section, shall file their application at least six months prior to the final filing deadline to be considered for the next scheduled examination. Applicants may be required to appear for an interview regarding their structural engineering qualifying experience.

**426.50. Qualification Requirements “Soil Engineer,” “Soils Engineer,” or “Geotechnical Engineer.”**

An applicant for authority to use the title “soil engineer,” “soils engineer,” or “geotechnical engineer” shall:

(a) Hold an unexpired, valid California civil engineer license.

(b) Submit evidence satisfactory to the Board that the minimum number of years of qualifying experience or education has been met as required in Sections 6736.1(b) and 6763 of the Code and as defined in Section 426.51, subsequent to the date of licensure as a California civil engineer. Up to one year credit of qualifying experience may be given for possession of post graduate degree(s) from a Board approved school of engineering with major studies in soil engineering as listed in Section 426.51(c). Credit for post graduate degree(s) will not be given if it has already been applied to the experience requirement for civil engineering licensure.

**426.51. Qualifying Experience for “Soil Engineer.”**

“Qualifying experience” means responsible charge of soil engineering projects. Evidence shall be provided that the applicant has qualifying experience in the areas described in subdivisions (a), (c) and (e) and has demonstrated working knowledge in the areas described in subdivisions (a) through (e). At least one-half of the applicant’s annual full-time professional practice shall be in soil engineering, except that a teacher of soil engineering and related courses at a board approved school of engineering will be given credit for applicable consulting work as a percentage of equivalent full-time work. Applicable consulting work shall be substantiated by references and project documents.

(a) Development of programs of geotechnical investigation which includes, but is not

limited to:

(1) Communication with other design consultants to determine their geotechnical

input needs;

(2) Performance of literature searches, site history analyses, etc., related to surface

and subsurface conditions;

(3) Formulation or engineering evaluation of field exploration and laboratory testing

programs to accomplish the scope of the investigation;

(4) Preparation or engineering evaluation of proposals.

(b) Performance of geotechnical field and laboratory studies which includes, but is not

limited to:

(1) Direction and/or modification of field exploration programs, as required upon

evaluation of the conditions being encountered;

(2) Classification and evaluation of subsurface conditions.

(3) Understanding the purposes for and being qualified to perform routine field and

laboratory tests for:

(A) soil strength

(B) bearing capacity

(C) expansion properties

(D) consolidation characteristics

(E) soil collapse potential

(F) erosion potential

(G) compaction characteristics

(H) material acceptability for use in fill

(I) pavement support qualities

(J) freeze-thaw properties

- (K) grain-size
- (L) permeability/percolation properties

(c) Analysis of geotechnical data and engineering computations which includes, but is not limited to:

1. (1) Analysis of field and laboratory test results regarding:
  - (A) soil strength
  - (B) bearing capacity
  - (C) expansion properties
  
  - (D) consolidation characteristics
  - (E) soil collapse potential
  - (F) erosion potential
  - (G) compaction characteristics
  - (H) material acceptability for use in fill (I) pavement support qualities
  
  - (J) freeze-thaw properties
  - (K) grain-size
  - (L) permeability/percolation properties (M) ground water conditions
  - (N) soil dynamic properties
  
2. (2) Performance of computations using test results and available data regarding:
  - (A) bearing capacity
  - (B) foundation type, depth, dimensions
  - (C) allowable soil bearing pressures
  
  - (D) potential settlement (E) slope stability
  - (F) retaining systems (G) soil treatment
  
  - (H) dewatering/drainage (I) floor support
  - (J) pavement design (K) site preparation
  
  - (L) fill construction
  - (M) liquefaction potential
  - (N) ground response to seismic forces (O) ground water problems; seepage (P) underpinning

(d) Performance or engineering evaluation of construction, postconstruction and site monitoring which includes, but is not limited to:

- (1) Performance or supervision of geotechnical testing and observation of site grading;
  
- (2) Analysis, design and evaluation of instrumentation programs to evaluate or monitor various phenomena in the field, such as settlement, slope creep, porewater pressures and ground water variations;

(3) Geotechnical observation during construction and/or installation, including but not limited to, spread foundations, drilled piers, piles, slurry walls, anchors, bulkheads, shoring, underpinning and subdrains;

(4) Engineering evaluation of soil related distress.

(e) Preparation or engineering evaluation of geotechnical reports which includes, but is

not limited to:

(1) Preparation of appropriate plans, logs, test results and other exhibits;

(2) Documentation of testing and observation;

(3) Preparation of written reports which present findings, conclusions and

recommendations of the investigation;

(4) Preparation of specifications and guidelines for achieving the intent of

subdivision (e)(3), above.

#### **427.10. References for Professional Engineers and Land Surveyors.**

(a) To assist the Board in evaluating qualifications, each applicant for licensure as a professional engineer or a professional land surveyor shall submit completed reference forms from as many references as may be consistent with the length and character of the professional experience. Professional engineer applicants shall use the form entitled "Professional Engineer Engagement Record and Reference Form (PE09)(2017)," hereby incorporated by reference. Professional Land Surveyor applicants shall use the form entitled "Professional Land Surveyor Engagement Record and Reference Form (LS09)(2017)," hereby incorporated by reference. Professional land surveyor applicants may also use the form entitled "Log Book for Professional Land Surveyor Applicants (LB09)(2017)," hereby incorporated by reference, as an optional supplement to the "Professional Land Surveyor Engagement Record and Reference Form (LS09)(2017)."

(b) The applicant for licensure as a professional engineer or a professional land surveyor shall furnish not less than the number of references required hereafter:

(1) An applicant for a license as a professional land surveyor or as a professional engineer shall refer to not less than four persons who are authorized to practice in the discipline for which the applicant is applying and who have personal knowledge of the applicant's qualifying experience, none of whom is a relative either by birth or marriage.

(2) Nothing herein contained shall be construed to limit authority of the Board to seek such other information pertinent to the education and experience of the applicant as may be required to verify his or her qualifications. The Board may waive the requirement that only registered or licensed individuals give references for the applicants in disciplines other than civil engineering or land surveying when the applicants have no association with registered or licensed individuals in their work environment.

#### **427.20. Reference Requirements for “Soil Engineer.”**

(a) An applicant for authority to use the title “soil engineer” shall submit at least four completed reference forms from individuals who hold or held current, valid, unexpired California licenses as civil engineers during the time of the applicant’s experience. None of the references shall be related to the applicant by birth or marriage. At least two of these individuals shall be civil engineers who are or were actively engaged in the practice of “soil engineering.” Each civil engineer providing a reference shall clearly indicate areas of personal knowledge of the applicant’s qualifying experience. Reference forms completed by civil engineers registered or licensed outside of California, in lieu of or in addition to California references, will be considered; however, the Board may require additional information as specified in Section 427.20(d). Reference forms completed by civil engineers registered or licensed outside of the State of California shall be notarized. Information submitted by references is confidential.

(b) Notwithstanding Section 427(a), a reference form shall be submitted for each period of qualifying experience listed on the engagement record form for which the applicant desires

credit.

(c) An applicant will be required to verify employment inclusive dates for each period of

qualifying experience. Employment verification forms may be used for this purpose.

(d) Nothing contained in this section shall limit the authority of the Board to require that an applicant submit additional references, employment verifications and other information pertinent to education or experience to verify that the applicant has met the minimum qualifications as defined in Sections 6736.1(a) and (c) of the Code and Sections 426.50 and

426.51.

#### **427.30. References for Structural Authority.**

(a) An applicant for authority to use the title “structural engineer” shall submit at least three completed reference forms, using the form entitled “Structural Engineer Engagement Record and Reference Form (SE09)(2017),” hereby incorporated by reference, from individuals who hold current, valid California licenses as civil engineers and who are authorized by the Board to use the title “structural engineer,” or equivalent thereto, none of whom is related to the applicant by birth or marriage. Each reference shall have personal knowledge of the applicant’s qualifying experience and shall have examined the applicant’s work. It is preferred that at least one of the references has been a direct supervisor for a period of not less than six months.

(b) “Equivalent thereto” as used in this section, means a professional engineer who is authorized to use the title “structural engineer” in a state which has a comity agreement with this state related to “structural engineering.”

Reference forms completed by a “structural engineer” registered outside of this state but registered or licensed in a state which has a comity agreement with the State of California shall be notarized.

(c) Nothing contained in this section shall limit the authority of the Board to require that an applicant submit additional references, employment verifications and other information pertinent to the applicant’s education and/or experience to verify that the applicant meets the minimum qualifications as defined in Sections 426.10, 426.11, and/or 426.13.

#### **428. Abandoned Applications.**

In the absence of special circumstances any of following actions by an applicant for certification or licensure shall be considered to constitute abandonment of the application and shall result in cancellation of the application with no refund of the application fee:

(a) Failure to provide additional information or references within 90 days following the mailing of a request by the Board’s staff; or

(b) Failure to complete that examination to which the application has been assigned within two (2) years from the date of filing of the application; or

(c) Failure to appear for examination at the designated time and place unless a postponement has been obtained in accordance with Rule 446; or

(d) Failure to appear for examination at the designated time and place after having obtained two postponements.

#### **429. Application Appeal.**

(a) An applicant who is notified by the board that his/her application has been denied may appeal to the board for re-evaluation of his/her application. An application appeal shall be filed with the board within 60 days after the date the denial notice has been mailed to him/her.

(b) An application appeal shall be made in writing and shall state the reason therefor. An appeal shall be supported by additional evidence, more references, affidavits, and supplemental information such that the board may be better informed of the applicant’s qualifications.

(c) The executive officer may deny an application appeal which is not filed within the time period provided in paragraph (a) of this rule.

(d) The executive officer shall notify each applicant who appeals under this rule of the approval of his/her appeal, or the reason for its denial.

(e) When an application has been denied, the executive officer shall also notify the applicant that he or she has the right to hearing under the Administrative Procedure Act (Government Code Section 11500 et seq.), if he or she makes a written request for hearing within 60 days after service of the notice of denial.

### **Article 3. Examinations**

#### **436. Schedule of Regular Written Examinations.**

(a) Written examinations shall be given at intervals as determined by the board but not less than once each year.

(b) The executive officer shall publish annually, not later than three months prior to the end of each calendar year, a schedule of examinations for the following year.

(c) Whenever circumstances warrant such action the board may postpone, advance, or otherwise change without notice the examination schedule previously published.

#### **437. Individual Examination.**

(a) Individual examinations for licensure, certification, or authorization shall be either oral or written or a combination of both, in the discretion of the Board. They may be held at times and places convenient to the Board.

(b) An applicant for licensure as a professional engineer or as a land surveyor will be considered for assignment to an individual examination provided his/her qualifications meet all the requirements of the code and rules of the Board and provided he/she holds a valid registration or license as a professional engineer as a land surveyor in another state, in the same branch in which he/she is applying; such registration or license having been obtained by passing written examinations of comparable standard to those examinations required in California.

(c) An applicant for authority to use the title "structural engineer" may be considered for the individual examination only if he/she has passed a 16-hour examination in another state which the Board may deem equivalent to the written examination for structural authority given in California. This 16-hour examination shall have been in addition to the regular examination series for registration or licensure as a professional engineer and shall have contained significant emphasis on seismic design and lateral load considerations.

#### **438. Waiver of Fundamentals Examination.**

(a) An applicant for licensure as a professional engineer whose qualifications meet all requirements of the code and rules of the Board will be allowed to appear for only the second division of the written examination prescribed by Section 6755 of the Code if he or she meets one or more of the following requirements:

- (1) Holds valid licensure as a professional engineer in another branch in California.
  - (2) Holds valid certification as an engineer-in-training in another state obtained by passing a written examination in which the content of the examination is designed to test the candidate's knowledge of fundamental engineering subjects, including mathematics and the basic sciences.
  - (3) Is a graduate of an approved engineering curriculum and submits satisfactory evidence to the Board that he or she has fifteen (15) years or more of additional engineering work experience satisfactory to the Board that has been gained in addition to graduation, or any other education experience, and while performing engineering tasks under the direction of a person legally authorized to practice in an applicant's branch of engineering.
  - (4) Is a graduate of a non-approved engineering curriculum or an approved engineering technology curriculum and submits satisfactory evidence to the Board that he or she has seventeen (17) years or more of additional engineering work experience satisfactory to the Board that has been gained in addition to graduation, or any other education experience, and while performing engineering tasks under the direction of a person legally authorized to practice in an applicant's branch of engineering.
  - (5) Is a graduate of an approved engineering curriculum and an approved post-graduate engineering curriculum and submits satisfactory evidence to the Board that he or she has fourteen (14) years or more of additional engineering work experience satisfactory to the Board that has been gained in addition to graduation, or any other education experience, and while performing engineering tasks under the direction of a person legally authorized to practice in an applicant's branch of engineering.
  - (6) Is a graduate of a non-approved engineering curriculum or an approved engineering technology curriculum and an approved postgraduate engineering curriculum and submits satisfactory evidence to the Board that he or she has fourteen (14) years or more of additional engineering work experience satisfactory to the Board that has been gained in addition to graduation, or any other education experience, and while performing engineering tasks under the direction of a person legally authorized to practice in an applicant's branch of engineering.
  - (7) Is the holder of an earned doctorate in engineering from a department or program at a university or college where the undergraduate engineering curriculum in the same branch of engineering is an approved engineering curriculum; or is serving in a tenure-track faculty position in an approved engineering curriculum at the level of Assistant Professor or higher.
- (b) An applicant for licensure as a land surveyor whose qualifications meet all requirements of the code and rules of the Board will be allowed to appear for only the second division of the written examination prescribed by Section 8741 of the Code if he or she meets one or more of the following requirements:

- (1) Holds valid licensure as a professional civil engineer in California.
  - (2) Holds valid certification as a land surveyor-in-training in another state obtained by passing a written examination in which the content of the examination is designed to test the candidate's knowledge of fundamentals of surveying subjects, including mathematics and the basic sciences.
  - (3) Is a graduate of an approved land surveying curriculum and submits satisfactory evidence to the Board that he or she has fifteen (15) years or more of additional land surveying work experience satisfactory to the Board that has been gained in addition to graduation, or any other education experience, and while performing land surveying tasks under the direction of a person legally authorized to practice land surveying.
  - (4) Is a graduate of a non-approved land surveying curriculum and submits satisfactory evidence to the Board that he or she has seventeen (17) years or more of additional land surveying work experience satisfactory to the Board that has been gained in addition to graduation, or any other education experience, and while performing land surveying tasks under the direction of a person legally authorized to practice in land surveying.
  - (5) Is a graduate of an approved land surveying curriculum and an approved post-graduate land surveying curriculum and submits satisfactory evidence to the Board that he or she has fourteen (14) years or more of additional land surveying work experience satisfactory to the Board that has been gained in addition to graduation, or any other education experience, and while performing land surveying tasks under the direction of a person legally authorized to practice in land surveying.
  - (6) Is a graduate of a non-approved land surveying curriculum and an approved post-graduate land surveying curriculum and submits satisfactory evidence to the Board that he or she has sixteen (16) years or more of additional land surveying work experience satisfactory to the Board that has been gained in addition to graduation, or any other education experience, and while performing land surveying tasks under the direction of a person legally authorized to practice in land surveying.
- (c) An applicant for a California certification as an engineer-in-training or a land surveyor-in-training who holds valid certification in another state obtained as in (a)(2) or (b)(2) above may be issued a California certificate.

**439. Examination Not Permitted.**

A person certified or licensed, by the board in a category or branch is not permitted to take any portion of the examination for the same category or branch unless his or her certificate or license has expired pursuant to Section 6796.3 or Section 8803 of the Code or unless re- examination is ordered as a probationary condition pursuant to Section 419.

**441. Authorization to Take Examination.**

(a) After evaluating the qualifications of an applicant and establishing that person's eligibility for the examination, in accordance with the applicable laws and regulations administered by the board, the executive officer assigns the applicant to the next scheduled examination for which the applicant qualified.

(b) Any applicant who lacks the qualifications for admission to the examination required by Chapter 7 or 15 of the code and rules of the board shall be declared ineligible; the application shall be denied and the application fee may be partially refunded in accordance with the provisions of Sections 158, 6763.5 and 8748.5 of the code. The executive officer shall notify each applicant of the reason for denying the application.

(c) Notification of the applicant's assignment and authorization to take the examination and the location shall be postmarked at least 14 days prior to the examination date.

#### **442. Examination Subversion.**

(a) Examination subversion is the use of any means to alter the results of an examination to cause the results to inaccurately represent the competency of an examinee. Examination subversion includes, but is not limited to:

(1) Communication between examinees inside of the examination room.

(2) Giving or receiving any unauthorized assistance on the examination while an examination is in progress.

(3) Having any unauthorized printed or written matter or other devices in his or her possession which might serve to aid the examinee on the examination.

(4) Obtaining, using, buying, selling, distributing, having possession of, or having unauthorized access to secured examination questions or other secured examination material prior to, during or after the administration of the examination.

(5) Copying another examinee's answers or looking at another examinee's materials while an examination is in progress.

(6) Permitting anyone to copy answers to the examination.

(7) Removing any secured examination materials from the examination facility.

(8) Allowing another person to take the examination in the examinee's place.

(9) Placing any identifying mark upon his or her examination papers other than his or

her identification number or other identifiers as directed by the examination administrator.

(10) Use by an examinee of any written material, audio material, video material, digital material, or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination.

(11) Writing on anything other than designated examination material.

(12) Writing or erasing anything after time is called.

(b) At the discretion of the Executive Officer, if there is evidence of examination

subversion by an examinee prior to, during, or after the administration of the examination, one or more of the following may occur:

(1) The examinee may be denied the privilege of taking the examination if examination subversion is detected before the administration of the examination.

(2) If the examination subversion detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further examination subversion shall be taken, and the examinee may be permitted to continue with the examination.

(3) The examinee may be requested to leave the examination facility if examination subversion is detected during the examination.

(4) The examinee may be requested to submit written advisement of his or her understanding of and intent to comply with the law.

(5) The examination results may be voided and the application and examination fee forfeited.

(6) The examinee may not be allowed to sit for an examination for up to three (3) years.

(c) If examination subversion is detected after the administration of the examination, the Executive Officer shall make appropriate inquiry to determine the facts concerning the examination subversion and may take any of the actions as described in subdivision (b).

(d) The Executive Officer reserves the right not to release the examination results to the examinee pending the outcome of any investigation of examination subversion.

(e) Removal from or voidance of one part of a multiple-part examination taken during a single examination administration may be cause for removal from or voidance of all other parts of the multiple-part examination.

#### **443. Inspection of Examination.**

(a) The following definitions as used in these regulations have the meaning expressed in this section:

(1) "Essay type problem" means an engineering or land surveying problem in which the examinee provides a free response as solution and is graded for method, computations and answers. Scoring is determined by comparing examinee solutions with pre-determined scoring plans.

(2) “Multiple-choice type problem” means an engineering or land surveying problem which requires the examinee to select an answer from a multiple response format. Computations are not considered in the grading process for multiple-choice items.

(b) Multiple-choice type problems shall not be reviewed.

(c) An applicant who meets the criteria specified in subparagraph (1) below shall be granted 8 hours to review or write an appeal for an essay type problem or problems attempted during the written examination.

(1) Who is no more than 15% below the passing score on a State specific Professional Engineering or Professional Land Surveying examination.

(d) Time and location of the examination review or appeal session shall be designated by the executive officer.

(e) At the time of the review or appeal session, no one other than the examinee and representatives of the board shall have access to such examination papers.

(f) Evidence that the applicant erased, deleted, removed or altered the examination papers, or the material contained thereon during such inspection, may result in the applicant being disqualified by the board from taking future examinations.

(g) The applicant shall have access to his or her examination, test booklets and solutions when reviewing or preparing an appeal of an essay type problem during the time period specified in subsection (c).

#### **444. Examination Appeal.**

(a) Applicants who were unsuccessful in the Professional Engineers or Professional Land Surveyor Examination will be notified by mail with the notice of results of the date and time in which they may attend a review or appeal session. The appeal fee referred to in section 407(d) must be received by the board within twenty-one (21) days from the date of the notice of the results of his or her examination. Applicants who decide to submit an appeal will be required to submit their appeal at the end of the review or appeal session.

(b) An appeal of an essay type problem of the examination shall be made in writing; and it shall state the reason for appeal, citing the item or items against which the appeal is directed, and it shall be accompanied by the appropriate appeal fee. The applicant shall identify the specific item(s) being challenged: the specific reasons for the challenge: and cite reference materials, facts and figures to substantiate the appeal. The appeal fee shall be payable for an appeal directed at an essay type problem of the examination. An appeal may be directed to any specific essay type problem or problems or sub-parts thereof, but an appeal shall cause the entire problem to be rescored. Rescoring of an essay type problem may result in one of the following three actions: points may be added; points

may be deducted; or the score may remain the same. If the appeal results in the appellant being deemed to have passed the examination, the full appeal fee shall be refunded.

(c) The executive officer may deny any appeal requesting a review of an examination that is not accompanied by information supporting the reason for such request, is not accompanied by the correct appeal fee, or is not filed within the period of time provided in paragraph (a) of this rule.

(d) The Board's decision on an appeal of an essay type problem is final and shall not be re-evaluated. A multiple-choice type problem is not appealable.

#### **446. Postponements.**

The executive officer may grant a postponement, not to exceed two such postponements for each application to any applicant who for reasonable cause is prevented from appearing for examination at the time fixed, provided the applicant's request for postponement and the reason therefor is filed with the principal office of the board at any time prior to the expiration of the ten (10) day period immediately following the date of such examination.

#### **447. Permissible Reference Material and Other Accessories.**

The executive officer shall advise each examinee when he/she is notified that he/she is assigned to an examination, what reference and other materials may be used during the examination to which he/she has been assigned.

### **Article 4. Miscellaneous**

#### **461. Testing Laboratory Reports.**

Reports issued by Testing Laboratories shall be prepared by or under the supervision of a licensed civil, electrical, ~~or mechanical~~ mechanical or software engineer as appropriate and signed or sealed by him/her whenever such reports go beyond the tabulation of test data (composition of material, breaking stress, et cetera) and proceeds to:

(a) Interpret the data to draw conclusions as to the characteristics of civil engineering structure, an electrical, ~~or mechanical~~ mechanical or software device, or parts thereof.

(b) Express civil, electrical, ~~or mechanical~~ mechanical or software mechanical engineering judgment in the form of recommendations derived from the results of the test.

(c) Perform design work in the preparation of plans, specifications, and other instruments requiring licensure as a civil, electrical, and ~~or mechanical~~ mechanical and/or software engineer.

**463. Notice of Association or Disassociation With Partnership, Firm, or Corporation.**

(a) A professional engineer who is associated as the partner, member, officer, or employee in responsible charge of professional engineering services offered or performed by a firm, partnership, or corporation shall notify the Board within thirty (30) days of such association or termination of association on a form approved by the Board.

(b) A licensed land surveyor and/or civil engineer who practices or offers to practice land surveying, according to the provisions of Section 8729 of the Code, as a partner, member, or officer of a partnership, firm, or corporation shall advise the Board within thirty (30) days of such association or termination of association on a form approved by the Board.

(c) A licensed photogrammetric surveyor who is associated as a member, partner, officer, or employee in a firm, partnership, or corporation which offers or performs photogrammetric surveying services according to the provisions of Article 5.5 of the Professional Land Surveyors' Act shall notify the Board within thirty (30) days of such association or termination of association on a form approved by the Board.

(d) A firm which contains partners, members or officers as described above will be allowed six months following the death, disassociation, or retirement of a member, partner, or officer whose name the firm, partnership, or corporation carried in its firm title to make a written request to the Board for an investigation pursuant to the requirements of Section 6738(e) of the Code. The Board will determine if such firm is eligible to continue use of its firm title without change.

**463.5 Providing Notice of Licensure.**

Every licensee shall provide notice to his or her clients that the licensee is licensed by the Board for Professional Engineers, Land Surveyors, and Geologists. Notice shall be provided by one or more of the following methods:

(a) Displaying his or her wall certificate in a public area; or office; or individual work area of the premises where the licensee provides the licensed service.

(b) Providing a statement to each client that states the client understands the licensee is licensed by the Board for Professional Engineers, Land Surveyors, and Geologists. Said statement shall be signed and dated by the client and shall be retained in the licensee's records.

(c) Including a statement that the licensee is licensed by the Board for Professional Engineers, Land Surveyors, and Geologists either on letterhead or on a contract for services. If said statement is included on a contract for services, it shall be placed immediately above the signature line for the client in at least 12 point type.

(d) Posting a notice in a public area of the premises where the licensee provides the licensed services that states the named licensee is licensed by the Board for Professional Engineers, Land Surveyors, and Geologists. Said notice shall be in at least 48 point type.

**464. Corner Record.**

(a) The corner record provided for in Section 8773.1 of the Code shall contain the following information consistent with each corner identified therein:

- (1) The county and, if applicable, the city in which the corner is located.
- (2) A brief legal description of the section, township, range, base, and meridian or the Rancho in which the corner is located, if applicable.
- (3) Identification of the corner type (e.g., government corner, control corner, property corner, etc.).
- (4) Identification of the reference of the related statute (i.e., Section 8765(d), Section 8771, Section 8773, or other relevant sections of the Code).
- (5) Description of the physical condition of any monument(s) found, set, reset, replaced, or removed.
- (6) The date of the visit to the monument when the information for the corner record was obtained.
- (7) For corners for which the corner record is filed in accordance with Section 8765(d) of the Code, the corner record shall show the applicable provisions of the following, consistent with the purpose of the survey:
  - (A) All monuments found, set, reset, replaced, or removed, describing their kind, size, and location, and giving other data relating thereto.
  - (B) Bearing or witness monuments, basis of bearings, bearing and length of lines, scale of map, and north arrow.
  - (C) The relationship to those portions of adjacent tracts, streets, or senior conveyances which have common lines with the survey.
  - (D) Any other data necessary for the intelligent interpretation of the various items and locations of the points, lines, and areas shown, or convenient for the identification of the survey or the surveyor, as may be determined by the licensee preparing the corner record.
- (8) For corners for which the corner record is filed in accordance with any subdivision of Section 8771 of the Code, the information shown on the corner record shall also show the applicable provisions of Section 8771 of the Code.

(9) For Public Land Corners for which a corner record is required by Section 8773(a) of the Code, a sketch shall be made showing site recovery information that was used for the corner.

(10) Except for those corners referenced in subdivision (9), a drawing shall be made which shows measurements that relate the corner to other identifiable monuments.

(11) The date of preparation of the corner record and, as prescribed by Section 8773.4 of the Code, the signature and title of the chief of the survey party if the corner record is prepared by a United States Government or a California State agency or the signature and seal of the land surveyor or civil engineer, as defined in Section 8731 of the Code, preparing the corner record.

(12) The date the corner record was filed and the signature of the county surveyor.

(13) A document or filing number and/or Agency Index information.

(b) A reference to the California Coordinate System is optional at the discretion of the preparer of the record.

(c) A corner record shall be filed for each public land survey corner which is found,

reset, or used as control in any survey by a land surveyor or a civil engineer. Exceptions to this rule are identified in Section 8773.4 of the Code.

(d) The corner record shall be filed within 90 days from the date a corner was found, set, reset, or used as control in any survey. The provisions for extending the time limit shall be the same as provided for a record of survey in Section 8762 of the Code.

(e) A corner record may be filed for any property corner, property controlling corner, reference monument, or accessory to a property corner, together with reference to record information. Such corner record may show one or more property corners, property controlling corners, reference monuments, or accessories to property corners.

(f) A corner record is limited to a single corner record document, in accordance with Section 8773.1 of the Code, and shall be legible, clear, and understandable. A corner record may be submitted in an electronic medium if the county surveyor has a system to provide for the submittal, archiving, and distribution to the public in an electronic or hard copy format.

(g) The standard markings and standard abbreviations used by the Bureau of Land Management (formerly the General Land Office) of the United States Department of the Interior shall be used in the corner record.

(h) The corner record shall be filed on a form prescribed by the Board. The approved form is "Corner Record", (BPELSG2016 revised 06/2016), incorporated herein by reference.

#### **465. Records of Survey - Public Officers.**

A public officer who has performed a survey which is subject to the requirements of Section 8762 of the code, shall file a record of survey map or comply with Section 8765(a) of the code. In either event, the public officer shall file the information required by Section 8765(a) of the code relating to his or her survey within the time limit provided for in Section 8762 of the code.

#### **470. Application Response.**

(a) The following timeframes, based on taking and passing the first available examination, shall apply to applications for licensure as a professional engineer or as a professional land surveyor when an examination is required.

(1) Within 150 calendar days of receipt of an application, the Board shall inform the applicant in writing that the application is either accepted for filing or that it is deficient and what specific information or documentation is required to complete the application.

(2) A complete application shall include a score for all parts of the examination. Within 60 calendar days after the filing of a complete application, the Board shall make a decision regarding the applicant's eligibility for licensure.

(b) The following timeframes, based on taking and passing the first available

examination, shall apply to applications for certification to use the titles "Engineer-in-Training" or "Land Surveyor-in-Training" when an examination is required:

(1) Within 75 calendar days of receipt of an application, the Board shall inform the applicant in writing that the application is either accepted for filing or that it is deficient and what specific information or documentation is required to complete the application.

(2) A complete application shall include a score for the examination. Within 60 calendar days after the filing of a complete application, the Board shall make a decision regarding the applicant's eligibility to use either the title "Engineer-in-Training" or "Land Surveyor-in-Training."

(c) The following timeframes shall apply to applications for licensure as a professional engineer or as a professional land surveyor when comity licensure is applied for and when no examination is required:

(1) Within 125 calendar days of receipt of a comity application, the Board shall inform the applicant in writing that the application is either accepted for filing and complete or that it is deficient and what specific information or documentation is required to complete the application.

(2) Within 60 calendar days after the date of filing of a complete application, the Board shall make a decision regarding the application for licensure.

#### **471. Processing Time.**

The Board's time periods are based upon an applicant taking and passing the first available examination and for processing an application from the receipt of the initial application to the final decision regarding issuance or denial of licensure based on the board's actual performance during the two years preceding the proposal of this section:

- (a) The median time was 255 days.
- (b) The minimum time was 10 days. (c) The maximum time was 1548 days.

#### **472. Citations of Unlicensed Persons.**

(a) The Executive Officer or his or her designee may issue a citation for any violation of any provision of law enforced by the Board to an unlicensed person who, unless otherwise exempt, is acting in the capacity of a professional engineer or a professional land surveyor.

(b) Each citation

(1) shall be in writing;

(2) shall describe with particularity the nature of the violation, including specific

reference to the provision or provisions of law determined to have been violated;

(3) shall contain an assessment of an administrative fine, an order of abatement fixing a reasonable period of time for abatement of the violation, or both an

administrative fine and an order of abatement;

(4) shall be served on the cited person at the last known business or residence

address personally or by certified mail with return receipt requested;

(5) shall inform the cited person that failure to pay the fine within 30 calendar days

of the date of assessment, unless the citation is being appealed, may result in the Executive Officer applying to the appropriate superior court for a judgment in the amount of the administrative fine;

(6) shall inform the cited person that, if he or she desires an informal conference to appeal the finding of a violation, the informal conference shall be requested by written notice to the Board within 30 calendar days from date of issuance of the citation;

(7) shall inform the cited person that, if he or she desires a hearing to appeal the finding of a violation, that hearing shall be requested by written notice to the Board within 30 calendar days from date of issuance of the citation.

#### **472.1. Assessment of Administrative Fine.**

(a) In no event shall the administrative fine be less than \$50 or exceed \$5,000 for each violation.

(b) In determining the amount of an administrative fine, the Executive Officer shall consider the following factors:

- (1) The nature and severity of the violation;
- (2) The good or bad faith exhibited by the cited person;
- (3) The history of previous violations;
- (4) The extent to which the cited person has cooperated with the Board and the

Board's investigation;

(5) The extent to which the cited person has mitigated or attempted to mitigate any

damage or injury caused by his or her violation;

(6) Any factors in extenuation or aggravation related to the violation; (7) Other matters as may be appropriate.

#### **472.2. Appeal of Citations.**

(a) Any person served with a citation issued pursuant to Section 472 may appeal the citation by submitting a written request for a hearing to the Board within 30 calendar days of the date of issuance of the citation. Such hearings shall be conducted pursuant to the Administrative Procedure Act, Chapters 4.5 and 5, commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) In addition to requesting a hearing as described in subsection (a), the cited person may, within 30 calendar days of the date of issuance of the citation, submit a written request for an informal conference with the Executive Officer.

(c) The Executive Officer may, within 30 working days from receipt of a written request for an informal conference as provided in subsection (b), hold an informal conference with the cited person and/or his or her legal counsel or authorized representative. The 30-day period may be extended by the Executive Officer for good cause. Following the informal conference, the Executive Officer shall affirm, modify, or dismiss the citation, including any administrative fine assessed or order of abatement issued. An order affirming, modifying, or dismissing the original citation shall be served on the cited person within 30 calendar days from the informal conference. Said 30-day period may be extended by the Executive Officer for good cause. Said order shall state in writing the reasons for the affirmation, modification, or dismissal of the original citation. If the order affirms or modifies the original citation, said order shall fix a reasonable period of time for abatement of the violation or payment of the fine. Service of this order shall be made as provided in Section 472. This order shall be considered the conclusion of the informal conference proceedings.

(d) If the citation is affirmed or modified following the informal conference, the cited person may request a hearing as provided in subsection (a) within 30 calendar days from service of the order described in subsection (c). The cited person shall not be permitted to request another informal conference.

(e) If the citation is dismissed after the informal conference, the request for a hearing, if any, shall be deemed to be withdrawn.

(f) Submittal of a written request for a hearing as provided in subsection (a), an informal conference as provided in subsection (b), or both stays the time period in which to abate the violation and/or to pay the fine.

(g) If the written request for a hearing as provided in subsection (a) or an informal conference as provided in subsection (b) or both is not submitted within 30 calendar days from the date of issuance of the citation, the cited person is deemed to have waived his or her right to a hearing or an informal conference.

### **472.3. Compliance with Order.**

(a) If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, then he or she may request from the Executive Officer an extension of time within which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) Failure of an applicant for licensure as a professional engineer or as a professional land surveyor to abate the violation or to pay the fine within the time allowed is a ground for denial of licensure.

(c) Notwithstanding any other provision of the law, the Executive Officer may waive all or part of an administrative fine if the cited person satisfactorily completes all the requirements for, and is issued, a license.

(d) If the cited person fails to pay all of the assessed fine within the time allowed, the Executive Officer may apply to the appropriate superior court for a judgment in the amount of the administrative fine.

(e) If a hearing as provided in Section 472.2(a) is not requested, payment of the fine shall not constitute an admission of the violation charged.

(f) Payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

### **472.4. Disconnection of Telephone Service.**

*(a) If, upon investigation, the Executive Officer has cause to believe that an unlicensed individual acting in the capacity of a professional engineer or a professional land surveyor, who is not otherwise exempted from the provisions of the Professional Engineers Act or the Professional Land Surveyors' Act, has violated Sections 6787 or 8792 of the Code by advertising with respect to the offering or performance of services, without being properly licensed, the Executive Officer may issue a citation under Section 472 containing an order of abatement which requires the cited person to both cease the unlawful advertising and notify the telephone company furnishing services to the cited person to disconnect the telephone services furnished to any telephone number contained in the unlawful advertising, and that subsequent calls to that number shall not be referred by the telephone company to any new telephone number obtained by that person. The cited person shall provide written evidence of compliance to the Executive Officer.*

(b) If the cited person fails to comply with an order of abatement as described in subsection (a) within the time allowed, the Executive Officer shall inform the Public Utilities Commission of the violation in accordance with Business and Professions Code section 149.

#### **473. Citations of Licensed Persons.**

(a) The Executive Officer or his or her designee may issue a citation for any violation of any provision of law enforced by the Board to any person who holds a license issued by the

Board.

(b) Prior to the issuance of a citation in any case involving allegations of negligence

and/or incompetence, as defined in Section 404, in the professional practice, the Executive Officer shall submit the alleged violation for review to at least one licensee of the Board who is competent in the branch of professional engineering or professional land surveying most relevant to the subject matter of the citation. The licensee reviewing the alleged violation shall be either a member of the Board's professional staff, a technical advisory committee member, or an expert consultant. Upon conclusion of the review, the reviewer shall prepare a finding of fact and a recommendation based upon that finding to which the Executive Officer shall give due consideration in determining whether cause exists to issue a citation.

(c) Each citation

(1) shall be in writing;

(2) shall describe with particularity the nature of the violation, including specific

reference to the provision or provisions of law determined to have been violated;

(3) 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 an administrative fine

and an order of abatement;

(4) shall be served on the cited person at the address of record on file with the Board

personally or by certified mail with return receipt requested;

(5) shall inform the cited person that failure to pay the fine within 30 calendar days

of the date of assessment, unless the citation is being appealed, may result in disciplinary

action being taken by the Board and may result in the full amount of the assessed fine being added to the fee for renewal of the license, in which case the license shall not be renewed without the payment of the renewal fee and fine;

(6) shall inform the cited person that, if he or she desires an informal conference to appeal the finding of a violation, the informal conference shall be requested by written notice to the Board within 30 calendar days from the date of issuance of the citation;

(7) shall inform the cited person that, if he or she desires a hearing to appeal the finding of a violation, that hearing shall be requested by written notice to the Board within 30 calendar days from the date of issuance of the citation.

#### **473.1. Assessment of Administrative Fines.**

(a) In no event shall the administrative fine be less than \$50 or exceed \$5,000 for each violation.

(b) In determining the amount of an administrative fine, the Executive Officer shall consider the following factors:

(1) The nature and severity of the violation;

(2) The good or bad faith exhibited by the cited person;

(3) The history of previous violations;

(4) The extent to which the cited person has cooperated with the Board and the

Board's investigation;

(5) The extent to which the cited person has mitigated or attempted to mitigate any

damage or injury caused by his or her violation;

(6) Any factors in extenuation or aggravation related to the violation; (7) Other matters as may be appropriate.

#### **473.2. Appeal of Citations.**

(a) Any person served with a citation issued pursuant to Section 473 may appeal the citation by submitting a written request for a hearing to the Board within 30 calendar days of the date of issuance of the citation. Such hearings shall be conducted pursuant to

the Administrative Procedure Act, Chapters 4.5 and 5, commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) In addition to requesting a hearing as described in subsection (a), the cited person may, within 30 calendar days of the date of issuance of the citation, submit a written request for an informal conference with the Executive Officer.

(c) The Executive Officer may, within 30 working days from receipt of a written request for an informal conference as provided in subsection (b), hold an informal conference with the cited person and/or his or her legal counsel or authorized representative. The 30-day period may be extended by the Executive Officer for good cause. Following the informal conference, the Executive Officer shall affirm, modify, or dismiss the citation, including any administrative fine assessed or order of abatement issued. An order affirming, modifying, or dismissing the original citation shall be served on the cited person within 30 calendar days from the informal conference. Said 30-day period may be extended by the Executive Officer for good cause. Said order shall state in writing the reasons for the affirmation, modification, or dismissal of the original citation. If the order affirms or modifies the original citation, said order shall fix a reasonable period of time for abatement of the violation or payment of the fine. Service of this order shall be made as provided in Section 473. This order shall be considered the conclusion of the informal conference proceedings.

(d) If the citation is affirmed or modified following the informal conference, the cited person may request a hearing as provided in subsection (a) within 30 calendar days from service of the order described in subsection (c). The cited person shall not be permitted to request another informal conference.

(e) If the citation is dismissed after the informal conference, the request for a hearing, if any, shall be deemed to be withdrawn.

(f) Submittal of a written request for a hearing as provided in subsection (a), an informal conference as provided in subsection (b), or both stays the time period in which to abate the violation and/or to pay the fine.

(g) If the written request for a hearing as provided in subsection (a) or an informal conference as provided in subsection (b) or both is not submitted within 30 calendar days from the date of issuance of the citation, the cited person is deemed to have waived his or her right to a hearing or an informal conference.

### **473.3. Compliance with Order.**

(a) If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, then he or she may request from the Executive Officer an extension of time within which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) Failure of the cited person to abate the violation or to pay all of the assessed fine within the time allowed is grounds for suspension or revocation of the cited person's license.

(c) If the cited person fails to pay all of the assessed fine within the time allowed, the balance due for the fine shall be added to the renewal fee for the license, and the license shall not be renewed until the fine is paid in full.

(d) If a hearing as provided in Section 473.2(a) is not requested, payment of the fine shall not constitute an admission of the violation charged.

(e) Payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

#### **473.4. Disconnection of Telephone Service.**

(a) If, upon investigation, the Executive Officer has cause to believe that a professional engineer or a professional land surveyor, who is not otherwise exempted from the provisions of the Professional Engineers Act or the Professional Land Surveyors' Act, has violated Sections 6787 or 8792 of the Code by advertising with respect to the offering or performance of services, without being properly licensed, the Executive Officer may issue a citation under Section 473 containing an order of abatement which requires the cited person to both cease the unlawful advertising and notify the telephone company furnishing services to the cited person to disconnect the telephone services furnished to any telephone number contained in the unlawful advertising, and that subsequent calls to that number shall not be referred by the telephone company to any new telephone number obtained by that person. The cited person shall provide written evidence of compliance to the Executive Officer.

(b) If the cited person fails to comply with an order of abatement as described in subsection (a) within the time allowed, the Executive Officer shall inform the Public Utilities Commission of the violation in accordance with Business and Professions Code section 149.

#### **474. Establishment of Criteria.**

The criteria for the selection of a contractor are: professional excellence, demonstrated competence, specialized experience of the person, education and experience, ability to meet schedules, nature and quality of completed work, reliability of the person, location and other considerations the Executive Officer deems necessary to the performance of the contract.

##### **474.1. Request for Qualifications.**

(a) Where a project requires professional engineering or land surveying services the Executive Officer shall make a statewide request for qualifications through the publications of the respective professional societies and in other appropriate publications.

(b) The request for qualifications shall contain the following information: the nature of the work, the criteria upon which the award shall be made, the name of the contact person, the address to send statements of qualifications and performance data , and the deadline by which the statements must be received.

(c) The Executive Officer shall provide a copy of each request for qualifications to all small businesses who have indicated an interest in receiving the request. A failure of the Executive Officer to send a copy of a request for qualifications to any person shall not operate to preclude any contract.

#### **474.2. Selection of Engineers and Land Surveyors.**

After expiration of the deadline stated in the publications, as specified in Section 474.1, the Executive Officer, in conjunction with no less than three persons selected by the Executive Officer, shall evaluate statements of qualifications and performance data of firms which have been submitted to the Board. Based upon the statement of qualifications and performance data, a list ranking the qualified firms will be made.

From a list of three or more qualified firms, the Executive Officer shall select the first three ranked firms for contract negotiation to provide the services required. Where three qualified firms cannot be found which could provide the required service, the Executive Officer may then select from the available firms or issue a new request for proposal. Selections based on less than three firms must be documented with the names and addresses of firms contacted by the Executive Officer and the reasons why the provisions of this section could not be met. This documentation shall be maintained in the Boards Contract file.

#### ***474.3. Conflict of Interest/Unlawful Activity.***

***Governmental agency employees who are related to persons seeking to contract under these regulations shall not participate in any aspect of the contract review or selection process.***

***Further, any practice that results in an unlawful activity including, but not limited to, rebates, kickbacks, or any other unlawful consideration shall be prohibited.***

#### **474.4. Amendments.**

In instances where the Board effects a necessary change in the project during the course of performance of the contract, the contractor's compensation may be adjusted by negotiation of a mutual written agreement in a fair and reasonable amount where the

amount of work to be performed by the contractor is changed from that which the parties had originally contemplated.

#### **474.5. Contracting in Phases.**

Should the Board determine that it is necessary or desirable to have a given project performed in phases, it will not be necessary to negotiate the total contract price or compensation provisions in the initial instance, provided that the Board shall have determined that the person is best qualified to perform the whole project at a fair and reasonable cost, and the contract contains provisions that the Board, at its option, may utilize the person for other phases and that the person will accept a fair and reasonable price for subsequent phases to be later negotiated and reflected in a subsequent written instrument. The procedure with regard to negotiation provided for in Section 6106 of the Public Contract Code shall be applicable.

#### ***475. Code of Professional Conduct – Professional Engineering***

***To protect and safeguard the health, safety, welfare, and property of the public, every person who is licensed by the Board as a professional engineer, including licensees employed in any manner by a governmental entity or in private practice, shall comply with this Code of Professional Conduct. A violation of this Code of Professional Conduct in the practice of professional engineering constitutes unprofessional conduct and is grounds for disciplinary action pursuant to Section 6775 of the Code. This Code of Professional Conduct shall be used for the sole purpose of investigating complaints and making findings thereon under Section 6775 of the Code.***

##### ***(a) Compliance with Laws Applicable to a Project:***

***A licensee shall provide professional services for a project in a manner that is consistent with the laws, codes, ordinances, rules, and regulations applicable to that project. A licensee may obtain and rely upon the advice of other professionals (e.g., architects, attorneys, professional engineers, professional land surveyors, and other qualified persons) as to the intent and meaning of such laws, codes, and regulations.***

##### ***(b) Conflict of Interest:***

***(1) If a licensee provides professional services for two or more clients on a project or related projects, the licensee shall disclose in writing to those clients and property owners or their authorized representatives his or her relationship to those clients.***

***(2) If a licensee has a business association or a financial interest which may influence his or her judgment in connection with the performance of professional services, the licensee shall fully disclose in writing to his or her client(s) or employer(s) the nature of the business association or the financial interest.***

***(3) A licensee shall not solicit or accept payments, rebates, refunds, or commissions, whether in the form of money or otherwise, from contractors or suppliers of material,***

*systems, or equipment in return for specifying their products to a client or employer of the licensee.*

*(4) A licensee, while engaged by a governmental agency as an officer, employee, appointee, agent, or consultant of that agency shall not engage in a professional engineering business or activity that may be subject to that licensee's direct or indirect control, inspection, review, audit, or enforcement on behalf of that agency, unless the circumstances are disclosed to and approved by that agency in writing prior to such engagement.*

*(c) Representations:*

*(1) A licensee shall not misrepresent his or her qualifications to a prospective or existing client or employer.*

*(2) A licensee shall not misrepresent to a prospective or existing client the licensee's scope of responsibility in connection with projects or services for which the licensee is receiving or will receive compensation from that client.*

*(3) A licensee shall not misrepresent his or her scope of responsibility in connection with projects or services for which the licensee is claiming credit.*

*(4) A licensee shall not misrepresent nor permit the misrepresentation of his or her professional qualifications, or affiliations or the affiliations or purposes of the institutions, organizations, or other businesses with which he or she is associated.*

*(5) When providing information in connection with a person's application for a license to practice professional engineering, a licensee shall accurately represent his or her knowledge of the applicant's qualifications.*

*(6) A licensee may advertise or solicit for any services for which he or she is authorized by licensure.*

*(7) A licensee shall only express professional opinions that have a basis in fact or experience or accepted engineering principles.*

*(8) A licensee shall attribute proper credit to others for their professional work or professional contribution.*

*(9) A licensee shall not knowingly permit the publication or use of his or her data, reports, plans, or other professional documents for unlawful purposes.*

*(10) A licensee shall not falsely or maliciously injure or attempt to injure the reputation or business of others.*

*(11) A licensee shall not misrepresent data and/or its relative significance in any professional engineering report.*

*(d) Confidential Information:*

*Confidential information obtained by a licensee, in his or her professional capacity, concerning a client, employer, or other related party shall not be disclosed by the licensee without the permission of the client, employer, or other related party except for the following:*

*(1) Disclosures made in response to an order of the court or to a subpoena or summons enforceable by an order of the court.*

*(2) Disclosures made in an adjudicatory proceeding.*

*(3) Disclosures made in response to an official inquiry from a governmental regulatory agency.*

*(4) Disclosures made when required by law.*

*(5) Disclosures made upon discovering a hazard within the licensee's field of professional expertise which may threaten the health, safety, and welfare of the public.*

*(6) Disclosures made when providing evidence to the Board regarding other licensees or unlicensed individuals who may have violated the Professional Engineers*

*Act.*

*(7) Disclosures made regarding illegal conduct. As used in this section, "confidential information" means information identified as confidential by the licensee's client, employer, or other related party.*

*(e) Document Submittal:*

*(1) A licensee shall not misrepresent the completeness of the professional documents he or she submits to a governmental agency.*

*(2) A licensee shall not misrepresent the completeness of the professional documents he or she prepared to his or her client or to other involved parties.*

#### **476. Code of Professional Conduct – Professional Land Surveying**

To protect and safeguard the health, safety, welfare, and property of the public, every person who is licensed by the Board as a professional land surveyor or professional civil engineer legally authorized to practice land surveying, including licensees employed in any manner by a governmental entity or in private practice, shall comply with this Code of Professional Conduct. A violation of this Code of Professional Conduct in the practice of professional land surveying constitutes unprofessional conduct and is grounds for disciplinary action pursuant to Section 8780 of the Code. This Code of Professional

Conduct shall be used for the sole purpose of investigating complaints and making findings thereon under Section 8780 of the Code.

**(a) Compliance with Laws Applicable to a Project:**

A licensee shall provide professional services for a project in a manner that is consistent with the laws, codes, ordinances, rules, and regulations applicable to that project. A licensee may obtain and rely upon the advice of other professionals (e.g., architects, attorneys, professional engineers, professional land surveyors, and other qualified persons) as to the intent and meaning of such laws, codes, and regulations.

**(b) Conflict of Interest:**

(1) If a licensee provides professional services for two or more clients on a project or related projects, the licensee shall disclose in writing to those clients and property owners or their authorized representatives his or her relationship to those clients.

(2) If a licensee has a business association or a financial interest which may influence his or her judgment in connection with the performance of professional services, the licensee shall fully disclose in writing to his or her client(s) or employer(s) the nature of the business association or the financial interest.

(3) A licensee shall not solicit or accept payments, rebates, refunds, or commissions, whether in the form of money or otherwise, from contractors or suppliers of material, systems, or equipment in return for specifying their products to a client or employer of the licensee.

(4) A licensee, while engaged by a governmental agency as an officer, employee, appointee, agent, or consultant of that agency shall not engage in a professional land surveying business or activity that may be subject to that licensee's direct or indirect control, inspection, review, audit, or enforcement on behalf of that agency, unless the circumstances are disclosed to and approved by that agency in writing prior to such engagement.

**(c) Representations:**

(1) A licensee shall not misrepresent his or her qualifications to a prospective or existing client or employer.

(2) A licensee shall not misrepresent to a prospective or existing client the licensee's scope of responsibility in connection with projects or services for which the licensee is receiving or will receive compensation from that client.

(3) A licensee shall not misrepresent his or her scope of responsibility in connection with projects or services for which the licensee is claiming credit.

- (4) A licensee shall not misrepresent nor permit the misrepresentation of his or her professional qualifications, or affiliations or the affiliations or purposes of the institutions, organizations, or other businesses with which he or she is associated.
- (5) When providing information in connection with a person's application for a license to practice professional land surveying, a licensee shall accurately represent his or her knowledge of the applicant's qualifications.
- (6) A licensee may advertise or solicit for any services for which he or she is authorized by licensure.
- (7) A licensee shall only express professional opinions that have a basis in fact or experience or accepted land surveying principles.
- (8) A licensee shall attribute proper credit to others for their professional work or professional contribution.
- (9) A licensee shall not knowingly permit the publication or use of his or her data, reports, maps, or other professional documents for unlawful purposes.
- (10) A licensee shall not falsely or maliciously injure or attempt to injure the reputation or business of others.
- (11) A licensee shall not misrepresent data and/or its relative significance in any professional land surveying report.

**(d) Confidential Information:**

Confidential information obtained by a licensee, in his or her professional capacity, concerning a client, employer, or other related party shall not be disclosed by the licensee without the permission of the client, employer, or other related party except for the following:

- (1) Disclosures made in response to an order of the court or to a subpoena or summons enforceable by an order of the court.
- (2) Disclosures made in an adjudicatory proceeding.
- (3) Disclosures made in response to an official inquiry from a governmental regulatory agency.
- (4) Disclosures made when required by law.
- (5) Disclosures made upon discovering a hazard within the licensee's field of professional expertise which may threaten the health, safety, and welfare of the public.

(6) Disclosures made when providing evidence to the Board regarding other licensees or unlicensed individuals who may have violated the Professional Land Surveyors' Act.

(7) Disclosures made regarding illegal conduct.

As used in this section, "confidential information" means information identified as confidential by the licensee's client, employer, or other related party.

**(e) Document Submittal:**

(1) A licensee shall not misrepresent the completeness of the professional documents he or she submits to a governmental agency.

(2) A licensee shall not misrepresent the completeness of the professional documents he or she prepared to his or her client or to other involved parties.