

January 2010

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Professional Engineers in California Government (PECG) Assembly Bill 1431

The employee union PECG, who represents geologists working for the state, has sponsored a bill to put one additional member on BPELS, requiring that person to be licensed under the Act, and change the name of the board to include geologists and geophysicists. This bill was carried through the Assembly by Member Hill from the Bay area, and passed by a vote of 68 to 0 on the Assembly floor on January 27, 2010. The bill now must clear the Senate and be signed by the Governor to become effective. AEG representatives, John Pfeiffer from the Sacramento Section, Erik Olsberg from the San Francisco, and I, met with Assembly Member Hill's staff along with PECG's lobbyist in December to discuss amending the bill to include at least two persons licensed under the Act, a geologist and a geophysicist. We were told at that meeting that no amendments would be considered until the bill passed the Assembly, but once that happened they would work with us to amend it as Senate bill, and so we'll see if that can be accomplished. Getting an amended bill through the Senate may be doable, but getting the Governor to sign it is another story. According to Steve Baker, PECG's lobbyist, the Governor is opposed to adding public members to the board, which would be a necessary component of the amended bill, since current law requires an equal or greater number of public members to be professional members. This could go a couple of ways, we could get the bill amended and the Governor could refuse to sign it (quite possible), or we could just let the PECG bill go through Senate as written in which case the Governor will likely sign it, but it will be inadequate for our needs.

So we needed to think a bit about how to approach the necessary amendments to AB 1431, and came up with a few options. We've included those options below in this newsletter so I'm not going to discuss them all here. The option we've chosen to pursue maintains the size of the board at thirteen members (the unamended PECG bill increases the size of the board to fourteen - opposition to it on this basis was discussed by BPELS), and this is accomplished, of course, by replacing two positions currently held by engineers with a geologist and geophysicist. As with everything we have pursued throughout this process, this option has its critics, but curiously enough only from the geologic community thus far. There appears to be concern that requesting this would cause outrage from the engineering community and derail all efforts to reform the board to accommodate geologists. I have not seen any evidence that this is likely to occur, in fact, at the January 27, 2010 BPELS meeting, Geotechnical Board Member Jim Foley, offered that since he will be termed out in July, his seat might be a good one to be reallocated for geologists. I think we should give the engineering community a little credit and assume that given sound justification and a logical explanation we can count on their support.

Here's how it goes, BPELS is currently made up of five engineers, one land surveyor, and seven public members. Of the engineering disciplines, the **three practice acts** are represented and **two represent title acts** from other branches of engineering. If we were to request parity on this basis, we would ask for four members to represent our **two practice acts** and **two title acts**. This would, in turn, require at least three additional public members and four if you want to have an uneven number on the board. This option has zero chance of even finding an author to carry the legislation and the Governor would veto it if it passed. So to achieve parity, the obvious thing to do is to replace the two title acts currently on the board with representative of the two practice acts from the Geologists and Geophysicists Act. Engineers still maintain a majority of technical members on the board and all practice acts regulated by the board, including the land surveyors, would then have a representative on the board. There is really no logical argument to oppose this, although some have questioned the need to have a geophysicist on the board due to the relatively small number of licensees. In my mind, the relatively small size of the regulated community is justification in itself to have a member on the board where they would otherwise be insignificant. Furthermore, the boards are required to have more public members than professional members so that the professions can't dominate the boards and override the interests of the public in favor of the profession, so the concept of limiting the influence of any particular profession is already in play. Anyone concerned that the engineering community will suffer by losing two seats on the board should consider a few things 1) the budget allocated to administration of the Engineer's act is roughly ten times that of the geologist's act, 2)

geologists have lost their entire board and 80% of its staff, and 3) it gives BPELS a stronger footing in sunset review hearings coming up in 2011.

The replacement option is attractive on all levels. It is fair, it achieves the Governor's desire to consolidate regulatory functions, and it does not increase the size of the board. Putting all these things together it should be relatively easier to get support for this in the senate and ultimately the Governor's signature.

Preliminary Injunction/Writ of Mandate/Declaratory Relief

Legal action to overturn ABx4 20 continues. The hearing on injunctive relief was rescheduled to March 15th to see if an agreement could be reached that would address concerns with regard to representation on the Board and operations/representation at the staff level within BPELS. So far no agreement has been reached and a recent proposal was rejected because it required legislative remedies. In the meantime, the Attorney General's office has filed a demurrer, which is scheduled to be heard on February 9th. The demurrer is basically a request to have our case dismissed and its filing is pretty much automatic in cases against the state. In responding to the demurrer, we will have the opportunity to have our basic arguments heard in court, and if we prevail through this process we will know that we have a case and will be in a much stronger position going forward. On the flip side, the process could result in our case being dismissed by the court. At least then we will know where we stand. We have exercised our right to amend our complaint, which will take the February 9th meeting off calendar and be rescheduled. The petition for the Preliminary Injunction will be abandoned, since the board and staff are already gone, and a request for Writ of Mandate to re-establish the board will take its place.

Potential Settlement Agreement

Last week we sent around an amended settlement agreement to membership (see below) that details our demands of BPELS in terms of administering the Geologists and Geophysicists Act. After the January 27, 2009 BPELS meeting, John Pfeiffer, Bruce Hilton, and I met with BPELS Executive Officer, Dave Brown and Counsel, Gary Duke, to discuss the settlement agreement. It was a good meeting and we were able to reach agreement on most issues. If the Work Force Study currently underway and anticipated to be complete this week recommends additional staff and includes licensed professionals, we will have the basis for settlement agreement, and given reasonable assurances that the recommendations of the Work Force Study will be included in a Budget Change Proposal and approved, we should be able to settle the lawsuit and revisit the issue of reestablishing an independent board through legislation, sometime down the road and, hopefully, under a more friendly administration.