

# CONTRACTORS' STATE LICENSE BOARD

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*Protection of the public shall be the highest priority for the Contractors' State License Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.*

— Business and Professions Code § 7000.6

**C**reated 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), and 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 licenses almost 290,000 contractors in California.

CSLB licenses general engineering contractors (classified as "A"), general building contractors ("B"), and approximately 40 specialty contractor categories ("C"); in addition, the Board registers home improvement salespersons who market contractor services to consumers. The fifteen-member Board consists of one general engineering contractor, two general building contractors, two specialty contractors, one member from a labor organization representing building trades, one local building official, and eight public members (including one who represents a statewide senior citizen organization). Under

Business and Professions Code section 7002(b), a representative of a labor organization is eligible to serve as a public member of CSLB. The Board currently maintains five committees: executive, enforcement, licensing, legislation, and public affairs.

At this writing, CSLB is functioning with one vacancy: a “C” specialty contractor who must be appointed by the Governor.

## MAJOR PROJECTS

### CSLB Completes SB 465 (Hill) Study

During its December 7, 2017 [meeting](#), CSLB reviewed, discussed and approved the study and legislative report that [SB 465 \(Hill\) \(Chapter 372, Statutes of 2016\)](#) required it to conduct. This bill was the first legislative response to the tragic Berkeley balcony collapse of 2015. On June 16, 2015, an apartment building balcony collapsed in Berkeley, killing six college exchange students and injuring numerous others. The company responsible for the construction of the building reportedly paid out \$26.5 million in construction defect settlements in the three years prior to the incident. Due to its lack of reporting requirements, CSLB was wholly unaware of this pattern of settlements and consequently was not able to scrutinize the construction company’s work prior to the incident. One crucial component of SB 465 is its requirement that CSLB conduct a study to determine whether the Board’s ability to protect the public would be enhanced by regulations requiring licensees to report judgments, arbitration awards, and/or settlement payments of claims for construction defects to the Board; the study was expressly limited to rental residential units. [\[23:1 CRLR 111\]](#)

In the [SB 465 study](#), CSLB collected data through surveys and other appropriate means to address the six issues that the statute required the study to address:

(1) *Criteria used by insurers or others to differentiate between settlements that are for nuisance value and those that are not.* On this issue, CSLB consulted with four liability insurers and surveyed 1,300 insurers (only 273 of which responded to the survey), and found that the majority of respondents identified the potential cost of litigation exceeding the cost to settle as the primary indicator of a nuisance value settlement. Other high-ranking responses were the size of the case and the damages, and whether the insured appears to be liable. The report notes that approximately 95% of construction defect cases are settled before trial.

(2) *Whether settlement information or other information can help identify licensees who may be subject to an enforcement action.* Here, CSLB noted that settlement information is difficult to obtain, because settlement agreements in construction defect cases commonly contain a confidentiality clause precluding the parties from disclosing any information about the negotiation or the settlement (except “to government agencies, as required by law”). Even in the Berkeley balcony collapse case, CSLB’s review of court records yielded only a docket of motions filed, but not the settlement agreements themselves.

To answer this question, and to determine its additional workload if licensees had been required to report construction defect settlements during 2016, CSLB paid an online research service which searched court docket information dated after December 31, 2015 through November 9, 2017 for the key words “construction defect” as a case type. The search located 651 individual court cases, and CSLB was able to match 463 of its licensees

to those 651 cases and an additional 22 matters that had become final. Of these, CSLB estimated that it would need to add 13 additional staff to review these settlements. Additional investigative staff and expert witnesses would be required, because CSLB must prove by “clear and convincing evidence” (a standard that is higher than the “preponderance of the evidence” standard in civil court) and the Board’s four-year statute of limitations would pose additional challenges.

(3) *If there is a way to separate subcontractors from general contractors when identifying licensees who may be subject to an enforcement action.* In construction defect litigation, the plaintiffs usually file a class action against the developer, which then cross-complains against all contractors and subcontractors, who usually cross-complain against each other. CSLB was not successful in locating information that separated prime contractor defendants from subcontractor defendants. Additionally, according to an attorney consulted by the Board, the threshold question is whether “the flaw was caused by a design error, or the failure of the contractor to follow that design.” That requires investigation, and CSLB would not be interested in receiving reports of settlements due to design failure because design is done by architects and/or engineers, who are regulated by other DCA agencies.

(4) *Whether reporting should be limited to settlements resulting from construction defects that resulted in death or injury.* Again, a lack of data on construction defect settlements resulting in death or injury plagued CSLB’s ability to address this issue. The 22 “final” matters discussed in (2) above did not appear to involve injury or death. However, on this matter, the report stated that “[i]f settlements of construction defect cases involving injury or death were required to be made to the board, there does not appear to

be a reason to limit the cases to death or injury, which simply goes to the severity of CSLB discipline [rather] than whether the Contractors' Law was violated.”

(5) *The practice of other boards within DCA.* Two other construction-related boards—the Board for Professional Engineers, Land Surveyors, and Geologists (BPELSG), and the California Architects Board (CAB)—have had reporting requirements for years. Since 2008, BPELSG (which has approximately 100,000 licensees) reports receiving an average of 43 reports per year; of these, BPELSG opened an average of 31 investigations per year, and closed an average of 22 investigations per year, finding no violation in most of them. Since 2013, CAB (which has approximately 22,000 licensees) receives an average of 28 settlement reports per year, of which only 3.6% result in disciplinary or enforcement action—two citations and one disciplinary action. With approximately 280,000 active licensees, CSLB has more licensees than both BPELSG and CAB combined. BPELSG and CAB license individuals, whereas CSLB licenses entities via a qualifying individual. The report notes that any reported construction defect settlement would involve far fewer CAB/BPELSG licensees than it would CSLB licensees.

(6) *Any other criteria considered reasonable by the Board.* CSLB surveyed licensees, consumers, and insurers to assess whether CSLB's consumer protection mission would be enhanced by regulations requiring licensees to report judgments, arbitration awards, or settlement payments of construction defect claims for rental residential units. “Out of 3,479 licensees, 1,869 respondents responded ‘yes’ (53.72%) and 1,610 responded ‘no’ (46.28%). Out of 2,273 consumers, 2,175 responded ‘yes’ (95.69%) and 98 responded ‘no’ (4.31%). Out of 143 insurers, 90 responded ‘yes’ (62.94%) and 53 responded ‘no’ (37.06%).”

The bottom-line recommendation of CSLB is that it believes its ability to protect the public, as described in Business and Professions Code section 7000.6, “would be enhanced by regulations requiring licensees to report judgments, arbitration awards, or settlement payments of construction defect claims for rental residential units.”

At its December 7, 2017 meeting, the Board specifically found that requiring licensees to report judgments, arbitration awards, or settlement payments of construction defect claims is a good idea and would be a good investigative tool in the Board’s “tool box.” After much discussion and public comment, CSLB voted 13–1 to approve the study and directed staff to work with Senator Hill’s office throughout the drafting of any legislation resulting from this study.

## CSLB Responds to 2017–18 Wildfire/Mudslide Disasters

At the March 2, 2018 [meeting](#) of CSLB’s Public Affairs Committee and at CLSB’s April 13, 2018 [meeting](#), Public Affairs Chief Rick Lopes updated the Committee on CSLB’s coordinated response to the unprecedented natural disasters that occurred during 2017, which included floods, wildfires, and mudslides. As is common after a natural disaster, unlicensed individuals swoop in to prey upon victims, and CSLB (including its Statewide Investigative Fraud Team, or SWIFT) coordinates with other state agencies (such as the Department of Insurance) and federal agencies (such as FEMA) to offer assistance. CSLB staff from every unit and office traveled into affected areas to assist consumers and counsel them not to hire unlicensed contractors to clean up or rebuild. CSLB’s post-disaster mission is to help ensure that home and business owners are not

victimized a second time by unlicensed or unscrupulous contractors who might try to take advantage of them during the rebuilding process.

According to Lopes' report, "the 2017 wildfires and 2018 mudslides prompted one of the largest coordinated disaster response efforts in CSLB's almost 90-year history." CSLB staffed almost two dozen local assistance centers established by the Governor's Office of Emergency Services, and disaster relief centers established by FEMA, in 19 different counties. These centers provide a single facility at which individuals, families, and businesses can access a variety of disaster assistance programs and services.

During the disasters, CSLB's Public Affairs Office (PAO) compiled and distributed supplies, including more than 50,000 pages of educational information for distribution to the public. The primary consumer education message encouraged people to hire only licensed contractors for rebuilding work and to be aware that unlicensed or unscrupulous contractors may try to perpetrate a scam. PAO and staff also assembled hundreds of disaster warning signs for posting in fire-ravaged areas.

PAO has also begun conducting two distinct wildfire workshops in the various fire areas: one for survivors and one for contractors who plan to work on the rebuilding effort. During these workshops, other partner agencies assist CSLB, including the Department of Insurance, the CAB, the State Compensation Insurance Fund (SCIF), and FEMA. The fire survivor workshop includes essential consumer protection tips, information about contractor licensing and other requirements, insurance issues, how to work with an architect, and an update on the local rebuild provided by the local building department.

## CSLB and Solar Task Force Accomplishments

At CSLB’s December 7, 2017 meeting, staff reported that on November 8, staff held a conference call with a representative of the Public Utilities Commission (PUC) to discuss how CSLB and the PUC will implement [AB 1070 \(Gonzales Fletcher\) \(Chapter 662, Statutes of 2017\)](#). Among other things, AB 1070 adds section 7169 to the Business and Professions Code, which requires CSLB—on or before July 1, 2018 and in collaboration with the PUC—to develop and make available on its Internet website a “solar energy system disclosure document” that provides a consumer, at a minimum, accurate, clear, and concise information regarding the installation of a solar energy system, total costs of installation, anticipated savings, the assumptions and inputs used to estimate the savings and the implications of various financing options. [[23:1 CRLR 118](#)] Staff noted that many of the required provisions for the new disclosure document are already required within existing home improvement contract laws, and that a draft of the document would be shared with the PUC.

AB 1070 also adds new section 7170 to the Business and Professions Code, which requires CSLB to receive and review complaints and consumer questions regarding solar energy systems companies and solar contractors; and to receive complaints received from state agencies regarding solar energy systems companies and solar contractors. Beginning on July 1, 2019, CSLB must annually compile a report documenting consumer complaints relating to solar contractors. CSLB and PUC shall make the report available publicly on their websites. The report shall contain all of the following: (1) the number and types of complaints; (2) the ZIP Code where the consumer complaint originated; and (3) the disposition of all complaints received against a solar contractor.

CSLB's work on AB 1070 reflects its recent focus on various outreach, education, and enforcement strategies that it is implementing to reduce the number of complaints regarding solar energy contractors. As solar installations have become more popular, CSLB has seen a huge increase in the number of solar-related consumer complaints. In response, CSLB has created a Solar Task Force, consisting of seven CSLB staff dedicated to identifying and combatting the issues consumers face in the growing solar industry. [[23:1 CRLR 107](#)] Also at the December 2017 meeting, CSLB enforcement chief Missy Vickrey noted that CSLB is holding meetings with solar contractors who are the subject of the most complaints in hopes these contractors will improve their business practices.

On March 8, 2018, the Solar Task Force and CSLB staff met and discussed current trends in solar complaints, accomplishments, and next steps. In preparation for the conclusion of the Solar Task Force in June 2018, CSLB has created solar-specific training for Enforcement Representatives in its Investigative Centers. Beginning in July 2018, all solar complaints will be handled in the same manner as all other complaints received by CSLB. Training will be conducted CSLB's Sacramento and Norwalk offices in April and May.

At CSLB's April 13, 2018 [meeting](#), staff reported that between "January 2017 and December 2017, CSLB received an average of 66 solar complaints per month." CSLB is continuing to analyze the data to determine trends and how best to address them. The Solar Task Force is dedicated to working with industry to reduce consumer solar complaints referred to CSLB Investigation Centers by 50% by June 2018.

To achieve this goal, CSLB has met with national solar companies and the Department of Consumer and Business Affairs of Los Angeles County. CSLB has

established relationships with prosecutors across California to pursue criminal charges for the most serious cases. CSLB has also established a partnership with the Federal Trade Commission to investigate and address contractors who target homeowners of specific ethnic backgrounds with high-pressure sales tactics. Further, CSLB conducted an undercover sting operation focused on solar on February 13, 2018, the results of which are still pending.

Also at the April 13 meeting, Registrar Dave Fogt announced that the Task Force would not disband until it achieves its objectives and the practices that result in contractors becoming the subject of multiple complaints are corrected.

## Workers' Compensation Enforcement Strategies, Resources, and Accomplishments

At CSLB's December 7, 2017 meeting, the Enforcement Committee announced its establishment of a Workers' Compensation Advisory Committee (Advisory Committee), which includes Board members Kevin Albanese and Ed Lang. The Advisory Committee will collaborate with other government agencies and make recommendations to address workers' compensation insurance avoidance. The other government agencies to be consulted include: the Employment Development Department (which chairs the Joint Enforcement Task Force, which facilitates information sharing among designated state agencies to combat the underground economy); Division of Occupational Safety and Health of California (Cal-OSHA); the Division of Labor Standards Enforcement; the Department of Insurance; and the SCIF, which provides fairly priced workers' compensation insurance.

To maintain an active California contractor license, licensees are required to have on file with CSLB either a certificate of workers' compensation (WC) insurance or a certificate of self-insurance issued by the Department of Industrial Relations. Studies by CSLB's enforcement division have revealed that 59% of the contractors contacted in four targeted classifications that perform outdoor construction (concrete, earthwork/paving, landscaping, and tree trimming) had false WC exemptions on file with CLSB. Board members and staff have recently discussed a number of strategies, aimed at reducing the number of false WC exemptions on file with the Board. [[23:1 CRLR 112](#)]

On January 25, 2018, the Advisory Committee and CSLB staff met with SCIF management to explore (among other issues) the feasibility of expanding the number of license classifications that are required to purchase WC insurance; currently, that requirement only applies to C-39 roofers.

At its February 23, 2018 [meeting](#), the Enforcement Committee passed a motion to bring to the Board's Legislative Committee: (1) a proposal to mandate WC insurance for several other license classifications who perform work likely to require more than one employee, and (2) a proposal to prohibit licensees who have violated Labor Code 3700 (failure to carry WC insurance) from filing a new WC exemption for one year.

It its April 13, 2018 [meeting](#), CSLB approved the referral of both of these potential legislative proposals to the Legislative Committee.

## Arborist Certification Program and Specialty "C" License Classification

At its December 7, 2017 [meeting](#), CSLB referred to the Licensing Committee the issue of whether there is a need to create a new "C" specialty license for tree service

contractors to replace the existing limited specialty C-61/D-49 (tree service contractor) classification, which does not require a trade examination.

In August 2017, CSLB staff met with members of the tree care industry regarding license classifications and workers' compensation insurance. Members of the industry expressed concern with the current classification structure and raised issues about inadequate safety training, which, they contended, has resulted in injuries and deaths. In particular, they stated that the current CSLB license classifications that allow individuals to perform tree service work do not adequately cover the safety aspects of tree service work. They believe the C-27 landscape contractor classification is too broad and that its exam contains only a limited number of questions on tree service safety, and the C-61/D-49 tree-service contractor classification is a limited specialty classification and does not require a trade exam. Cal-OSHA's Division of Occupational Safety and Health (DOSH) reported that between October 1, 2014 and September 30, 2016, it investigated nearly 70 accidents involving tree work, including trimming or removal services. Nearly three out of four of the accidents (74%) resulted in a worker hospitalization, and 12 of the accidents involved the death of a worker.

At its February 23, 2018 [meeting](#), the Licensing Committee discussed whether to strengthen the C-61/D-49 specialty license, or work with DOSH to create an arborist specialty certification, or both. During public comment, the majority of the discussion centered on worker safety rather than performance of the trade. Thus, CSLB's Licensing Committee recommended creating an arborist certification program with DOSH, which would be required of any licensee performing this type of work.

At its April 13, 2018 meeting, CSLB approved the Licensing Committee’s recommendation to direct staff to meet with representatives of DOSH to develop an arborist certification program and pursue a possible separate specialty license for tree service and, in the interim, to continue holding meetings with various stakeholders.

## Licensing Reciprocity

At its April 13, 2018 [meeting](#), CSLB directed staff to pursue reciprocity agreements with Louisiana, North Carolina, and Oregon to waive CSLB’s “B” general building contractor trade exam for qualified applicants from those states who have passed the commercial general building contractor exam of the National Association of State Contractors Licensing Agencies (NASCLA) if those states agree to accept CSLB’s “B” general building contractor trade exam. Further, those applicants must take and pass the California law and business exam.

This directive originated from a report issued by the Little Hoover Commission (LHC) in October 2016, which found that while licensing requirements provide many health and safety benefits to consumers, they could also act as a barrier that prevents some people from practicing a particular profession. The LHC recommended that licensing boards should be required to identify whether licensing requirements are the same or substantially different in other states, and to grant partial reciprocity for professionals licensed in states with appropriately comparable testing and education requirements. CSLB currently has limited reciprocity agreements concerning the NASCLA exam with three states—Arizona, Nevada, and Utah.

At its November 3, 2017 [meeting](#), the Licensing Committee heard a presentation from DCA’s Office of Professional Examination Services (OPES) about the use of

NASCLA trade exams and trade exam waivers. One of OPES' recommendations was that in considering reciprocity, CSLB should evaluate the difference in the scope of practice, examination content, format, passing scores, and passing rates.

At its February 23, 2018 meeting, the Licensing Committee directed staff to continue researching the experience requirements for a general building contractor license in Alabama, Arkansas, Georgia, Louisiana, North Carolina, and Oregon, and their willingness to waive a general building trade exam for a California licensee. In March 2018, CSLB contacted states that use NASCLA's commercial general building contractor exam and with which CSLB does not have a reciprocity agreement to inquire about their interest in partial license reciprocity. To date, Louisiana, North Carolina, and Oregon are the only states to respond. As such, CSLB has directed staff to pursue reciprocity with these three states.

## LEGISLATION

[SB 981 \(Dodd\)](#), as introduced February 1, 2018, would amend section 17577.3 of the Business and Professions Code to allow contractors who sell water treatment devices through home solicitation contracts to deliver or install them during the consumer's "three-day right of rescission" period. The bill would make the contractor responsible for all costs of removing the installed water treatment device or other materials if the buyer rescinds the contract before the expiration of the rescission period.

According to the sponsor, these amendments are necessary because unlicensed contractors are installing water treatment devices within the three-day rescission period, thus putting licensed contractors at a competitive disadvantage. However, a consumer's right to rescind certain contracts is a decades-old consumer protection measure that allows

the buyer to cancel without any penalty or obligation within the rescission period. Water treatment systems are often subject to high-pressure sales tactics because they can be installed in one day. Further, the installation of these systems requires alterations to the plumbing and wall structure. Thus, removing the water treatment system and returning the home to its original state is not simple. As such, at its April 13 meeting, the Board adopted an “opposed unless amended” position. [*S. Jud and BP&ED*]

[SB 1042 \(Monning\)](#), as amended April 10, 2018, is a CSLB-sponsored bill that would add section 7099.8 to the Business and Professions Code to make explicit CSLB’s authority to host settlement conferences on contested citations, and to formalize the existing citation conference process as currently conducted by CSLB. Specifically, the new section would permit a cited licensee to request a formal administrative hearing on a contested citation. In addition to, or instead of, the formal hearing, the cited contractor may request an informal office conference to resolve a citation; CSLB’s enforcement chief (or his/her designee) must host the conference with the cited person (including his/her representative of choice) and, if the conference is held, any request for an administrative hearing would be deemed withdrawn. This would allow CSLB to affirm, modify, or dismiss the citation as a result of the conference. Further, if the cited person wishes to contest the result of the conference, the right to request an administrative hearing remains intact.

Currently, CSLB may issue a citation to a licensee for a violation; approximately 40% of the more than 2,000 citations that CSLB issues per year are appealed. The average cost of an administrative hearing on a contested citation is \$10,000. For this reason, CSLB is attempting to minimize the number of appeals referred for a formal hearing by

encouraging contractors to take advantage of the informal office conference mechanism, which will cost all parties less money and achieve a resolution more quickly. CSLB adopted a “support” position at its April 13 meeting. *[S. BP&ED]*

[AB 2705 \(Holden\)](#), as introduced February 15, 2018, is a CSLB-sponsored bill that would amend section 7126 of the Business and Professions Code, which currently provides that a licensed contractor who fails to comply with the workers’ compensation requirements of the Contractors’ State License Law and the Labor Code is guilty of a misdemeanor. AB 2705 would subject unlicensed contractors to the same criminal penalty if they fail to maintain workers’ compensation insurance for their employees. *[A. Appr]*

[SB 721 \(Hill\)](#), as amended January 11, 2018, would add section 7071.20 to the Business and Professions Code, relating to deck and balcony inspections. The new section would establish minimum inspection and repair requirements for “exterior elevated elements” that include load-bearing components in all buildings containing three or more multifamily dwelling units. The bill would define “exterior elevated elements” to mean

balconies, decks, porches, stairways, walkways, entry structures, and their supports and railings, that extend beyond exterior walls of the building and which have a walking surface that is elevated more than six feet above ground level, are designed for human occupancy or use, and rely in whole or in substantial part on wood or wood-based products for structural support or stability of the exterior elevated element.

The inspection must be conducted by a licensed architect, licensed civil or structural engineer, or an individual certified as a building inspector or building official.

This bill is a follow-up to [SB 465 \(Hill\) \(Chapter 372, Statutes of 2016\)](#), which is the legislature’s first response to the June 2015 collapse of a balcony at a Berkeley apartment building that killed six and injured seven. In addition to the deadly Berkeley balcony collapse, a stairwell at an apartment building in the City of Folsom collapsed in

2015, killing a Cal Poly graduate student. SB 465 establishes more oversight over the construction industry. SB 465 also requires CSLB to conduct a study of judgments, arbitration awards, and settlements that were the result of claims for construction defects for rental residential units and, by January 1, 2018, to report to the legislature the results of this study to determine if the Board's ability to protect the public as described in section 7000.6 would be enhanced by regulations requiring licensees to report judgments, arbitration awards, or settlement payments of those claims. CSLB conducted the study and reported its findings at its December 7, 2017 meeting (see MAJOR PROJECTS). SB 721 would impose no requirements on CSLB. *[A. Desk]*

[SB 1465 \(Hill\)](#), as introduced February 16, 2018, would not pertain to CSLB. However, on December 21, 2017, Senator Hill announced his intent to introduce legislation that would require contractors to report judgments, settlements, and arbitration awards of construction defect lawsuits involving apartments, condominiums, and homeowners' associations. Senator Hill is expected to add this language to SB 1465 as a further legislative response to the tragic Berkeley and Folsom events (see above). *[S.BP&ED]*

[AB 2138 \(Chiu and Low\)](#), as amended April 2, 2018, would amend various sections of the Business and Professions Code relating to professional licensure applicants with criminal records. Of note, the bill would limit the circumstances under which DCA boards may deny professional licensure to individuals who have previously been convicted of crimes; require DCA boards to develop criteria for determining whether a crime is directly and adversely related to the qualifications, functions, or duties of the business or profession a board regulates; require boards to follow certain procedures when requesting information about or taking disciplinary action based on an applicant's criminal history;

and require boards to annually report specified de-identified information relating to Board action pertaining to applicants with criminal convictions, including the number of licensees who were affected, whether they provided evidence of rehabilitation or mitigation, whether they appealed, the final disposition, and the voluntarily provided information on race or gender of any applicant.

Criminal justice advocacy groups who sponsor the bill note that California has among the highest recidivism rates in the nation, and one of the root causes of high recidivism is the inability of prior offenders to secure gainful employment upon reentry. According to the authors, “[a]ll too often, qualified people are denied occupational licenses or have licenses revoked or suspended on the basis of prior arrests or convictions, many of which are old, unrelated to the job, or have been judicially dismissed. Alleviating barriers to occupational licensing is just one way California can reduce recidivism and provide economic opportunity to all its residents.”

At its April 13 meeting, CSLB voted unanimously to oppose AB 2138. [A. B&P] [AB 2353 \(Frazier\)](#), as introduced February 13, 2018, would amend section 941 of the Civil Code, relating to construction defects. The amendment would shorten the timeframe for the filing of certain civil lawsuits involving construction defects from 10 years after substantial completion of the construction to five years. [A. Jud]

[AB 2371 \(Carrillo\)](#), as amended April 11, 2018, would add sections 7065.06 and 7195.5 to the Business and Professions Code, relating to water use efficiency. New section 7065.06 would require CSLB—prior to revising the examinations for the general engineering contractor’s license or the landscaping contractor’s license (C-27)—to confer with the Department of Water Resources and the California Landscape Contractors

Association to determine whether any updates or revisions to the exams are needed to reflect new and emerging landscape irrigation efficiency practices; ensure that the exams include questions that are specific to water use efficiency and sustainable practices; and ensure that the reference study material for the exams continues to include the most current version of the Model Water Efficient Landscape Ordinance at section 490, Title 23 of the CCR.

New section 7195.5 would require—commencing January 1, 2020 and for purposes of improving landscape water use and irrigation efficiency—a home inspection report on a dwelling unit on a parcel containing an in-ground landscaping irrigation system to include documentation of the examination of numerous detailed elements of the irrigation system.

These CSLB-related provisions are part of a much larger statewide effort in AB 2371 to improve landscape water-use efficiency. According to the author, “this bill advances five recommendations from the [Independent Technical Panel formed at the request of the legislature in 2007] final draft report that have the potential to improve landscape water use efficiency substantially. Improving urban landscape water-use efficiency and reducing waste can save energy, lower water and wastewater treatment costs, eliminate the need for costly new infrastructure, and help California meet its short- and long-term water challenges. Importantly, lower water and wastewater treatment costs help to ensure the affordability of services that are essential to all of California’s communities.” [A. Actbty&AdmR]

[AB 3126 \(Brough\)](#), as amended March 23, 2018, would add, amend, and repeal several sections of the CSLL to delete the ability of an applicant for licensure as a contractor or a licensed contractor to post a cash deposit in lieu of a required bond.

This CSLB-sponsored bill would reduce the problems associated with cash deposits as an alternative to a surety bond. Since CSLB is not a signatory to the bank account, it cannot directly access the funds. Under current law, a client who wishes to be compensated for damages must make a claim in civil court to receive compensation from the cash deposit, which may lead to delays in consumers being compensated. Further, CSLB reports incidents where the contractor has removed the funds from the account or closed the account, and CSLB is not aware of that fact until a consumer makes a claim. CSLB believes that by removing the authority of the Registrar to accept a “bond alternative” in lieu of a surety bond, CSLB can preserve the process of making a good faith claim against a bond on behalf of consumers. *[A. B&P]*

[SB 1230 \(Gaines\)](#), as amended March 19, 2018, would add section 7026.115 to the Business and Professions Code to authorize a contractor holding a Class “B” license to perform the installation, alteration, repair, or preparation for moving of any type of manufactured home, mobile home, or multifamily manufactured home, as those terms are defined in the Health and Safety Code. *[S. BP&ED]*

[SB 988 \(Galgiani\)](#), as introduced February 5, 2018, would add section 7196.2 to the Business and Professions Code to require a home inspector who observes any shade of yellow corrugated stainless steel tubing (CSST) during a home inspection to include that observation and a specified statement in a home inspection report. The statement reads, “[M]anufacturers of yellow CSST believe that yellow CSST is safer if properly bonded and grounded as required by the manufacturer’s installation instructions. Proper bonding and grounding of this product can only be determined by a licensed electrical contractor.” The new section defines “yellow CSST” to mean a flexible, stainless steel pipe used to

supply natural gas and propane in residential, commercial, and industrial structures. This bill is sponsored by the Air Conditioning, Heating and Refrigeration Institute. According to the author, more than half of yellow CSST installations in the United States were completed prior to code updates and were thus not properly bonded. This can result in serious consequences whenever lightning strikes nearby. It remains unclear how many homes in California were installed with yellow CSST prior to the national code updates.

In California, home inspection reports are intended to clearly identify and describe the inspected systems, structures, or components of the dwelling, including any material defects identified and recommendations regarding the conditions observed, or any recommendations for evaluation by the appropriate persons. As currently drafted, this bill would only require home inspectors to document their observation of yellow CSST in the home inspection report; they are not required to inspect for yellow CSST. *[S. BP&ED]*

[AB 996 \(Cunningham and Brough\)](#), as amended July 17, 2017, would add section 7018.5 to the Business and Professions Code, relating to the CSLB website's search function for workers' compensation claims. The new section would require CSLB—on or before January 1, 2020—to adopt an enhancement to the current contractor license check search function on its Internet website to permit consumers and licensees to do all of the following: (a) monitor the status and progress of a successfully filed WC certification being reviewed by the Board, including a visual tool that provides the date the application was filed, the status of each of the components of the certification that have been filed, and that shows that the review is being reviewed and shown as pending until the final disposition has been approved by the Registrar; and (b) view the daily record of the average time

elapsed from the time the Board receives the certification until a final disposition has been approved by the Registrar. [*S. Appr*]

## LITIGATION

On January 18, 2018 in *McMillin Albany LLC et al. v. Superior Court*, 4 Cal. 5th 241 (2018), the California Supreme Court unanimously held that the Right to Repair Act (Act)—codified at Civil Code section 895 *et seq.*—precludes a homeowner from pleading common law causes of action for defective conditions that resulted in physical damage to an individual dwelling. Further, the Court held that failure to comply with the Act’s prelitigation procedures mandates a stay of proceedings where the homeowner commences litigation by asserting common law causes of action for construction defects resulting in economic loss and property damage.

At various times after January 2003, plaintiffs Carl and Sandra Van Tassell and several dozen other homeowners purchased 37 new single-family homes from developer and general contractor McMillin Albany LLC (McMillin). In 2013, the Van Tassells sued McMillin, alleging the homes were defective in nearly every aspect of their construction. The first amended complaint filed by the Van Tassells included common law claims for negligence, strict product liability, breach of contract, breach of warranty, and a statutory claim for violation of the construction standards set forth in the Act.

The Act sets forth detailed statewide standards that the components of a dwelling must satisfy. It also establishes a prelitigation dispute resolution process that affords builders notice of alleged construction defects and the opportunity to cure such defects, while granting homeowners the right to sue for deficiencies even in the absence of property damage or personal injury.

McMillin sought a stipulation from the Van Tassells to stay the litigation so that the parties could proceed through the informal process delineated in the Act. The Van Tassells declined to stipulate and dismissed their statutory claim for violation of the construction standards set forth in the Act. In doing so, the Van Tassells cited *Liberty Mutual Ins. Co. v. Brookfield Crystal Cove LLC*, 219 Cal. App. 4th 98 (2013), which held that the Act was enacted to provide a remedy for construction defects causing only economic loss and did not alter preexisting common law remedies in cases where actual property damage or personal injuries resulted.

The trial court denied McMillin's motion to stay, stating that although the issues raised in *Liberty Mutual* might be subject to further appellate inquiry, it was currently bound by the decision and as such, the Van Tassells' issue qualified for immediate review. On appeal, the Fifth District Court of Appeal reversed the trial court's decision, determining that McMillin was entitled to a stay pending completion of the prelitigation process set forth in the Act. The court examined the text and legislative history of the Act and concluded that the Act was meant to at least partially supplant common law remedies in cases where property damage had occurred. As such, the court held that the Act's prelitigation resolution process applied even though the Van Tassells dismissed their statutory claim under the Act, and granted McMillin's request for a stay of the litigation. The Van Tassells petitioned for review.

After engaging in an exhaustive review of the text and legislative history of the Act, the Supreme Court affirmed the Fifth District's decision. The Court observed that the legislature intended the Act to supplant the common law with new rules governing the method of recovery in "any action seeking recovery of damages arising out, or related to

deficiencies, in the residential construction” of an individual dwelling unit. The Court found that “[t]he Legislature was well aware of the main categories of damages in construction defect actions (economic loss, property loss, death or personal injury) and their treatment under existing law. The major stakeholders on all sides of construction defect litigation participated in developing the Act.” The Court further found that “various forms of economic loss” and “property damages resulting from construction defects” are recoverable under the Act (such that the Act replaced the common law methods of recovery of these types of damages), whereas “personal injury damages are not listed as a category recoverable under the Act” (such that the legislature preserved the status quo, retaining the common law as an avenue for recovery of that type of damages). The Court concluded: “In sum, the legislative history confirms what the statutory text reflects: the Act was designed as a broad reform package that would substantially change existing law by displacing some common law claims and substituting in their stead a statutory cause of action with a mandatory prelitigation process. . . . Accordingly, the Van Tassells must comply with the Act’s prelitigation procedures before their suit may proceed. Because the Van Tassells have not yet done so, McMillin is entitled to a stay.”

## RECENT MEETINGS

At its December 7, 2017 meeting, CSLB reported that staff compiled the rulemaking package on proposed changes to section 853, Title 16 of the CCR, intended to expand outreach regarding license renewals, and submitted it to DCA for review on September 22, 2017. [[23:1 CRLR 127](#)] At this writing CSLB has not published the proposed changes for the 45-day public comment period.

CSLB devoted its April 12, 2018 meeting to a daylong strategic planning session in which it reviewed and revised the goals and objectives in its three-year strategic plan. CSLB also reviewed its *Board Member Administrative and Procedure Manual*, which is 15 years old, in an attempt to update it.