

California's Board for Geologists and Geophysicists' Abolition via AB20 4x

Questions and Answers

The following Q&A discussion is compiled from the 100s of emails and hours of discussions regarding the passage by the legislature of AB20 4x during the 4th Extraordinary Session of the legislature, and its signing into law by the Governor on July 28. This paper is an attempt to provide some clarity to the issue and to elucidate plans for future action. Not all issues are covered, and some information received of which I don't have supporting documentation is intentionally omitted. Any errors and misstatements are my own, and I intend to update this document with corrections as they are received. To that end, any questions not addressed, or not adequately addressed should be directed to me at: ctnestle@socal.rr.com.



July 11, 2009 meeting of the Big Five (l-r): Assembly Minority Leader Sam Blakeslee (R), Assembly Speaker Karen Bass (D), Governor Arnold Schwarzenegger (R), Senate President *pro tempore* Darrell Steinberg (D), Senate Minority Leader Dennis Hollingsworth (R), and gubernatorial Chief of Staff Susan Kennedy. (Photo and caption from Wikipedia)

Note the date of this meeting: they're discussing the budget. Normally the State Legislature prepares the budget. But as some have noted, California is anything but normal.

The term "Leadership" and "Legislative leaders" refers to the four legislative leaders (the Big Five minus the Governor).

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Q. What happened and when?

- A. As a part of the budget package of bills introduced during the 4th Extraordinary Session of the California Legislature, AB20 4x (more properly known as ABx4 20) was introduced July 2 as a placeholder with no specific details. The bill was amended July 23 – *the day of the vote* – to include merging the Board for Geologists and Geophysicists (BGG) with the Board for Professional Engineers and Land Surveyors (BPELS). Because the bill was distributed hours before the vote, only some legislative staffers had the time to read it, but probably no legislators, before voting began (this ethically-questionable practice of dropping bills on the desks shortly before a vote is actually rather common). The Governor signed the budget package of bills into law on July 28, 2009. Legislation enacted in a Special Session goes into effect on the 91st day after the adjournment of the Special Session. The 4th Extraordinary Session was adjourned on July 24, 2009; therefore, majority vote legislation enacted in that session would become effective October 23, 2009.

All versions of the bill are available in PDF and HTML format at: http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=abx4_20&sess=CUR&house=B&author=audra_strickland

Q. What events preceded this bill?

- A. The Governor had proposed merging, eliminating, and converting to committees various boards in conjunction with the budget process, and AEG had heard through its lobbyist that a proposal to merge the BGG into the State Mining and Geology Board (SMGB) was to be discussed during a hearing of the Senate Business, Professions, and Economic Development Committee (a.k.a. Senate B&P). Last February (2009), several of us went to discuss this proposal with various legislators and staff (all Republicans, incidentally) and then testified at the hearing in support of leaving the BGG alone. The report submitted to the Senate B&P Committee by staff originally recommended the BGG remain as-is, but was allegedly later changed to recommend merging with the SMGB. All of the legislators and staff we met with could not understand why any of this was even being discussed if no money would be saved [*see next question below*]. We also explained that if need be, moving the BGG into the SMGB was preferable to BPELS. We were told this option was not on the table.

The “Big Five” had hashed out a budget deal that then had to be written into legislation to be voted on. You may recall that this had to be done very quickly, since the legislature was well past the constitutionally required deadline for passing a budget. [*Food for thought – did we elect a full legislature so that only five people would determine what the state budget would be? Short answer – Yes.*]

For the budget vote, the legislature generally voted in accordance with the direction provided by the legislative leaders because if they didn't, it would be very difficult, if

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not impossible, for anyone voting differently to have any of their legislation ever reach the floor. This is why the legislators voted up on AB20 4x even though they knew it accomplished nothing.

We had discussed with legislators why it was important for the BGG to remain as-is, we explained that the BGG is entirely self-funded, as are all boards under the Department of Consumer Affairs (DCA), and that no fiscal benefit would be realized, and we provided data to support these facts. And yet, for political reasons the legislature ignored all of it.

An example of this is that Senator Mark Wyland, recognizing the absurdity of any manipulations of self-funded boards, voted no on the proposal to eliminate the BGG during the Senate B&P hearing, but then later voted yes on the budget package.

Q. Does eliminating the BGG save the state money?

A. No. The Floor Report of the 2009-2010 State Budget As Modified by AB/SB 4X 1, dated July 23, 2009, states on page 8: "The proposals do not result in any General Fund savings because industry-specific oversight state entities are funded by special funds which collect revenue through licensing fees." The entire report is found in PDF format at: <http://www.scottlay.com/docs/assemblyfloorreport.pdf>, or in MS Word at: <http://www.assembly.ca.gov/Committee/C4/Reports/July%2023%202009%20Floor%20Report%20of%20the%202009-10%20State%20Budget.doc>.

Q. If no money is saved, then why was this part of the budget package?

A. With publication of the *California Performance Review* (CPR) and the subsequent *Governor's Reorganization Plan 1* (GRP1) in 2004, the Governor has been trying to reduce the size of government. Consolidating self-funded boards, bureaus, and commissions has the *appearance* of reducing government spending while actually accomplishing nothing. This appeals to the great majority of the general public who never look deeper than the shallow sound bites provided on television news.

The Floor Report of the 2009-2010 State Budget As Modified by AB/SB 4X 1, dated July 23, 2009, states on page 8: "The idea is that professionals become licensed and simultaneously allow for a regulated professional field." If anyone on the planet can explain to me what that sentence means and how that forms a logical argument in support of eliminating boards, please let me know. *[If the author of that sentence graduated through the California educational system, perhaps that's evidence of the state of that system – but I digress.]*

Q. Were any other boards eliminated?

A. No, the BGG was the ONLY board eliminated. The Floor Report of the 2009-2010 State Budget As Modified by AB/SB 4X 1, dated July 23, 2009, states on page 8:

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The Proposal:

- 1) Abolishes the Bureau of Naturopathic Medicine, creates the Naturopathic Medicine Committee, and requires the governor to appoint 2 additional members, for a total of 9 members to the Board of Osteopathic Examiners which must be licensed Naturopathic doctors. *[Converting a Bureau or a Board into a Committee retains that Bureau or Board intact, but places it under another entity. All staff and functionality remain as-is, only the name is changed and it reports to the Board during that Board's meetings.]*
- 2) Consolidates the Structural Pest Control Board within the Department of Pesticide Regulation, keeping the board and its licensing and regulatory functions intact. *[Note that this "board and its licensing and regulatory functions" remain intact.]*
- 3) Consolidates the Bureau of Electronic Appliance Repair and the Bureau of Home Furnishings and Thermal Insulation into the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation. *[Not a board]*
- 4) Consolidates the Board for Geologists and Geophysicists under the Board for Professional Engineers and Land Surveyors and transfers two PY's to the Board for Professional Engineers and Land Surveyors to handle issues relating to geologists and geophysicists. *["PY" stands for "personnel-year" – only two staff are transferred to administer the Geologist and Geophysicist Act. The BGG currently has a staff of nine.]*

Q. Other states have combined boards, why shouldn't the BGG be consolidated with BPELS?

- A.** Consolidating the boards is not inherently bad; the problem is the process under which the merger occurred, and the utter lack of thought put into its implementation. States with combined boards have representation on the board for each discipline that is licensed by that board. States with combined boards either have the name of each discipline as part of the board name such as *The Pennsylvania Board of Professional Engineers, Land Surveyors, and Geologists (two geologists on the board)*, or the board has an umbrella name such as the *Arizona Board of Technical Registration*.

Consider the following: There is no requirement in AB20 4x for BPELS to provide geologic representation on the board, nor does it require the board name to be changed to represent all of its licensees. The bill transfers only two of the current nine staff, but it fails to specify where these staff are to come from. How is BPELS going to oversee the practice of geology for public safety, or administer the professional exams and licensing of geologists, engineering geologists, geophysicists, and hydrogeologists with none of those professionals on the board, or on staff? We are told that BPELS will take two staffers from the BGG (but the bill

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does not require this), and that they are required to take the two with the longest state service, not necessarily with the longest BGG service. All other institutional knowledge is lost. There is also no requirement for BPELS to accept the BGG's volunteer committees (Examination, Enforcement, Professional Affairs Advisory, Policy, etc.). These volunteer committees provide invaluable expertise in preparing examination questions for the California Supplemental Exam, vetting PG, GP, CEG, and CHG license exam applications, judging the merits of enforcement complaints, among many other tasks. Without them BPELS staff absorb enormous additional responsibilities beyond their current tasks, and beyond their current capabilities. Two additional staff members are woefully insufficient to handle that work, and administration of the Geologist and Geophysicist Act will suffer.

Q. How are other state's licensing boards reacting to this situation? Are there National implications?

A. The Executive Director of the Mississippi State Board of Registered Professional Geologists, and a former Executive Officer of the Texas board have contacted me. Both are very concerned that if California's board is eliminated there may be a domino effect nationally. If the State of California, which has the greatest number of geologic hazards to public safety of any other state, does not need a licensing board for geologists, then why should any other state?

Q. Why wasn't this anticipated?

A. When speaking with Assembly Member Sam Blakeslee's and other legislator's staff in February 2009, we made it clear that the SMGB was the preferred option over BPELS. We were told that merging with BPELS was not on the table. Since then, AEG's lobbyist has been tracking the proposal and all indications were that the Senate B&P staff would recommend leaving the BGG as is, but that it was still possible that the BGG would be merged with the SMGB. There was nothing to indicate anything different until the morning of July 23rd.

Q. Why didn't AEG and CCGO do something to stop this? Where were they?

A. Many seem to overestimate our influence in Sacramento: Just because we request something, doesn't make it happen. We can talk all we want to whomever we want (and we *do* need to continue to do this), but the legislature will *always* vote in their best interest.

[See *What events preceded this bill*, page 2 above, for further discussion relevant to this question]

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Q. Should we write letters to Sam Blakeslee and other legislators requesting that they change the legislation?

- A.** Assembly Member Sam Blakeslee has specifically stated that he WILL NOT revise or modify any legislation connected with the budget bill signed by the Governor on July 28. Also, any such legislation would require the approval of the Senate Pro Tem, and for various reasons that isn't going to happen. Lastly, the legislative session ends September 11, 2009, so it would be physically impossible to have legislation written, submitted, and voted on by then even if a legislator wanted to.

Letters to legislators must include a request for action by the legislator. If there is nothing for them to act on, the message will be lost by the time there is legislation to act on.

Mr. Blakeslee did say that next year he would consider legislation to increase the number of staff positions on BPELS to help oversee the Geologist and Geophysicist Act. There will be lobbying efforts to convince the legislature to include adding a geologist position to BPELS and to change the name of the board to include geologists (generally effective one to two years following the legislation).

There will be letter-writing campaigns to targeted legislators at specific times when action can be taken. It is critical that letters are sent when they can be most effective. Information and sample letters will be distributed through AEG and CCGO email distribution lists as those times approach. We are also attempting to acquire a contact list of all licensed geologists in California. All of you will be kept informed of developments, and will be asked to participate when the time comes.

Q. Didn't the original version of AB20 4x recommend merging the BGG with the SMGB?

- A.** No. The recommendation to Merge the BGG into the SMGB was in the Senate Committee on Business, Professions and Economic Development's staff report. AB20 4x never proposed merging the BGG into the SMGB. AB 20 4x was introduced July 2 as a placeholder with no specific proposals. It was amended July 23 – *the day of the vote* – to include merging the BGG with BPELS. Prior to the vote, some legislative staffers, but probably no legislators had the time to read the bill. All versions of the bill are available in PDF and HTML format at:
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Q. Should we lobby to move the BGG from BPELS over to the SMGB?

- A.** That is an option should all efforts to extricate the BGG from BPELS fail. There are several logical and structural reasons why the BGG should remain under the DCA umbrella, and it is likely that the DCA and the Dept. of Finance would oppose

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moving the BGG under the Dept. of Conservation. This opposition will be difficult to overcome, but all proposals are worth pursuing.

Q. Did BPELS have anything to do with this? Did they want it?

A. No. They were as surprised as everyone else.

Q. Will discussing our concerns with BPELS help?

A. Yes. AEG's lobbyist, Judy Wolen, has been talking with BPELS' Deputy Director, who is very concerned about the lack of staffing being transferred and will be requesting more staff via the budget process. The new (as of June or July) BPELS Executive Officer won't meet or discuss the situation until after October 23 (when the transfer becomes effective). He says he will only talk to DCA or the BGG's E.O. Some suggest that he may have been instructed to do this. BPELS next board meeting is scheduled for September 16 and 17 in the San Diego area (always subject to cancellation or change of venue). AEG SoCal Section will have at least two representatives there.

Q. What short-term and long-term goals are planned?

A. The three California Sections of AEG are evaluating the feasibility of filing an injunction against the state to stop implementation of the portion of AB20 4x that transfers the BGG into BPELS. If this is successful we will continue working with the BGG on the operational improvements they've made resulting from past Sunset Review Hearings, and increase our legislative networking, and begin a program of targeted campaign contributions. The southern California Section of AEG has established a Political Action Fund to support the injunction (short-term) and provide for political contributions to key legislators (long-term). Apparently as little as \$500 can make a difference. If the injunction fails, we work with the legislature and the DCA to improve the operational limitations imposed by AB20 4x. This includes increasing the number of staff, having at least one geologist seat on the board, and having the board name changed to include geologists. We work with BPELS (and lobby the DCA) to establish examination and enforcement committees, and as many others as needed to effect the same level of operational efficiency as existed when the BGG was an independent board. We address the inherent conflict of interest in non-licensed practice of geology by engineers (an on-going issue with regulators), since there is currently no enforcement by BPELS on these cases. We monitor and document the effectiveness of BPELS in their oversight of the Geologist and Geophysicist Act, and demand during sunset review hearings (expected to begin next fall) that deficiencies be addressed.

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- Q. Won't filing an injunction offend some of the legislators we need to remain friendly with? Isn't there some risk to following through with this plan?**
- A.** Injunctions are filed against the state all the time. In fact, the Senate Pro Tem has filed his own injunction against the state (his boss, no less) arguing that the Governor's adding more cuts to the budget on his own was illegal. Our planned injunction is not critical of any particular legislator, nor is it critical of BPELS. The injunction attacks the process by which the BGG was eliminated. It also has the added benefit of demonstrating that we are not complacent to actions taken against us.
- Q. What can we offer and what tangible value can we demonstrate and show simplistically for BGG to be reinstated?**
- A.** Without an injunction it is likely the BGG will never be reinstated as an independent board (this is what we are told by various legislative staff). However, there is a slim possibility that under a Democratic administration (possibly in 2011), and after one particular Senator is termed out in 2014, it may be possible to find someone willing to carry legislation to reinstate the BGG. If that happens, and I think it's a very slim possibility that it would, we're looking at somewhere between 2016-2018 before that legislation would become effective. A mega-geologic disaster may accelerate that time frame a little.

In the meantime, we must continue our ongoing program of educating the legislature of the value that licensed geologists bring to society, and the importance of a stand-alone Board for Geologists and Geophysicists to public protection.