



of a firearm rather than the carrying of a deadly weapon in the course of employment as a security guard or patrolperson; and expand the exemption from licensure as an alarm company operator to include any entity retained by the alarm company operator to monitor alarm systems, as specified. At this writing, AB 3242 is pending in the Senate Business and Professions Committee.

**SB 2525 (Vuich).** Existing law provides for the licensing and regulation of repossession agencies and their employees by the Bureau. The law requires each repossession agency to be managed or controlled by a person registered as a qualified manager. As amended May 25, this bill would provide that an assignment, for purposes of recovering personal property sold under a security agreement, means an authorization by the lessee, in addition to the legal owner, lienholder, or lessor; and that an assignment also includes an authorization by a registered owner to recover personal property registered under the Vehicle Code where there is or was an employer-employee relationship between the registered owner and the possessor of the property. This bill would also authorize superior courts to enjoin unlicensed repossession agency activity and to impose civil fines, as specified; increase the experience requirement for a qualification certificate to two years of lawful experience for those applying on or after January 1, 1992; increase the time in which an applicant has to file with the Bureau in order that he/she may be eligible for examination to not later than 30 days prior to the next scheduled examination; provide that employees of a multiple licensee, as defined, need only file one application for registration for each multiple licensee; and exempt employees of a licensee who engage exclusively in-office skiptracing from registration.

This bill is currently pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

**SB 2420 (Royce),** as introduced February 28, would provide that specified requirements relating to licensure by the Bureau apply to security guard registrants and applicants for registration as a security guard, and require that applicants for an alarm company operator or alarm agent license be at least 18 years old. The bill is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

**AB 4001 (Katz)** would have made numerous changes to statutes pertaining to the licensing and regulation of private patrol operators, but was rejected on

June 13 by the Assembly Ways and Means Committee.

The following is a status update of bills discussed in detail in CRLR Vol. 10, No. 1 (Winter 1990) at page 62:

**AB 1644 (Peace),** as amended January 10, would amend section 7546.3 of the Business and Professions Code to authorize the Bureau to ascertain from governmental or other official documents whether an applicant for a position as a security guard has been convicted of a criminal offense outside California. The bill is now pending in the Senate Business and Professions Committee.

**SB 104 (Robbins)** would permit the filing of an approved insurance policy in lieu of the \$10,000 surety bond now required of collection agency licensees. This bill has been pending in the Assembly Finance and Insurance Committee for over one year; no hearing date has been set at this writing.

**AB 255 (Floyd),** which would have permitted DCA to adopt rules requiring private investigators to comply with the training requirements regarding the exercise of powers to arrest and the carrying and use of firearms applicable to private patrol operators, died in committee.

**SB 141 (Deddeh),** which would have set new expiration dates for qualification certificates and extended reporting and/or registration deadlines for collection agency licensees, died in committee.

## RECENT MEETINGS:

At its January 18 meeting in San Bernardino, PSSAB elected Bruce Westphal as its new chair. John Taylor and Francis Stoffels were elected as Vice-Chair and Secretary, respectively.

Chief Hall indicated that the *Industry Bulletin* would not be a monthly publication, as the Bureau has limited time and resources. The *Bulletin* "will be a publication that will be sent out only as changes occur." Hall indicated that the *Bulletin* would be sent out at least three times per year depending on the extent of industry changes between issues. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 44 for background information.)

At the March 9 CAAB meeting, the Board reelected public member Esther Winston to another term as Chair. The Board also elected industry member Bette Myers as Vice-Chair and public member John Espinosa as Secretary.

At its May 18 meeting, CAAB discussed the fact that the Bureau's enabling statute sunsets in 1991. Chief Hall reported that DCA plans to introduce legislation removing the sunset date or extending it further.

## FUTURE MEETINGS:

PSSAB: October 18 in San Francisco; January 17 in Los Angeles.

CAAB: September 14 in Fresno; January 1991 in San Diego.

## CONTRACTORS STATE LICENSE BOARD

*Registrar: David Phillips*  
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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 Business and Professions Code section 7000 *et seq.*; CSLB's regulations are codified in Chapter 8, Title 16 of the California Code of Regulations (CCR).

The thirteen-member Board, consisting of seven public members, five contractors and one labor member, generally meets every other month. The Board maintains six committees: legislative, enforcement, licensing, public information, strategic planning, and budget/administration. In addition, the Board maintains a Fire Protections Systems Ad Hoc Committee. Committees meet every one to three months, and present recommendations for requested action at the full Board meetings.

## MAJOR PROJECTS:

*Alternate Testing Methods.* On January 30, the Office of Administrative Law (OAL) rejected the Board's proposed amendment to section 829, Chapter 8, Title 16 of the CCR, which would establish an alternate method of establishing a minimum competence level other than passing the licensing examination. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 51 for background information.) OAL disapproved the proposed regulatory change because the Board failed to comply with the clarity and reference standards of Government Code section 11349.1, and because the Board failed to fully summarize and/or respond to all public comments.

On March 21, CSLB released modified language of section 829 for a fifteen-day comment period. Under the revised section, if an applicant fails to pass the trade examination, the CSLB Registrar shall evaluate the applicant's construction experience and, provided the experience is clearly described on the application and verified by certificates, add to the exam grade credit for experience of one-half percentage point for each year of experience, commencing



ing with the fifth year and concluding with the fourteenth year of experience (for a maximum of five percentage points). On May 29, OAL approved this version of the Board's amendment to section 829.

*Other Regulatory Changes.* At its April 20 meeting, CSLB held a public hearing on proposed amendments to two regulatory sections. First, CSLB adopted amendments to section 832.16, to conform to AB 3841 (Eastin) (Chapter 1035, Statutes of 1988), which states that on and after January 1, 1990, the installation of all fire protection systems, excluding electrical alarm systems, shall be performed only by a fire protection contractor. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 51 for more information on AB 3841.) The amendment to section 832.16 adds language specifically excluding the installation of electrical alarm systems from the scope of work which may be undertaken by a fire protection contractor.

The Board then rejected a proposed amendment to section 832.61, which would have defined the scope of work which may be undertaken by persons holding any of 25 different limited-specialty (C-61) subclassification licenses.

At this writing, the rulemaking file on section 832.16 is at OAL awaiting review.

*CSLB Budget.* At the Board's January 18 meeting and at the Administration/Budget Committee's March 21 meeting, the Governor's proposed 1990-91 budget was a topic of much discussion. In particular, both the Board and the Committee expressed concern and regret that the Governor has proposed to remove \$20 million from CSLB's reserve fund in an attempt to help balance the state budget. This removal would leave CSLB with three months' operating expenses, which is considered sufficient as a general rule for state agencies. However, it conflicts with CSLB's June 1989 Fund Balance Policy (see CRLR Vol. 9, No. 4 (Fall 1989) p. 52 for background information), which was supported by the Governor later in 1989 in his veto of 1989-90 budget control language which would have mandated a reduction of the fund. As the budget had not been approved at the time of the meetings (and still has not been approved at this writing), the Board decided to adopt a wait-and-see attitude before expressing its concerns to the Governor.

The Board also discussed the Legislative Analyst's February 22 analysis of the Governor's Budget, in which the Legislative Analyst pointed out that CSLB has begun to reduce its once-

massive complaint backlog with the addition of 24 investigators (at a cost of \$1.7 million), for a total of 108 investigators statewide. The Analyst noted that the Board was able to resolve 31,700 complaints in 1988-89, which is about 3,000 more complaints than it received during that year. The Analyst estimated that by July 1, 1990, the Board's complaint backlog would be reduced to 6,200, down from 12,000 as of July 1987.

*CSLB Independent Agency Status.* At the Legislative Committee's March 21 meeting and at the Board's April 19-20 meeting, Board members addressed two then-pending bills which would remove CSLB from the Department of Consumer Affairs (DCA) and vest in CSLB the powers of an independent agency. CSLB currently pays DCA \$2 million per year as its pro rata fee for DCA's administrative services; that figure is expected to increase to \$2.2 million next year. CSLB staff estimated that independent status would require the expenditure of \$779,000 per year on an ongoing basis and \$450,000 in one-time costs. Thus, establishment as an independent agency could potentially save the Board \$1.3 million per year in operating expenses. However, the Board's removal from DCA would represent a serious financial loss to DCA, which might be imposed on other DCA boards and bureaus (and, of course, consumers of the services provided by licensees of those other boards and bureaus); thus, DCA and the Deukmejian administration are not likely to support this concept. Indeed, both bills were dropped later in the legislative session (*see infra* LEGISLATION).

## LEGISLATION:

*AB 3480 (Mountjoy)*, as amended June 11, would authorize the CSLB Registrar to accept the qualifications of a contractor licensed in another state if that state accepts the qualifications of a contractor licensed in this state for purposes of licensure, and if the Board ascertains on a case-by-case basis that the professional qualifications and conditions of good standing for licensure and continued licensure are the same in that state as in California. The bill would authorize the waiver of the trade examination upon certification from that other state that the applicant has been licensed for the previous five years.

This bill would also provide that any action, other than an action to recover fringe benefits, against a contractor's bond or the bond of a qualifying individual must be brought within two years

after the expiration of the license period during which the act or omission occurred, or within two years of the date that the license was inactivated, cancelled, or revoked, whichever first occurs. In the case of a disciplinary bond, any action, other than to recover fringe benefits, shall be brought within the preceding time periods or within two years after the last date for which a bond was required, whichever first occurs. The bill would provide for the same limitations on the filing of any action against a deposit filed in lieu of a contractor's bond or the bond of a qualifying individual or a disciplinary bond. This bill is pending in the Senate Business and Professions Committee.

*AB 3978 (Lancaster)*, as introduced March 2, would have created a new CSLB with departmental status within the State and Consumer Services Agency, and specified its powers and duties. This bill was dropped by its author.

*SB 2290 (Seymour)*, as amended April 18, would include the failure to comply with specified public works contract noncollusion affidavit requirements as a cause for disciplinary action under the Contractors State License Law. The Public Contract Code contains a statement of legislative intent respecting its codification; this bill would provide further legislative declarations respecting the objectives of the Code, and make related changes. This bill is currently pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

*SB 2291 (Doolittle)*. Business and Professions Code section 7059 requires the awarding authority, in public works contracts, to determine the contractor license classification necessary to bid and perform the project, within limitations. As amended May 30, this bill would instead require the awarding authority to designate that classification consistent with the Contractors State License Law and the regulations adopted pursuant to that law, but would provide that the CSLB Registrar shall be the final administrative authority over these classification matters. This bill is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

*SB 2476 (Seymour)*, as amended June 18, would change existing law which provides that a waiver of the contractor's examination may be granted if the qualifying individual of a corporate or partnership licensee has, for five of the seven years preceding application, been listed on CSLB records as a member of any licensee who held a license in the



same classification being applied for. This bill would require the qualifying individual to have been engaged in the activities of the licensee in the same classification for which the license is applied for. The bill would also provide that an additional classification may be added to any contractor's license without examination, if specified conditions are met.

This bill would also repeal section 7065.3 of the Business and Professions Code, which currently authorizes the CSLB Registrar to waive the written trade examination for an applicant who applies for licensure in a trade for which CSLB, by regulation, has waived the written trade examination, and instead review and evaluate the applicant's experience for purposes of licensure. This bill is currently pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

*SB 2888 (L. Greene)*, as amended May 14, would require CSLB to contract for a study of the contracting industry's payment practices, and would specify the issues to be covered by the study. The bill would require the Board to select a person or entity with whom the Board is to contract and would require a report to be made to the Board and the legislature on or before December 31, 1991. This bill is currently pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

*SB 1958 (Ayala)*. Business and Professions Code section 7109 provides that the CSLB Registrar may deny, suspend, or revoke the license of any person licensed or registered pursuant to the Contractors State License Law, who commits or omits any act, the commission or omission of which constitutes a cause for disciplinary action. A cause for disciplinary action, among other things, is a willful departure in any material respect from accepted trade standards for good and workmanlike construction, unless the departure was in accordance with plans and specifications prepared by or under the direct supervision of an architect. This bill would provide that three or more negligent departures in any material respect from accepted trade standards, or three or more negligent departures from or disregard of plans or specifications in any material respect would constitute cause for disciplinary action. This bill, amended May 15, is pending at the Assembly Committee on Government Efficiency and Consumer Protection.

The following is a status update of bills described in detail in CRLR Vol. 10, No. 1 (Winter 1990) at pages 63-64:

*SB 1740 (Montoya)* would have vested CSLB with all the powers of a department as a part of the State and Consumer Services Agency. This bill was dropped by its author.

*AB 2620 (Eastin, Presley)* requires all prime building contractors and subcontractors to pay any specialty contractor within ten days of receiving a progress payment, unless otherwise agreed to in writing. The prevailing party in any action for the collection of funds wrongfully withheld shall be entitled to attorneys' fees and costs. This bill signed by the Governor (Chapter 178, Statutes of 1990).

*AB 2667 (Eastin)*, as amended March 28, would expand the definition of the term "employee" for purposes of disability insurance, unemployment compensation insurance withholding, and personal income tax withholdings to include individuals employed by persons who hold or are required to obtain a valid state contractor's license. This bill would increase the penalty for an employer's failure to file a timely return, or for an intentional or fraudulent deficiency, to 50% of the amount of contributions assessed. The bill would also permit a penalty for failure to report amounts paid to be assessed in lieu of, or in addition to, the penalty for furnishing a false or fraudulent withholding statement to an employee. This bill is currently pending in the Senate Industrial Relations Committee.

*SBX 16 (Roberti)* and *ABX (Eastin)* are twin bills aimed at preventing the victimization of persons suffering property damage in the Loma Prieta earthquake, by making offenses by unlicensed architects, engineers, or contractors punishable as either a misdemeanor or a felony, as specified. *SBX 16*, amended January 4, is pending in the Senate Appropriations Committee. *ABX 24* was dropped by its author and reintroduced by Assemblyman Epple as *ABX 9*. As amended May 8, the new bill has the same prohibitive language as *ABX 24* had, but additionally proposes to double the amounts of fines which may be imposed for certain offenses under those circumstances; require the defendant to make full restitution subject to the defendant's ability to pay; add a one-year enhancement where the offense is a felony and the defendant has a prior felony conviction of such an offense; and require probation of at least five years or until restitution is made. This bill is currently pending in the Senate Appropriations Committee.

*SB 1872 (Montoya)* would have required contractors to complete continuing education courses as a condition

for license renewal, but was dropped by its author.

*SB 1079 (Mello)*, would require CSLB to conduct a study relating to the installation, inspection, testing, licensing, design, and manufacturing of fire extinguishing systems, is still pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

*AB 2282 (Eastin)*, as amended May 31, would require CSLB to develop a system for joint enforcement actions, with respect to contractors, with other state departments. The bill would also require contractors to maintain workers' compensation insurance as a condition of licensure; failure to maintain such would be grounds for automatic suspension. Failure of an unlicensed person acting as a contractor to maintain insurance would be grounds for citation; and failure to resolve outstanding penalties would be grounds for refusal to renew a contractor's license. This bill is pending in the Senate Appropriations Committee.

*SB 732 (Beverly)*, as amended June 11, would authorize CSLB to license asbestos consultants and site surveillance technicians, and would subject a person acting as an asbestos abatement consultant or site surveillance technician without a license to civil and criminal penalties. This bill is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

*AB 115 (Floyd)* would require a public entity to award public works contracts for an amount greater than \$500,000 only to "qualified" public works contractors. Minority business enterprises and women owned business enterprises would be exempted. This bill remains in the Senate inactive file.

*AB 117 (Floyd)*, as amended March 1, defines "lowest bidder" or "lowest responsible bidder" for purposes of Public Contract Code section 1105. This bill is pending in the Senate Governmental Organization Committee.

#### LITIGATION:

In *D.R. Gallo Builders, Inc. v. Travelodge International, Inc.*, No. B035868 (Mar. 29, 1990), the Second District Court of Appeal held that an unlicensed contractor could recover damages from an owner based upon the tort claim of deceit, in spite of Business and Professions Code section 7031. That section provides that a contractor may not bring or maintain a claim for breach of a construction contract in California without a valid California contractor's license. While the court refused to permit the unlicensed contractor to main-



# REGULATORY AGENCY ACTION

tain suit for breach of the implied covenant of good faith and fair dealing because it found this cause of action be implicitly based on the existence of an enforceable contract, the court did permit the contractor to recover on both fraud and negligent misrepresentation causes of action. Since fraud and negligent misrepresentation, as tort claims, are not premised upon an enforceable agreement, the court found both causes of action viable by an unlicensed contractor in spite of section 7031. The holding in this case will likely be limited to those situations where an owner actively seeks out an unlicensed contractor, with knowledge of the lack of a valid license, contracts with that contractor, and then attempts to use section 7031 to avoid payment.

## RECENT MEETINGS:

At its January 18 meeting in Long Beach, CSLB adopted the recommendations of a special ad hoc committee on the proper licensee classifications for installation and removal of underground storage tanks (UST). Under the Board's new policy, plumbing contractors (class C-36) may install any UST that provides a service to a building; general engineering contractors (class A) may install UST for any purpose at any location; and limited-specialty service station equipment contractors (class C-61/D-40) may install fuel UST at service stations.

Also at its January 18 meeting, CSLB adopted a policy that future licensee examinations shall be developed such that passing scores are between 60% and 75% of the total examination questions. If complexities inherent in the license classification dictate the setting of a passing point lower than 60%, staff will be required to prepare a statement to the Board explaining the need for a lower passing point.

At its April 19-20 meeting, CSLB approved 13 conceptual 1991-92 budget change proposals (BCPs) in the amount of \$3,314,000. Included within these BCPs are proposals to expand the Unlicensed Activity Unit statewide, hire staff counsel independent of DCA counsel, and implement an additional Computer Assisted Testing (CAT) site. The staff counsel position would act as a liaison with the Office of the Attorney General and advise the Registrar on complex legal issues. Historically, the Board has relied upon DCA staff counsel to advise it; however, the Board is of the opinion that the large number of complicated legal issues presented before the Board justifies the addition of a specialist staff counsel position. The

CAT site is required because CSLB projects 65,000 license examinations to be given in fiscal year 1991-92, but the Board is only budgeted to administer 50,000 exams.

## FUTURE MEETINGS:

To be announced.

## BOARD OF COSMETOLOGY

*Executive Officer: Denise Ostton  
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In 1927, the California legislature enacted the Cosmetology Act, establishing the Board of Cosmetology (BOC). The Board was empowered to require reasonably necessary precautions designed to protect public health and safety in establishments related to any branch of cosmetology. BOC's enabling legislation is found in Business and Professions Code section 7300 *et seq.*; the Board's regulations are codified in Chapter 9, Title 16 of the California Code of Regulations (CCR).

Pursuant to this legislative mandate, the Board regulates and issues separate licenses to salons, schools, electrologists, manicurists, cosmetologists, and cosmeticians. It sets training requirements, examines applicants, issues certificates of registration and licenses, hires investigators from the Department of Consumer Affairs to investigate complaints, and disciplines violators with licensing sanctions.

The Board is comprised of seven members—four public members and three from the industry. It is required to hold meetings at least four times per year.

## MAJOR PROJECTS:

*Merger with Board of Barber Examiners.* In the past several months, BOC members and staff have devoted considerable time and attention to AB 3008 (Eastin), the bill which will at long last merge BOC with the Board of Barber Examiners (BBE). (See *supra* agency report on BBE and CRLR Vol. 10, No. 1 (Winter 1990) p. 58, 64, and Vol. 7, No. 1 (Winter 1987) p. 1 for extensive background information on the merger issue.)

On January 29, BOC held a special meeting to discuss the concept with Mike Abbott, a consultant from Assemblymember Eastin's office. On March 4, BOC and BBE held a joint meeting to discuss the language of the bill. While the two boards were able to reach agreement on some issues, they disagreed on the timetable for the merg-

er, the name of the new board, and the concept of "administrative merger" versus "merged licenses."

At an April 18 hearing on AB 3008 before the Assembly Committee on Governmental Efficiency and Consumer Protection, BBE took an oppose position, based on the reaction of its licensees to the merger concept. BBE also urged that the merger be administrative in nature, with retention of separate licenses for the different trades. BOC testified in support of the bill. As a result of the hearing, the bill was amended to provide separate license categories for barbers, cosmetologists, hairstylists, estheticians, manicurists, and electrologists. The barber pole is protected for use by barbers only. While the new board retains the authority to examine applicants for individual licensure, its licensing authority over schools and instructors was deleted, except that the board would retain the authority to develop the course curricula which must be taught in schools and to develop health and safety regulations for schools. An approved school would be one which is licensed by the Council for Private Postsecondary and Vocational Education created by SB 190 (Morgan) (see *infra* for further discussion of SB 190), and which provides a course of instruction approved by the new board.

BOC supports all of these changes. The bill has subsequently been amended several times, and BOC recently submitted a list of over 70 technical changes which are currently being incorporated.

*Clean-Up of SB 190 and AB 1402.* In recent months, there has been much confusion as to whether cosmetology schools are subject to the provisions of the Private Postsecondary and Vocational Education Reform Act (SB 190 (Morgan), Chapter 1307, Statutes of 1989) and the Maxine Waters School Reform and Student Protection Act (AB 1402 (M. Waters), Chapter 1239, Statutes of 1989). Collectively, these bills overhauled the Education Code in regard to the state's oversight of private postsecondary education. SB 190, in creating the Council for Private Postsecondary and Vocational Education (CPPVE), restructured the state licensure procedure and enhanced minimum standards for degree-granting institutions. (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 53-54 for background information on SB 190.) AB 1402 provides extensive new consumer protection standards for students enrolled in private vocational schools, including required disclosure of student rights, financial stability and reporting requirements, mandatory admissions tests, 100% pro