Board for Professional Engineers and Land Surveyors
Board Meeting Minutes
June 23 & 24, 2005

Radisson Fisherman's Wharf Hotel
250 Beach Street
San Francisco, CA 94133
(415) 392-6700

Thursday, June 23, 2005

Board Members Present:	James Foley (President), Gregg Brandow, Arthur Duffy, Robert Jones, Michael Welch, Dale Wilson, and Edward Yu
Board Members Absent:	Cindy Tuttle (Vice President), William Roschen, and Millicent Safran
Board Staff Present:	Cindi Christenson (Executive Officer), Don Chang (Legal Counsel), Susan Ruff (Liaison Deputy Attorney General), Nancy Eissler (Enforcement Program Manager), Debbie Thompson (Budget Analyst), and Cindy Fernandez (Executive Analyst)
Public Present:	See Attached

1. Roll Call to Establish a Quorum

The meeting was called to order by President Foley at 1:30 p.m. Roll call was taken, and a quorum was established.

2. Public Comment

Mr Stout asked how many members of the Board are officially gone. President Foley responded that Mr. Fruchtman, Ms. Warren, and Mr. Schock were not reappointed and are no longer on the Board.

5. Approval of Delinquent Reinstatements (Possible Action)

MOTION: Mr. Wilson/Mr. Duffy moved to approve the Delinquent Reinstatements as follows:

CIVIL

1. **Elizabeth Ann Wemple**
   Reinstate applicant's civil license once she takes and passes the Board's Laws and Regulations Examination.

MECHANICAL

1. **Reed C Lyons**
   Reinstate applicant's mechanical license, having passed the Board's Laws and Regulations Examination.

VOTE: 7-0, motion carried.

6. Comity and Temporary Authorization Applications (Possible Action)

MOTION: Mr. Wilson/Mr. Yu moved to approve the Amended Handout Comity List.

VOTE: 7-0, motion carried.

MOTION: Mr. Duffy/Mr. Welch moved to approve an extension of a Temporary Civil Authorization for a period of 180-days for Richard Wayne McCoy.

VOTE: 7-0, motion carried

8. Administrative

a. Fund Condition (Possible Action)

Ms. Thompson reported on the Board's fund condition dated June 1, 2005. Renewal revenue projections for FY 2004-05 decreased from $3,353,085 to $3,345,519 and application revenue decreased from $3,444,126 to $3,336,347. Reimbursements received to date of $17,050 were also updated on the fund condition. The Board still faces a projected deficit in FY 2006/07 of $19,701. This small projected deficit will likely be eliminated with prior FY adjustments moving the deficit to FY 2007/08. Prior FY adjustments occur when unexpended encumbrances from prior FYs are disencumbered and moved back into the Board's fund reserve.

b. Fiscal Year 2004/05 Budgets (Possible Action)

Ms. Thompson reported that the expenditure projection for FY 2004-05 using expenses through April 30, 2005 is $7,166,297 with a projected budget balance of $394,024 for year end.

c. Fiscal Year 2006-07 Budget Change Proposals (BCPs)

Ms. Thompson provided updates to the three BCPs requested for FY 2006/07.

1) Restoration of Enforcement Analyst Positions.
A $126,000 redirection in savings from the Postage and Attorney General line Items was requested to restore two permanent, ongoing Enforcement Analyst positions to manage the growth in cases. Another $126,000 augmentation from the Board's fund was requested for two analysts (2-year limited term) to assist with backlogged cases aged over a year old.

2) Government Reporting Requirements (SB 1549, Ch. 691, Statutes of 2004).
An augmentation of $230,000 from the Board's fund was requested for one analyst and one-half an office assistant to manage added workload of the mandatory reporting requirements.

3) Fund Redirection to Restore Mail Clerk Position.
A $40,000 redirection in savings from the Subject Matter Expert and Communications Line Items was requested to restore the Board's Office Assistant position responsible for the daily processing of mail, applications, faxes and email.

d. Publication Review

Ms. Thompson reported that the Enforcement Bulletin will be finalized in early June 2005 and mailed shortly thereafter. Ms. Eissler suggested that the County Building Official Guide be delayed until the numerous regulatory changes now taking place are finalized and can be included.

9. Enforcement

a. Update regarding Rulemaking Proposals, including but not limited to Board Rules 404.1 and 404.2 (Responsible Charge), Board Rule 418 (Criteria for Rehabilitation), and Board Rule 473 (Citations of Licensed Persons) (Possible Action)

Ms. Eissler reported that all three final rulemaking files had been submitted to the Department of Consumer Affairs (DCA) for review on June 6, 2005. DCA has 30 calendar days to review the files. Once DCA signs off on them, they will be submitted to the Office of Administrative Law (OAL) for review and approval. OAL has 30 working days to review the files.

10. Examinations/Qualifications

a. Requests for Proposals for the Geotechnical and Structural Engineering Examinations. (Possible Action)

Ms. Christenson reported that only one proposal was received and the contract was awarded to Thompson Prometric, formerly the Chauncey Group.

11. Legislative

a. Discussion of Legislation for 2005, including but not limited to AB 180, AB 226, AB 446, AB 861, SB 246, SB 752, and SB 1113 (Possible Action)

Ms. Christenson reported that not much has changed since the last Board meeting and she gave an update on the information in the agenda.

b. Regulation Status Report

Ms. Christenson gave an update on information in the agenda packet.

12. Technical Advisory Committee Reports

a. Board Assignments to TACs (Possible Action)

Dr. Brandow recommended that the SETAC have a meeting in the near future to look into defining "Supervision of Construction" in regulation. Mr. Foley and Mr. Duffy indicated that the GETAC and CETAC should probably participate in that discussion as well.

b. Appointment of TAC Members (Possible Action)

No appointment of TAC members.

13. Liaison Reports (Possible Action)

a. ABET

No report given.

b. NCEES

Mr. Markuson offered to talk to the other professional associations regarding covering the travel costs of the Board members when their expenses are not covered by the State. Ms. Christenson said she would check to see if this would be allowed under the State rules about "Gift Reporting" requirements.

The Western Zone meeting was held May 19-21, 2005, in Anchorage, Alaska. There was concern expressed regarding lack of participation of Board members at the National level.

c. Technical and Professional Societies

No report given.

14. President's Report

President Foley read the proclamations for past Board members David Fruchtman, William Schock, and Elizabeth Warren. They left the Board on June 1, 2005, when their one-year grace period expired.

15. Executive Officer's Report

1. Administration Report

a. Executive summary report

No additional report given.

2. Personnel

a. New Hires

Ms. Christenson reported that we are in the process of hiring two new staff: the EIT Evaluator and the Administrative Unit Supervisor.

b. Vacancies

3. Enforcement/Examination/Licensing

a. College Outreach

No outreach has been held since the last Board meeting in May.

b. Report on Enforcement Activities

Ms. Christenson reported that as of June 20, 2005, the Enforcement Unit has closed 27 cases, 14 of those were over a year old.

c. Report on Examination Activities

Ms. Christenson reported that a meeting with PMES is being planned and that we are in the process of getting examination results mailed out.

4. Publications/Website

a. Website Activity Statistics

No additional report was given.

5. Other

a. DCA update

No updates.

16. Approval of Board Travel (Possible Action)

No Board travel.

17. Other Items Not Requiring Board Action

a. Date of Next Board meeting: September 1 & 2, 2005, Southern California

18. Closed Session – Personnel Matters, Examination Procedures and Results, Administrative Adjudication, and Pending Litigation (As Needed) [Pursuant to Government Code sections 11126(a) and (b), 11126(c)(1), 11126(c)(3), and 11126 (e)(1)]

a. Michael William Foster v. Board for Professional Engineers and Land Surveyors, El Dorado Superior Court Case No. PC 20030492

b. Lawrence B. Karp v. Board for Professional Engineers and Land Surveyors, Court of Appeal First Appellate District, Division 3, Case No. A109241, (San Francisco Superior Court Case No. 402996)

19. Open Session to Announce the Results of Closed Session

Ms. Christenson reported that the Board discussed pending litigation as noticed, specifically Michael William Foster v. Board for Professional Engineers and Land Surveyors, El Dorado Superior Court Case No. PC 20030492, and Lawrence B. Karp v. Board for Professional Engineers and Land Surveyors, Court of Appeal First Appellate District, Division 3, Case No. A109241, (San Francisco Superior Court Case No. 402996).

Ms. Christenson reported that the Board adopted the results of the take-home examination for the candidates who had previously passed the 8-hour portion of the October 2004 examinations.

Ms. Christenson reported that the Board approved the following cut scores for the April 2005 examinations:

- EIT 70 out of 100
- LSIT 70 out of 100
- Chemical 70 out of 100
- Electrical 70 out of 100
- Mechanical 70 out of 100
- Land Surveyor (NCEES) 70 out of 100
- Civil 8-hour 70 out of 100
- Seismic Principles 159 out of 292 possible points
- Engineering Surveying 180 out of 300 possible points

Ms. Christenson reported that the Board adopted the Stipulations regarding Dante Lota, Donald McMath, Ronald Warrecker, and Richard Butler Klein.

20. Approval of Consent Items (Possible Action)
(These items are before the Board for consent and will be approved with a single motion following the completion of Closed Session. Any item that a Board member wishes to discuss will be removed from the consent items and considered separately.)

a. Approval of the Minutes of the May 13, 2005, Board Meeting

MOTION: Mr. Welch/Mr. Wilson moved to approve the minutes of the May 13, 2005, Board meeting.

VOTE: 7-0, motion carried.

b. Approval of Candidates for Certification/Licensure (Based on Examination Results, Including Successful Appeals, Adopted in Closed Session)

MOTION: Mr. Yu/Mr. Welch moved to approve candidates for licensure and certification based on examination results, including successful appeal results and take home examination results, approved in closed session.

VOTE: 7-0, motion carried.

Friday, June 24, 2005

Board Members Present:	James Foley (President), Cindy Tuttle (Vice President), Gregg Brandow, Arthur Duffy, Robert Jones, Michael Welch, Dale Wilson, and Edward Yu
Board Members Absent:	William Roschen and Millicent Safran
Board Staff Present:	Cindi Christenson (Executive Officer), Don Chang (Legal Counsel), Susan Ruff (Liaison Deputy Attorney General), Nancy Eissler (Enforcement Program Manager), and Cindy Fernandez (Executive Analyst)
Public Present:	See Attached

1. Roll Call to Establish a Quorum

The meeting was called to order by President Foley at 9:00 a.m. Roll call was taken, and a quorum was established.

3. Hearing on the Petition for Reinstatement of Revoked License of Joseph E. Alexander [OAH No. 2005050530] The hearing on this Petition will be held on Friday, June 24, 2005, beginning at 9:00 a.m., or as soon thereafter as the matter may be heard.

The hearing on the Petition for Reinstatement of Revoked License of Joseph E. Alexander was held.

4. Closed Session – Administrative Adjudication [Pursuant to Government Code section 11126(c)(3)] – This Closed Session will be held immediately following the hearing on the Petition.

19. Open Session to Announce the Results of Closed Session

Ms. Eissler reported that, in the Closed Session following the hearing, the Board directed the Administrative Law Judge to prepare the written decision on the Matter of the Petition for Reinstatement of Revoked License of Joseph E. Alexander.

Ms. Eissler reported that during the Closed Session on Thursday, June 23, 2005, the Board discussed pending litigation as noticed, specifically Michael William Foster v. Board for Professional Engineers and Land Surveyors, El Dorado Superior Court Case No. PC 20030492, and Lawrence B. Karp v. Board for Professional Engineers and Land Surveyors, Court of Appeal First Appellate

District, Division 3, Case No. A109241, (San Francisco Superior Court Case No. 402996); adopted the Stipulations regarding Dante Lota, Donald McMath, Ronald Warrecker, and Richard Butler Klein; adopted the results of the take-home examinations for the candidates who had previously passed the 8-hour portion of the examinations; and adopted the following cut scores for the April 2005 examinations:

- EIT 70 out of 100
- LSIT 70 out of 100
- Chemical 70 out of 100
- Electrical 70 out of 100
- Mechanical 70 out of 100
- Land Surveyor (NCEES) 70 out of 100
- Civil 8-hour 70 out of 100
- Seismic Principles 159 out of 292 possible points
- Engineering Surveying 180 out of 300 possible points

7. Sunset Review Issues

a. Sunrise Process (Possible Action)

b. Proposal by PECG/CELSOC regarding SB 246 (Possible Action)

These two items were discussed together.

President Foley introduced Nancy Hall, the Deputy Director for Board Relations from the Department of Consumer Affairs (DCA).

President Foley advised that he and Ms. Christenson met with Charlene Zettel, the Director of DCA, Sherry Mehl, the Chief Deputy Director, and Ms. Hall regarding the Administration's proposal to merge this Board with the Geology Board. President Foley explained that he had initiated the meeting. He indicated that he personally supports such a merger because the practices of engineering and geology are regulated by the same board in most other states. He explained that the Administration's proposal would create a nine-member Board with two professional engineers, one land surveyor, one geologist, and five public members.

President Foley stated that he expressed to the Director that he had two concerns with the proposal. One is that, because the bulk of the enforcement cases involving land surveying or structural engineering work, he recommended that a Structural Engineer Board member be specifically designated. His second concern was with the proposal that the public members be faculty who teach the professions regulated. He said that he doubts this is a good idea because they might be too close to the profession to represent the public; there is a perception that most faculty is not really interested in licensing; and, in his experience, the most

effective public members have been ones who have little connection to engineering or surveying, which serves the public interest best.

Ms. Hall stated that the exchange of ideas at the meeting was valued by DCA. She stated that the Director felt the meeting was very productive.

Ms. Hall explained that DCA, as approved by the Administration, has an "oppose unless amended" position on SB 246, the Board's Sunset Bill. She stated that they are not opposed to the functionality of the Board or to the Title Act conversion proposal. She said the "oppose unless amended" position is just for the structure of the Board so that they can restructure the Board. She said that they believe that a larger board operates better because it has more resources.

President Foley stated that he was concerned with the Administration using SB 246 for this because it could end up dragging down five years of work on the Title Act issue, but he said that he realizes that the Board has to let the political process do its thing.

Ms. Christenson stated that the Administration had not yet presented language it would like to see amended into the bill to merge the two boards.

Vice-President Tuttle stated that she was concerned with having fewer professional members because the Board needs that expertise. She questioned why there would be a public member majority.

Ms. Hall advised that the Governor feels very strongly that the consumer protection boards should have a public member majority to protect the public interests. Ms. Hall stated that they believe that a smaller board is more efficient. She also stated that the boards could have technical advisors to assist with technical aspects; she stated that these technical advisors would be volunteers, not staff.

Vice-President Tuttle stated that she believes there could be harm to the public by losing technical expertise from the Board.

President Foley advised that he had expressed concerns with having volunteer advisors who do not get paid or even reimbursed for their travel expenses. He explained that the Board already has problems finding qualified people who are willing to work on examination development matters because the pay is so low.

Mr. Duffy stated that he was very concerned with President Foley meeting with the Director and expressing opinions about issues that had not been discussed by the Board first.

President Foley explained that he felt that he, as the Board President, should meet with the Director to get information to present to the Board so that the Board could discuss the issue. He stated that he made it very clear at the meeting that he was not representing the full Board or any position of the Board on the proposal.

Ms. Hall stated that President Foley had not expressed an opinion or stated that he personally supported the idea of a merger at the meeting with the Director. She advised that the meeting was an opportunity for the Director to explain where the idea came from. She also indicated that the only opinion expressed was that if the merger and reduction of board members did occur, consideration should be given to requiring that one of the professional engineer members should be a civil or structural engineer and that there should not be a requirement that the public members be faculty.

Dr. Brandow asked Ms. Hall what the goal of this proposal was, was it to save money, to better serve the public, or to better serve the profession. Ms. Hall stated that it was all of those.

Mr. Duffy questioned how this proposal would do that. He stated that if they wanted the “most efficient” method of running things, then it would be just one person, like a bureau. He stated that there are also problems if it is at the other end of the spectrum with too many members, but that is not where this Board is. He also questioned what disciplines the professional engineer members would come from.

Ms. Hall stated that the Administration did not have any legislative language yet to accomplish this proposal.

Mr. Wilson stated that he was concerned with the composition of the members. He stated that the public members need to not be connected to the profession and that faculty would be too closely connected.

Mr. Stout stated that Business and Professions Code section 450.5 specifically prohibits public members on boards from being “too closely identified” with the regulated profession. He stated that faculty who teach these professions would definitely be “closely identified” with the profession.

Ms. Hall stated that the issue of public members having to be faculty “just came out of the air one day and snowballed.” She said that they are not sure where this came from. She advised that a faculty member position would have to be separate from any of the public member positions. She

indicated that the Administration was not going forward with that part of the proposal.

Mr. Markuson, representing CELSOC, stated that CELSOC has no position yet on this proposal. He said there was merit to consider the idea, especially to help the Geology Board, which has a very small staff. He questioned what would happen if a revoked geologist petitioned for reinstatement and the Geologist Board member was not at the meeting where the petition was heard or if an engineer in a discipline not represented on the Board petitioned for reinstatement. He stated that this could be an ever larger challenge when the Title Act conversion goes through.

Mr. Foley stated it was his understanding that technical advisors, whether paid as consultants or volunteers, would not be able to participate in the Board's Closed Session discussions and decision-making regarding disciplinary matters. Ms. Eissler confirmed that the Administrative Procedure Act requires that the Board make such decisions.

Mr. Jones stated that it would be inefficient to have to rely on technical advisors because the Board would most likely have to put items over to a future meeting in order to get a technical advisor on the issue.

Mr. Yu stated that he believes it is in the best interests of the public to have public members.

Ms. Hall stated that the Administration hopes for continued dialog with the Board as things move forward. She stated that they would look to the expertise of the Board if any transition occurs.

President Foley introduced Bill Gage, Chief Consultant to the Senate Business and Professions Committee.

Mr. Gage stated that they are discussing the "oppose unless amended" position with the Administration. He stated that Senator Liz Figueroa and the Senate Business and Professions Committee have no plans to amend SB 246 at this time.

Mr. DeWitt, representing CELSOC, stated that CELSOC is very supportive of the Board and its not being sunset. However, there are concerns with SB 246. He stated that they are concerned with the overlap and incidental practice because there could be harm to the consumers that the Board will never hear about unless a complaint is filed. They are also concerned with tying the sunset of the Board to the Title Act conversion. Additionally, they are concerned that the individual Title Act disciplines are not going through the legislatively-mandated sunrise process.

Mr. Markuson, representing CELSOC, stated that the Title Acts recommended to be converted do not meet the criteria to become a Practice Act. He stated that they are a small population with the profession. He stated that CELSOC believes that “self-certification” of competency does not protect the public. He stated that they are very concerned that the Board would be precluded from defining incidental practice by statute. He stated that they believe that it would permit engineers not eligible for licensure to practice in other disciplines using the overlap/incidental provision. He stated that this is a significant flaw in the proposal.

Mr. Markuson advised that CELSOC and PECG have a joint proposal, which was included in the agenda packet. He stated that they used existing laws for the structural and geotechnical title authorities to create title authorities for traffic and fire protection. He stated that, based on the many people from those professions who have spoken at various public hearings, CELSOC/PECG believe those two disciplines should be kept, but not make into their own practice disciplines. They also recommend that chemical and nuclear be kept as Title Acts and sunset all of the rest. He stated that this would not create any new Practice Acts, so there would be no infringement on other professions and no new challenges for the Board for regulation. They believe that continuing the title regulation for chemical and nuclear would protect the public because having a State-issued license, even just to use a title, be revoked is significant. He stated that CELSOC and PECG believe their proposal is superior to SB 246 and hope the Board will consider and make recommendations to the Legislature to include their proposal in SB 246.

Mr. Duffy stated that CELSOC and PECG are the two largest organizations representing the majority of licensees and he hopes the Board realizes the gravity of this proposal. He stated there are significant flaws in SB 246. He stated that they were told they would have a voice during the process and that each Title Act discipline would go through the sunrise process, but that is not happening. He stated that he is concerned that SB 246 says that the Board shall not be allowed to define overlap. He questioned why the Board would be prohibited from defining each branch by regulation. He stated that the fatal flaw is the definition of chemical engineering and questioned why it was defined that way. He stated that it uses the phrase “processes of chemical and physical changes,” which would include concrete, which would, in turn, allow chemical engineers to perform civil engineering. He stated that if the Board allows SB 246 to go forward, the Board will have no voice in the future.

Mr. Wilson stated that it appeared to him that the concerns being raised seemed to be on the assumption that someone other than Civil Engineers

wants to be in responsible charge of what are now typically civil engineering projects; however, he has not seen any evidence of that.

Mr. Markuson stated that the comments he had heard at various public hearings was that engineers in the Title Act disciplines want “out from under” the existing Practice Acts to do their projects. He stated that the Board will not be able to decide if they are qualified because there are still some who were never tested and who were just grandfathered; even though that number is getting smaller, they are still here.

President Foley questioned how the title authority for fire protection would work; would the person first have to be a civil, electrical, or mechanical engineer and then take the fire protection engineering examination. Mr. Markuson said that would be how it would work.

President Foley asked how the Board would address comity and mobility issues with other states since the Board’s regulation scheme would be very different from any other state.

Mr. Markuson stated that the Board could address that through regulations. He stated that he does not know how many comity applications the Board receives for fire protection where the applicant is not already licensed as a civil, electrical, or mechanical engineer, but if it is a sizeable population, the Board could revisit the statute to create another possibility for them. He stated that their argument against doing the whole proposal that is in SB 246 is that the current system gives the Board a lot of flexibility. He stated that their proposal is a “slightly more rationale” approach. He stated that the traffic engineer authority could be for electrical and mechanical engineers as well as civil engineers, which some people have suggested.

Ms. Christenson advised the Board that staff had looked at the title authority proposal from the perspective of how would this work. She explained that when the structural and geotechnical title authorities were created, they were already part of the defined area of practice of civil engineering. She indicated that traffic engineering and fire protection engineering already exist and that those definitions would have to be brought into the existing civil, electrical, and mechanical engineering definitions. She explained that it is not clear if it would make them Practice Acts and if it would preclude people who are currently practicing in those disciplines from continuing to do so. She explained that title authorities are considered to be mastry level, rather than entry level, and usually require more experience after getting the entry level license. She said there could be a problem with using the national fire protection examination, which is an entry level examination, for a mastry level license, and the Board might end up having to create its own examination.

She also indicated that there was a question as to what would happen with the existing traffic and fire protection engineers who are not also licensed as civil, electrical, or mechanical engineers. She indicated that there would be questions as to why the qualifications at the entry level as it is now are no longer sufficient and why do these two disciplines have to be specialties.

Mr. Wilson asked what happened to the sunrise hearings for the Title Act disciplines. Mr. Gage advised that the decision as to which ones should be eliminated is for the Legislature to make. He explained that the sunrise process was the legislative staff doing its own review and presenting recommendations based on that to the Joint Committee.

Mr. Duffy stated that he thought the Board's recommendation to the Legislature was to consider each one. He stated that the Board should take a "watch" position on SB 246.

President Foley stated that his understanding was that the Board could make recommendations but that the Legislature would choose what to do.

Mr. Gage stated that the real issue was what ones should be phased out, and the Joint Committee decided on three. He stated that if others should be phased out as well, that would have to be argued out in the Legislature. He stated that the sunrise/sunset process is the legislative staff putting their recommendations before the Joint Committee. He advised that there were public hearings before the Legislature where the issue of which disciplines would be eliminated were discussed. He stated that they did ask the Board if it agreed with the three to be eliminated.

Mr. Duffy stated that he feels the Board has not had the input he thought the Board would have. He thought each Title Act discipline was going to have a separate hearing.

Dr. Brandow noted that very early on in the process there was some discussion of sunrise hearings.

Mr. Duffy stated that he does not believe the Board has had any input.

President Foley stated that the issues have been discussed at public meetings and people have testified before the Legislature at hearings over the last five years. He said that it is probably not a perfect proposal because no proposal is perfect and there is always something that has to be addressed in the future. He stated that the proposal in SB 246 represents a majority vote of the Board.

Mr. Duffy stated that he believes the Board should decide if it wants to move forward with the amendments to Section 6717 as shown in SB 246.

Mr. Gage stated that the Board was unique in that it was given the authority to define the scope of practice by regulation; that has always been the prerogative of the Legislature and other professions do not have that authority.

Mr. Duffy stated that the Board has been able to define the scope of practice in the past.

President Foley explained that the Board is not able to do that for civil, electrical, and mechanical engineering. He stated that he thinks the Board should not be put in the position of dealing with turf battles and trying to define scope of practice.

MOTION: Mr. Duffy/Vice-President Tuttle moved to oppose the amendments to Section 6717 in SB 246 which would prohibit the Board from defining by regulation the scope of practice of any discipline of engineering; Section 6717 should be left as it currently is, which prohibits the Board from defining by regulation the scope of practice of only civil, electrical, and mechanical engineering.

Mr. Jones questioned if the Board can make a recommendation to amend SB 246. Ms. Christenson advised that the Board can do that, but the Legislature would then decide whether or not to make the amendment.

President Foley stated that since the Board cannot currently define by regulation the scope of practice of civil, electrical, or mechanical engineering, the other disciplines that are converted from Title Acts to Practice Acts should also be included.

Mr. Duffy stated that he wants the Board to look at the language in the definitions of the Title Act disciplines and be able to further define them if necessary.

Vice-President Tuttle asked if the language for the definitions in SB 246 was changed from the existing language. Ms. Christenson explained that language was taken exactly from the existing definitions in current regulations, which have not changed since they were adopted in the 1970s.

VOTE: 4-4, motion failed. Mr. Duffy, Mr. Jones, Vice-President Tuttle, and Mr. Yu voted aye; Dr. Brandow, President Foley, Mr. Welch, and Mr. Wilson voted nay.

Mr. Duffy questioned whether the Board President is allowed to vote on motions. Ms. Eissler advised that the Board's Operating Procedures specifically allow the President to vote on all motions.

Mr. Duffy stated that the phrase "shall not be necessary" in new Section 6730.5 would prohibit the Board from defining overlap/incident practice.

Mr. Jones stated that the phrase made it sound like the Board would have flexibility as to whether or not to define it.

Mr. Gage stated that the intent was to give the Board the flexibility to define it as needed but to not require the Board to do so.

Mr. Markuson stated that there could be problems if the ambiguity in the language was not eliminated.

Mr. Gage stated that the Board would still be able to define overlap by regulation, although other states do not define it.

MOTION: Mr. Duffy/Dr. Brandow moved to recommend that Section 6730.5 in SB 246 be amended as follows:

(c) ~~As such engineering work may be in connection with and incidental to the engineering work of the professional engineer on a specific project or activities related to a professional engineer's licensed branch of engineering, it shall not be necessary for the~~ The board ~~to~~ may define in regulation permissible engineering work that may be in connection with and incidental to the engineering work of the professional engineer, or which specific tasks or activities a professional engineer may or may not perform.

VOTE: 6-1, motion carried. Mr. Wilson voted nay.

Mr. Duffy stated that he believes the definition of chemical engineering is too broad.

Dr. Brandow questioned what was wrong with having the definition be broad.

Mr. Wilson pointed out that the definition has worked since it was adopted in the 1970s.

Mr. DeWitt stated that the definition of chemical engineering would involve concrete, so a chemical engineer could argue that he can do civil

engineering because of that. He stated that there needs to be a deliberative sunset/sunrise process to sort through all of the definitions.

President Foley stated that chemical engineers would be precluded from doing structural engineering.

Mr. Stout asked if a chemical engineer can design a cement plant that manufactures cement.

President Foley stated that chemical engineers currently design the processes.

MOTION: Mr. Duffy/Mr. Jones moved that the Board not take a position on the CELSOC/PECG proposal at this meeting because the Board needs more time to review and discuss it.

Dr. Brandow asked what time frame there would be for such a discussion.

Ms. Christenson advised that there is no language in a bill at this time regarding the CELSOC/PECG proposal. She also advised that she had spoken with Mr. DeWitt and Mr. Markuson about some of staff's concerns with the proposal, including the proposal to move all of Board Rule 415 into statute because that would have the effect of allowing full overlap by all disciplines into all other disciplines.

VOTE: 7-0, motion carried.

Mr. Wilson asked why the same language was included in both Sections 6730.5 and 6730.7 regarding local agencies.

Ms. Eissler explained that it was included in both sections to make it very clear that local agencies are prohibited from infringing on the practice rights of licensees; if it was only included in one section, it might be too easy to be overlooked.

14. President's Report

President Foley thanked staff and Board members for all the support he received during his term as President.

21. Adjourn

The Board adjourned at 1:50 p.m.

PUBLIC PRESENT

Bob DeWitt, CELSOC
Tom Stout, CSPE/CLCPE
Ann Christina Rothchild
Richard Markuson, CELSOC
Steve Burton, Reg. Mgr. Westrec Marinas
Nancy Hall, DCA
Bill Gage, Senate B&P Committee