



LEGISLATION

AB 2226 (Frazee). Existing law requires every person licensed as a private investigator, private patrol operator, protection dog operator, or armored contract carrier who carries a firearm in the course of employment to have a valid firearms qualification card and, among other things, requires completion of a course of training in the carrying and use of firearms and the passage of a written test, as prerequisites to obtaining the qualification card. As introduced March 5, this bill would provide that any person who, while a peace officer, completed a course of training and obtained the basic certificate prescribed by the Commission on Peace Officer Standards and Training shall, upon presentation of proof to the Bureau, be exempt from those training and testing requirements. [A. CPGE&ED]

SB 574 (Boatwright), as amended May 17, would revise certain experience requirements and renewal periods with respect to repossession agencies and repossessioners; remove from licensure and regulation protection dog operators; remove and revise various provisions concerning the licensure of alarm company operators; and eliminate licensure and regulation of medical provider consultants. [A. CPGE&ED]

AB 89 (Conroy), as amended March 31, would authorize specific entities or persons to release information (regarding residence addresses) obtained pursuant to existing law to private investigators, if the private investigator agrees to and signs a nondisclosure statement setting forth the conditions for the release, keeps the nondisclosure statement on file, and the information is used only for specified purposes. [A. PubS]

AB 117 (Murray). Existing law relating to the licensure of private investigators, patrol operators, and related persons authorizes the DCA Director to adopt rules and regulations establishing the qualifications of persons eligible to carry firearms while employed by a private patrol operator, any lawful business as a security guard or patrolperson, or an armored contract carrier; adopt procedures governing the filing of charges by local authorities with respect to applicants for registration with BCIS for failure to meet standards for registration; and adopt recordkeeping requirements for identifying all firearms in the possession or control of specified employees. As amended May 4, AB 117 would extend that rulemaking authority to cover private investigators and their employees, and would make related changes. It would also extend the rulemaking authority to fixing qualifications for

bodyguards and to the establishment of procedures, qualifications, fees, and conditions under which licensed private investigators or bodyguards who hold valid firearms qualification cards will be issued a permit by the Director to carry a concealed firearm. The bill would specify that, after January 1, 1994, these procedures are the exclusive means whereby those licensees, acting within the scope of the activities for which they are licensed, and going to or from home or work, may carry a concealed firearm.

Existing law also provides that a private investigator may only provide services to protect a person, but not property, when incidental to an investigation. AB 117 would instead provide that a private investigator may provide services to protect a person even when he/she does not protect property and when it is incidental to an investigation, or when he/she is also licensed as a private patrol operator. AB 117 would also require licensees carrying or using a firearm to comply with certain insurance requirements. [A. CPGE&ED]

SB 842 (Presley), as amended April 13, would authorize BCIS to issue interim orders of suspension and other restrictions, as specified, against its licensees. (See agency update on DCA for more information.) [A. CPGE&ED]

SB 393 (Deddeh), as introduced February 23, would enact a new Debt Collection Practices Act, under which third-party debt collectors would be regulated. Among other things, the Act would provide for regulation by BCIS, exemptions from regulation, and the imposition of fees which would be deposited into a continuously appropriated fund. If enacted, the bill's provisions would take effect immediately as an urgency measure and remain operative until July 1, 1995. [S. InsCl&Corps]

SB 394 (Deddeh), as amended April 22, would require any person engaged in the business of collecting claims for others or conducting the activities of a collection agency, as defined, to record a verified certificate of operation as a collection agency with the recorder's office of the county of the collection agency's principal place of business. This bill would exempt from this requirement specified persons or entities that engage in collection activities that are minor and incidental to other primary business activities, and would also require a collection agency to maintain a bond in the amount of \$10,000. This bill would take effect immediately as an urgency measure. [A. F&I]

AB 561 (Speier), as amended April 14, would enact a Collection Agency Act under which BCIS would license and reg-

ulate persons engaged in the business of collecting claims for others or conducting a collection agency. The bill would provide that, effective April 1, 1994, no person shall engage in the business of collecting claims for others or conduct a collection agency, as defined, relating to any person either as debtor or creditor, present in this state, unless he/she holds a valid collection agency license. [A. W&M]

AB 936 (Rainey), as introduced March 1, would repeal, reenact, reorganize, and revise existing provisions which require an individual to obtain a permit from BCIS to lawfully perform his/her trade as a locksmith. This bill would require a locksmith, including an individual, company, association, partnership, or corporation, to be licensed and would require an employee of a locksmith to be registered. [A. Floor]

AB 1972 (Horcher). Existing law provides that any person who knowingly engages a nonexempt unlicensed repossession agency, after being notified by BCIS in writing of that agency's unlicensed status, is guilty of a misdemeanor. As amended May 10, this bill would delete the requirement of written notice by BCIS of the agency's unlicensed status. AB 1972 would also amend the list of prohibited acts by employees of repossession agencies to include failing to report a violent act involving the employee to the licensee or the licensee's qualified certificate holder within 24 hours. This bill would also require any licensee and other specified individuals, including immediate family members, to dispose of any financial interest in any repossession agency within a specified time period after revocation of the license, and would also prohibit those individuals from acquiring any interest in a repossession agency during a period of suspension or revocation of the license. [A. Floor]

SB 756 (Kelley), as amended April 12, would provide for an increase in fees, as of January 1, 1995, for persons licensed as private investigators, private patrol operators, and related capacities. [S. Floor]

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 com-



plaints, 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 public member and one labor representative.

MAJOR PROJECTS

Board Continues to Wrestle With Budget Cuts. At both its January and April meetings, CSLB discussed how to handle the \$3.2 million budget cut previously mandated by the legislature, along with an anticipated additional \$1.6 million reduction. [13:1 CRLR 30] Unless CSLB is able to raise its fees (*see* LEGISLATION), the Board will have to permanently downsize from a \$34 million per year budget to a \$29 million per year budget.

At the Board's January meeting, CSLB Chief Administrative Officer Linda Brooks recommended that CSLB increase all of its license renewal fees and its original application fees by \$100. Brooks also recommended that staff be allowed to immediately implement the following budget reductions: eliminate CSLB's last annual newsletter, for a savings of \$100,000; reduce the Attorney General budget line item, for a savings of \$550,000; reduce the Office of Administrative Hearings budget line item, for a savings of \$180,000; eliminate paid overtime, for a savings of \$80,000; cut travel by 50%, for a savings of \$130,000; convert CSLB's toll-free information telephone number to toll charge, for a savings of \$300,000; change or reduce the pro rata payment to the Department of Consumer Affairs, for a savings of \$500,000; reduce the number of computer-assisted testing and district office sites, for a savings of \$160,000; and reduce staff by 70–80 positions, for a savings of \$3 million. Under the proposed

plan, the Board would downsize by the necessary \$5 million; Brooks noted that if the Board's fee increase legislation is enacted, funding for these programs could be reinstated. The Board accepted the recommendations and directed staff to implement the reductions immediately.

At CSLB's April 23 meeting, Brooks reported that a hiring and promotion freeze was implemented in January, staff was in the process of combining a couple of offices, and CSLB is not purchasing any new vehicles or major equipment. Brooks added that if the fee bill is enacted, CSLB may avoid having to lay off any employees.

Home Depot Loses to CSLB. On February 22, Administrative Law Judge Joyce A. Wharton issued her decision in a proceeding brought by CSLB against home supply retailer Home Depot; CSLB cited the company three times for advertising to perform installation work or performing installation work for which the company is not properly licensed. [13:1 CRLR 31] Wharton found that Home Depot, which has been licensed since 1990 as a B-general building contractor, had advertised and performed work for which a C-specialty contractor license is required; she found that Home Depot had been arranging for its products to be installed under its Class-B license by subcontracting with various Class-C licensees. Wharton stated, however, that a general contractor "cannot take a prime contract that requires the use of only one trade unless it holds the required specialty license." Home Depot unsuccessfully argued that it was not acting as a contractor, but rather as a broker by arranging for various Class-C contractors to actually perform the work. However, Wharton found that regardless of the merits of Home Depot's program, it was violating "the clear language and basic purpose of the Contractors License Law."

With respect to the advertising charge, Wharton stated that Home Depot's Class-B license qualifies it to perform any of the installation services advertised in its catalog so long as the installation contract covers three or more trades or crafts. However, Wharton found that a significant part of Home Depot's installation business involves contracts which use less than three trades.

Wharton accordingly affirmed two of the three citations issued, finding that Home Depot advertised on or about September 18, 1991, to perform work without the proper specialty contractor license, and acted in the capacity of a C-36 plumbing contractor without a license. On March 4, the CSLB Registrar adopted

Judge Wharton's proposed decision; the decision became effective on April 3.

Rulemaking Update. At its January 21 meeting, CSLB held a public hearing on the proposed revision of section 832.36 and adoption of new section 832.05, Title 16 of the CCR. Amendments to section 832.36, which specifies the tasks that may be undertaken by plumbing contractors, would expand the section's coverage; new section 832.05 would create a new specialty contractor classification for carpentry. [13:1 CRLR 32]

Following discussion, and in response to a number of comments submitted by industry members, the Board adopted a modified version of proposed section 832.05, which would provide that a carpentry contractor constructs and repairs framing and rough carpentry, finish carpentry (including installation of cabinets, sashes, and doors), wood flooring, siding, overhead doors, roof decking, wood trusses, and sheathing. On February 17, the Board released this modified language for an additional public comment period which expired on March 18. At this writing, the Department of Consumer Affairs (DCA) is reviewing the language; if approved, DCA will forward the rulemaking file to the Office of Administrative Law (OAL) for review and approval.

Regarding the proposed amendments to section 832.36, the Board received numerous comments from industry representatives at the hearing; many of the participants opposed the proposed language on the basis that it would inappropriately broaden the scope of work of plumbers. Following discussion, the Board directed an ad hoc committee to review the comments and report back at CSLB's April meeting. At the Board's April 23 meeting, CSLB Registrar Dave Phillips reported that the committee had met and was addressing the issues raised by the comments. The Board agreed to continue the public hearing until its July meeting.

On February 8, OAL disapproved CSLB's proposed amendment to section 832.07, Title 16 of the CCR, which would delete authorization for Class C-7 low voltage contractors to install low voltage fire alarm systems. [13:1 CRLR 32] According to OAL, the action was disapproved because CSLB's estimate of the cost of the action shows costs to the Board; however, the Board did not obtain the concurrence of the Department of Finance as required under State Administrative Manual section 5056. Also, OAL found that CSLB supplemented the record with materials which were not mentioned in the notice of the proposed action and relied on those materials to answer comments and



establish the necessity for the proposed regulation, but did not make the materials available for comment in accordance with the requirements of section 45, Title 1 of the CCR. The Board corrected the deficiencies noted by OAL and resubmitted the proposed amendments to section 832.07, along with proposed new section 832.28—which would create a new specialty license classification for Class C-28 lock and security equipment contractors [12:4 CRLR 71]—to OAL for review and approval.

■ LEGISLATION

SB 574 (Boatwright), as amended May 17, would increase the required amount of a contractor's bond and a qualifying individual's bond. [A. CPGE&ED]

AB 203 (Collins). Existing law requires CSLB to consist of thirteen members, including seven public members; the Governor is authorized to appoint five of those public members. As amended April 26, this bill would provide that one of those seven public members shall be a local building official appointed by the Governor. [A. Floor]

AB 338 (Mountjoy). Existing law classifies the contracting business into three branches, one of which is general building contracting; existing law also provides that anyone who merely furnishes materials or supplies without fabricating them into, or consuming them in the performance of the work of the general building contractor, is not a general building contractor. As introduced February 8, this bill would revise the definition of a general building contractor, and eliminate the exclusion of the above-specified persons from the definition of a general building contractor. [13:1 CRLR 31] [A. CPGE&ED]

AB 427 (Frazee). Existing law prohibits a contractor from bidding for the installation or removal of, or installing, or removing, an underground storage tank, unless the contractor has passed the hazardous substance removal certification examination. As amended March 18, this bill would correct the reference to hazardous substance certification examination, and would allow a contractor who is not certified to bid on a contract for the installation or removal of an underground tank, as long as the work is performed by a contractor who is certified. [A. Floor]

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 a declaration on any building permit issued

which includes, among other things, a workers' compensation declaration, a certificate of exemption from workers' compensation insurance, if applicable, and a construction lending agency affirmation requirement, as specified. As amended March 15, this bill would remove the requirement that those declarations appear on the issued building permit.

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 additionally except from that requirement a contractor who complies with a provision of law requiring a licensed contractor to have on file with CSLB a certificate of workers' compensation insurance or a certificate of consent to self-insure, for specified purposes. The bill would also provide that no city or county shall be liable to any person or entity for issuing a permit to a contractor if evidence is presented indicating the contractor complied with the requirement. [A. F&I]

AB 628 (Frazee). Existing law, with certain exceptions, 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 without alleging and proving that he/she was licensed during the time of the performance of the act or contract; 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 during the performance of any act or contract covered by the action. As introduced February 22, this bill would provide that any person or entity controverting licensure or proper licensure is not required to produce a verified certificate; when licensure or proper licensure is controverted, the burden of proof to establish licensure or proper licensure is on the licensee. [13:1 CRLR 32] [S. B&P]

AB 1392 (Speier), as amended April 14, would provide that CSLB shall notify DCA whenever any complaint has gone thirty days without any investigative action; require the DCA Director to determine when a backlog of complaints justifies the use of DCA staff to assist in complaint investigation; and authorize the DCA Director to review any complaint filed with CSLB. [A. Floor]

AB 1800 (Friedman, T.). Existing law provides for the establishment of the Department of Industrial Relations (DIR) and prescribes its various powers and duties regarding fostering, promoting, and developing the welfare of the wage earners of this state, the improvement of working conditions, and the advancement of opportunities for profitable employment. As introduced March 5, this bill would abolish DIR and instead provide for the Labor and Employment Agency supervised by the Secretary of the Labor and Employment Agency. This bill would provide that the agency consists 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. The bill would also provide that the Division of Labor Statistics and Research, the Division of Apprenticeship Standards, the Division of Industrial Accidents, the California Apprenticeship Council, the State Mediation and Conciliation Service, the Office of Self-Insurance Plans, and the Cal-OSHA Plan are subject to the agency's jurisdiction. [A. L&E]

AB 1807 (Bronshvag), as amended May 3, would authorize CSLB to establish by regulation a system for an inactive category of licensure, and make the Contractors State License Law inapplicable to a licensee operating within the scope of the Geologist and Geophysicist Act. [A. W&M]

AB 1981 (Horcher). Existing law does not expressly prohibit contractors from entering into contracts with their subcontractors and suppliers making payment thereof contingent upon payment of the contractor. As introduced March 5, this bill would declare such a provision in an express or implied contract to be contrary to public policy, void, and unenforceable. [A. Jud]

AB 2044 (Hoge). Existing law authorizes the CSLB Registrar to publish a list of the names and addresses of licensed contractors and to furnish the list to public works and building departments and officials, as specified. As introduced March 5, this bill would require the Registrar to provide public officials with on-line access to the Board's computer database containing information on the status of licenses of all licensed contractors. [A. CPGE&ED]

AB 2296 (Mountjoy). Existing law provides that it is grounds for disciplinary action for any prime building contractor or subcontractor to fail to pay any subcon-



tractor not later than ten days of receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed the contractor on account of the work performed by the subcontractor, to the extent of the subcontractor's interest therein. As introduced March 5, this bill would remove the exception for an agreement otherwise in writing. [A. CPGE&ED]

SB 148 (Boatwright), as introduced January 28, would increase specified CSLB application and renewal fees. [A. CPGE&ED]

SB 409 (Ayala). Existing law does not specify any particular form for warranties given for roofing installation, repair, or replacement. Under existing law, a warranty does not generally apply to subsequent purchasers of the warranted item in the absence of an express provision in the warranty. As amended April 13, this bill would require contracts for specified residential roof installation, repairs, or replacements to be in writing. With respect to these contracts entered into on or after January 1, 1994, the bill would make these warranties enforceable by subsequent purchasers of the dwelling, unless the purchaser waives this right as provided in the bill. [A. CPGE&ED]

SB 617 (Hayden), as amended April 21, would prohibit a contractor, on or after July 1, 1994, from removing lead from residential real property unless the contractor has passed an approved lead removal certification examination. [S. Floor]

SB 842 (Presley), as amended April 13, would permit CSLB to issue interim orders of suspension and other license restrictions, as specified, against its licensees. (See agency update on DCA for more information.) [A. CPGE&ED]

SB 949 (Rogers), as introduced March 5, would 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 5% of the payment and in no event shall the total retention withheld exceed 5% of the contract price. This provision would not apply if the original contractor or the subcontractor fails to provide a performance bond issued by a surety acceptable to the owner or original contractor, if requested by the owner or original contractor. This bill would also provide that with respect to the contract between the original contractor and the

subcontractor, the retention proceeds withheld shall not be less than that set forth in the contract between the owner and the original contractor. [S. Jud]

■ LITIGATION

In *Blair Excavators, Inc. v. Paschen Contractors, Inc.*, 9 Cal. App. 4th 1815 (Oct. 6, 1992, as modified on denial of rehearing Oct. 26, 1992, review denied Jan. 21, 1993), the First District Court of Appeal considered whether a subcontractor could recover an amount greater than that stated in a preliminary bond notice. Blair Excavators, Inc., performed certain excavating work as a subcontractor to Ferrante Construction Company, which in turn was a subcontractor to and in privity of contract with Paschen Contractors, the general contractor on a public wastewater treatment project in Marin County. When Ferrante failed to fully compensate Blair for work completed, Blair gave statutory notice of its claim to Paschen; specifically, Blair sent a 90-day preliminary bond notice under the terms of Civil Code section 3091, and a 20-day preliminary stop notice under the terms of Civil Code section 3098; both notices stated that the amount due was slightly more than \$200,000. Blair subsequently brought suit pursuant to its bond notices; Ferrante was not named as a party to the litigation.

At trial, the court allowed Blair to prove damages in excess of the \$200,000, in accord with California precedents holding that it is the reasonable value of the services provided, not the price specified in a contract with a party which is not before the court, which is the proper measure of damages in an action such as this; the court also found that Paschen would suffer no prejudice from facing a claim in excess of the approximately \$200,000 specified in the 90-day notice. The trial court concluded that Blair should collect \$355,000 as the reasonable value of the unpaid work.

The First District Court of Appeal affirmed, finding that because Paschen was not in privity with Blair, the correct measure of damages was the reasonable value of the services rendered, not the contract price. The First District also noted that section 3091 requires the amount in question to be stated in the bond notice with "substantial accuracy," and noted that there is no authority directly on point as to whether the amount stated with "substantial accuracy" in the bond notice provides an absolute upper limit on a plaintiff's claim at trial; however, the court found that in the absence of a showing of prejudice, the amount of the section 3091 notice does not limit the amount of recovery.

Finally, the First District agreed that Paschen had every opportunity to present any credible evidence of prejudice, but failed to do so.

■ RECENT MEETINGS

At CSLB's January 21-22 meeting in Ontario, Registrar Dave Phillips announced the resignation of Steve Lazarian, a public member of the Board for the past seven years; Lazarian has become more active in his family's construction business and felt that there might be a possible conflict of interest because of his position as a public member. The Registrar noted that Lazarian had been instrumental in providing much of the leadership that resulted in the Board's many accomplishments. Phillips also introduced new CSLB member John Chalker, who was appointed by Assembly Speaker Willie Brown; Chalker is vice-president of Merrill Lynch in San Diego.

The Registrar said that progress on reducing aged complaints has slowed due to budget reduction efforts; for example, various field positions are being left vacant for a period of time to generate salary savings. The Registrar reported that the median age of a complaint at closure is holding at 41 days, compared to 158 days a few years ago.

During a public comment period, DCA Director Jim Conran addressed CSLB, stating that getting unlicensed contractors licensed is a top issue with DCA and CSLB; Conran noted that he would like to see unlicensed activity units operating in every county in the state. Conran also suggested that CSLB consider alternative ways of getting more unlicensed contractors licensed, such as lowering the requirements for obtaining a license.

Finally, the Board adopted a motion to form a long-range planning task force, to be comprised of members of the Board, staff, and industry. CSLB authorized the Registrar to appoint the committee.

At CSLB's April 23 meeting in San Francisco, the Board welcomed new member Sharon Kowertz of Fountain Valley; Kowertz, president of Kennison, Inc., a mechanical and electrical contracting company, was appointed by Governor Wilson on February 17 to fill a specialty contractor vacancy.

Board member John Chalker announced that the ad hoc committee on long-range planning recently had its first meeting in Sacramento; he will have a full report for the Board on the committee's work at CSLB's October meeting.

■ FUTURE MEETINGS

To be announced.