would have the burden of ensuring that employees subject to registration are currently registered or have made a timely application for registration with BCIS.

BCIS' amendments would also require separate licensure to operate a locksmith business under one or more fictitious trade names; each locksmith license would be location-specific. A separate branch office registration would be required for each location in which a licensee conducts business other than the principal place of business address listed on the licensee's primary license.

BCIS may also require that the name and license number of the licensee, as it appears in BCIS' records, be listed in every advertisement or solicitation by the licensee's locksmith business.

The proposed amendments would also specify that a licensee shall at all times be responsible for the actions of his/her employees performed in violation of the Act, when such employees are acting within the course and scope of their employment. Amendments would also provide that a license or registration of a locksmith shall be automatically suspended if the locksmith is convicted of a crime which is substantially related to the functions, duties, and responsibilities of a locksmith. The automatic suspension would be effective upon BCIS' mailing of a notice of conviction and suspension of license to the licensee at his/her address of record.

The proposal would give BCIS the authority to inspect, examine, or investigate relevant records, books, accounts, and files created and maintained by a locksmith; BCIS would have access to all business records necessary to the examination for the purpose of performing a random audit to ensure compliance with the Act.

Other proposed amendments would provide the following exemptions from licensure: any person or his/her agent or employee who is the manufacturer of a product, other than locks and keys, and who performs locksmith services for the locks of that product as a normal incident to its marketing; employees who are industrial or institutional locksmiths, provided that such employees provide locksmith services only to a single employer who does not provide locksmith services for hire to the public; tow truck operators who do not originate keys for locks and whose locksmith services are limited to motor vehicles; any person exclusively and regularly employed by a state correctional institution; and any person registered with BCIS as a repossession under Chapter 11 of the Business and Professions Code, if the duties of that person's position which constitute locksmithing are ancillary to the primary duties and functions of that person's position.

Repossessor Industry to Propose Fee Increase. The California Association of Licensed Repossessors (CALR) is expected to sponsor a bill in the 1993–94 legislative session which would increase licensing fees. Although the repossession industry will be sponsoring the bill, the fee increase will affect most or all of the industries regulated by the Bureau. Whereas industry opposition defeated last session's proposed fee increase, this year's proposal appears to have some industry support; some of the support for this year's bill comes from the realization that if fees are not increased, BCIS may be forced to cease all functions except for licensing. According to CALR Legislative Liaison Ray Radford, BCIS' continued regulation benefits both the industries and consumers; if BCIS is forced to cease its enforcement activities, consumers may be left with little or no recourse from unscrupulous industry members. In addition, if BCIS does not continue to establish statewide standards for the industries, they may be subject to specific regulations of each individual municipality.

At this writing, CALR has not confirmed an author for its bill, but hopes to have it introduced as an urgency measure in the Senate.

RECENT MEETINGS

On December 22, BCIS' Private Security Advisory Board held its final meeting in Sacramento. Pursuant to ABX 66 (VASCONELLOS) (Chapter 21X, Statutes of 1992), PSAB was formally abolished on December 31. At the meeting, staff presented final reports on the Private Security Training Committee and the Liaison with Law Enforcement Agencies Committee. PSAB Chair Bruce Westfall thanked all those who had assisted in the smooth operation of the Board during his tenure.

CONTRACTORS STATE LICENSE BOARD

Registrar: David Phillips
(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 maintains six committees: Administration, Enforcement, Legislation, Licensing, Public Information, and Strategic Planning. Beginning in October 1992, separate committee meetings will not be held; instead, all issues will be discussed and decided by the full Board at regular Board meetings.

The Board currently has vacancies for one labor member and one specialty contractor.

MAJOR PROJECTS

State Budget Cuts Continue to Plague Board. At its October 22 meeting, CSLB discussed its ongoing financial problems resulting from the state's budget cuts. Staff noted that because CSLB derives all of its funding from licensing fees, the state does not save any general fund money by cutting CSLB's budget; instead, the state is transferring CSLB's special fund resources away from the Board and depositing it into the general fund. [12:4 CCLR 1; 71] In its 1992–93 budget, the state took 10% of CSLB's annual $38.7 million budget for general fund purposes; CSLB staff alerted the Board to the possibility that the state may repeat the 10% cut in the 1993–94 budget. Any such additional reduction would require drastic reductions in expenditures by CSLB, a significant increase in licensing fees, or both.

The Board discussed several possible areas where cuts could be made, such as enforcement activities (which comprise 70% of the Board's budget), personnel, consolidation of district offices, arbitration, Attorney General's Office costs, computer testing of applicants, data processing, and the toll-free phone system. The Board asked staff to look into each of these areas, along with other areas where reductions could be made, to see how the budget could be trimmed. Board member Steve Lazarian opined that it would be better to reduce programs across the board, as opposed to eliminating a few in their entirety, because of the difficulty in subsequently resurrecting any programs that are eliminated.

In addition to expenditure reductions, the Board also discussed the need to increase licensing fees. CSLB Administr-
tive Officer Linda Brooks reminded the Board that staff has been requesting an increase in fees for three years. Brooks stated that if fees are not increased during the current fiscal year, CSLB will have a reserve at the end of the year of less than $1 million; according to Brooks, a prudent reserve would be three months’ worth of expenditures, or $8.4 million.

Some CSLB members expressed opposition to the proposed fee increase; Board Chair Joe Valverde stated that he is resistant to it due to the 34% unemployment rate in the construction industry, and CSLB member Steve Lazarov suggested that, as an alternative, the Board could create new revenue by developing a marketing program to get more contractors licensed. Various contractors in the audience spoke both for and against a fee increase; those in favor of an increase expressed hope that the money would go toward discipline against unlicensed contractors and concern that any increased fee income not be subject to capture by the state. Following discussion, the Board agreed to sponsor a bill to increase fees (see infra LEGISLATION).

Board Continues to Discuss Radical License Classification Changes. At the Board’s October 22-23 meeting, members continued to discuss the proposed restructuring of the A-general engineering and B-general building contractor classifications. [12:4 CRLR 71] Once again, the proposal generated many questions and a great deal of concern from contractors in the audience and various Board members. The proposed revisions grew out of recent concern over public contracts and the inability of public works officials to accurately distinguish between A and B work. Complex projects, such as airports, multi-story buildings, and structures with elaborate foundations, frequently have the attributes of traditional A and B jobs, ultimately, only one of the license classifications is chosen by the public agency as appropriate for the project. With recent changes in state law which make contracting out of license class equal to unlicensed contracting, legitimate contractors have been put in jeopardy. Under state law, unlicensed contractors have no standing to sue for their compensation in court; similarly, licensed contractors working out of their license class would likely have no standing to sue.

At the October meeting, CSLB member Steve Lazarian presented the Licensing Committee’s modified proposal regarding the classification revisions. Under the current proposal, Business and Professions Code section 7055 would be amended to include five contracting classifications; AB-general construction contracting, A-general engineering contracting, B-general building contracting, C-residential/home improvement contracting, and D-specialty contracting.

Also under the proposal, Business and Professions Code section 7055.5 would be added to provide that a general construction contractor is a contractor whose contracting business is in connection with fixed works and/or building construction projects requiring specialized construction knowledge and skill in technical engineering and building procedures. The general construction contractor would be authorized to perform any of the work classified within sections 7056, 7057, or 7057.5 of the Business and Professions Code.

Business and Professions Code section 7056 would be amended to provide that a general engineering contractor is a contractor whose contracting business is in connection with fixed works, including the following divisions or subjects: irrigation, drainage, water power, water supply, flood control, inland waterways, harbors, docks and wharfs, shipyards and ports, dams and hydroelectric projects, levees, river control and reclamation works, railroads, highways, streets and roads, tunnels, airports, sewers and sewage disposal plants and systems, waste reduction plants, bridges, overpasses, underpasses and other similar works, pipelines and other systems for the transmission of petroleum and other liquid or gaseous substances, parks, playgrounds and other recreational works, refineries, chemical plants and other similar industrial plants, powerhouses, power plants and other utility plants and installations, mines and metallurgical plants, land leveling and earth-moving projects, excavating, grading, trenching, paving and surfacing work, and concrete works in connection with the above listed fixed works.

Business and Professions Code section 7057 would be amended to provide that a general building contractor is a contractor whose contracting business is in connection with any structure built or being built for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind, requiring in its construction three or more unrelated building trades or crafts, or to do or superintend the whole or any part thereof.

Finally, Business and Professions Code section 7057.5 would be added to read that a residential/home improvement contractor is a contractor whose contracting business is in connection with single-family residential structures and home improvements as defined in Business and Professions Code section 7151, requiring in the construction of these structures, three or more unrelated trades or crafts, or to do or superintend the whole or any part thereof.

At this time, there is no proposal to amend Business and Professions Code section 7058, which provides that a specialty contractor is a contractor whose operations as such are the performance of construction work requiring special skill and whose principal contracting business (a) involves the use of specialized building trades or crafts; (b) includes the business of servicing or testing fire extinguishing systems; or (c) includes operations concerning the installation and laying of carpets, linoleum, and resilient floor covering.

Following discussion, the Board agreed to continue to receive input regarding the proposal and to modify it as appropriate. CSLB also agreed to introduce a spot bill during the 1993-94 legislative session which will subsequently be amended to include the classification revisions once they are approved by the Board.

CSLB Nails Home Depot. According to CSLB Deputy Registrar Arne Rovell, the Board has cited home supply retailer Home Depot three times for advertising to perform installation work or performing installation work which the state contends the company is not properly licensed to do. Home Depot has a B-general building contractor license, which allows it to coordinate or perform the work of three or more specialty trades but does not allow it to perform the work of only one or two specialty trades; such activities would currently require a C-specialty contractor license. Home Depot maintains that it is complying with the law and continues to offer product installation services. On November 23-24, CSLB argued its case against Home Depot before an administrative law judge (ALJ). The ALJ ordered Home Depot and CSLB to submit any final briefs on the matter prior to December 14, at which time the ALJ closed the record; a decision was expected to be released in January.

CSLB Proposes to Revise Plumbing, Carpentry Contractor Regulations. On November 20, CSLB published notice of its intent to amend section 832.36 and adopt new section 832.05, Title 16 of the CCR. Section 832.36 specifies the tasks that may be undertaken by plumbing contractors; the section currently provides that, in structures and works occupied by people or animals, a plumbing contractor provides a permanent means for a supply of safe, pure, and wholesome water, ample in volume and of suitable temperature for drinking, cooking, bathing, swimming, ir-
igation, washing, and cleaning. Among other things, the proposed amendments would expand the section's coverage to include all structures, including those in which people work or assemble, and would provide that the classification includes but is not limited to piping to the public sewer main or the construction and connection of onsite wastewater disposal systems, piping storage tanks and venting for a safe and adequate supply of gases and liquids for any purpose, including vacuum, compressed air, and gases for medical, dental, commercial, and industrial uses; all gas appliances, flues, and gas connections for all systems including suspended space heating units, but not including forced warm air units; water and gas piping from the property owner's side of the meter or utility main to the structure or fixed works; installation of any type of equipment to heat water or fluids to a temperature suitable for the purposes listed in the section, including the installation of solar equipment for this purpose; and the maintenance and replacement of all items described above and all health and safety devices such as, but not limited to, gas earthquake valves, gas control valves, back flow preventers, water conditioning equipment, and regulating valves.

CSLB staff has received a number of inquiries regarding specialty licensure in a carpentry class; staff responds that if a person desires to contract in the field of carpentry, he/she must obtain a B-general building contractor license, because CSLB's carpentry classification was discontinued in the 1950s. Proposed new section 832.05 would create a new specialty contractor classification, providing that a carpentry contractor performs and repairs all carpentry work, framing rough carpentry, finish carpentry including cabinets, sashes and doors, wood flooring, siding, overhead doors, roof decking, wood trusses, metal studs, and installation of drywall (no taping or texturing).

CSLB was scheduled to hold a public hearing on these proposals on January 21 in Ontario.

Rulemaking Update. CSLB’s proposed amendments to section 832.07 and proposed adoption of section 832.28, Title 16 of the CCR, have been approved by the Department of Consumer Affairs and have been submitted to the Office of Administrative Law for review and approval. The proposed amendments to section 832.07 would delete authorization for Class C-7 low voltage contractors to install low voltage fire alarm systems. Proposed new section 832.28 would create a new specialty license classification for Class C-28 lock and security equipment contractors. [12-4 CRLR 71]

LEGISLATION

Future Legislation. At its October 22–23 meeting in Sacramento, CSLB agreed to pursue the following legislative proposals during the 1993–94 session:

- CSLB will sponsor a bill to increase the ceiling on CSLB fees, primarily to restore the Board’s reserve fund to a sound level following the state’s transfer of all but three months’ worth of operating expenses to the general fund (see supra MAJOR PROJECTS). Although no specific amounts were mentioned, CSLB staff has suggested increasing the license application fee and the license renewal fee by $100.
- CSLB will sponsor legislation to facilitate the redefinition of the A-general engineering and B-general building contractor license classifications (see supra MAJOR PROJECTS).
- CSLB will sponsor a bill to clarify the language of AB 2413 (Lancaster) (Chapter 229, Statutes of 1992), which amended Business and Professions Code section 7031. That section provides that— with specified exceptions—no person engaged in the business or acting in the capacity of a contractor may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract for which a license is required by law without alleging that he/she was a duly licensed contractor at all times during the performance of that act or contract, regardless of the merits of the cause of action brought by the person. Section 7031 also provides that if licensure or proper licensure is controverted, then proof of licensure shall be made by production of a verified certificate of licensure from CSLB which establishes that the individual or entity bringing the action was duly licensed in the proper classification at all times during the performance of any act or contract covered by the action. At CSLB’s October meeting, Board members stated that it was not the Board’s intent to place the burden of proof on a homeowner to prove the contractor is not licensed, and that AB 2413’s amendments may have created that perception. The Board directed staff to draft legislation to clarify this issue.

LITIGATION

In Four Star Electric, Inc., v. F&H Construction, No. C009168 (Aug. 4, 1992), the Third District Court of Appeal held that a subcontractor was not collaboratively estopped from recovering against a general contractor even though the general contractor had obtained a default judgment against the subcontractor in a previous action on the same subcontract. Four Star Electric, Inc. (Four Star) had entered into a subcontract with F&H Construction (F&H) for Four Star to perform the electrical work on a prison in Jamestown for the California Department of Corrections; F&H was the general contractor on the project. In the subcontract, Four Star had agreed to indemnify F&H against all liability for claims and liens for material and labor, among other things, ordered by Four Star. During the course of the subcontract, Four Star failed to pay three of its suppliers, who in turn sued Four Star and F&H. F&H filed cross-complaints for indemnification against Four Star on each of the three suppliers’ claims, alleging that it had paid Four Star all amounts due it under the contract. Four Star did not appear, so F&H obtained default judgments on the cross-complaints.

Four Star subsequently sued F&H for failure to pay Four Star upon completion of the job. The trial court sustained F&H’s demurrer to Four Star’s claim on the basis that Four Star was collaterally estopped from recovering due to the default judgment in the previous actions. The trial court relied on F&H’s allegation in the indemnification actions that F&H had fully complied with the subcontract in its entirety by paying Four Star “any and all monies due.”

On appeal, the Third District reversed, holding that in order to assert collateral estoppel, it must be demonstrated that the issue was actually litigated and decided in the prior action; further, the issue must have been necessary to the judgment in that action. According to the Third District, a default judgment is not conclusive with respect to any defense or issue that was not raised or was not necessary to uphold the judgment. F&H’s claim in the indemnification actions that it had fully complied with the contract in its entirety was not necessary to the default judgments and thus could not be later used to collaterally estop Four Star from suing for monies earned under the subcontract (although the default judgments would be used as a setoff).

The Third District also looked at the practical side of the dispute. Four Star may have concluded that because it had no defense to the claims of the suppliers or to F&H’s cross-complaints, allowing the default judgment to be entered against it was the most practical and economical solution. However, if Four Star believed that the default judgments would result in it...
not being compensated for work yet to be performed, then it would have been compelled to litigate each of the claims and cross-complaints. The obvious result would be more litigation rather than less, the latter being the goal of the collateral estoppel doctrine of res judicata.

RECENT MEETINGS

At CSLB’s October 22–23 meeting in Sacramento, Department of Consumer Affairs (DCA) Director Jim Conran complimented the Board on its accomplishments and commented on the positive relationship that has developed between the Board members, CSLB staff, and himself. He stated that there would be a follow-up meeting in November to Governor Wilson’s Summit on “Jump Starting Construction”; Conran also announced that a plan will be submitted to the Governor by DCA to increase enforcement against unlicensed activity.

Registrar David Phillips reported that staff continues to make progress toward processing all complaints within six months. At the end of August, only three complaints were over one year old; nine of CSLB’s fifteen districts have no complaints over nine months old. The San Diego District Office continues to be in the lead by being completely current on all complaints. Phillips also reported that a manual containing a summary of all relevant case law regarding contractor licensing has been distributed to all CSLB offices for use by staff engaged in disciplinary activities.

During the Strategic Planning and Administration Committee’s portion of the meeting, staff announced that pending complaints are down to approximately 5,000 from approximately 13,000 pending three to five years ago. CSLB receives approximately 30,000 complaints per year; 30% involve unlicensed contractors. Staff also reported that CSLB’s new automated testing system allows applicants to obtain immediate results from the exam and is capable of testing 6,000 applicants per month; the new testing system allows CSLB to issue licenses within two months. Staff also reported that the new automated phone system now enables CSLB to answer almost one million calls per year, up from 250,000 calls per year prior to bringing the new system on line. The automated phone system allows callers to check the validity of a license 24 hour per day.

During the Enforcement Committee’s portion of the meeting, staff announced several goals and objectives for 1992–93. With respect to processing complaints, it is staff’s goal to process 92% of all complaints in six months; reduce the median age for case closures from 41 days to 38 days; eliminate all complaints over twelve months old; redirect 250 complaints (those with between $5,000 and $25,000 in dispute) to the Voluntary Arbitration Program; and reimplement the Mandatory Arbitration Program (for complaints with under $5,000 in dispute) when and if funding becomes available. The Enforcement Committee also hopes to establish unlicensed activity units for the central and northern regions when and if funding becomes available; conduct one sting operation per month; and improve the collection rate on civil penalties for licensee citations by collecting at least 10% of all penalties assessed.

The Licensing Committee announced several goals and objectives for 1992–93, including redefining the A-general engineering and B-general building contractor classifications (see supra MAJOR PROJECTS); ensuring the timely processing of license applications and renewals; completing the revision of the original contractor license application form to comply with legislation passed in the last three years; and exploring ways to automate much of the work in the workers’ compensation unit by electronically transferring policy information from the state compensation insurance fund.

FUTURE MEETINGS

July 22–23 in Los Angeles.

BOARD OF DENTAL EXAMINERS

Executive Officer:
Georgetta Coleman
(916) 920-7197

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 (RDA), and four public members. BDE’s current members are Gloria Valde, DMD, president; Stephen Yuen, DDS, vice president; Pamela Benjamin, public member; John Berry, DDS; Victoria Camilli, public member; Joe Frisch, DDS; Peter Hartmann, DDS; Martha Hickey, public member; Virtual Murrell, public member; Jean Savage, DDS; Joel Strom, DDS; and Hazel Torres, RDA. Although the term of Dr. Savage has expired, it is anticipated that she will continue to serve on the Board during a one-year grace period until her replacement is appointed. In addition to Dr. Savage’s position, BDE has one other DDS/DMD vacancy and one RDH vacancy.

MAJOR PROJECTS

Board Proposes Action to Reduce Fees. On December 4, the Board published notice of its intent to amend section 1021, Division 10, Title 16 of the CCR, to reduce its biennial license renewal fee, reduce the fee for the corporation annual report, and eliminate an obsolete provision regarding fictitious name permit renewal fees. This action was originally proposed in July, but was tabled at BDE’s September 11 meeting because of uncertainty over the impact of the budget crisis and the impending transfer of BDE reserve funds to the state’s general fund. (12:4 CRLR 75) However, at its November 13 meeting, BDE voted to approve the fee reduction proposal.

In addition to proposing the fee changes listed above, the proposed action would reduce the biennial renewal fee for a licensee who has practiced dentistry for twenty years or more in this state, has reached the age of retirement under the Social Security Act, and customarily provides his/her services free of charge or for a nominal charge, as specified, to any person, organization, or agency. This language implements AB 2847 (Feland) (Chapter 419, Statutes of 1992), which added section 1716.1 to the Business and Professions Code, authorizing this fee reduction.