



the guide does not answer several important questions consumers often ask, such as why most cemeteries refuse to give a refund if a consumer changes his/her mind about services, or why some final bills contain "back-loaded" costs that are not listed in the initial contract. Leonard also complained that the guide does not contain definitions of misleading industry terms, and does not clearly inform consumers of certain laws that are subject to wide-scale abuse. Specifically, Leonard urged the Board to clearly state that it is illegal for any cemetery or crematorium to charge "handling fees" for goods, such as caskets, purchased from third parties; the Board agreed to consider her recommendations.

LEGISLATION

SB 2037 (McCorquodale), as amended May 18, would (among other things) abolish the Cemetery Board and the Board of Funeral Directors and Embalmers, and create in their place a single Bureau of Funeral and Cemetery Services under the supervision of the DCA Director (*see* MAJOR PROJECTS). At the May 9 hearing of the Senate Business and Professions Committee, Senator McCorquodale tentatively agreed to amend SB 2037 to merge the two boards into one board (not a bureau); at this writing, this language is expected to be amended into SB 2037 when it reaches the Assembly. [*S. Appr*]

SB 2036 (McCorquodale), as amended May 18, would create a "sunset" review process for occupational licensing agencies within DCA, requiring each to be comprehensively reviewed every four years. In the event that SB 2037 (*see above*) is not enacted, SB 2036 would impose an initial "sunset" date of July 1, 1997 on the Cemetery Board; create a Joint Legislative Sunset Review Committee within the legislature, which would review the Board's performance approximately one year prior to its sunset date; and specify 11 categories of criteria under which the Board's performance will be evaluated. Following review of the agency and a public hearing, the Committee would make recommendations to the legislature on whether the Board should be abolished, restructured, or redirected in terms of its statutory authority and priorities. The legislature may then either allow the sunset date to pass (in which case the Board would cease to exist and its powers and duties would transfer to DCA) or pass legislation extending the sunset date for another four years. (*See* agency report on DCA for related discussion of the "sunset" concept.) [*S. Appr*]

SB 1562 (Mello). Existing law defines the terms "burial" and "grave" for pur-

poses of the law governing public cemetery districts. As amended April 27, this bill would require a district that inter a decedent in a manner other than burial in the ground, as prescribed, to comply with certain requirements pertaining to the regulation of private cemeteries. [*A. LGov*]

The following is a status update on bills reported in detail in CRLR Vol. 14, No. 1 (Winter 1994) at page 38:

AB 1807 (Bronshvag), as amended March 23, requires that the current address of the Cemetery Board and/or the Board of Funeral Directors and Embalmers, as appropriate, appear prominently on the first page of all contracts for specified goods and services. This bill was signed by the Governor on March 30 (Chapter 26, Statutes of 1994).

AB 1392 (Speier), as amended July 1, 1993, would—among other things—provide that the Cemetery Board's executive officer is to be appointed by the Governor, subject to Senate confirmation, and that the Board's executive officer and employees are under the control of the DCA Director. [*S. B&P*]

SB 155 (Boatwright), which would have deleted existing law which prohibits a crematory licensee from conducting any cremations of human remains more than 72 hours after death unless the remains have been preserved by refrigeration or embalming; provided that cremated remains may be disposed of by a cemetery authority or crematory after one year by burial at sea after certain notification requirements are met; and required funeral directors and crematories to faithfully carry out the instructions of the person who is the authorizing agent for cremation of the body of a deceased person, and provided that a funeral director who faithfully carries out those instructions is not liable for acts of the crematory, and the crematory that faithfully carries out those instructions is not liable for acts of the funeral director, died in committee.

RECENT MEETINGS

At its February 17 meeting, the Board elected industry members Keith Hargrave to serve as chair and Steve Doukas to serve as vice-chair for 1994.

Also at the February meeting, interim EO James Diaz offered a complaint analysis report, which listed a total of 74 complaints received over the past six months. Diaz noted that the majority of those complaints concern problems with contracts between consumers and cemeteries or crematories. The Board agreed that something must be done to encourage licensees to make contracts a top priority, and briefly discussed requiring licensees to

use a "plain language contract"; however, the Board took no action on this matter.

At the Board's April 28 meeting, new EO Raymond Giunta reported on the Hills of Peace Cemetery; the Board acts as conservator of this cemetery and has experienced numerous problems with the caretaker, who had allegedly threatened cemetery volunteers. [*14:1 CRLR 38-39*] Giunta reported that the caretaker did not pass an onsite inspection and was ordered to comply by May 1 or face removal. In a related problem, the City of Los Angeles served the caretaker with a notice to vacate, because the onsite building in which he was living was being used as a dwelling in violation of a City ordinance. DCA staff counsel warned that no further action may be taken by the Board until the caretaker's status is reviewed by the Attorney General's Office.

FUTURE MEETINGS

July 28 in Long Beach.

CONTRACTORS STATE LICENSE BOARD

Registrar: Gail W. Jesswein
(916) 255-3900

Toll-Free Information Number:
1-800-321-2752

The Contractors State License Board (CSLB) licenses contractors to work in California, handles consumer complaints, and enforces existing laws pertaining to contractors. The Board is authorized pursuant to the Contractors State License Law (CSLL), Business and Professions Code section 7000 *et seq.*; CSLB's regulations are codified in Division 8, Title 16 of the California Code of Regulations (CCR).

The thirteen-member Board—consisting of seven public members, two B-general building contractors, two C-specialty contractors, one A-general engineering contractor, and one member from a labor organization representing building trades—generally meets four times per year. The Board currently has five committees: administration/consumer education, enforcement, licensing, strategic planning, and legislation.

MAJOR PROJECTS

Board Registrar Passes Away. David R. Phillips, who served as CSLB Registrar since 1988, passed away suddenly on January 30. Phillips' 29-year career with CSLB started in 1965 when he was hired as a field investigator in Long Beach. In 1972,



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he was promoted to supervising deputy, and in 1978 he became assistant regional deputy for CSLB's Southern Region. Before his appointment as Registrar, he was in charge of the Board's Central Region from 1980-82 and Southern Region from 1982-88. Phillips is remembered as a man of deep personal integrity and devotion to both his family and the construction industry; his loss was mourned by many in state government. CSLB Chief Deputy Registrar Mickey Matsumoto was named acting Registrar until a successor to Phillips could be chosen.

CSLB Selects New Registrar. On April 22, CSLB selected Gail W. Jesswein to serve as Registrar of Contractors and CSLB Executive Officer; Jesswein was chosen from over 160 applicants for the position. Since 1984, Jesswein has been chief of the Division of Apprenticeship Standards in the Department of Industrial Relations; prior to that gubernatorial appointment, he served for six years as head of the Electrical Training Trust for the Los Angeles County Electrical Joint Apprenticeship and Educational Training Committee. Jesswein, whose own electrical contractor's license is current but inactive, began his position as Registrar on May 16.

CSLB Cracks Down on Illegal Contracting Activity in Earthquake Area. In response to the January 17 earthquake in Northridge and a request from Governor Wilson to provide more protection against unlicensed contractors, CSLB's Unlicensed Activity Unit for the Southern Region teamed up with investigators from the Department of Consumer Affairs' (DCA) Division of Investigation and local police, and set up undercover "sting" operations to catch unlicensed contractors soliciting earthquake victims. A sweep of 178 construction sites resulted in 50 enforcement actions ranging from felony unlicensed contracting to citations for failure to carry workers' compensation insurance. Felony charges may be brought against unlicensed workers posing as contractors if they are working in a declared state or federal disaster area.

Other CSLB Enforcement. In a separate two-year investigation ending on April 19, three electrical service companies were put on probation for five years and fined a total of \$190,000 plus \$60,000 in investigative costs as a result of an investigation by CSLB and the Santa Clara County District Attorney's office. The companies, Rainier Electric and Service Co., Rescue Electric Service, and Rainier Electric, admitted to replacing functioning electrical parts that company technicians misrepresented as defective; telling homeowners that parts that were in fact

readily available in retail stores were no longer available; charging significantly more for work than the estimated cost quoted before the work was authorized; beginning work before the customer was told the actual cost of the job; and misleading customers by falsely advertising in telephone directory advertisements that they gave free estimates and that they had been in business for 34 years.

Rulemaking Update. The following is a status update on CSLB rulemaking proposals discussed in detail in recent issues of the *Reporter*:

- CSLB's proposed regulatory actions to amend section 832.07, Title 16 of the CCR, which would prohibit low-voltage system contractors (C-7) from installing low-voltage fire alarm systems, amend section 832.36, Title 16 of the CCR, to specify the tasks that may be undertaken by plumbing contractors, and adopt new section 832.28, Title 16 of the CCR, which would create and define a new specialty license classification for class C-28 lock and security equipment contractors, were not finalized within one year as required by the Administrative Procedure Act and thus expired. [14:1 CRLR 40; 13:4 CRLR 41] On April 1, CSLB renounced the regulatory package, with the final modified text unchanged; however, previously submitted comments will not be considered as part of this rulemaking file. The written comment period ended on May 16; at this writing, the proposal awaits adoption by CSLB and review and approval by the Office of Administrative Law (OAL).

- CSLB's proposed amendments to section 884, Title 16 of the CCR, which would revise recommended minimum and maximum civil penalty assessments which may be included in license citations, are pending at OAL at this writing. [14:1 CRLR 40; 13:4 CRLR 41]

LEGISLATION

SB 2036 (McCorquodale), as amended May 18, would create a "sunset" review process for occupational licensing agencies within DCA, requiring each to be comprehensively reviewed every four years. SB 2036 would impose an initial "sunset" date of July 1, 1998 for CSLB; create a Joint Legislative Sunset Review Committee within the legislature, which would review CSLB's performance approximately one year prior to its sunset date; and specify 11 categories of criteria under which CSLB's performance will be evaluated. Following review of the agency and a public hearing, the Committee would make recommendations to the legislature on whether CSLB should be abolished, restructured, or redirected in terms of its

statutory authority and priorities. The legislature may then either allow the sunset date to pass (in which case CSLB would cease to exist and its powers and duties would transfer to DCA) or pass legislation extending the sunset date for another four years. (See agency report on DCA for related discussion of the "sunset" concept.) [S. *Appr*]

AB 2646 (Goldsmith), Existing law provides that only specified contractors may install fire protection systems; as amended April 14, this bill would provide, in addition, that an owner-builder of an owner-occupied, single-family dwelling may install these systems. [S. *B&P*]

AB 2719 (Frazee), as introduced February 9, would provide that violation of specified laws dealing with excavations and subsurface installations by a licensed contractor constitutes cause for disciplinary action. This bill would also require that misdemeanor criminal actions for violations of law applicable to home improvement contracts must be brought, or a complaint filed, within three years from the effective date of the contract. [S. *B&P*]

AB 2780 (O'Connell), as amended May 18, would create the California Certified Home Inspectors Board to certify home inspectors. The bill would exempt certified home inspectors, as defined, from the Architects Practice Act, the Professional Engineers Act, the CSLL, the Real Estate Appraisers' Licensing and Certification Law, and provisions governing structural pest control operators. The bill also would specify unfair business practices by certified home inspectors. [S. *B&P*]

AB 2934 (Richter), Existing law permits a contractor to contribute a portion of his/her license fee to the Construction Management Education Account. As introduced February 17, this bill would impose a \$10 surcharge on the fee for each initial license or license renewal of a contractor, which must be placed in the Construction Management Education Account.

Existing law allows CSLB to make grants from the Account to qualified post-secondary educational institutions for the support of courses of study in construction management, creates an advisory committee to recommend grant awards, and requires that the membership of the committee consist of eleven members, including at least one representative from each of a list of specified contractor associations. This bill would add other contractor associations to this list. [S. *B&P*]

AB 3001 (Conroy), as amended May 17, would require a contractor whose license has been suspended five or more times to disclose in a document, which must be provided prior to entering into a



contract to perform work on residential property with four or fewer units, any citation, license suspension, or license revocation during the previous four years resulting from any violation of the CSLL by the contractor or any complaint or legal action relating to conduct regulated under the CSLL that resulted in an unfavorable judgment against the contractor. The bill would also require a contractor to provide in a document provided prior to entering into a contract for work on residential property with four or fewer units a notice that CSLB may be contacted for information on the contractor's license. A violation of these provisions would be subject to a penalty or license suspension or revocation, as specified. [A. W&M]

AB 3300 (Speier). Existing law requires contractors to give a notice to certain persons of various lien and bond rights and obligations that arise under construction contracts. Existing law requires that notice to be given to an owner for home improvement or swimming pool construction. As amended May 18, this bill would also require that notice to be given for work on residential property with four or fewer units.

Existing law requires a contractor's bond to be filed for the benefit of any homeowner damaged as a result of a violation of the CSLL, and for any person damaged as a result of a willful and deliberate violation of the CSLL. This bill would increase the amount of the required bond from \$7,500 to \$10,000 for all contractors effective January 1, 1995, and require the bond to be issued for the benefit of any owner or tenant contracting for home improvement or other work on residential property with four or fewer units, a homeowner contracting for construction of a personal residence damaged as a result of a violation of the CSLL, and for any person damaged as a result of a violation of the CSLL. This bill would make similar changes for the qualifying individual's bond.

Under existing law, the aggregate liability of a surety on a claim for wages and fringe benefits brought by employees of the contractor against the contractor's bond is limited to \$4,000; this bill would provide that the aggregate liability of a surety on claims for wages and fringe benefits is subject to that limit.

Under existing law, if the amount of the bond is insufficient, priority is given to claims for wages and fringe benefits. This bill would provide that certain claims of persons relating to residential property are subject to priority over other claims except for claims for wages and fringe benefits. This bill would provide that those bonds shall provide for the payment

of any final determination of the CSLB Registrar in certain instances. The bill would require the Registrar to provide for notice to the surety of any pending action that may give rise to liability under this provision. [A. W&M]

AB 3269 (B. Friedman). Existing law regulates home improvement salespersons and makes it a misdemeanor to act as a home improvement salesperson without being registered. As introduced February 24, this bill would provide that any security interest taken to secure any payment for the performance of any act or conduct relating to home improvement, as defined, is unenforceable if the person soliciting the act or contract was not a duly registered salesperson at the time the homeowner signs the home improvement contract solicited by the salesperson. [A. Floor]

AB 3292 (Bowen), as introduced February 24, would repeal an existing provision authorizing the CSLB Registrar to waive the written examination requirement for licensure applicants under specified circumstances. [A. Floor]

ABX 57 (Archie-Hudson). Existing law regulates the content and effect of home solicitation contracts, as defined. Existing law defines "services" for purposes of these provisions to include, among other things, services furnished in connection with the repair, alteration, or improvement of residential premises. As amended May 17, this bill would revise this definition to also include services furnished in connection with the restoration of residential premises; provide that any home solicitation contract or offer for the repair or restoration of residential premises signed and dated by the buyer within a prescribed time period from when a disaster, as defined, causes damages to the residential premises shall be void, except as otherwise provided; provide that, in addition to any other right to revoke an offer, a buyer has the right, within a prescribed time period, to cancel a home solicitation contract or offer for the repair or restoration of residential premises damaged by a disaster that was not otherwise void; and specify that the provisions added by this bill regarding home solicitation contracts or offers for the repair or restoration of residential premises damaged by a disaster shall not apply to a contract that is solicited by the buyer or his/her agent and that is executed in connection with the making of prescribed emergency repairs or services, among other conditions. [A. W&M]

AB 3294 (Bowen). Under existing law, a willful or deliberate failure by a CSLB licensee or the agent or officer of the licen-

see, to pay any money due for any materials or services rendered in connection with the licensee's operations as a contractor, as specified, or the false denial of any amount due or the validity of the claim thereof with intent to secure for the licensee or the licensee's employer, or other person, any discount upon this indebtedness or with intent to hinder, delay, or defraud the person to whom this indebtedness is due, is grounds for disciplinary action. As amended April 26, this bill would instead provide that any of these actions shall result in suspension of the contractor's license and may constitute a cause for other disciplinary action. [A. Floor]

AB 3436 (Martinez), as amended May 18, would provide that, before the commencement of binding arbitration of specified claims pursuant to home construction or improvement contracts, the arbitrator shall provide to each party a written declaration disclosing an affiliation with either party, if any, as specified. The bill would further provide that if an affiliation is disclosed, either party may disqualify the arbitrator. [A. Floor]

AB 3528 (Alpert), as amended April 18, would create the San Diego County Construction Contractors Council in state government with a prescribed membership, and would specify the powers, duties, and responsibilities of the Council in carrying out the bill. The Council would be authorized to promote the sale of construction industry services and commodities by marketing, advertising, and promotions, and to educate and instruct the construction industry with respect to specified matters that affect the marketing of construction industry services or commodities. The bill would authorize CSLB to levy an assessment, not to exceed a specified amount, on contractor licensees, and would require CSLB to transfer the assessments to the Council. The bill would also provide for the suspension of the operation of its provisions under certain conditions and for concluding the operations of the Council. [A. Floor]

SB 1844 (Mello). Existing law provides that a person who engages in the business or acts in a capacity for which a contractor's license is required may not bring an action for compensation for performance of any act or contract for which the license is required unless he/she was licensed during the time of the performance of the act or contract. However, under current law, a court may find substantial compliance with licensing requirements if the person can show during an evidentiary hearing (1) that he/she was duly licensed during any portion of the 90 days im-



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mediately preceding the performance of the act or contract for which compensation is sought, (2) that the person's license was in a category that would have authorized the performance of the act or contract, and (3) that the failure to comply with licensing requirements was the result of either an inadvertent clerical error, or other error or delay not caused by the negligence of the person. As amended May 17, this bill would provide instead that a court may find substantial compliance with licensing requirements if the person who acted in the capacity of a contractor or who engaged in the business (1) was duly licensed in California prior to the performance of the act or contract, (2) acted reasonably and in good faith to maintain his/her proper license, and (3) did not know or reasonably should not have known that he/she was not duly licensed.

Existing law provides that the provisions concerning substantial compliance with licensing requirements shall have no retroactive effect and shall apply only to proceedings commenced after January 1, 1992. This bill would delete the reference to retroactivity and instead provide that the substantial compliance provisions shall apply to all contracts entered into on or after January 1, 1995, and to all actions or arbitrations arising therefrom. [S. Floor]

SB 1694 (Wright). Existing law creates CSLB's Unlicensed Activity Unit as a demonstration project only in southern California, to enforce provisions prohibiting all forms of unlicensed activity. As amended April 19, this bill would remove the limitation that the enforcement unit operate as a demonstration project only in southern California. This bill would also allow the CSLB Registrar to issue a citation against an unlicensed individual who advertises to perform construction work or a work of improvement. [A. CPGE&ED]

AB 3475 (Mountjoy). Existing law requires an applicant for a contractor's license, for restoration of a license, or for continued use of a license after discipline to file a bond in addition to other required bonds. Among other persons, the requirement applies to any partnership, corporation, firm, or association of which any officer, director, member, partner, or qualifying person has had a license suspended or revoked as a result of disciplinary action. As amended May 17, this bill would make this requirement applicable to renewal of a license and to an application to change officers of a corporation after discipline. The bill would make the requirement applicable to any existing or new officer, director, member, partner, or qualifying person of any partnership, corporation, firm, or association, as specified.

Under existing law, the CSLB Registrar may issue a citation when the Registrar has probable cause to believe that a licensee or an applicant for a license has committed any acts or omissions which are grounds for denial, revocation, or suspension of the person's license. This bill would provide that the disassociation of any officer, director, member, or associate from the license of any partnership, corporation, firm, or association whose license has been cited pursuant to the above provision shall not relieve that person from responsibility for complying with the citation if he/she had knowledge of, or participated in, any of the prohibited acts for which the citation was issued. The bill would also provide that the disassociation of any qualifying partner, responsible managing officer, or responsible managing employee from a license that has been cited pursuant to the above provision shall not relieve that person from responsibility for complying with the citation. [A. Floor]

AB 3302 (Speier). Under existing law, a complaint against an individual licensed by CSLB alleging commission of any acts or omissions that may be grounds for legal action must be filed in writing with the Registrar within three years after the act or omission alleged as the ground for the disciplinary action. As amended May 18, this bill would instead provide that a complaint against a licensee alleging commission of any patent acts or omissions that are grounds for legal action must be filed in writing with the Registrar within four years after the act or omission alleged as the ground for the disciplinary action, and a complaint against a licensee alleging commission of any latent acts or omissions, as defined, that are grounds for legal action based on structural defects, as provided, shall be filed in writing with the Registrar within ten years after the act or omission alleged as the ground for the disciplinary action.

This bill would also provide that the revocation, suspension, or other disciplinary action of a license to act as a contractor by another state is grounds for disciplinary action in this state if the individual is a licensee, or applies for a license, in this state. This bill would also provide that when CSLB resolves a complaint, the Board shall notify the contractor and the complainant in writing of its action and the reasons for taking that action.

Under existing law, there is no prohibition against a licensee using the name or position of a public official in advertising or promotional materials. This bill would prohibit the use of the name or position of a public official, as defined, in any advertising or promotional material by the li-

ensee without the written authorization of the official and a disclaimer, as specified.

Existing law provides requirements applicable to arbitration provisions contained in specified real estate contracts. This bill would impose requirements applicable to arbitration provisions contained in contracts for work on residential property with four or fewer units, as specified. [A. W&M]

ABX 36 (Katz, Bowen), as amended May 12, would provide that, upon the proclamation of a state of emergency and for a period of thirty days following the declaration, it is a misdemeanor for any person, contractor, business, or other entity to sell or offer to sell any consumer food items, goods or services used for emergency clean-up, emergency supplies or medical supplies, home heating oil, or gasoline or other motor fuels for a price that exceeds by 10% the price charged by that person for those goods or services immediately prior to the proclamation of emergency, unless that person can prove that an increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or for labor or materials used to provide the services, as specified. The bill also would provide that, upon the proclamation of a state of emergency, as provided, and for a period of 180 days following the declaration, it is a misdemeanor for any contractor to sell or offer to sell any repair or reconstruction services or any services used in emergency clean-up for a price that exceeds by 10% the price charged by that person for those services immediately prior to the proclamation of emergency, unless that person can prove that an increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or for labor or materials used to provide the services, as specified. The bill would also provide for the extension of the provisions of the bill for additional thirty-day periods, as specified. A violation of these provisions would also be an unfair business practice and act of unfair competition.

Under existing law, the conviction of a crime substantially related to the qualifications, functions, and duties of a contractor constitutes grounds for disciplinary action. As amended May 12, this bill would require the CSLB Registrar to immediately revoke the license of any contractor convicted of violating the provision described above. [A. W&M]

SB 634 (Craven). Existing law makes various actions in connection with work by contractors a misdemeanor, including receiving or accepting completion certifi-



cates when work is not complete, failing to comply with requirements for home improvement contracts, and making various misrepresentations or engaging in fraudulent activities. As amended April 18, this bill would increase the penalty for a violation of those provisions in connection with a scheme to defraud an owner in connection with repairs to a structure damaged by a natural disaster. [A. Floor]

The following is a status update on bills reported in detail in CRLR Vol. 14, No. 1 (Winter 1994) at page 40:

AB 1807 (Bronshvag), as amended March 23, makes the CSLL inapplicable to a licensee operating within the scope of the Geologist and Geophysicist Act. This bill was signed by the Governor on March 30 (Chapter 26, Statutes of 1994).

AB 1392 (Speier), as amended July 1, 1993, would provide that the CSLB Registrar is to be appointed by the Governor, subject to Senate confirmation, and that the Board's Registrar and employees are under the control of the DCA Director. [S. B&P]

AB 203 (Collins), as amended April 26, 1993, would provide that one of the seven public members on CSLB shall be a local building official appointed by the Governor. [S. B&P]

AB 443 (Aguiar). Existing law provides that every city or county which requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure shall, in addition to any other requirements, print certain declarations on any building permit issued, including a declaration verifying workers' compensation coverage and a certificate of exemption from workers' compensation insurance, as specified. As amended January 19, this bill would revise the form of the workers' compensation declaration verifying coverage or exemption from coverage, and would require CSLB to annually compile and distribute to city, county, and city and county building departments a list of all contractors without current workers' compensation insurance policies.

Existing law provides that every county or city which requires a permit for construction work on any building or structure shall require each applicant to have on file a certificate of workers' compensation insurance or a certificate of consent to self-insure, with specified exceptions. This bill would instead require that each applicant sign the workers' compensation declaration required to appear on the issued building permit pursuant to the above provision of law. The bill also would require contractors, at the time of permit issuance, to

show their valid workers' compensation insurance certificate. [S. Appr]

SB 949 (Rogers), as amended July 13, 1993, would generally provide that, with respect to all contracts between owners and original contractors for the construction of any private work of improvement, excluding residential construction, entered into on or after July 1, 1994, the retention proceeds withheld by the owner from the original contractor or by the original contractor from any subcontractor from any payment shall not exceed 10% of the payment and in no event shall the total retention withheld exceed 5% of the contract price. [A. Jud]

The following bills died in committee: **AB 338 (Mountjoy)**, a Board-sponsored bill which would have revised the definition of a general building contractor, and eliminated the exclusion of specified persons from the definition of a general building contractor [13:1 CRLR 31]; **AB 1800 (Friedman, T.)**, which would have abolished the Department of Industrial Relations and instead provided for the Labor Agency consisting of the Department of Occupational Safety and Health, the Department of Workers' Compensation, the Department of Rehabilitation, the Department of Labor Standards Enforcement, the Employment Development Department, the Department of Fair Employment and Housing, and CSLB; and **AB 1981 (Horcher)**, which would have declared that provisions in an express or implied contract between contractors and their subcontractors and suppliers making payment thereof contingent upon payment of the contractor are contrary to public policy, void, and unenforceable.

■ LITIGATION

In *Vallejo Development Company v. Beck Development Company*, 24 Cal. App. 4th 929 (Apr. 29, 1994), appellant Vallejo Development Company (VDC) appealed from judgments of dismissal entered by the Solano County Superior Court as to each of four complaints by which VDC sought to recover payment from several "merchant builders" for whom VDC agreed to install infrastructure improvements in a large, unfinished commercial/residential project commonly known as "Northgate." The trial court accepted the respondents' argument that VDC may not prosecute any of its claims for compensation—whether characterized as actions on the contract or in quasi-contract, actions to foreclose on a mechanic's lien, actions to enforce a vendor's lien, or otherwise—because, during the time it was providing the agreed-upon services to respondents, it did not have a valid contractor's license as re-

quired by Business and Professions Code section 7031(a). The trial court rejected VDC's argument that, as a "master developer" for the Northgate project, it merely furnished labor and materials through licensed, third-party general contractors and that it was not, therefore, a "contractor" within the meaning of sections 7026 and 7031.

On appeal, the First District Court of Appeal first considered whether VDC is seeking compensation for the performance of any act or contract for which a license is required within the meaning of section 7031. The court noted that Business and Professions Code section 7056 defines the scope of work for which a contractor's Class A license is required to include fixed works requiring specialized engineering knowledge and skill, including irrigation, drainage, water power, water supply, flood control, highways, streets and roads, sewers and sewage disposal plants and systems, land leveling and earthmoving projects, excavating, grading, trenching, paving and surfacing work and cement and concrete works in connection with the above mentioned fixed works. According to the court, the work VDC agreed to complete for the merchant builders was clearly of the type for which a general engineering contractor's license is required.

The court also determined that by entering into the agreements with respondents, and by performing as required under the terms of the agreements, VDC was acting in the capacity of a contractor for the Northgate project; according to the court, "[b]y entering into the agreements to 'improve the Property' and to be 'solely responsible for completion of' infrastructure improvements—including graded building pads, storm drains, sanitary systems, streets, sidewalks, curbs, gutters, utilities, street lighting, and traffic signals—VDC was clearly contracting to provide construction services in exchange for cash payments by respondents." The court further noted that the "mere execution of such a contract is an act 'in the capacity of a contractor,' and an unlicensed person is barred by section 7031, subdivision (a), from bringing claims based on the contract."

The First District also commented that, if the legislature intended to exempt "master developers" from the CSLL, it easily could have done so. The court also noted that judicial recognition of such an exemption would open a "Pandora's Box," noting that there is no substantive difference between VDC's claim that it merely intended to administer or supervise the work of licensed contractors, and other



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situations in which unlicensed parties have argued that they should be allowed to recover on their contracts by virtue of their having subcontracted out the work to be performed by licensed contractors. The court stated that VDC's efforts to rewrite the CSLL must be directed to the legislature, not to the courts. Accordingly, the First District affirmed the trial court's holding.

RECENT MEETINGS

At CSLB's January 28 meeting, then-Registrar David Phillips announced that information being released to inquiring consumers through the Board's automated phone response system has been expanded to include information on legal actions and construction-related judgments, as well as additional bond information. Phillips also announced that the Board is being forced to maintain a conservative posture on expenditures due to low revenues; however, revenues are expected to increase due to the licensing fee increase which became effective on January 1. [13:4 CRLR 42]

Phillips also reported that CSLB is experimenting with verification of experience stated on licensure applications, as it agreed to do after October 1993 oversight hearings by the Assembly Consumer Protection Committee. [14:1 CRLR 39] Under this procedure, the Board will contact certifiers and previous employers, as well as request further documentation and proof of experience. CSLB eventually hopes to investigate the experience claimed by 100% of its applicants; however, its fiscal condition prevents achievement of that goal at the current time.

CSLB devoted its February 16 and April 7 meetings to discussing its recruitment process, interviewing, and selecting Gail Jesswein to succeed Dave Phillips as CSLB Registrar.

At CSLB's April 22 meeting, Administration/Consumer Education Committee Chair Bob Laurie reported that CSLB must pay special attention to problems in the telephone service that it provides to consumers and the industry; specifically, many callers have complained that they are not able to get through to a live operator. According to Laurie, this and other public outreach concerns will be a priority of the Committee.

Also at CSLB's April 22 meeting, Licensing Committee Chair Nina Tate reported that her Committee is focusing on issues regarding contractors' fiscal responsibility to consumers and the Board's level of oversight to ensure that consumers are protected against financially irresponsible contractors. According to Tate, the Committee is discussing several is-

issues, such as payment and performance bonds in the area of home improvement on projects over a certain dollar amount; higher bonding requirements (*see* LEGISLATION); the feasibility and cost of a recovery fund; separate classification for home improvement contractors with separate bonding; current bonding requirements and how they protect the consumer; the average number of bond claims against a contractor's bond, the amount of the claims, and how many are paid; and minimum financial requirements for a contractor. At present, the Committee is focusing on two of these issues: separate classification for home improvement contractors with separate bonding, and fiscal responsibility for the contractor. These topics will be discussed in greater detail at future Committee meetings.

FUTURE MEETINGS

July 22 in Los Angeles.

BOARD OF DENTAL EXAMINERS

Executive Officer:
Georgetta Coleman
(916) 263-2300

The Board of Dental Examiners (BDE) is charged with enforcing the Dental Practice Act, Business and Professions Code section 1600 *et seq.* This includes establishing guidelines for the dental schools' curricula, approving dental training facilities, licensing dental applicants who successfully pass the examination administered by the Board, and establishing guidelines for continuing education requirements of dentists and dental auxiliaries. The Board is also responsible for ensuring that dentists and dental auxiliaries maintain a level of competency adequate to protect the consumer from negligent, unethical, and incompetent practice. The Board's regulations are located in Division 10, Title 16 of the California Code of Regulations (CCR).

The Committee on Dental Auxiliaries (COMDA) is required by law to be a part of the Board. The Committee assists in efforts to regulate dental auxiliaries. A "dental auxiliary" is a person who may perform dental supportive procedures, such as a dental hygienist or a dental assistant. One of the Committee's primary tasks is to create a career ladder, permitting continual advancement of dental auxiliaries to higher levels of licensure.

The Board is composed of fourteen members: eight practicing dentists (DDS/

DMD), one registered dental hygienist (RDH), one registered dental assistant (RDA), and four public members. BDE's current members are Stephen Yuen, DDS, president; Joel Strom, DDS, vice president; Martha Hickey, public member, secretary; Pamela Benjamin, public member; John Berry, DDS; Victoria Camilli, public member; Robert Christoffersen, DDS; Joe Frisch, DDS; Peter Hartmann, DDS; Genevieve Klugman, RDH; Virtual Murrell, public member; Roger Simonian, DDS; Hazel Torres, RDA; and Gloria Valde, DMD.

MAJOR PROJECTS

McCorquodale Legislation Calls for Abolition of COMDA, Restructuring of BDE. Following the November 1993 oversight hearing on the performance of BDE and COMDA by the Senate Subcommittee on Efficiency and Effectiveness in State Boards and Commissions [14:1 CRLR 41], Senator Dan McCorquodale introduced SB 2036, which would establish a "sunset" review process for all occupational licensing agencies within the Department of Consumer Affairs (DCA). He also amended SB 2038 (McCorquodale) to include a provision abolishing COMDA and restructuring the composition of BDE to provide greater representation for dental auxiliaries. Under the April 5 version of SB 2038, BDE would consist of six practicing dentists, two registered dental hygienists, two registered dental assistants, and four public members.

SB 2038 is based upon the recommendations of the Senate Subcommittee in its final report released on April 11. In that report, the Subcommittee noted that COMDA is an advisory body which carries out a limited range of duties delegated to it by BDE. COMDA is not authorized to engage in any aspect of enforcement, and very little enforcement activity is undertaken or necessary as against dental auxiliaries. The Subcommittee noted that COMDA is itself under the jurisdiction of another BDE advisory committee, the Auxiliary Committee. Thus, COMDA makes recommendations only on certain issues to the Auxiliary Committee, which may approve or reject them; in turn, the Auxiliary Committee makes recommendations to the full Board, which may approve or reject them. The Subcommittee noted that "there are two committees performing basically the same function," and concluded that abolishing COMDA may improve efficiency by eliminating one level of review. "It would be more efficient for a Board which equally represents dentists and auxiliaries to conduct, approve, and act upon issues and programs, rather than