

CONSTRUCTION AND DESIGN REGULATORY AGENCIES

practice for California architects; (3) protect consumers by preventing violations and effectively enforcing laws, codes, and standards; (4) increase public and professional awareness of CAB's mission, activities, and services; (5) improve the effectiveness of relationships with related organizations; and (6) enhance organizational effectiveness and improve the quality of customer service in all programs.

LATC held a similar strategic planning session at a two-day retreat on February 11–12, 2000. LATC reviewed its 1998–99 activities and accomplishments, discussed the environmental scan and LATC operations, began to develop a communications plan, and identified focus groups to conduct market condition assessments.

At its December 2000 meeting, CAB elected architect Gordon Carrier as president, architect Kirk Miller as vice president, and public member John Canestro as secretary for 2001.

At CAB's January 22, 2001 meeting, Executive Officer Steve Sands announced that Board staff had developed an RFP for development and administration services for the CSE. At the March 15, 2001 meeting, the Board awarded the contract to PMES to engage in exam development activities during 2001, and exam administration services between January 2003 and December 2006.

At CAB's March 15, 2001 Board meeting, Executive Officer Doug McCauley reported that the Department of Finance's Office of State Audits and Evaluations had performed a review of CAB in November 2000 under an inter-agency agreement with DCA. The purpose of the review was

to assist DCA's Office of Internal Audits to comply with the requirements of the Financial Integrity and State Managers' Accountability Act of 1983. On February 1, 2001, CAB staff conducted an exit interview with the auditors to discuss their findings and review their draft report. The auditors recommended that CAB strengthen its controls over the Board's Visa CalCard, fixed assets, and payroll warrants. CAB provided a written response to the report on February 8, 2001 and will hold a follow-up meeting with the auditors in approximately six months.

CAB held its 2001 strategic planning session on March 15–16, 2001. The Board again contracted with Daniel Iacofano to facilitate the session. Iacofano presented a draft of the updated plan to CAB's Executive Committee on April 30, 2001. The Committee, in turn, will present the draft along with its own modifications and recommendations to the full Board at the June 14, 2001 meeting. Mr. Iacofano also facilitated LATC's 2001 strategic planning session held on January 26–27, 2001.

FUTURE MEETINGS

CAB—2001: June 14 in Sacramento; September 6 in San Diego; December 7 in San Francisco. **2002:** January 11–12 in San Diego; March 12 in Sacramento; May 31 in Pasadena; August 14 in Sacramento; December 5–6 in Berkeley.

LATC—2001: July 20 in San Diego; October 19 in Pomona; December 14 in Sacramento. **2002:** February 7 in Sacramento; May 8 in Sacramento; August 15 in Sacramento; December 12 in Sacramento.

Contractors' State License Board

Registrar: Stephen P. Sands ♦ (916) 255-4000 ♦ Toll-Free Complaint Line (Northern California): 1-800-321-2752 ♦ Toll-Free Complaint Line (Southern California): 1-800-235-6393 ♦ Internet: www.cslb.ca.gov



Created in 1929, the Contractors' State License Board (CSLB) licenses and regulates construction contractors, handles consumer complaints, and enforces existing laws pertaining to contractors. A consumer protection agency within the Department of Consumer Affairs (DCA), CSLB is authorized pursuant to the Contractors' State License Law (CSLL), Business and Professions Code section 7000 *et seq.*; the Board's regulations are codified in Division 8, Title 16 of the California Code of Regulations (CCR). CSLB currently licenses over 278,000 contractors in California.

CSLB licenses general engineering contractors, general building contractors, and approximately 40 specialty contractor categories; in addition, the Board registers home improvement salespersons who market contractor services to consumers. As of January 1, 2001, the fifteen-member Board consists of eight public members, one general engineering contractor, two general building contractors, two specialty contractors, one member from a labor organization representing

building trades, and one building official.

The Board currently maintains five committees: executive, contractor and consumer education, enforcement, licensing, and legislation.

A number of new Board members have joined CSLB in recent months. In May 2000, Governor Gray Davis appointed Paul Baldacci, Larry Booth, Anthony Elmo, and John ("Bert") Sandman to the Board. Baldacci, a licensed contractor, is president of Castle Construction Company in Danville. Booth, also a contractor, is senior vice-president of Frank M. Booth, Inc., a mechanical contracting firm in Sacramento. Elmo is chief building official for the City of Temecula. Sandman, a licensed contractor, is president and chief operating officer for A. Teichert and Son, Inc., of Sacramento.

In November 2000, Assembly Speaker Robert M. Hertzberg appointed John Hall of Alhambra as a new public member of CSLB. Hall is business manager for Plumbers Local No. 78 in Los Angeles.

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In January 2001, the Senate Rules Committee appointed Eldon Clymer of Fiddletown as a public member of CSLB. Clymer is a union official for the Northern California Carpenters Regional Council in Sacramento.

In February 2001, Assembly Speaker Hertzberg appointed Chuck Center as a public member of the Board. Center is the Director of the California State Council of Laborers. He has been a representative for the Operating Engineers Local 3 and the California State Building and Construction Trades Council.

In March 2001, Governor Davis appointed Charles Bertucio to the Board. Bertucio, a public member, is Assistant Vice President of Insurance for the Ulico Casualty Company in San Francisco.

At this writing, CSLB is functioning with three vacancies—all gubernatorial appointees (two public members and one labor representative).

MAJOR PROJECTS

Board Narrowly Escapes Sunset

CSLB's November 30, 1999 "sunset review" hearing before the Joint Legislative Sunset Review Committee (JLSRC) set in motion a yearlong process that has resulted in a temporary extension and re-composition of the Board due to legislative and Davis administration dissatisfaction with CSLB's performance; the hiring of a new Registrar; a legislative directive to study nagging enforcement issues that were identified at the hearing; and the appointment of an independent "CSLB Enforcement Monitor" to help the Board resolve those issues.

◆ **November 1999 Sunset Review Hearing.** CSLB was first reviewed by the JLSRC in 1996-97; following that review, the Joint Committee and DCA expressed dissatisfaction with the Board's performance in several specific areas. Whereas most other boards undergoing sunset review were given four-year extensions, CSLB was given only a two-year extension and directed to resolve approximately 15 separate issues prior to its next review. [16:1 CRLR 104] By the time of CSLB's 1999 review, it became apparent that—although some of the issues identified by the JLSRC in 1997 had been addressed—the Board had failed to resolve many others, including several critical enforcement issues.

The Board's November 1999 sunset hearing began with the testimony of three disgruntled consumers who had trouble with CSLB licensees but were even more unhappy with CSLB's enforcement process. All three echoed similar allegations: (1) the Board spends too much of its time and resources pursuing unlicensed contractors and not enough energy policing its own licensees who are wreaking havoc on the consuming public; (2) before hiring their contractor, all three consumers

contacted the Board for information and were told the same thing—"his record is clean"—when, in reality, complaints were pending and/or the contractor had caused injury to other consumers; (3) the Board fails to take aggressive enforcement action against repeat offenders; (4) the existing \$7,500 "contractor's bond" is wholly inadequate to provide relief to victimized homeowners, thus requiring consumers to seek monetary relief in court, which is expensive and time-consuming; (5) the Board allegedly refuses to process a disciplinary complaint if the homeowner files a civil action against the complained-of contractor; (6) the Board's investigation process takes an excessive period of time; and (7) the Board's licensing process—under which a contractor may have or work under several different license numbers—is confusing and often prevents consumers from meaningfully investigating the record of the contractor with whom they are dealing.

Next, attorney Manuel Duran of Bet Tzedek Legal Services played a videotape of several news segments illustrating home improvement scams that have victimized senior citizens in the Los Angeles area. Duran complained about the Board's registration program for "home improvement salespersons"—sales personnel employed by a licensed contractor who visit residents and persuade them (often using high-pressure sales tactics) to sign loan papers to finance home improvement work. According to Duran, these contracts often include liens or mortgages on the home; thus, if the homeowner does not or cannot make the payments, the lender forecloses on the home. Although SB 187 (Hughes) (Chapter 512, Statutes of 1999) now prohibits home improvement salespersons from using this type of contract with senior citizens, they may be used with any other consumer. Duran offered several suggestions: (1) CSLB should stiffen its oversight of home improvement salespersons (possibly moving to a licensure program), provide information on them on its Web site, and require them to post a bond; (2) CSLB should create a recovery fund from which victimized consumers might be compensated; (3) CSLB should adjust its licensing system—in which an individual can work as a contractor under several different license numbers—because it permits a dishonest person to shift from one license to the other in order to avoid being detected and/or monitored by consumers; and (4) CSLB

investigators need more training in sophisticated home equity lending fraud practices so they can better investigate these cases and present them to public prosecutors for criminal prosecution.

Following these presentations, CSLB Registrar Dr. C.

Lance Barnett, Board Chair Joe Tavaglione, and Board Vice-Chair Bob Alvarado addressed the JLSRC. Dr. Barnett noted that 60% of the Board's budget is used on enforcement—a program that monitors 278,000 licensees with 395,000 licenses, and receives 30,000 complaints per year. According to Dr. Barnett, CSLB mediates 40-45% of these complaints

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and investigates the rest, sending many to its arbitration programs (which are authorized to issue binding judgments), the Attorney General's Office for license discipline, and district attorney's offices for criminal prosecution. He stated that CSLB recovers \$30 million per year in restitution for consumers through its enforcement program.

Dr. Barnett next addressed a series of specific issues that were identified after CSLB's 1996-97 sunset review. [17:1 CRLR 92-96] Since then, many have been addressed; however, several stood out as unresolved as of November 1999:

• *Restitution for Consumers.* Following CSLB's 1996-97 sunset review, the JLSRC concluded that CSLB's existing mechanisms to compensate consumers who are victimized by licensed contractors are inadequate. The primary mechanism is the required \$7,500 "contractor's bond," which the Board agrees is inadequate and often unavailable to consumers. During 1999, CSLB held several public hearings on a series of proposals to enhance that mechanism, including creation of a supplemental bond for home improvement work (which, according to CSLB, is the subject of most complaints filed with the Board), new proposals to avoid mechanics' liens, and consumer education on the value of requiring the contractor to secure general liability insurance and/or a payment and performance bond for the project. The Board also studied "recovery funds" used in other states and by other occupational licensing agencies in California; however, staff did not find a program that could be successfully replicated in a state as large as California. Dr. Barnett noted that the Board planned to sponsor legislation on some of the more meritorious "safety net" proposals in 2000. [17:1 CRLR 96-97]

• *Inadequate Screening for Criminal History.* Currently, CSLB requires applicants for licensure to state whether they have ever been convicted of a crime. However, the Board has no way to verify the answer, and has unintentionally issued licenses to convicted felons who later injured consumers. Dr. Barnett announced plans to seek a fingerprinting requirement for applicants and licensees in 2000. Additionally, he noted that CSLB would review the use that it makes of known criminal convictions in licensing and enforcement decisionmaking. Currently, a criminal conviction is grounds for license denial or discipline only if it is "substantially related" to the duties, qualifications, and functions of a contractor—and the Board has historically interpreted the "substantial relationship" requirement very narrowly: Only convictions that are directly related to construction qualify. Staff will explore expansion of the Board's use of criminal convictions in licensing and enforcement decisions.

• *Public Disclosure Policy.* Currently, CSLB discloses to the public (upon request or on its Web site) pending complaints that have been "referred for legal action." It does not disclose other information that it may collect or have, includ-

ing civil judgments and settlements, business bankruptcies, or criminal convictions; nor does it disclose complaints that are still under investigation. Dr. Barnett noted that the Board would revisit its public disclosure policy in 2000.

• *Mechanics' Liens Issues.* Dr. Barnett reported that the California Law Revision Commission (CLRC) has undertaken a study of issues arising from the imposition of mechanics' liens. Generally, a consumer will contract with a general (prime) contractor, who in turn contracts with subcontractors, materials suppliers, and laborers. If the consumer pays the prime contractor but that business fails to pay the subcontractors, the subcontractors may place a lien on the home—thus potentially requiring the consumer to pay the subcontractors twice. Most consumers are unaware of this potential, so state law requires contractors to provide consumers with a series of notices on mechanics' liens and ways to avoid them; additionally, all potential lienholders must identify themselves to the consumer through another series of notices. Most observers agree that the required notices are lengthy, jargon-filled, and generally unread by and fairly useless to most consumers. The CLRC is studying the frequency of this problem, the need for legislative reform in this area, and the extent to which the legislature can make changes (in light of the fact that mechanics' lien provisions are embedded in the California Constitution). CSLB staff is participating in the CLRC proceeding, which is not likely to be completed until 2001 at the earliest.

• *CSLB's "Reengineering" Project.* By far, the most controversial component of CSLB's 1999 sunset review was its ongoing project to "reengineer" the way in which the Board receives, processes, and investigates complaints against contractors. Prior to Lance Barnett's arrival as Registrar in 1998, complaints against contractors were handled locally; that is, they were filed at any of 15 CSLB district offices, processed by staff based at that office (consumer services representatives (CSRs) who input and attempt to mediate complaints,

and investigators who would investigate cases in the field), and—if not dismissed or settled—shipped up the chain of command to the Registrar, who signed off on the accusation and transferred it to the Attorney General's Office for prosecution. Barnett and

his upper management perceived that complaints were being handled inconsistently by CSLB's 15 different offices, workload varied widely among those offices, investigators spent more of their time at an office behind a desk than in the field, and CSLB was not properly using modern technology to expedite its complaint handling and screening processes. [16:1 CRLR 107-08]

Thus, in March 1999 and continuing throughout that year, CSLB commenced a "reengineering" pilot project in southern California. The first component of the reengineering project sought to centralize complaint intake in one location

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under the direction of one supervisor, and to establish a "triage" system whereby serious or repeat offender complaints would be identified quickly. Thus, all of CSLB's southern California CSR positions were moved to its Buena Park office; those CSRs who did not want to move to Buena Park were assisted in finding other jobs. A second component of the reengineering project involved the closure of several of CSLB's southern California district offices, ostensibly to save on rent. The savings were to be invested in an Internet-based communications system and laptop computers, cell phones, and "home office" equipment for all southern California investigators. CSLB management believed that delinking investigators from offices would result in more on-the-scene investigations, more frequent consumer contact, faster investigation cycle times, and higher consumer satisfaction levels. [17:1 CRLR 96]

At the time of CSLB's November 1999 sunset hearing, the Board had not yet authorized Barnett to expand the southern California pilot project to northern California; that authorization was expected in January 2000 (see below for details). However, the relatively new Davis administration Department of Consumer Affairs registered opposition to further CSLB district office closures because it sought more—not less—visibility for DCA agencies. Further, some legislators had begun to express concern about the potential closure of CSLB offices in their districts; finally, labor unions representing some CSLB employees stated their members' concerns about the closure or movement of district offices.

◆ **April 2000 Follow-Up Hearing.** During early 2000, CSLB sponsored AB 2370 (Honda), a bill to require fingerprinting of all applicants for initial and renewal CSLB licensure (including home improvement salespersons). Additionally, CSLB staff worked with JLSRC and DCA staff to draft legislation that would extend the existence of the Board beyond its then-applicable sunset date of July 1, 2001.

At an April 4, 2000 hearing, however, the JLSRC and DCA unveiled some unexpected recommendations. Both the JLSRC and DCA agreed that state licensing and regulation of contractors should continue; however, the JLSRC expressed concern that the Board's existing composition (six contractors and seven public members, of whom one must be a local building official) is not a public member majority, and that some of the Board's public members may be closely connected to the construction industry or a member thereof. DCA offered no recommendation on whether CSLB should continue as the state's regulator of contractors. At the April hearing, DCA Director Kathleen Hamilton reiterated her concern that "the general direction taken by this Board is inconsistent with the administration's direction. We want to broaden visibility of the Department and its agencies, yet CSLB is undertaking this reengineering project which has closed district offices and is relying heavily on the Internet for communication, and not all consumers have access to the Internet." According to Hamilton, members of DCA's Consumer Leaders' Roundtable had voiced concerns about the Board's unrespon-

siveness to consumer needs, and had questioned the neutrality and fairness of the Board's arbitration program (see below for details).

Registrar Barnett responded by saying that "CSLB is 'on the same page' with DCA and the JLSRC; it's an issue of 'when' rather than 'whether.' These are timing issues, not substantive issues over which we have disagreement." He defended the Board's reengineering project by saying that it "puts our investigators where consumers want them to be—at their homes looking at damage," and noted that CSLB conducts specialized outreach programs for seniors and others who may not have access to the Internet.

◆ **April 19, 2000 Final Recommendations.** The JLSRC issued final recommendations on April 19 that shocked the Board. Finding "a dissatisfaction with the efforts of this Board by members of the Joint Committee and Department to address major issues involving protection of consumers, and concern about whether this Board will adequately deal with those issues in the future," the Joint Committee suggested that CSLB be allowed to sunset as of July 1, 2001, and that the Board be "reconstituted" as of that same date. Under this proposal, all existing Board appointments and the Registrar's position would cease as of July 1, 2001, and the Department would undertake to regulate contractors until new board members are appointed. The JLSRC also recommended that the legislature reconfigure the composition of the Board to create a true public member majority, and add safeguards to ensure that no public member is a current or past CSLB licensee, a family member of a licensee, formerly connected with the construction industry, or has any financial interest in the business of a CSLB licensee.

Additionally, the Joint Committee recommended that CSLB convene public hearings to revisit its public disclosure policy, expand its "substantial relationship" criteria for use of criminal convictions in licensing and enforcement decisionmaking, improve its applicant review process and continue its quest for fingerprinting authority, conduct a comprehensive review of the issues surrounding home equity fraud in the context of home improvement contracting, review its "reengineering" project and the impact of that project on consumer and industry access to the Board and on the Board's ability to carry out its mission, pursue legislation to require home improvement salespersons to post a bond, and reconsider proposals that would provide more adequate restitutionary remedies for injured consumers.

◆ **CSLB's Sunset Legislation.** On May 1, 2000, JLSRC Chair Senator Liz Figueroa amended SB 2029 (Figueroa) to add two new public member positions to the Board (to create an 8-7 public member majority) and to otherwise reflect the JLSRC's recommendations. The Senate passed SB 2029 on May 31, 2000.

When the bill reached the Assembly, it was joined to AB 2370 (Honda), CSLB's fingerprinting bill. This move prompted vigorous opposition by the construction industry, which was not entirely sure what CSLB intended to do with

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information on criminal convictions that it would obtain through fingerprinting. Meanwhile, the Center for Public Interest Law (CPIL) registered opposition to the proposed “re-constitution” of the Board, arguing that five of the Board’s 13 positions were then vacant and that if Governor Davis would fill the positions, the Board would effectively be “re-constituted.” CPIL sought to retain the “public forum” created by a multimember board functioning under the Bagley-Keene Open Meeting Act (which requires multimember regulatory bodies to meet and make decisions in public, subject to public scrutiny and comment), and suggested that instead of sunseting the Board, the legislature should restructure it into a public member majority, require it to immediately study and report on the significant enforcement issues which have been plaguing it for years, and create a “CSLB Enforcement Monitor” position—a temporary, external consultant, independent of the Board and the construction industry, charged with studying the Board’s discipline system and making recommendations for change to the legislature. The Enforcement Monitor suggestion was based on a similar successful experiment at the State Bar in the 1980s in which CPIL participated. [11:4 CRLR 1; 7:3 CRLR 1]

The legislature listened to the JLSRC, the industry, and CPIL. AB 2370 (Honda) was untied from SB 2029 (and promptly died—see 2000 LEGISLATION). SB 2029 was amended to include provisions adding two new public member positions on the Board, stiffening the criteria for public member appointment, and creating a two-year CSLB Enforcement Monitor position (see below for details). The bill also requires CSLB to undertake comprehensive studies of five issue areas and report to the legislature by October 1, 2001: (1) home improvement contracts that involve home equity lending fraud and scams; (2) the impacts of its “reengineering” project on Board efficiency, complaint cycle times, and consumer/industry access to the Board; (3) recovery fund programs in California and in other states that provide compensation to consumers for financial injury caused by licensed professionals; (4) alternatives to the \$7,500 “contractor’s bond” that will compensate homeowners for financial injury sustained as a result of a contractor’s fraud, poor workmanship, malfeasance, abandonment, failure to perform, or other illegal acts, including an examination of step-bonding and/or a new requirement of a payment/performance bond; and (5) the current complaint disclosure policy under which CSLB provides information to consumers about its licensees’ disciplinary history.

Finally, SB 2029 requires the Board to adopt (through the rulemaking process) (1) a statement emphasizing the value of commercial general liability insurance (GLI) and encouraging homeowners to verify that their contractors have GLI; and (2) a checklist of items that an owner contracting for home improvement (including swimming pools) should consider when reviewing a proposed contract. Three months after the Board adopts the GLI statement and the checklist, all home improvement contractors and swimming pool contractors must

include both in their contracts (see below for details). SB 2029 was signed by the Governor on September 29 (Chapter 1005, Statutes of 2000).

Board Hires New Registrar

In mid-August 2000, during the pendency of SB 2029, CSLB Registrar Lance Barnett resigned to become Chief Deputy Controller at the State Controller’s Office. At its August 23, 2000 meeting, CSLB appointed James N. Goldstene, Chief of DCA’s Bureau of Barbering and Cosmetology, as Interim Registrar, and decided to commence a nationwide search for a permanent replacement for Barnett. After interviewing candidates at its December 12, 2000 meeting, CSLB selected Stephen P. Sands as its new Registrar effective January 1, 2001. Sands, who has a bachelor’s degree from the U.S. Air Force Academy and a master’s degree in public administration from Golden Gate University, has had an extensive career in a variety of responsible positions at the Department of Consumer Affairs; since 1986, Sands had served as the Executive Officer of the California Architects Board, one of CSLB’s sister agencies within DCA.

DCA Director Appoints CSLB Enforcement Monitor

As described above, SB 2029 (Figueroa) added section 7092 to the Business and Professions Code, which creates a “CSLB Enforcement Monitor” position to be appointed by the DCA Director. Under the statute, the Monitor shall “evaluate the Contractors’ State License Board discipline system and procedures, making as his or her highest priority the reform and reengineering of the board’s enforcement program and operations, and the improvement of the overall efficiency of the board’s disciplinary system.” The statute requires the Monitor to focus on “improving the quality and consistency of complaint processing and investigation and reducing the timeframes for each, reducing any complaint backlog, assuring consistency in the application of sanctions or discipline imposed on licensees, and shall include the following areas: the accurate and consistent implementation of the laws and rules affecting discipline, staff concerns regarding disciplinary matters or procedures, appropriate utilization of licensed professionals to investigate complaints, [and] the board’s cooperation with other governmental entities charged with enforcing related laws and regulations regarding contractors.” The Monitor is vested with the investigative authorities of the DCA Director. The statute further requires CSLB to cooperate with the Monitor and to provide data, information, and case files as requested by the Monitor. The Monitor will serve for a term of two years, and issue reports and recommendations every six months.

In March 2001, DCA Director Kathleen Hamilton appointed Thomas A. Papageorge, Head Deputy District Attorney of the Consumer Protection Division at the Los Angeles County District Attorney’s Office, as CSLB Enforcement Monitor. A 24-year veteran of law enforcement, Papageorge supervises the prosecution of white-collar crime, unfair com-

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petition, and antitrust offenses at the Los Angeles DA's Office. Papageorge is also an active member of the DCA Director's Law Enforcement Committee, which is charged with improving communication and collaboration between DCA agencies and local prosecutors. Papageorge has commenced his investigation of CSLB's enforcement program and is preparing to release his initial report and recommendations in the fall of 2001.

CSLB Creates Consumer Advisory Council

During the pendency of SB 2029, CSLB decided to create a Consumer Advisory Council (CAC) to stimulate the receipt and consideration of information about issues of concern to consumers who hire and manage building contractors. To ensure adequate representation of the statewide consumer perspective, CSLB selected CAC members from California's various geographic regions and consumer interest groups.

CSLB convened the first CAC meetings on September 26, 2000 and January 18, 2001. At these meetings, CSLB staff welcomed CAC members and presented them with orientation sessions on the Board's purpose, mission, and structure. CAC members then discussed CSLB's strengths and weaknesses, and identified and prioritized issues that the Council would address in the coming months. In order of importance, the first two issues were (1) consumer education and outreach, and (2) CSLB's complaint disclosure policy and the timeliness of its complaint processing. In January, Council members also provided input on CSLB's regulatory proposals informing consumers about the importance of general liability insurance and providing consumers with a checklist of items to consider when entering into a home improvement contract (see below for details).

On April 16, 2001 in Riverside, the CAC met to discuss its priority issues. Regarding complaint disclosure, the Council was provided with an update on SB 135 (Figueroa), CSLB-sponsored legislation that will permit the Registrar to disclose the existence of complaints against contractors once a "probable violation" which may pose consumer harm has been identified (see 2001 LEGISLATION). Several CAC members representing consumer organizations noted that they had already written letters in support of SB 135. The Council also created ad hoc task forces to address four major issues: (1) public affairs and consumer education/outreach, (2) protections for consumers who enter into service and repair contracts, (3) enforcement, and (4) predatory lending. At its June 2001 meeting, the Council is expected to separate into breakout groups to discuss recommendations for better CSLB performance in each of these areas.

CSLB Complaint Disclosure Task Force

CSLB's "complaint disclosure policy" identifies the information that the Board will disclose to an inquiring consumer about pending disciplinary actions or complaints against a contractor. The Board's current policy is embodied in section 863, Title 16 of the CCR, and requires the Registrar to "establish a system whereby members of the public may obtain from board records, information regarding complaints made against licensed contractors, their history of legal actions taken by the board, and license status....For purposes of this section, 'complaint' means a written allegation which has been investigated and referred for legal action against the licensee. For purposes of this section, 'legal action' means referral of the complaint for the issuance of a citation, accusation, statement of issues, or for the initiation of criminal action or injunctive proceedings." Under section 863, complaints that are in the process of being screened, mediated, arbitrated, or investigated are not disclosed.

In other words, CSLB will not disclose a pending complaint until it has been fully investigated and referred to the Attorney General's Office or a public prosecutor for the filing of a "legal action." Although relatively progressive in comparison with the complaint disclosure policies of other occupational licensing boards (which routinely refuse to disclose a pending complaint until formal charges have actually been filed), CSLB's complaint disclosure policy has been a thorny issue for years—partly because CSLB's investigation process is perceived as extremely lengthy and no complaint (including multiple complaints against the same contractor which are on the verge of being referred) may be disclosed until the investigation is completed and the matter has been "referred for legal action."

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As described above, the Board's disclosure policy was the subject of consumer complaints at CSLB's 1999 sunset review hearing; the JLSRC directed the Board to reconsider the policy; and—as passed by the legislature and signed by the Governor—SB 2029 requires the Board to undertake a comprehensive study of its policy.

On July 28, September 12, September 26, and October 26, 2000, CSLB staff counsel Ellen Gallagher convened public hearings throughout the state on the Board's complaint disclosure policy, seeking input from consumer groups and others as to the type of information that would be helpful in choosing a contractor:

◆ **Complaints.** According to Gallagher's final report on the hearings, most consumers want more information at an earlier point—they are upset that CSLB fails to disclose complaints even when the Board knows a contractor has accumulated a number of them. Many consumers also want information on "resolved" or "settled" complaints, because they be-

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lieve that many contractors ignore complaints until the Board becomes involved. Consumers are not interested in engaging a contractor who consistently attracts complaints, and do not want the Board to brush these complaints aside as “settled.” Board staff admitted that contractors can accumulate many “resolved” complaints without warranting a citation. Industry representatives, on the other hand, support the existing limited disclosure policy, because they fear that disclosure of uninvestigated (possibly frivolous) complaints will harm the reputations of competent contractors and that contractors themselves may file complaints against their competitors to gain an edge.

◆ **Financial Information.** Consumers also want information about contractor finances to protect themselves from soon-to-be-bankrupt contractors, contractors likely to abandon a project, and contractors who fail to pay subcontractors and suppliers (thus exposing consumers to liens). Consumers are interested in learning about arbitration awards and judgments against contractors (even if paid, the contractor was found more likely than not to have caused injury), settlements, and mechanics’ liens caused by the contractor’s failure to pay subcontractors. Industry representatives generally opposed the disclosure of any of this information.

◆ **General Liability Insurance Status.** Most consumers who participated in the public hearings were shocked to learn that contractors are not required to carry general liability insurance, and believe that (1) contractors should be required to purchase it, and (2) the status of such insurance (*e.g.*, carrier, policy number, amount, expiration date) should be disclosed on CSLB’s Web site (as is workers’ compensation insurance). Interestingly, a majority of industry representatives and contractors also supported mandating GLI. CSLB held a series of public hearings on this issue in 1999 [17:1 CRLR 97; 16:2 CRLR 84–85], and has attempted legislation requiring contractors to carry GLI in the past; however, the insurance industry refuses to provide the Board with electronic transfer of GLI information. Without electronic transfer, the Board cannot keep its records (and its Web site) on 278,000 licensees up to date, and it does not want to put inaccurate information on its Web site. Thus, CSLB was forced to be satisfied with the GLI disclosure provision in SB 2029 (see below for detailed information).

At CSLB’s January 31, 2001 meeting, Board Chair Joe Tavaglione appointed Board members Larry Booth and Dave Lucchetti to a Complaint Disclosure Task Force, and charged it with making a recommendation to the Board. After meeting with Board staff on February 22 and sharing a draft report with industry representatives on March 6, the Task Force presented its report and recommendations to the Board at its April 17 meeting in Riverside.

The Task Force’s report is limited to the disclosure of complaints (not civil actions or other non-CSLB-generated information), and analyzes the various steps of a complaint moving through the Board’s enforcement system. Those steps include (1) intake/mediation, (2) arbitration (referred after intake/mediation), (3) investigation, (4) arbitration (referred

after investigation), (5) referred for legal action, and (6) legal action taken. Currently, complaints are disclosed only after they reach step (5) of the process, and—if they reach step (6)—they are disclosed forever. The Task Force recommended that CSLB sponsor legislation providing that complaints that (a) have not been settled in the Board’s Intake/Mediation Unit, (b) are non-technical in nature and should be further investigated for legal action, and (c) have not been referred to arbitration should be disclosed if a Board investigator finds that probable violation has occurred, the investigator’s supervisor agrees, and the alleged violation would warrant a legal action. Such a complaint would be disclosed with a disclaimer that the complaint is only an allegation and is under investigation. The Task Force also recommended that the Board limit the time period during which CSLB disciplinary actions are disclosed. The Task Force suggested that the Board disclose revocations and suspensions for a minimum of seven years, and citations for a period of five years.

At its April 2001 meeting, Task Force Chair Larry Booth explained the proposed policy and noted that it had been incorporated into SB 135 (Figueroa) (see 2001 LEGISLATION). Following discussion, CSLB unanimously voted to support SB 135.

Update on Complaint Handling Reengineering Project

Throughout 1999, CSLB implemented a “pilot project” to reengineer the way it receives, manages, and resolves complaints from consumers in the four-county region of greater Los Angeles (including Orange, Riverside, San Bernardino, and Los Angeles counties). The project involved (1) the consolidation of all Intake/Mediation personnel in one office in Buena Park—meaning that all CSLB consumer services representatives (CSRs), who formerly staffed CSLB district offices throughout the state, were required to either move to Buena Park or find other jobs; (2) the closure of several CSLB district offices; and (3) the “home-officing” of all CSLB investigators. Instead of reporting to offices, the Board’s southern California investigative staff was equipped with mobile offices, including a laptop computer, modem, cellular phone, and fax machine, to enable them to work more in the field but still be reachable immediately for new assignments and information. CSLB management hoped that the project would lead to faster turnaround time for complaint handling, more consistent outcomes for consumers, better preparation of cases that go to the field for investigation, and greater consumer satisfaction due to increased investigator presence in the community. [17:1 CRLR 96; 16:2 CRLR 83–84]

At the Board’s January 18, 2000 meeting, Registrar Lance Barnett hoped CSLB would approve statewide expansion of the southern California “pilot project.” Armed with statistics indicating reductions in case investigation costs (\$719 for pilot project cases versus \$1,009 for non-pilot project cases), higher investigator productivity (7.7 case closures per month in the pilot project versus 6.7 case closures per month in non-

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pilot project areas), higher CSR productivity (30.6 case closures per month in the pilot project versus 26.1 case closures per month in non-pilot project areas), and increased legal actions per investigator (1.4 legal actions per month in the pilot project versus 1.2 legal actions per month in non-pilot project areas), Dr. Barnett sought approval of his plans to consolidate all central and northern California intake and mediation functions in Sacramento; consolidate the San Francisco and San Jose district offices into the Oakland Investigation Center; and convert the Ventura district office into a satellite office reporting to the Azusa Investigation Center. However, CSLB lacked a quorum at its January 18 meeting, and the matter was deferred to a special meeting of the Executive Committee on January 27, 2000.

At the Executive Committee's January 27, 2000 meeting, seven CSLB members participated by teleconference. The Committee agreed that the results from the pilot project presented at the January 18 meeting were favorable, and agreed that complaint intake and mediation should be centralized in northern California and that voluntary investigator home-officing should continue. However, the Committee—aware that the reengineering project had engendered criticism at CSLB's December 1999 sunset hearing (see above)—expressed concerns about the impact of further district office closures on public access to the Board, and directed staff to keep all existing offices open for public access.

As noted above, DCA and some legislators criticized the reengineering project at CSLB's April 2000 follow-up sunset hearing, and reiterated their request that no more Board offices be closed or moved unnecessarily. The JLSRC and the legislature responded by requiring the Board to study the overall impact of its reengineering project in SB 2029 (Figueroa) (see above).

Following the passage of SB 2029 and the resignation of Lance Barnett, new Registrar Steve Sands—in cooperation with CSLB Enforcement Monitor Tom Papageorge—hired NewPoint Group, an independent management consultant, to conduct the study of the reengineering project required by SB 2029. At this writing, the study is under way; preliminary results indicate that the reengineering project and associated factors caused an unusually high level of staff attrition throughout the Board's enforcement program in 1999 and 2000, resulting in the accumulation of large backlogs of complaints throughout the state, increased cycle times to resolve and/or move complaints through the system, and a decreased consumer satisfaction rate. NewPoint's full report must be submitted to the legislature by October 1, 2001.

CSLB Rulemaking

Following is a report on recent rulemaking proceedings undertaken by CSLB, some of which are described in more

detail in Volume 17, No. 1 (Winter 2000) of the *California Regulatory Law Reporter*:

◆ **Required Disclosure Regarding General Liability Insurance.** As noted above, SB 2029 (Figueroa) (Chapter 1005, Statutes of 2000) requires CSLB to adopt a regulation containing a statement that “emphasizes the value of commercial general liability insurance and encourages the owner or tenant to verify the contractor's insurance coverage and status.” Three months after the Board adopts such a regulation, all home improvement contractors and contractors building single-family residences must include the Board-adopted statement in their estimates and contracts; those estimates and contracts must also include a check box indicating whether the contractor carries general liability insurance (GLI) and, if so, the name and telephone number of the insurer.

On December 8, 2000, CSLB published notice of its intent to adopt section 872, Title 16 of the CCR, which would contain the required statement. Following a public hearing on January 30, 2001 and a 15-day notice of modifications to the proposed language, the Board adopted section 872 at its April 17, 2001 meeting. The regulation notifies consumers that home improvement contractors and contractors building single-family residences for owners who intend to occupy the home for at least one year are required to disclose—in a written document accompanying the bid and/or contract—whether or not they carry GLI. The statement explains that GLI is not intended to cover the work performed by the contractor, but it can protect against third-party bodily injury and accidental property damage caused by the contractor. It notes that GLI is not required, but “CSLB strongly recommends that all contractors carry it. The Board cautions you to evaluate the risk to your family and property when contracting with a contractor who is not insured.” The statement notifies consumers that if the contractor carries GLI, he/she is re-

Preliminary results indicate that the reengineering project and associated factors caused an unusually high level of staff attrition throughout the Board's enforcement program in 1999 and 2000, resulting in the accumulation of large backlogs of complaints throughout the state, increased cycle times to resolve and/or move complaints through the system, and a decreased consumer satisfaction rate.

quired to provide the consumer with the name and telephone number of the insurance carrier, and instructs consumers to call the insurance company to verify that the policy is in effect and will cover the project. Finally, the statement notes that some contractors may choose to be “self-insured,” and warns consumers to determine whether—if something goes wrong—the contractor would be able to cover losses ordinarily covered by insurance.

At this writing, staff is preparing the rulemaking file on section 872 for submission to the DCA Director and the Office of Administrative Law (OAL) for review and approval.

◆ **Home Improvement Checklist.** SB 2029 (Figueroa) (Chapter 1005, Statutes of 2001) requires the Board to adopt, in regulation, a “checklist” setting forth the items that a homeowner contracting with a home improvement contractor or swimming pool contractor should consider when review-

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ing a proposed contract. Three months after the Board adopts such a regulation, all home improvement contractors and swimming pool contractors must include the Board-adopted checklist in all estimates and contracts.

On December 8, 2000, CSLB published notice of its intent to adopt section 872.1, Title 16 of the CCR, which would contain the required checklist. Following a public hearing on January 30, 2001 and a 15-day notice of modifications to the proposed language, the Board considered section 872.1 at its April 17, 2001 meeting. Among other things, the checklist would remind consumers to (1) contact CSLB to check the contractor's license status; (2) obtain and check at least three local references from the contractors under consideration; (3) read and understand the contract; (4) determine whether the statutory three-day right to cancel the contract applies; (5) ensure that the contract states when work will start and end, and includes a detailed description of the work to be done, the materials to be used, and the equipment to be installed; (6) determine whether a down payment is required, and that it is no more than 10% of the contract price or \$1,000 (whichever is less); (7) if the contract includes a schedule of payments, pay only as work is completed and not before; (8) ensure that the contractor has delivered the required "Notice to Owner" describing mechanics' liens and ways to avoid them; and (9) ensure that all changes or additions to the contract are in writing. Following discussion, the Board adopted section 872.1 after adding an additional checklist item reminding consumers to consider whether building permits are required for the project and to inquire whether the contractor has obtained them. On April 27, CSLB published yet another 15-day notice on the modified language of section 872.1.

At this writing, staff is preparing the rulemaking file on section 872.1 for submission to the DCA Director and OAL for review and approval.

◆ **Industry Expert Program.** At its April 2000 meeting, following public hearings at its July and October 1999 meetings, CSLB adopted sections 895–895.9, Title 16 of the CCR, to implement Business and Professions Code sections 7019 and 7019.1. Section 7019 authorizes CSLB to contract with licensed professionals ("industry experts") to assist the Board in its investigation of consumer complaints. Section 7019.1, which was added by SB 857 (Polanco) (Chapter 812, Statutes of 1997), requires the Board to furnish a copy of any industry expert's report to the complainant and to the licensee complained of, and sets standards for the contents of the report. Under the statute, the expert's opinion must include all of the following: (1) an identification of the nature of the condition that produced the complaint and the cause, basis, or contributing cause of that condition; (2) whether the cause or basis of the condition complained of constitutes a departure from plans, codes, or accepted trade standards; (3) an identification of the code provisions or trade standards specified in paragraph (2); (4) the cost to correct each item identified under paragraph (2) as being the result of a departure

from plans, specifications, codes, or accepted trade standards; and (5) the basis of the cost computed in paragraph (4).

Regulatory sections 895–895.9 would have directly implemented section 7019.1 by defining several terms used in the statute, setting forth the purpose of the industry expert program, authorizing the Registrar to recruit industry experts as necessary, setting forth the required qualifications of all industry experts, authorizing the Registrar to waive the experience and training qualifications under certain circumstances, setting forth grounds for disqualification of an expert, authorizing the Registrar to intermittently conduct regional training sessions to ensure the availability of a pool of qualified industry experts, further defining the contents of the expert's report, and setting standards for the release of the report as required by section 7019.1. [17:1 CRLR 97–99]

On January 10, 2001, OAL disapproved the Board's industry expert regulations on grounds they failed to meet the consistency, clarity, and necessity standards of the Administrative Procedure Act. OAL first concluded that the regulations are not consistent with the Permit Reform Act of 1981 because they establish a sort of "authorization" program under which the Registrar may approve industry experts without setting forth the minimum, median, and maximum timeframes for the approval process (as required by the Permit Reform Act). OAL also found numerous sections of the regulation to be unclear (including the definition of the term "industry expert"). Finally, OAL determined that the rulemaking record did not contain any detailed or specific necessity for any of the proposed regulations.

Section 7019.1, one of the statutes CSLB proposed to implement by adopting these regulations, sunsetted on July 1, 2000. Thus, the Board has decided not to cure the defects cited by OAL and resubmit the rulemaking file.

◆ **Minimum Qualifications for Arbitrators.** Each year, CSLB investigates approximately 26,000 complaints related to building construction and/or home improvement. Approximately 1,500 of these cases involve financial injury and are referred to the Board's Arbitration Program, established in section 7085 of the Business and Professions Code. Financial disputes under \$5,000 must be resolved through the Board's Mandatory Arbitration Program (MARB), while some financial disputes under \$50,000 may be handled through CSLB's Voluntary Arbitration Program (VARB); in both cases, the complained-of contractor must have a generally clean record. Hearings are conducted by an arbitrator appointed by the Board; in VARB proceedings, the parties participate in the selection of the arbitrator. Currently, CSLB's arbitrations are presided over by arbitrators from Arbitration Works, Inc. (AWI); AWI's contract with CSLB expires on June 30, 2001.

In May 1999, the Board published notice of its intent to adopt section 890, Title 16 of the CCR, to implement a provision of section 7085.5 of the Business and Professions Code. Subsection 7085.5(b)(3) requires CSLB to adopt regulations setting minimum qualifications for arbitrators in the areas of

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training, experience, and performance. Throughout 1999 and 2000, CSLB conducted studies and held numerous public hearings on its proposed regulations in an attempt to satisfy concerns raised by DCA Director Kathleen Hamilton and others. [17:1 CRLR 99] Hamilton objected to language in the regulations requiring CSLB arbitrators to have numerous years of experience or expertise in the construction industry. She noted that an arbitrator functions as a judge and, as such, should be neutral and have expertise in dispute resolution; in her view, construction expertise and expert opinion should come from expert witnesses hired by the parties and/or the Board who testify subject to cross-examination at the hearing. Hamilton argued that requiring arbitrators to have extensive construction experience may convey the appearance (if not the actuality) of bias toward the contractor in CSLB arbitration proceedings. Conversely, some construction industry representatives argued that the proposed regulations did not require arbitrators to have enough specific information about technical construction issues.

In an attempt to resolve these issues, CSLB held a roundtable forum in early 2000; according to CSLB documents, the consensus at the roundtable was that construction experience is essential for CSLB arbitrators (although then-CSLB Enforcement Chief Sondra Vaughan and the California Consumer Affairs Association disagreed), and that arbitration training should be required for attorneys who wish to qualify as CSLB arbitrators. Following the roundtable, and with the June 2001 expiration of its AWI contract approaching, the Board spent several months reviewing the entire arbitration program and its various alternatives.

Later in 2000, CSLB staff conducted two studies. In the first study, staff examined 163 arbitration files selected randomly to evaluate whether contractor arbitrators are biased toward contractors. Overall, staff found that contractor arbitrators found in favor of the complainant in 79% of the cases they heard; non-contractor arbitrators found in favor of the complainant in 84% of the cases they heard. Staff also attempted to measure whether, even though an arbitrator may have found "in favor of" the complainant, the arbitrator may have exhibited bias by awarding an inappropriately low amount; to measure this factor, staff compared the amount of the arbitration award with the amount of damages assessed by the industry expert. Staff found that non-contractor arbitrators awarded 82.3% of the industry expert's estimate, and contractor arbitrators awarded 70.3% of the industry expert's estimate.

Staff's second study was a telephone survey of complainants and contractors involved in 100 randomly-selected CSLB arbitration cases. Of the 87 responding complainants, 68% stated they were satisfied with the arbitration process, 51% were not concerned with bias on the part of the arbitrator, 83% felt the arbitrator was fair to both parties, 95% stated the arbitrator gave them enough time to present their case, and 58% were satisfied with the outcome of the arbitration. Of the 91 responding contractors, 42% stated they were satis-

fied with the arbitration process, 37% were not concerned with bias on the part of the arbitrator, 64% felt the arbitrator was fair to both parties, 86% stated the arbitrator gave them enough time to present their case, and 28% were satisfied with the outcome of the arbitration.

Based on the results of these studies, the approaching expiration of AWI's contract for arbitration services, DCA Director Hamilton's continuing concerns, and the Office of Administrative Hearings' (OAH) expression of interest in conducting CSLB's arbitration hearings, the Board voted at its October 2000 meeting to fashion its regulations so as to offer consumers a choice between AWI arbitrators (who might be contractors with considerable construction experience) and OAH administrative law judges (professional judges with considerable dispute resolution experience). In December 2000, the Board renoticed section 890 and, after several more public hearings, adopted its final language at its April 2001 meeting.

Under section 890 as approved by the Board in April 2001, a CSLB arbitrator must possess the following minimum qualifications: (a) five years of experience in the construction industry as a licensed contractor or a professional in a construction-related field (such as an architect or engineer), or (b) five years of experience as an attorney, judge, administrative law judge, arbitrator, or a combination thereof, handling a minimum of eight construction-related matters. In addition, CSLB arbitrators must have completed a course on construction arbitration within the past five years, including but not limited to training on the process, ethics, and laws relating to arbitration; must thereafter complete a similar eight-hour continuing education course every five years; and must complete a training program related specifically to the Board's arbitration procedures, laws, and policies.

At this writing, staff is preparing the rulemaking file on section 890 for submission to the DCA Director and OAL for review and approval.

◆ **Construction Zone Traffic Control Contractor.** AB 1206 (Wesson) (Chapter 708, Statutes of 1999) creates a new specialty contractor license category for individuals who engage in the preparation and removal of roadway construction zones, lane closures, flagging, or traffic diversions, and requires persons performing that work after January 1, 2001 to hold the appropriate specialty contractor license. [17:1 CRLR 100] To implement AB 1206, CSLB—in March 2000—published notice of its intent to adopt new section 832.31, Title 16 of the CCR, to create the new specialty category in its regulations. Following an April 2000 public hearing, the Board adopted new section 832.31; OAL approved it on September 18, 2000. Section 832.31 states that "a construction zone traffic control contractor prepares or removes lane closures, flagging, or traffic diversions, utilizing portable devices, such as cones, delineators, barricades, sign stands, flashing beacons, flashing arrow trailers, and changeable message signs, on roadways, including but not limited to public streets, highways, or any public conveyance."

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2000 LEGISLATION

SB 2029 (Figueroa), as amended August 25, 2000, is CSLB's "sunset review" legislation that extends the existence of the Board until July 1, 2003. The bill also adds two new public members to the Board—one to be appointed by the Assembly Speaker and the other to be appointed by the Senate Rules Committee. SB 2029 specifies that public members must not be current or former CSLB licensees, nor may they be a close family member of a licensee or "currently or formerly connected with the construction industry or have any financial interest in the business of a licensee of the Board." However, the bill also specifies that representatives of labor organizations may be appointed as CSLB public members. Thus, effective January 1, 2001, CSLB consists of eight public members, five contractors, one member of a labor organization representing the building trades, and one local building official.

SB 2029 also adds section 7092 to the Business and Professions Code, which requires the DCA Director to appoint a CSLB Enforcement Monitor for a two-year period ending in 2003. The Monitor is charged with evaluating CSLB's discipline system and procedures and recommending changes that will improve the quality and consistency of complaint processing and investigation and reduce the timeframes for each, reduce any complaint backlog, and assure consistency in the application of sanctions or discipline imposed on licensees. The Monitor is required to submit periodic reports to the DCA Director and to the legislature.

The bill also requires the Board to study a number of issues which have long caused problems for the Board and consumers, and to file reports with the legislature by October 1, 2001. Specifically, CSLB must study (1) home improvement contracts that involve home equity lending fraud and scams; (2) the impacts of its "reengineering" project that has dramatically changed the way CSLB receives, processes, and investigates complaints about contractors; (3) recovery fund programs in California and in other states that provide compensation to consumers for financial injury caused by licensed professionals; (4) the use of surety bonds to compensate homeowners for financial injury sustained as a result of a contractor's fraud, poor workmanship, malfeasance, abandonment, failure to perform, or other illegal acts, including an examination of step-bonding and/or a new requirement of a payment/performance bond instead of the traditional "contractor's bond" (CSLB must conduct this study in conjunction with the Department of Insurance); and (5) its current complaint disclosure policy under which it provides information to consumers about its licensees' disciplinary history.

Finally, SB 2029 requires the Board to adopt (through the rulemaking process) (1) a statement emphasizing the value of commercial general liability insurance (GLI) and encouraging homeowners to verify that their contractors have GLI,

and (2) a checklist of items that an owner contracting for home improvement (including swimming pools) should consider when reviewing a proposed contract. Three months after the Board adopts the GLI statement and the checklist, all home improvement contractors and swimming pool contractors must include both in their contracts (see MAJOR PROJECTS). SB 2029 was signed by the Governor on September 29 (Chapter 1005, Statutes of 2000).

AB 2370 (Honda), as amended August 14, 2000, was a CSLB-sponsored bill that would have required applicants for contractor licensure, home improvement certification, and home improvement salesperson registration to submit their fingerprints to the Board, to enable CSLB to check their criminal histories (which it currently cannot do); and would have allowed the Board to deny licensure or certification to applicants who have been convicted of crimes, or have committed dishonest or fraudulent acts related to the qualifications, functions, or duties of home improvement contractors. At one point, AB 2370 was double-joined with SB 2029 to ensure its passage (see MAJOR PROJECTS); however, due to opposition

by the construction industry, this bill was delinked from SB 2029 and later died in the Senate Appropriations Committee.

AB 1849 (Wiggins), as amended April 5, 2000, would have created—until January 1,

2006—a major fraud unit within CSLB for the investigation of fraudulent acts committed by licensees under the CSLL and/or relevant labor laws. This bill—similar to 1999's AB 952 (Wiggins), which was vetoed by the Governor [17:1 CRLR 100]—died in the Senate Appropriations Committee.

SB 1216 (Hughes), as amended August 25, 2000, would have regulated persons who perform home inspections. This bill would have required any person representing him/herself as a home inspector to pass a basic competency examination and allowed a civil penalty of \$1,000 for each violation. SB 1216 would also have prohibited licensed contractors, engineers, and architects—many of whom currently perform home inspections—from using the title of home inspector or advertising that they perform home inspections unless they pass the examination required by the bill. On September 29, 2000, Governor Davis vetoed SB 1216, finding that the bill "would place an unnecessary additional regulatory burden on licensed professionals who have already met extensive education, training, and examination requirements. Rather than benefitting consumers, this bill may expose them to increased costs resulting from the additional regulation of the home inspection industry."

SB 1524 (Figueroa), in its early versions, was a joint effort by JLSRC Chair Senator Liz Figueroa and then-Insurance Commissioner Chuck Quackenbush to ensure that consumers who are victimized by contractors have a monetary remedy. Originally, the bill would have authorized CSLB to require contractors to carry commercial general liability in-

SB 2029 adds section 7092 to the Business and Professions Code, which requires the DCA Director to appoint a CSLB Enforcement Monitor for a two-year period ending in 2003.

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insurance instead of the \$7,500 "contractor's bond." Subsequent versions would have clarified that homeowners could perfect a claim against the bond without having to demonstrate to the surety's satisfaction that the underlying violation of the CSLL was "willful" or "deliberate." In the end, Senator Figueroa amended this language out of SB 1524 and opted for SB 2029 (Figueroa), which requires the Board to further study the issues surrounding GLI and the "contractor's bond."

SB 1151 (Polanco), as amended in May 1999, would have required licensed contractors to obtain a written receipt indicating that persons contracting for home improvement services or swimming pool construction have received and read all required mechanics' lien notices. In May 2000, the bill was gutted and no longer pertains to CSLB.

SB 865 (Hughes). Business and Professions Code section 7163 specifies certain requirements as to the enforceability of home improvement contracts. Originally, SB 865 would have provided that a violation of section 7163 by a licensed home improvement contractor or person subject to licensure, or by his/her agent or salesperson, shall subject the licensee to mandatory suspension or revocation of CSLB licensure. However, the bill was amended in June 2000 and no longer relates to CSLB.

The following bills died in committee during 2000: **AB 229 (Baldwin)**, which would have permitted providers of approximately 50 types of professional services—including general contractors and subcontractors—to form limited liability corporations; **AB 1288 (Davis)**, which would have required CSLB licensees to carry commercial general liability insurance as a condition precedent to the issuance or renewal of a license; **AB 1221 (Dutra)**, which would have established the California Homebuyer Protection and Quality Construction Act of 2000, a ten-year warranty program administered by CSLB that would have limited purchasers of defective homes to binding arbitration and remedies under the warranty (to the exclusion of tort litigation in most cases); **ACA 5 (Honda)** and **AB 742 (Honda)**, which would have created an exception to the mechanics' lien rights of laborers, subcontractors, and materials suppliers where the property in question is a single-family, owner-occupied dwelling that is the primary residence of the owner of the property and the owner has paid the prime contractor in full, and would have enabled non-prime contractors who have not been paid to seek compensation through the Contractors' Default Recovery Fund, a new industry-supported fund; **AB 1642 (Floyd)**, which would have provided that the failure of a contractor to pay moneys when due for materials purchased or services rendered in connection with his/her operations as a contractor for residential home improvement work, when he/she has the capacity to pay or has received funds for that particular project that were sufficient to pay for the services or materials, and if the failure to pay results in a mechanic's lien being filed

against residential property for that work, would result in the automatic suspension of the contractor's license; and **AB 171 (Margett)**, which would have required the owner of a public or private work of improvement to notify, by registered or certified mail, the original contractor and any claimant who has provided a preliminary 20-day notice that a notice of completion or notice of cessation has been recorded, within ten days of recordation of that notice of completion or notice of cessation; failure to give notice would have extended the mechanics' lien rights of the contractor or claimant.

2001 LEGISLATION

SB 135 (Figueroa), as amended March 26, 2001, is a CSLB-sponsored bill that would liberalize the Board's complaint disclosure policy in response to the directive in SB 2029 (Figueroa) (Chapter 1005, Statutes of 2000) (see above) and to the review of that policy recently undertaken by CSLB's Complaint Disclosure Task Force (see MAJOR PROJECTS). Under CSLB's current policy, the Registrar is required to make available to the public the nature and disposition of all complaints on file against a licensee that have been referred for legal action; the policy prohibits the disclosure of complaints that are still being investigated or have been resolved in favor of the contractor. SB 135 would require the Registrar to make available to the public the date, nature, and status of all complaints on file that have been referred for investigation after a determination by Board enforcement staff that a probable violation has occurred; the bill would further require the Board to adopt regulations creating a disclaimer that would accompany the disclosure of a complaint. SB 135 would also provide that formal CSLB disciplinary actions shall be disclosed for a minimum of seven years, and citations must be disclosed for five years after the date of compliance with the citation. [S. Appr]

SB 26 (Figueroa), as amended March 8, 2001, is an urgency bill that would reinstate the position of CSLB Registrar, which was inadvertently deleted in 2000's sunset legislation. [A. B&P]

AB 269 (Correa), as amended April 5, 2001, would create the Division of Enforcement Oversight within DCA. Under the direction of the DCA Director, the Division would monitor and evaluate the consumer complaint and discipline system of each DCA board (including CSLB). Further, the bill would require the CSLB Registrar to be appointed by a three-member panel comprised of a representative of the Board, the DCA Director, and the Governor's appointments secretary. [A. B&P]

SB 771 (Committee on Business and Professions), as amended March 29, 2001, is a clean-up bill that would make a number of noncontroversial changes to the CSLL. Among other things, SB 771 would: (1) include the installation, repair, and maintenance of underground storage tanks within

SB 135 (Figueroa), as amended March 26, 2001, is a CSLB-sponsored bill that would liberalize the Board's complaint disclosure policy in response to the directive in SB 2029 (Figueroa).

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the definition of a licensed contractor; (2) specify that the authority of the CSLB Registrar to issue administrative citations and civil penalties to unlicensed persons also includes unlicensed salespersons who are believed to have violated the CSLB; (3) require the revenues collected from the assessment of these administrative fines to be put in a separate account within the Contractors' State License Fund, that may be expended only upon appropriation by the legislature for the purposes of administering the CSLB; (4) allow the Registrar to use collection agencies to collect administrative civil penalties that are final, and permit the Registrar to assign the right to those penalties to the collection agency for adequate consideration; (5) extend the time to make a claim against a licensee's cash deposit with the CSLB from two to three years after the expiration or revocation of the contractor's license; (6) revise the deadline when a license application becomes void, and allow extensions of that timeframe for circumstances beyond the control of the license applicant; and (7) expand the grounds for disciplinary action during the license application and renewal process to include omission rather than just misrepresentation of material facts. [S. Appr]

SB 929 (Machado). Existing law creates the Construction Management Education Account for the purpose of promoting construction management education. As amended April 19, 2001, SB 929 would change the Account's name to "Construction Education Account" and authorize CSLB to transfer revenue from other funding sources including but not limited to donations, penalties, settlements, and gifts to the Account. [S. B&P]

AB 678 (Papan). Existing law prohibits unlicensed contractors from bringing an action to collect compensation for the performance of any act or contract for which a contractor's license is required. As amended May 1, 2001, this bill would authorize persons who use the services of an unlicensed contractor to bring an action to recover all compensation paid to the unlicensed contractor for performance of any act or contract for which a license was required. It would further specify that this authorization is not applicable when the person who used the services of an unlicensed contractor knew that the contractor was unlicensed prior to the time that any payments were made. [A. B&P]

AB 264 (Correa), as amended April 5, 2001, is a two-year bill that would create a new type of specialty contractor called the "service and repair contractor," whose operations would involve customer conditions that require immediate attention, including a customer's personal emergency, that does not exceed two thousand five hundred dollars (\$2,500) in labor and material. Under the bill, a person or business licensed under this category must maintain a minimum of \$100,000 in general liability insurance and a \$7,500 contractor's bond. [A. B&P]

AB 600 (Dutra), as introduced February 22, 2001, is a two-year bill that is virtually identical to AB 2112 (Dutra), which died in 2000 (see above) and AB 1221 (Dutra), which died in 1999 [17:1 CRLR 101]. Like its predecessors, AB 600 would create a ten-year new home warranty program that would be administered in some fashion by CSLB; the warranty would provide a dispute resolution process for claims covered by the warranty and essentially block homeowners who elect to purchase the warranty from suing in court under tort theories for damages due to construction defects. [A. Jud]

LITIGATION

In *Aas v. Superior Court (William Lyon Co., et al., Real Parties in Interest)*, 24 Cal. 4th 627 (2000)—a decision that has been characterized as "far-reaching," "cold-blooded," "cruel," and "shocking"—the California Supreme Court barred homeowners from recovering tort damages from their homebuilders for construction defects that have not yet caused property damage.

Lyon was the developer and general contractor of two subdivisions in San Diego County. Plaintiffs, purchasers of Lyon's homes, sued Lyon, alleged that their dwellings suffer from a wide variety of construction defects (including defects resulting from building code violations), and sought damages under several theories, including negligence. Plaintiffs sought the cost of repairing the alleged defects and damages representing the diminution in the value of their residences because of the defects. Prior to trial, the superior court ruled that plaintiffs—in attempting to prove their tort claims—were barred from presenting evidence of defects that have not yet resulted in bodily injury or physical property damage. Plaintiffs appealed that ruling; the Fourth District affirmed, and the Supreme Court granted review of the Fourth District's decision.

The Supreme Court characterized the "fairly narrow" issue before it as follows: "May plaintiffs recover in negligence from the entities that built their homes a money judgment representing the cost to repair, or diminished value attributable to, construction defects that have not caused property damage?" On a 5-2 vote, the court said no. In order to collect tort damages against contractors, a homeowner must wait until structural defects—including those resulting from building code violations and those that diminish the value of the property—actually cause physical damage to the home. In ruling that mere economic loss without physical damage will not sustain a cause of action in tort, the majority followed *Seely v. White Motor Co.*, 63 Cal. 2d 9 (1965), and a line of cases limiting the recovery of economic losses in tort actions. Homeowners are free to sue under contract and fraud theories of recovery, but are unable to collect tort damages until the alleged defects cause physical damage to the property. The majority also noted that homeowners enjoy "an ex-

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ceptionally long 10-year statute of limitations for latent construction defects" in Civil Code section 337.15, and invited the legislature to "add whatever additional protections it deems appropriate."

In a concurring and dissenting opinion, Chief Justice Ronald George wondered why a homeowner should "have to wait for a personal tragedy to occur in order to recover damages to repair known serious building code safety defects caused by negligent construction?...In determining that a negligently constructed home must first collapse or be gutted by fire before a homeowner may sue in tort to collect costs necessary to repair negligently constructed shear walls or fire walls, the majority today embraces a ruling that offends both established common law and basic common sense." Chief Justice George conceded that recovery in tort for minor violations that have not resulted in physical damage should be barred, but argued that recovery for serious defects and code violations posing a serious risk of death, personal injury, or considerable property damage should be permitted before those violations have caused physical injury. George noted that most of the plaintiffs live in condominiums, and their mere knowledge of such defects "places upon them a legal duty to make necessary repairs or corrections." Additionally, all plaintiffs have a duty to disclose such defects to subsequent purchasers. Thus, he would recognize a limited negligence action in tort to ensure that needed repairs to prevent future damage are undertaken.

Legal commentators have sparred about the effect of the *Aas* decision. Attorneys representing the construction industry argue that it should not be liable for damages that are purely speculative; if homeowners discover defects in their homes, they should file a complaint with CSLB and attempt to require the builder to repair the defect through CSLB's enforcement program. Plaintiffs' attorneys contend that the ruling will encourage contractors to "cut corners" and hope that no damage occurs within the first ten years, after which the statute of limitations will preclude recovery. Further, they fear the decision will inhibit homeowners from looking for defects in their homes because they will not want to disclose them to subsequent purchasers.

In *Tellis v. Contractors' State License Board*, 79 Cal. App. 4th 155 (Feb. 17, 2000), the Fourth District Court of Appeal upheld CSLB's citation against contractor Cody Bryan Tellis for violations of Business and Professions Code sections 7109 (willful departure from trade standards) and 7113 (material failure to complete project). In the process, the court had occasion to interpret *Terminix Co. v. Contractors' State License Board*, 84 Cal. App. 2d 167 (1948), a 50-year-old case that purports to bar CSLB from disciplining a contractor who both offers to and stands "ready, willing, and able" to repair substandard work. *Terminix* involved several contracts in which the homeowners had not paid the contract price because of dissatisfaction with Terminix's work; the court held that because the homeowners had not paid in full, they had not suffered "material prejudice or substantial injury," a re-

quired element of section 7109 and 7113 violations. Further, Terminix stood "ready, willing, and able" to make the homeowners whole; thus, the court refused to permit CSLB to discipline Terminix.

In *Tellis*, the contractor completed a \$226,000 home for the Watsons in September 1995, and the Watsons paid the full contract price. After they moved in, the Watsons discovered a number of items requiring repair, and promptly notified Tellis. A year later, the Watsons were still attempting to persuade Tellis to repair a list of 27 items. The Watsons filed a complaint with CSLB; the Board's industry expert confirmed that 20 of the 27 items constituted work that was below industry standards. Subsequently, the Board cited Tellis for 17 items of substandard work. On appeal, Tellis argued that *Terminix* applied—precluding CSLB disciplinary action—because he had offered to repair all the items and was "ready, willing, and able" to fulfill his contract. The court declined to apply *Terminix*, noting that the *Terminix* court held that such offers to repair must occur before payment in full for the project. The Watsons had paid Tellis in full in September 1995, before they discovered the substandard work. According to the court, "Tellis's agreement to repair the work later on does not negate the violation or absolve him of liability for the violation."

On January 19, 2000, the California Supreme Court declined to review the Second District Court of Appeal's decision in *ICF Kaiser Engineers, Inc. v. Superior Court (Sepulveda Hatteras Ltd., et al., Real Parties in Interest)*, 75 Cal. App. 4th 226 (Sept. 27, 1999). That opinion interprets Business and Professions Code section 7031, which generally precludes an individual from recovering in law or in equity for the performance of work performed as a contractor unless he/she was a duly licensed contractor "at all times during the performance of the contract" under which he/she claims compensation. In this matter, Sepulveda refused to pay Kaiser \$1.2 million of the agreed-upon \$1.9 million price for earthquake remediation work, claiming for the first time on appeal that Kaiser was not properly licensed by CSLB during the contract period. [17:1 CRLR 103-04] Although Kaiser's license had been suspended because, due to clerical oversight, the corporation failed to submit a "qualifying individual" bond to CSLB when it substituted a new "responsible managing officer" (RMO) for a previous RMO who had left the company, Kaiser had in fact secured the bond and it remained in full force and effect during the time Kaiser worked for Sepulveda; it had simply failed to transfer possession of the bond to CSLB. CSLB never notified Kaiser that its license had been suspended; in fact, because of a computer glitch, an inquiry to the Board during the time of Kaiser's suspension would have elicited a response that Kaiser's license was in good standing. Kaiser argued that it had "substantially complied" with CSLB's licensure requirements under Business and Professions Code section 7031(d); the Second District agreed, finding that "[i]f the doctrine of substantial compliance included in section 7031 is to have any effect at all, it must be applied in this case."

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On April 4, 2001, the U.S. Ninth Circuit Court of Appeals issued a decision in *In Re Dunbar*, 245 F.3d 1058, in which it upheld a 1999 ruling of its Bankruptcy Appellate Panel (BAP) vacating the bankruptcy court's decision that it was precluded from independently reviewing whether a CSLB disciplinary action (including an order to pay restitution and cost recovery) against a contractor who had filed Chapter 13 bankruptcy is subject to the automatic stay exception in 11 U.S.C. § 362(b)(4). [17:1 CRLR 104-05] The federal appellate court agreed that its bankruptcy courts are authorized to review whether CSLB's actions fall under the "police or regulatory powers" exception to the automatic bankruptcy stay embodied in 11 U.S.C. § 362(b)(4). Because the bankruptcy court failed to engage in that analysis, the Ninth Circuit remanded the matter to that court for further proceedings.

RECENT MEETINGS

At its July 2000 meeting, CSLB reelected contractor Joe Tavaglione as its Chair and elected public member Minnie Lopez-Baffo as its Vice-Chair.

Public comment at the Board's April 2001 meeting was dominated by complaints from numerous victims of Crown Builders, a San Diego-area remodeling company which closed its doors in November 2000 while in the midst of 70-90 remodeling projects. After the company's closure,

CSLB discovered that Crown owner Lee Ross had previously held a contractor's license in the early 1980s; that license was revoked after Ross was convicted of felony fraud involving Majestic Builders, another contracting business he previously owned. To become relicensed, Ross used a fake Social Security number and failed to disclose his earlier conviction. Because it lacks authority to require fingerprints of licensure applicants, CSLB was unable to detect either the false SSN or his prior conviction. Numerous Crown victims demanded that CSLB (1) secure fingerprinting authority immediately, (2) establish a recovery fund to provide some compensation to victims of contractor fraud, and (3) disclose pending complaints and investigations of contractors at an earlier point to help homeowners protect themselves. CSLB is working with the San Diego County District Attorney's Office to secure criminal charges against Ross and Crown.

FUTURE MEETINGS

2001: July 18 in San Diego; September 13 in Sacramento; October 23-24 in Sacramento.

2002: January 24 in San Francisco; April 18 in Los Angeles; June 6 in Riverside; October 4 in Monterey.

2003: January 23 in Sacramento; April 25 in San Francisco; June 5 in Riverside; September 12 in San Diego.

Board for Professional Engineers and Land Surveyors

Executive Officer: Cindi Christenson ♦ (916) 263-2222 ♦ Internet: www.dca.ca.gov/pels

The Board for Professional Engineers and Land Surveyors (PELS) is a consumer protection agency within the state Department of Consumer Affairs (DCA). PELS regulates the practice of engineering and land surveying through its administration of the Professional Engineers Act, sections 6700-6799 of the Business and Professions Code, and the Professional Land Surveyors' Act, sections 8700-8806 of the Business and Professions Code. The Board's regulations are found in Division 5, Title 16 of the California Code of Regulations (CCR). The basic functions of the Board are to conduct examinations, issue licenses, set standards for the practice of engineering and land surveying, investigate complaints against licensees, and take disciplinary action as appropriate.

PELS administers a complicated licensing system under which land surveyors and fifteen categories of engineers are licensed and regulated. Land surveyors are licensed under section 8725 of the Business and Professions Code. Pursuant to section 6730 of the Business and Professions Code, professional engineers may be licensed under the three "practice act"

categories of civil, electrical, and mechanical engineering. Structural engineering and geotechnical engineering are "title authorities" linked with the civil engineering practice act; both require licensure as a civil engineer and passage of an additional examination. The "title act" categories of agricultural, chemical, control system, fire protection, industrial, manufacturing, metallurgical, nuclear, petroleum, and traffic engineering are licensed under section 6732 of the Business and Professions Code. PELS' "title acts" only restrict the use of a title; anyone (including an unlicensed person) may perform the work of a title act engineer so long as he/she does not use the restricted title.

The Board consists of thirteen members: seven public members, one land surveyor, four practice act engineers, and one title act engineer. The Governor appoints eleven of the members for four-year terms that expire on a staggered basis. Additionally, the Assembly Speaker and the Senate Rules Committee each appoint one public member.

The Board has established four standing committees (Administration, Enforcement, Examination/Qualifications,

