



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 the Contractors State License Law (CSLL), 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.

At its June 7 meeting, CSLB welcomed Phyllis J. Moore, a new public member, to the Board. Ms. Moore will sit on the Public Information Committee.

MAJOR PROJECTS:

CSLB Complaint Disclosure Process. At its June 26 meeting, CSLB's Enforcement Committee discussed the Board's complaint disclosure process. CSLB staff reported that consumer requests for information about a licensee usually go to one of three offices: districts, regions, or headquarters. The person receiving the call determines whether the call is a request for a license status or a request for complaint information. Calls of the latter type are directed to the appropriate regional office, since they are the only offices which have access to complaint information. If the license in question is clear, the caller is told that the license is clear and in good standing. If there is a record of previous legal action, that information is also given. Unless a caller specifically asks for complaint information, however, CSLB staff typically limits its response to the current status of the license.

CSLB staff explained that its current regulations require the disclosure of complaint information if a consumer complaint survives initial screening, passes through preliminary investigation, and is assigned to a CSLB deputy for investigation, and may be disclosed

upon request until the complaint is found to be without merit. If the complaint is later found to be without merit, it is removed from the disclosure system. If the complaint is found to have merit, it is forwarded for legal action and is disclosed upon request.

CSLB member Frank Geremia, Jr., opined that the Board's current disclosure policy is unfair and tends to consider a contractor guilty until proven innocent. He stated that CSLB should not give out any information until a complaint is fully adjudicated, even if the complaint has been found to have sufficient merit to warrant an investigation. CSLB member Skip Michael responded that the Board should provide complaint information because callers are trying to determine whether the contractor can perform in a competent manner. Mr. Michael further argued that the Board has a responsibility to provide complaint information and the public has a right to receive such information.

At its September 12 meeting, the Enforcement Committee continued its discussion of this matter. Again, Mr. Geremia and a number of other Board members stated that complaint information about a contractor should not be released to inquiring consumers because some complaints turn out to be meritless. Mr. Michael responded that CSLB's regulations are consistent with those of the Department of Consumer Affairs. CSLB member John Lazzarra reminded the Committee that the Board's current regulations were developed after lengthy hearings and meetings.

Following its discussion, the Committee instructed CSLB staff to obtain complaint disclosure practices of other state regulatory agencies, and tabled this matter until its next meeting.

CSLB Citation and Disciplinary Action Disclosure Practices. In conjunction with the discussion of CSLB's complaint disclosure policy, CSLB Registrar David Phillips noted at the Enforcement Committee's June meeting that a larger issue is whether CSLB should continue to disclose information regarding citations and disciplinary actions taken against a contractor by CSLB, even after the contractor has accepted and complied with the requirements of the citation or disciplinary order. Currently, citations and disciplinary orders become part of the contractor's permanent record and are disclosed even if all conditions are satisfied. Mr. Phillips suggested that CSLB establish a time limit, so that citations or disciplinary actions are no longer disclosed after a certain period of time.

The Enforcement Committee continued its discussion of this matter at its September 12 meeting. At that meeting, the Committee agreed to recommend to CSLB that it should seek legislation permitting the Registrar to withhold citation information from the public, if the licensee (1) complies with the citation and (2) remains free of any further legal actions for a period of five years from the date the conditions of the citation are satisfied.

The Committee also agreed to recommend to the Board that it seek legislation permitting the Registrar to withhold accusation/disciplinary action information from the public if the licensee has (1) complied with the order's terms and conditions; (2) been free of any CSLB legal actions for five years from the date the terms and conditions of the order have been met; and (3) successfully petitioned the Registrar to have accusation/disciplinary action information withheld from public disclosure.

Regulatory Changes. On August 21, the Office of Administrative Law (OAL) approved CSLB's proposed amendment to section 832.16, Chapter 8, Title 16 of the CCR, 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. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 80 for background information.) 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.

Governor's Budget Proposal Dropped. In his proposed 1990-91 budget, the Governor sought to remove \$20 million from CSLB's reserve fund in an attempt to help balance the 1990-91 state budget. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 80 for background information.) However, this proposal was not supported by either the Assembly or Senate budget subcommittees, and was later dropped by the Governor.

CSLB Budget. At its July 20 meeting, CSLB announced that its 1990-91 budget is \$34.3 million, which represents an approximate 15% increase over last year's budget. The primary increase in the Board's budget occurs in the area of increased salaries. Additional positions were added to the agency, primarily in licensing.

At its June 7 meeting, CSLB approved a fourteenth budget change proposal (BCP) for 1991 and 1992, all of which total \$5.2 million. Although the



REGULATORY AGENCY ACTION

Board had previously approved thirteen BCPs (see CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 82 for background information), it approved a new one, which would provide full, ongoing support for CSLB's automated phone response system. The BCPs were set for a July 31 hearing with Department of Consumer Affairs (DCA) Director Michael Kelley. At the July 31 hearing, DCA approved thirteen of the fourteen BCPs. CSLB's request for its own staff counsel, who would be paid for by and housed at CSLB, was not approved because DCA stated it was unclear about the specific duties of that counsel and the relationship that the position would have with DCA legal counsel.

Complaint Backlog. CSLB is continuing its efforts to reduce its complaint backlog. The Board's goal was to have a pipeline figure of 6,000 complaints by July 1991; as of July 1990, there were 6,786 complaints. At the Board's July 20 meeting, CSLB Registrar David Phillips noted that due to improved efficiency in closing complaints, the staff's attitude toward the filing of complaints will become more positive and, as a result, more complaints may be filed.

At its September 12 meeting, Enforcement Committee staff reported that the backlog had increased during July but that the percentage of closures within the previous six months remained high.

Section 7026.4 Controversy. Business and Professions Code section 7026.4 states that the term contractor "includes any person, except a nurseryman or gardener, who is employed as an independent contractor, by any person licensed under this chapter, to remove trees, prune trees, remove tree limbs or stumps, or to engage in tree or limb guying." The section also provides that the term contractor "does not include any person, including but not limited to, a nurseryman or gardener, who is employed by an owner or occupier of any property to perform the activities described by this section, either as an independent contractor or as an employee. Nor does it include an owner or occupier of property, or an employee of an owner or occupier of property, who engages in the activities described by this section."

At its June 27 and September 12 meetings, CSLB's Licensing Committee discussed the confusion caused by this section. Specifically, this section of law differs from other provisions in that the licensure requirement depends on who a person is working for and not the type of work performed. A representative of the North Coast Builders Exchange in-

formed the Committee of the inconsistency his members must face when working with a property owner versus a licensed contractor.

After extensive discussion, the Committee agreed to recommend to the full Board that the statute should be amended to clarify that tree pruning, tree removal, stump removal, and tree or limb guying require a license, and to provide that nurserymen and gardeners are exempt to perform such work.

Specialty Class Criteria Developed. At CSLB's July 20 meeting, the Board adopted the following criteria to be used by associations or others when petitioning the Board to establish a new specialty classification:

- All new license classifications should be first established as a limited specialty, C-61, except in unusual circumstances.

- When the population of any C-61 subclass reaches 1,000, staff should review the subclass to determine whether it should be upgraded to a specialty class.

- Any time the trend of complaints is above normal for a particular kind of work, staff should analyze them and make recommendations concerning a change in classification if appropriate.

- When it is established that public health and safety concerns are affected, staff will evaluate whether a change in classification will help resolve such concerns and make appropriate recommendations to the Board.

- When evaluating a C-61 subclass for an upgrade to a specialty class, consideration will be given to whether any formally recognized programs (such as industry apprenticeships) have been developed. Such programs usually identify a common body of knowledge, skills, and abilities as requisites for becoming proficient at journey level.

- Consideration will be given as to whether the applicant group is already licensed or regulated by some other regulatory agency.

The criteria listed above will be used at any time there is a request from another government agency to implement a change in classification or certification.

Unlicensed Activity Unit (UAU). At its June 26 meeting, the Enforcement Committee reported that complaints against unlicensed contractors are down in the areas where CSLB's new UAU is operating. (See CRLR Vol. 10, No. 1 (Winter 1990) pp. 62-63 and Vol. 9, No. 4 (Fall 1989) p. 52 for background information.) As of June, the southern California UAU had issued 346 nonlicensee citations, 80 citations to licensed contractors, 64 notices to appear, and 102 warning letters. It has conducted seven

undercover operations and sixteen sweeps.

LEGISLATION:

AB 3359 (Cortese) would have required CSLB to provide for and collect a voluntary contribution of up to \$5 from applicants for new or renewal licenses issued under the CSLL, to be transferred to the Controller for exclusive use for the support of the California Uniform Construction Cost Accounting Commission. This bill was vetoed by the Governor on July 20.

The following is an update of bills described in detail in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at pages 80-81:

AB 3480 (Mountjoy), as amended August 31, authorizes 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 or greater in that state as in California. In addition, this bill makes numerous changes to laws applicable to contractors. AB 3480 was signed by the Governor on September 25 (Chapter 1326, Statutes of 1990).

SB 2290 (Seymour) includes the failure to comply with specified public works contract noncollusion affidavit requirements as a cause for disciplinary action under the CSLL. This bill also provides legislative declarations respecting the objectives of the Public Contract Code and makes related changes. This bill was approved by the Governor August 8 (Chapter 485, Statutes of 1990).

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 July 6, this bill would have required the awarding authority to designate that classification consistent with the CSLL and the regulations adopted pursuant to that law, but the Registrar shall be the final administrative authority over classification matters. This bill was vetoed by the Governor on September 25.

SB 2476 (Seymour). Existing law requires every person applying for a license as a contractor to pass a written examination for the classification of contracting being applied for; if the applicant is a corporation or partnership, the examination may be taken by a qualify-



ing individual or a responsible managing employee. The law provides for a waiver of the examination if the qualifying individual has, for five of seven years preceding application, been listed on the records as a member of any licensee who held a license in the same classification being applied for. As amended August 6, this bill adds the provision that the qualifying individual during the period listed on the license has been engaged in the activities of the licensee in the same classification for which the license is applied for. This bill also provides that an additional classification may be added to any contractor's license without examination, if specified conditions are met.

SB 2476 also repeals section 7065.3 of the Business and Professions Code, which currently provides that the Registrar may 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; in those instances, experience submitted by the applicant would be subject to review and investigation. This bill was signed by the Governor on September 29 (Chapter 1456, Statutes of 1990).

SB 2888 (*L. Greene*) would have required CSLB to contract for a study of the contracting industry's payment practices; this bill died in the Assembly Committee on Governmental Efficiency and Consumer Protection.

SB 1958 (*Ayala*). Business and Professions Code section 7109 provides that the Registrar may deny, suspend, or revoke the license of any person licensed or registered pursuant to the CSLB who commits any act or omits any act, which commission or omission 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. As amended August 13, this bill would have defined "willful," as applied to the intent with which an act is done or omitted, as a purpose or willingness to commit an act or make an omission, and stated that it does not require any intent to violate the law, injure another, or acquire any advantage. The Governor vetoed this bill on September 26.

AB 2667 (*Eastin*), as amended July 6, expands the existing definition of "employee" for purposes of disability insurance, unemployment compensation insurance withholding, and personal

income tax withholding to include individuals who are employees of persons who are required to obtain a valid state contractor's license, thereby extending the duty to deduct unemployment insurance and disability insurance from wages to those who are required to obtain a contractor's license as well as those who already hold a valid contractor's license. The bill also makes other related changes. AB 2667 was signed by the Governor on September 10 (Chapter 719, Statutes of 1990).

SBX 16 (*Roberti*) and ABX 9 (*Epple*) are twin bills aimed at preventing the victimization of persons suffering property damage in the October 1989 Loma Prieta earthquake, by making offenses by unlicensed architects, engineers, or contractors punishable as either a misdemeanor or a felony, as specified. SBX 16 died in the Senate Appropriations Committee.

ABX 9, with certain exceptions, doubles the amount of fines which may be imposed for offenses committed as part of a plan or scheme to defraud the owner of a residential or nonresidential structure in connection with the offer or performance of repairs caused by a disaster. This bill also requires the defendant to make full restitution subject to the defendant's ability to pay, adds a one-year sentence enhancement if the offense is a felony and the defendant has a prior felony conviction of such an offense, and requires probation to be at least five years or until restitution is made. This bill was signed by the Governor on September 22 (Chapter 36X, Statutes of 1990).

SB 1079 (*Mello*). Existing law provides for the issuance of a citation by CSLB's Registrar against persons who act in the capacity of or engage in the business of a contractor within the state without having a license in good standing to so act or engage. As amended June 28, SB 1079 reduces the minimum amount of the civil penalty assessed to not less than \$200. This bill was signed by the Governor on September 11 (Chapter 774, Statutes of 1990).

AB 2282 (*Eastin*), as amended August 21, requires CSLB to contract for a feasibility study, as specified, relating to the development of a system for joint enforcement actions with respect to contractors with the Department of Industrial Relations, the Employment Development Department, and the Franchise Tax Board. This bill also provides that on and after January 1, 1992, as a condition precedent to the issuance, reinstatement, renewal, or continued maintenance of a license, CSLB shall require an applicant or licensee to have on file a

Certificate of Workers' Compensation Insurance or a statement, made under penalty of perjury, that he/she is exempt from the Workers' Compensation Insurance Laws. This bill was signed by the Governor on September 26 (Chapter 1386, Statutes of 1990).

SB 732 (*Beverly*), as amended August 27, provides for the certification of asbestos consultants and site surveillance technicians who meet qualifications specified by this bill and Cal-OSHA's Division of Occupational Safety and Health, and subjects a person who engages in these activities without certification to civil and criminal penalties. This bill was signed by the Governor on September 22 (Chapter 1255, Statutes of 1990).

AB 115 (*Floyd*) was substantially amended on August 28 and no longer relates to CSLB.

AB 117 (*Floyd*) would have defined "lowest bidder" or "lowest responsible bidder" for purposes of Public Contract Code section 1105. This bill died in the Senate Governmental Organization Committee.

RECENT MEETINGS:

At its June 7 meeting, CSLB reviewed the progress made on its strategic planning goals which were established in October 1989. The Administration/Budget Committee reported that its goals focused primarily on automation: preparing the computer assisted testing system, creating a system allowing data access to license status, formulating the tracking and scheduling system, and working on the automated phone response system. The Committee noted that these projects are either up and running or are near completion.

The Public Information Committee reminded CSLB that its goal was to increase consumer and contractor awareness of and cooperation with CSLB by increased statewide public education. CSLB contracted with consultants through the California State University system to research public knowledge of the CSLB and to propose a one- and five-year plan to increase public knowledge and the effectiveness of CSLB's consumer protection program. The proposed plan was scheduled to be released in the early fall.

The Committee also reported that CSLB had distributed more than 200,000 copies of the *What You Should Know Before You Hire A Contractor* booklet. Also, the Committee's Outreach Program has been involved in twenty trade association meetings, fifteen state- and local government-sponsored



consumer education events, thirteen consumer group meetings, three school-based education programs, eleven radio interviews, and five television shows. CSLB has staffed booths answering questions and providing booklets and/or brochures at more than 45 days of consumer/home improvement trade show events.

The Licensing Committee noted that one of its goals was to ensure prompt response to telephone inquiries for licensing information. The automated phone response system, which is scheduled to be on-line later this year, will enable CSLB to adequately provide access to consumers and industry.

Another goal of the Licensing Committee was to develop a classification system that meets the needs of the industry. The Committee and the full Board has thoroughly reviewed the C-61 Limited Specialty Classification and developed definitions and a policy for this classification, ending a six-year study of the class.

A third Licensing Committee goal was to ensure that all written communications with the public and contractors are performed in a timely and professional manner. Licensing staff have attended over 100 training classes to improve their computer and writing skills.

The Legislative Committee reminded the Board that one of its major priorities was the owner/builder bill, AB 3960 (Moore). The bill, which died in the Assembly Ways and Means Committee's suspense file, would have clarified exemptions for owner-builders and would have provided the Registrar with the authority to file actions against exempt owner/builders who commit acts or omissions that would be cause for disciplinary action against a licensed contractor.

Another Legislative Committee goal was legislation requiring workers' compensation insurance for all licensed contractors. SB 2282 (Eastin), which was signed by the Governor on September 26, provides that on and after January 1, 1992, as a condition precedent to the issuance, reinstatement, renewal, or continued maintenance of a license, CSLB shall require an applicant or licensee to have on file a Certificate of Workers' Compensation Insurance or a statement, made under penalty of perjury, that he/she is exempt from the Workers' Compensation Insurance Laws. (See *supra* LEGISLATION.)

CSLB's Enforcement Committee stated that it had three major goals for 1990: (1) to ensure prompt resolution of

complaints; (2) to reduce unlicensed contracting; and (3) to improve efficiency of field operations staff. To ensure prompt resolution of complaints, the Committee made reduction of CSLB's complaint backlog its priority. The Committee reported that a zero backlog by December still looks feasible. The median closure rate has gone from approximately 150 days in 1987 to 54 days as of April 1990. According to CSLB, the creation and implementation of a Voluntary Arbitration Program and a Mandatory Arbitration Program have aided in reducing the backlog.

The Committee reported that the establishment of the Unlicensed Activity Unit in southern California resulted in a 27% decrease in complaints involving unlicensed activity, 59 applications for licenses, and 90% compliance with Notice to Appear citations (see *supra* MAJOR PROJECTS for more information).

Finally, the Committee attempted to meet its goal of improving the efficiency of field operations by establishing and implementing work standards for field operations staff. These standards have also been useful in budget requests and are expected to be useful in managing employee performance.

At its July 20 meeting, CSLB reported that the Computer Assisted Testing (CAT) program is up and running in Sacramento and will be in each district office soon.

Also at its July 20 meeting, CSLB announced that the Assembly Select Committee on Unlicensed Contractors has been renamed the Assembly Committee on Construction Issues; Assemblymember Delaine Eastin will continue to serve as chair. The role of the Committee was expanded to include issues other than unlicensed contractors. CSLB actively participates at these Committee meetings.

At the July meeting, Registrar David Phillips reported that CSLB's automated phone response system would soon implement "800" numbers for public, government, and CSLB access. The phone system, which is expected to be available by December, will offer many services such as information regarding contractors' licenses and complaint histories.

CSLB Public Information Officer Steve Kolb has produced a new *Don't Get Nailed* public awareness brochure, which is expected to be available in late 1990. At this writing, he is also in the process of producing a new booklet entitled *What You Should Know to Be A Contractor*.

At CSLB's July 20 meeting, Joe Valverde was reelected Board Chair and Roger Lighthart was elected Vice-Chair.

At its September 12 meeting, CSLB's Enforcement Committee discussed a proposal to seek legislation which would increase civil penalties for licensed contractors who hire unlicensed contractors. Board members stated that this proposal comes in response to a request from industry members that the Board act to curb the growth of unlicensed contracting. Under the proposal, a licensed contractor would be subject to a \$10,000 civil penalty for a second offense. After discussing this issue, the Committee tabled the matter until its next meeting.

Also at its September 12 meeting, the Enforcement Committee agreed to recommend to the Board that urgency legislation be sought which will permit the Board to divert a complaint to the Mandatory Arbitration Program if the contract price of the project is up to \$5,000 or the demand price of the complainant is no more than \$5,000, regardless of the contract price. The Mandatory Arbitration Program is currently limited to resolving disputes over contracts under \$2,500.

FUTURE MEETINGS:

January in San Diego (date to be announced).

BOARD OF COSMETOLOGY

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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