

Engineers and LLR

Licensing, Examinations, Complaint Process, Cease & Desist Orders, Recently Enacted Legislation, and Proposed Legislation

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Lenora Addison-Miles Administrator

Overview of Duties/Responsibilities

- Daily operations of program areas
- Reviewing & assessing efficiency and effectiveness of Board programs
- Consult with staff concerning changes and updates to procedures
- Coordinate Board Meetings
- Review and approve expenditures
- Supervise processing of initial and renewal applications
- Monitor compliance of administrative orders
- Issue Cease and Desist orders
- Work with OIE, OGC and the Boards regarding complaints/disciplinary matters/resolution guidelines for complaints

PE and LS Licensing Statistics

- 15,550 Engineers (6/30/2014)
 - 5,151 In-state / 10,389 Out-of-state
- 10 Associate (Category B) Engineers
- 163 Dual Licensees (PE/LS)
- 1,098 Surveyors
 - 628 In-state / 470 Out-of-state
- 2,766 Certificates of Authorizations (3/31/2015)
- 829 COA Branch Offices

- EIT – 7,275
- LSIT – 164

Initial Application Volume

Calendar Year 2013 = 2,154 applications
Avg. 179

Calendar Year 2012 = 2,087 applications
Avg. 173

Calendar Year 2011 = 2,302 applications
Avg. 191

Calendar Year 2010 = 2,278 applications
Avg. 189

PE Exam Performance

- April 2013 Administration
 - **Civil**
 - 51 First time takers (62.7% passed) – national avg. 70%
 - 49 Repeat takers (38.8% passed) – national avg. 37%
 - **Electrical**
 - 12 First time takers (50% passed) – national avg. 64.4%
 - 9 Repeat takers (33.3% passed) – national avg. 34.9%
 - **Mechanical**
 - 13 First time takers (61.5% passed) – national avg. 70%
 - 8 Repeat takers (37.5% passed) – national avg. 39.6%

Continued

- October 2013 Administration
 - **Civil**
 - 60 First time takers (58.3% passed) – national avg. 64.1%
 - 34 Repeat takers (26.5% passed) – national avg. 28.6%
 - **Electrical**
 - 13 First time takers (69.2% passed) – national avg. 62.6%
 - 7 Repeat takers (57.1% passed) – national avg. 27.7%
 - **Mechanical**
 - 23 First time takers (78.3% passed) – national avg. 71.5%
 - 6 Repeat takers (50% passed) – national avg. 41%
 - **Structural**
 - **Vertical** - 2 Repeat takers (100% passed) – national avg. 34.3%
 - **Lateral** – 2 First time takers (100% passed) – national avg. 37.5%
 - 4 Repeat takers (100% passed) – national avg. 42.8%

PS Exam Performance

- **April 2013 Administration**
- 3 First-time takers – 66.7% passed
 - national avg. 70.1%
- 10 Repeat takers – 60% passed
 - national avg. 41.9%
- **October 2013 Administration**
- 1 First-time taker – 0.0% passed (national avg. 76%)
- 2 Repeat takers – 50% passed (national avg. 40.6%)

FE & FS Exam Performance

- **Fundamental of Engineering (FE)**
- April 2013 administration
 - 323 first time - 82.7% passed / national avg. 77.5%
 - 101 repeat takers - 41.6% passed / national avg. 38.7%
- October 2013 administration
 - 367 first time - 81.7% passed / national avg. 73.1%
 - 72 repeat takers - 33.3% passed / national avg. 29.5%

Continued

- **Fundamentals of Surveying (FS)**
- April 2013 administration
- 17 first time – 76.5% passed / national avg. 67%
- 2 repeat takers – 50% passed / national avg. 24.6%

- October 2013 administration
- 4 first time – 100% passed / national avg. 67.5%
- 2 repeat takers – 50% passed / national avg. 26.7%

Initial Licenses Issued

- CY 2012
 - 826 Engineers
 - 610 Comity / 216 Exam
 - 14 Surveyors
 - 5 Comity / 9 Exam
- CY 2013
 - 778 Engineers
 - 618 Comity / 160 Exam
 - 19 Surveyors
 - 8 Comity / 11 Exam

Portfolio Review Process

- 10 applications received CY 2013
- 9 applicants approved, 1 pending
- 1 applicant denied in 2013 (begin process in 2012)
- Civil discipline most activity
- Equal candidates for civil & mechanical

Education & Research Fund

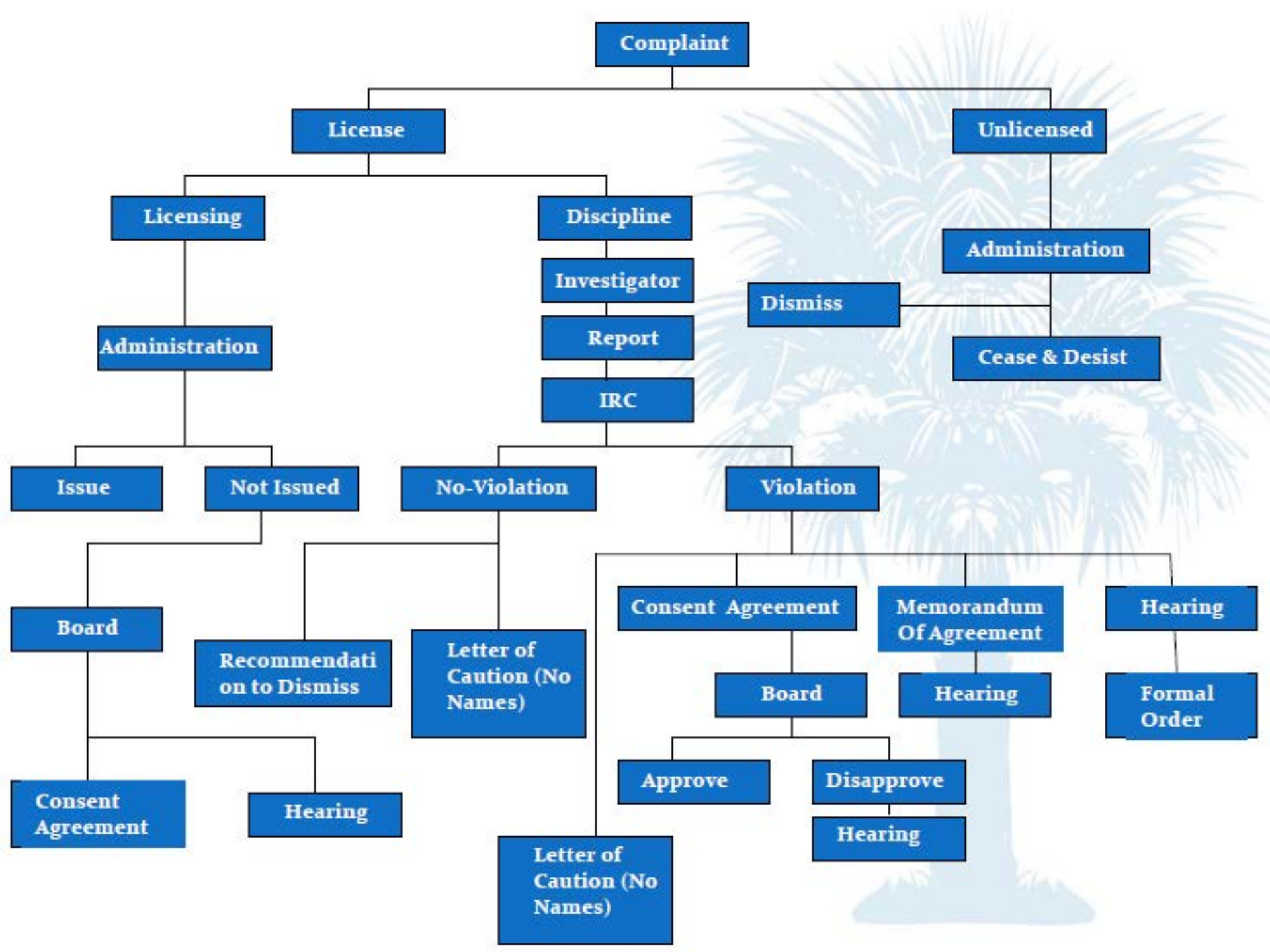
- Seven (7) requests approved in 2013
- Total of \$96,175
- Educational conferences, speakers, venue
- Current balance \$257,972 (January 2014)

Advice Counsel Duties

- The Office of Advice Counsel provides in-house counsel to all boards, panels, and commissions operating under the Department of Labor, Licensing, and Regulation
- Each Advice Counsel is assigned to boards; generally between 10-12 boards per attorney
- Attend board meetings, committee meetings, and other activities as directed by board and agency.
 - Responsible for board orders and other written communication from meetings
- May also assist in legislative matters
- Boards are our clients so we have an attorney-client privilege with boards and board members *only*, and only when they are serving in their official capacity
 - This does extend to committee members, but only in the context of the committee

Complaint Process

- A complaint analyst is assigned to determine if a violation has occurred. This process generally takes 7 days.
 - If the analyst (who is an attorney) determines the complaint does reasonably allege a violation, then the case is assigned to an investigator.
- Within 30 days of the assignment, the licensee will receive a letter which includes details of the allegations and requests a written response from the licensee, herein respondent.
 - The reply to the investigator is the respondent's opportunity to communicate to the agency his or her version of the events leading up to the complaint.
 - Any communication provided to the agency may be used in a legal proceeding and investigator may issue subpoenas under SC Code 40-1-80(B).
 - Many respondents choose to retain counsel.
 - Investigations are typically complete within 60-180 days.



Investigative Review Committee (IRC)

- IRC determines whether sufficient evidence exists of a violation to warrant formal proceedings.
 - Consists of chief investigator, board administrator, litigation attorney (from OGC), and professional members not employed by LLR.
- IRC then makes a recommendation to whether the Board should:
 - Dismiss the complaint: A letter is sent to the licensee, and the case is closed;
 - Issue a formal complaint; or
 - Issue a letter of caution.

Formal Complaint

- Office of General Counsel (OGC) prepares a formal complaint outlining the charges and serves the licensee.
- IRC may include in their recommendation guidelines for the resolution of the case by consent of the party (respondent).
 - ↳ CONSENT AGREEMENT OR “CA”
- OGC attorney may also negotiate with the respondent to stipulate to certain facts and/or sanctions
 - ↳ MEMORANDUM OF AGREEMENT OR “MOA”

Resolution Options—CA and FC

- Consent agreements, or CAs
 - Signing a CA is completely voluntary; Respondent may always opt for a full hearing to dispute the violations
 - If the licensee signs the CA, the board still must either accept or reject the CA.
 - Licensee may appear when board considers the CA, but often does not.
- If there is a hearing, it is a contested case under the Administrative Procedures Act, and certain procedures must be followed.
- Hearings may be:
 - Full hearings
 - MOAs: only sanctions to be decided by Board
 - Stipulation of facts: violation and sanctions to be decided by Board

The Hearing

- The State presents its case first, through counsel, and has the burden to prove the allegations in the complaint.
 - Witnesses may be called
 - Evidence presented; Rules of Evidence apply
 - Standard: Preponderance of the Evidence
- The licensee then presents his or her case, either with or without representation.
 - In an MOA, this should be limited to mitigating evidence only.

Final Order

- The Board may find a statutory violation has occurred and issue an order setting forth specific findings of facts and conclusions of law that support its ruling, or dismiss the case.
 - Sanctions are derived from statutes, and generally range from a private or public reprimand up to a license revocation
- Board orders are public, and subject to FOIA, except for private reprimands and dismissals.
- A licensee has 30 days to appeal an adverse order of the Board to the Administrative Law Court.

Cease and Desist

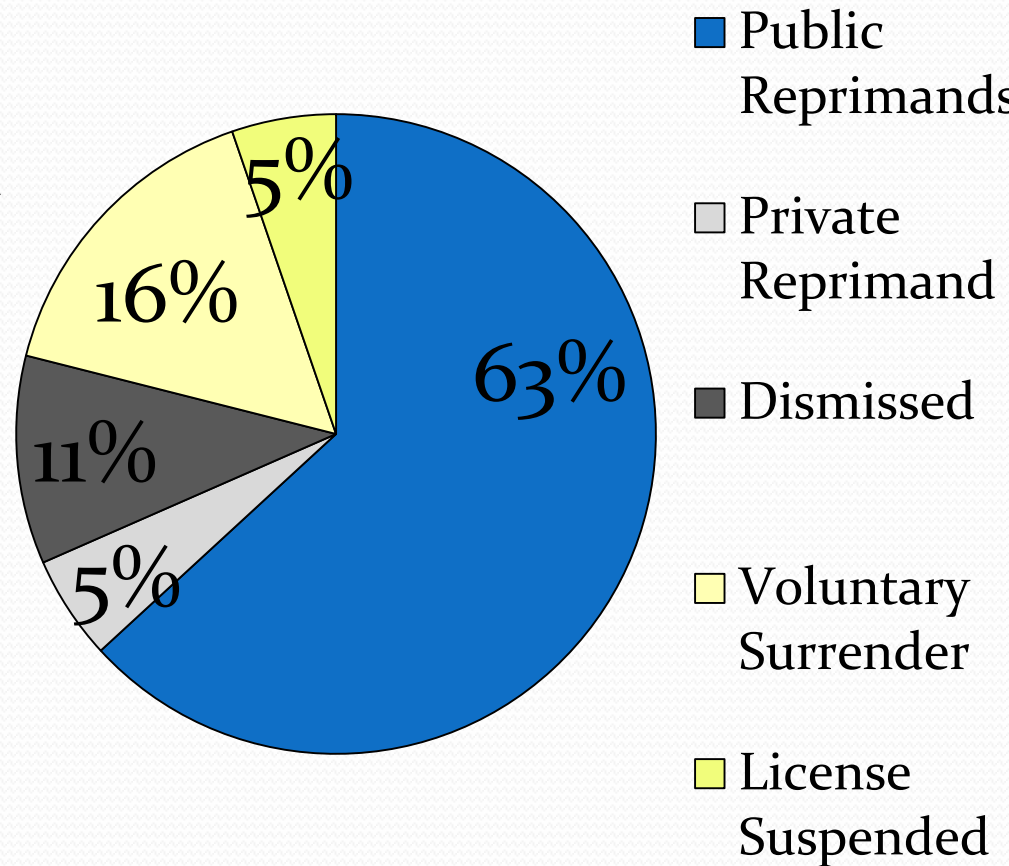
- When the Board has reason to believe that a person is violating or intends to violate a statute or regulation, it may order the person immediately to cease and desist from engaging in the conduct.
- A **cease and desist** is an order or request to halt an activity (cease) and not to take it up again later (desist) or else face legal action. -SC Code § 40-22-100

Cases as reported by the Office of General Counsel

| <u>Case Number</u> | <u>Holding/Result</u> | <u>Fine</u> | <u>Case Number</u> | <u>Holding/Result</u> | <u>Fine</u> |
|--------------------|-----------------------|---|--------------------|-----------------------|-------------|
| 2012-2 | Public Reprimand | \$3,000 | 2012-30 | Public Reprimand | \$4,000 |
| 2011-13 | Private Reprimand | | 2012-23 | Public Reprimand | \$1,000 |
| 2011-16 | Voluntary Surrender | | 2012-27 | Public Reprimand | |
| 2010-43 | Dismissed | | 2013-3 | Public Reprimand | \$2,000 |
| 2012-28 | Public Reprimand | \$2,000 | 2012-26 | Voluntary Surrender | |
| 2012-32 | Public Reprimand | \$500 | 2013-1 | Public Reprimand | \$500 |
| 2013-6 | License suspended | \$1,000 | 2013-29 | Public Reprimand | \$500 |
| 2012-25 | Public Reprimand | | 2013-23 | Public Reprimand | \$10,000 |
| 2012-29 | Voluntary Surrender | | 2010-22 | Public Reprimand | \$500 |
| 2012-33 | Dismissed | <i>*Cases closed from 2/19/2012 through 2/19/14</i> | | | |

Cases as reported by the Office of General Counsel

- 19 cases taken in front of the Board.
- 11 had associated fines averaging \$2,273, but going as high as \$10,000.
- 17 had some type punishment or reprimand.
- Main reasons for complaint: Unlicensed Practice, Noncompliance with CE, and Unreported Discipline



Subject Matter Experts

Don't you want to help us by lending your expertise?

- Engineering is a diverse field—we need all types of engineers as subject matter experts
- Experts would consult on disciplinary cases in their field to ascertain whether or not, and the degree, to which a violation may have occurred
- Can either receive per diem and mileage, or PDH credit. (Not both)
- On an as-needed basis
- May have to testify or issue a report in the event of a full hearing

Cease and Desist

SECTION 40-22-100. Cease and desist orders; application for temporary restraining order.

(A) As provided for in Section 40-1-100, when the board has reason to believe that a person is violating or intends to violate a provision of this chapter or a regulation promulgated under this chapter, in addition to all other remedies, it may order the person immediately to cease and desist from engaging in the conduct. If a person is practicing engineering and/or surveying without being licensed under this chapter, is violating a board order or a provision of this chapter or a regulation promulgated under this chapter, the board also may apply to an administrative law judge for a temporary restraining order, in accordance with the rules of the Administrative Law Court.

(B) No board member or director of the department or other employee of the department may be held liable for damages resulting from a wrongful temporary restraining order issued pursuant to Section 40-1-100. After receiving a C&D you are to stop practicing engineering immediately and contact the Board office for reinstatement or reapplication

If you are not qualified, you must remove any reference to engineering from your business, letterhead, business cards, advertisements, signs, website, or anywhere else

Violation of a C&D is adjudicated by the Administrative Law Court

Administrative Cease and Desist Orders 2012-2013

- In 2012:
 - 4 C&Ds issued for unlicensed practice
 - 1 C&D issued for not having a licensed PE with the firm
 - 1 C&D issued for unreported discipline on a renewal form
- In 2013:
 - 3 C&Ds issued for unlicensed practice
 - 2 C&Ds issued non-compliance with continuing education
 - 2 C&Ds issued for unreported discipline on renewal of license

Letter of Caution

- Not considered a disciplinary action and does not have to be reported to other states
- Not subject to a Freedom of Information Act request.
- Board administrator issues a non-disciplinary letter of caution that explains the determination that no violation exists, and the case is closed. However, the letter cautions the licensee to be mindful of a particular statute...

H.4604 Status and Effect

AKA the Industrial Exemption

- Bill was introduced in Early February 2014, and has been referred the House Committee on Labor, Commerce and Industry
- Would grant an exemption from the licensure requirement to practice engineering for certain activities performed by certain personnel of a manufacturing company.
- Board would like to see this language modified and is opposed to the bill in its current form
- Reported favorably out of subcommittee and it stands in full committee for vote tomorrow

H. 4604

- *“the activities of full-time employees of a manufacturing company or other personnel under the direct supervision and control of the manufacturing company, or a subsidiary of the manufacturing company, on or in connection with activities related to the research, development, design, fabrication, production, assembly, integration, installation, or service of products manufactured by the manufacturing company. This exemption does not apply to activities where the seal of a professional engineer is expressly required by statute, regulation, or building code, or to engineering services offered to the public. For the purposes of this item, ‘manufacturing company’ means a company that produces or assembles tangible personal property and ‘other personnel’ includes individuals employed by a staffing company working for the manufacturing company.”*

Industrial Exemption - FAA

Ratified and Approved in June 2013

- *[T]he work or practice of a person rendering engineering services to a corporation that operates in South Carolina under a production certificate issued by the Federal Aviation Authority, provided that the general business of the corporation does not consist, either wholly or in part, of the rendering of engineering services to the general public. For purposes of this section, “engineering services” means design, construction, and maintenance of airplanes and airplane manufacturing equipment.*

Engineering Statute Revisions: S. 497 and H.3832

- Full text available a www.scstatehouse.gov
 - Type “s 497” or “h 3832” in Quick Search box
- General revision to practice act
- Both bills referred to respective committees on Labor Commerce, and Industry; bills yet to be taken up in committee

QUESTIONS?



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