

**BACKGROUND PAPER FOR THE
Contractors State License Board
(Joint Oversight Hearing, March 18, 2015, Senate Committee on
Business, Professions and Economic Development and
Assembly Committee on Business and Professions)**

**IDENTIFIED ISSUES, BACKGROUND AND
RECOMMENDATIONS REGARDING THE
CONTRACTORS STATE LICENSE BOARD**

**BRIEF OVERVIEW OF THE
CONTRACTORS STATE LICENSE BOARD**

History and Function of the Contractors State License Board

The Contractors State License Board (CSLB or Board) in the Department of Consumer Affairs (DCA) is responsible for implementation and enforcement of the Contractors State License Law; the laws and regulations related to the licensure, practice and discipline of the construction industry in California. All businesses and individuals who construct or alter, or offer to construct or alter, any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the Board if the total cost (labor and materials) of one or more contracts on the project is \$500 or more.

CSLB was established by the Legislature in 1929 as the Contractors License Bureau, under the Department of Professional and Vocational Standards, to protect the public from irresponsible contractors. In 1935, the mission and duties were placed under the auspices of a seven-member Board. The Board increased to 15 members in 1960. Since 1970, CSLB has been part of the Department of Consumer Affairs.

CSLB's legal and regulatory role has changed since its creation. Initially, applicants were not issued licenses in specific classifications. Instead, applicants simply indicated the type of construction work that would be performed under the license, and the license was issued without examination or experience requirements.

In 1938, the Legislature made it mandatory for contractor license applicants to be examined for competence in their designated field. By 1947, CSLB had authority to establish experience standards and to adopt rules and regulations to affect the classification of contractors "...in a manner consistent with established usage and procedure as found in the construction business, and...limit[ing] the field and scope of operations of a licensed contractor to those in which he or she is classified and qualified to engage...."

The Board licenses approximately 290,000 contractors in 44 license classifications and two certifications. CSLB issues some 15,000 licenses each year, and more than 121,000 licenses are renewed each year. A license may be issued to an individual, partnership, corporation, limited liability

company, or joint venture. All licenses must have a qualifying individual (also referred to as “qualifier”). A qualifying individual is the person listed on CSLB records who satisfies the experience and examination requirements for a license. Depending on the type of license, the qualifying individual must be designated as an owner, responsible managing employee, responsible managing officer, responsible managing manager, responsible managing member, or qualifying partner in the license records. A qualifying individual is required for every classification and on each license issued by CSLB; the same person may serve as the qualifier for more than one classification.

The Board also registers some 9,600 home improvement salespersons (HIS) who are engaged in the sale of home improvement goods and services.

The current CSLB mission statement, as stated in its CSLB Strategic Plan 2013/14, is as follows:

The Contractors State License Board protects consumers by regulating the construction industry through policies that promote the health, safety, and general welfare of the public in matters relating to construction.

The Board is one of 39 boards, bureaus, committees, and other programs at the Department of Consumer Affairs (DCA).

Board Membership and Committees

Currently, CSLB is governed by 15 members. It has a public majority with ten public members. The ten public members include: one labor representative, one local building official, and one statewide senior citizen organization representative. The five professional members are: one general engineering (A) contractor, two general building (B) contractors, and two specialty (C) contractors.

The Governor appoints eleven members of the Board that require confirmation by the Senate. The Senate Rules Committee and the Assembly Speaker appoint two public members each. The Board as a whole is required to meet at least four times throughout the year, and meets at various locations throughout the state to address work completed by various committees of the Board. Board meetings are open and give the public the opportunity to testify on agenda items and on other issues.

The following table lists all members of the Board, including: background on each member, when appointed, term expiration date, and appointing authority.

Name	Appointment Date	Term Expiration Date	Appointing Authority
<p>David Dias, Chair Labor Member. David Dias, of Napa, was appointed by Governor Edmund G. Brown Jr. in April 2011 and reappointed in June 2012. Mr. Dias has been a business representative for Sheet Metal Workers' Local Union No. 104 since 2005, and previously was an apprentice instructor at Foothill Community College from 1998 to 2005, a field supervisor at Therma Inc. from 1997 to 2005, and a sheet metal worker foreman at RH Tinney from 1990 to 1997, after serving as an apprentice from 1986 to 1990. He is a trustee of the Bay Area Industry Training Fund, a member of the U.S. Green Building Council, and a member of the Joint Committee for Energy and Environmental Policy. Mr. Dias' term continues through June 1, 2016.</p>	<p>April 2011</p>	<p>June 1, 2016</p>	<p>Governor</p>

<p>Ed Lang, Vice Chair Public Member – Senior Citizen Organization. Ed Lang, of Rancho Cordova, was appointed by Governor Arnold Schwarzenegger in January 2007, and reappointed in July 2010 and June 2014. Mr. Lang retired as supervisor of the Corporation Collections Unit for the California Franchise Tax Board, where he worked in various positions from 1980 to 2003. Previously, he was an adult education instructor for the Folsom-Cordova Unified School District from 1976 to 1982, and served in the U.S. Air Force from 1960 to 1980. Mr. Lang serves on the Board of Directors for the InnerCity Housing Corporation and HELPS Family Foster Agency, and is a member of the American Association of Retired People. Mr. Lang’s term continues through June 1, 2018.</p>	January 2007	June 1, 2018	Governor
<p>Agustin Beltran, Secretary Public Member. Augie Beltran, of Oakdale, was appointed by the Senate Rules Committee in January 2014. Mr. Beltran served in the United States Marine Corps Reserve from 1985-1993. Since beginning his career as a carpenter apprentice, Mr. Beltran has worked in various facets of the construction industry for 25 years. Mr. Beltran has served on several government boards since 1997, including the Lathrop City Council from 2000-2004 and the Delta Protection Commission from 2002-2004. He currently serves as the President and Director of Public and Governmental Relations for the Northern California Carpenters Regional Council. Mr. Beltran’s term continues through June 1, 2017.</p>	January 2014	June 1, 2017	Senate Rules Committee
<p>Kevin J. Albanese “B” Contractor Member. Kevin J. Albanese, of San Jose, was appointed by Governor Edmund G. Brown Jr. in July 2013. Since 2004, Mr. Albanese has served as vice president and chief executive officer at Joseph J. Albanese Inc. Prior to his current role, he served in multiple management positions throughout the organization. In addition, Mr. Albanese graduated magna cum laude from the Santa Clara University School of Law, and since 2009, has operated a solo law practice. Mr. Albanese is a longtime member and past President of United Contractors and he also serves as a management Trustee for the Operating Engineers Local 3 Trust Funds. Mr. Albanese's term continues through June 1, 2017.</p>	July 2013	June 1, 2017	Governor
<p>Linda Clifford “A” Contractor Member. Linda Clifford, of Sacramento, was appointed by Governor Edmund G. Brown Jr. in July 2013, and reappointed in June 2014. Ms. Clifford has been chief financial officer at C.C. Myers Inc. since 1986. She also held multiple accounting positions at Continental Heller-Tecon Pacific from 1972-1986. Ms. Clifford is Treasurer and a board member of the California Transportation Foundation, and Secretary and a commissioner at the California Uniform Construction Cost Accounting Commission. Ms. Clifford's term continues through June 1, 2018.</p>	July 2013	June 1, 2018	Governor
<p>Susan Granzella Public Member. Susan Granzella, of Sacramento, was appointed by Governor Edmund G. Brown Jr. in October 2014. Ms. Granzella held several Visa, Inc. positions from 1996 to 2014, including senior director and vice president for technical documentation, and audit and compliance coordination for global development. Ms. Granzella's term continues through June 1, 2016.</p>	October 2014	June 1, 2016	Governor

<p>Joan Hancock “B” Contractor Member. Joan Hancock, of Sacramento, was appointed to CSLB by Governor Arnold Schwarzenegger in November 2007, and reappointed by Governor Edmund G. Brown Jr. in July 2011. Since 1983, Ms. Hancock has owned Her Land Enterprises, a general contracting firm. From 1977 to 1983, she co-owned Hancock & Colyer Construction. Ms. Hancock earned a Juris Doctorate in 1982, and a California State Teaching Credential in 1979. She also is a member of the Sacramento Mediation Center. Ms. Hancock’s term continues through June 1, 2015.</p>	November 2007	June 1, 2015	Governor
<p>Pastor Herrera Jr. Public Member. Pastor Herrera, of Los Angeles, was appointed by Governor Arnold Schwarzenegger in July 2010, and reappointed by Governor Edmund G. Brown Jr. in June 2014. Mr. Herrera has been adjunct professor at the California State University, Northridge Department of Family and Consumer Sciences since 2011. He served in multiple positions at the Los Angeles County Department of Consumer Affairs from 1977 to 2010, including director, assistant director, head of staff services, head consumer affairs representative and consumer affairs investigator. He is a member of the University of California, Los Angeles Latino Alumni Association, National Association of Consumer Affairs Administrators, Consumer Federation of California, Los Angeles Financial Credit Union Board of Directors, National Consumers League, and a founding member of the Los Angeles County Hispanic Managers. Mr. Herrera’s term continues through June 1, 2018.</p>	July 2010	June 1, 2018	Governor
<p>Robert Lamb II Public Member. Robert Lamb, of Cypress, was appointed by Assembly Speaker Fabian Núñez in May 2006. Mr. Lamb is a certified plumber and pipefitter. He has been a member of the United Association for more than 30 years, has held numerous positions in the construction industry, and has worked on a variety of construction projects. Mr. Lamb was the business manager and financial secretary/treasurer for the Plumbers and Steamfitters U.A. Local 582 in Santa Ana, and was also a representative for the Southern California Pipe Trades District Council 16. Mr. Lamb earned a Bachelor’s degree in Union Leadership and Administration from the National Labor College in Silver Springs, MD. He serves as an international representative for the United Association of Plumbers and Steamfitters. In October 2008, Assembly Speaker Karen Bass reappointed Mr. Lamb, and in 2012 Assembly Speaker John Perez reappointed Mr. Lamb for a term that continues through June 1, 2016.</p>	May 2006	June 1, 2016	Assembly
<p>Johnny Simpson Public Member. Mr. Simpson is the business manager/financial secretary of the International Brotherhood of Electrical Workers Local 569, which represents over 3,100 electrical workers in San Diego and Imperial counties. A third generation IBEW wireman, Mr. Simpson graduated from the IBEW California Apprenticeship Program in 1981. He is highly involved in his community and has spent more than 20 years volunteering alongside IBEW 569 members to fix electrical systems in the homes of San Diego’s low income seniors, disabled veterans, and families. He also is a San Diego Electrical Training Center trustee; president of the San Diego County Building and Construction Trades Council; and vice president of the San Diego County Building Trades Family Housing Corporation, which provides affordable housing for low and moderate income working families. Mr. Simpson’s term continues through June 1, 2015</p>	February 2015	June 1, 2015	Senate Rules Committee

<p>Paul Schifino “C” Contractor Member. Paul Schifino, of Los Angeles, was originally appointed by Governor Arnold Schwarzenegger in January 2010, and reappointed by Governor Edmund G. Brown Jr. in April 2011. Mr. Schifino is owner and president of both Anvil Steel Corporation and Junior Steel Company. Mr. Schifino was a partner for the law firm of Schifino and Lindon from 1992 to 2006, associate attorney for Strook and Strook and Lavan from 1990 to 1992, and adjunct professor at Georgetown University from 1987 to 1989. He also is a member of the American Institute of Steel Construction (AISC). Mr. Schifino and his wife are both ambassadors of the Weizmann Institute of Science, an international center of scientific research located in Israel. Mr. Schifino’s term continues through June 1, 2017.</p>	January 2010	June 1, 2017	Governor
<p>Frank Schetter Professional Member – "C" Contractor. Frank Schetter, of Sacramento, was appointed by Governor Edmund G. Brown Jr. in August 2011. Mr. Schetter has been the CEO of Schetter Electric since 2006 and was president from 1983 to 2005. He is currently a governor of the National Electrical Contractors Association and a member of the National Joint Apprenticeship and Training Committee. Mr. Schetter’s term continues through June 1, 2015.</p>	August 2011	June 1, 2015	Governor
<p>Nancy Springer Public Member – Building Official. Nancy Springer, of Browns Valley, was appointed by Governor Edmund G. Brown Jr. in September 2013. Ms. Springer has served in multiple positions for Butte County since 2007, including building division manager, interim building division manager, and building official assistant. She held multiple positions at Willdan Engineering from 2003 to 2007, including building safety services supervisor, office manager and senior plans examiner. Prior, Ms. Springer was a plans examiner at Linhart Peterson Powers and Associates from 1998 to 2003 and a building inspector for the Sutter County Community Services Department from 1992 to 1998. She was a building inspector for the City of Colusa from 1991 to 1992 and for the City of Palmdale from 1989 to 1991. Ms. Springer was an electrician apprentice at the National Electrical Contractors Association from 1984 to 1987 and an aircraft electrical systems specialist for the U.S. Air Force from 1980 to 1985. Ms. Springer's term continues through June 1, 2017.</p>	September 2013	June 1, 2017	Governor
<p>VACANCY – Governor’s Appointee, Public Member</p>			
<p>VACANCY – Assembly Speaker’s Appointee, Public Member</p>			

CSLB currently has five standing committees that perform various functions:

- **Enforcement Committee** – Purpose is to reduce, eliminate, or prevent unlicensed activity and unprofessional conduct that pose a threat to public health, safety, and welfare.
- **Licensing Committee** – Purpose is to ensure that all applicants and licensees are qualified to provide construction services.
- **Executive Committee** – Purpose is to enhance organizational effectiveness and improve the quality of customer service in all programs.
- **Legislative Committee** – Purpose is to ensure that statutes, regulations, policies, and procedures strengthen and support CSLB operations.

- **Public Affairs Committee** – Purpose is to educate consumers to make informed choices about construction services, and ensure that licensed contractors strengthen their technical management and service skills.

The Registrar of Contractors (Registrar) is appointed by the Board with the approval of the Director of DCA, and serves as the executive officer of the Board. The Registrar carries out all of the administrative duties of the Contractors State License Law, and pursuant to the Business and Professions Code (BPC) § 7091(f), reviews all proposed administrative law judge (ALJ) decisions, and makes all final agency enforcement decisions. The current Registrar, Cindi A. Christenson, was appointed by the Board January 1, 2015.

Fiscal, Fund and Fee Analysis

As a Special Fund agency, CSLB receives no General Fund support, relying solely on fees set by statute and collected from contractors and applicants. Renewal fees constitute the main source of revenue and are collected every two years from contractors with active licenses. Active contractor licenses expire two years from the last day of the month in which the license was issued. Inactive licenses are valid for four years. According to the Governor’s proposed Budget for fiscal year (FY) 2015/16, the total revenues anticipated by CSLB for FY 2014/15 is \$55,980,000, and for FY 2015/16, \$55,182,000. The total expenditures anticipated for CSLB for FY 2014/15 are \$63,192,000 and for FY 2015/16, \$62,880,000.

The chart below, provided by CSLB, details the past, current, and projected/purposed fund condition for the Board (Dollars in Thousands):

FUND CONDITION	ACTUAL				PROJECTED	
	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Adjusted Beginning Balance	21,330	15,250	27,322	28,953	26,257	20,288
Revenues and Transfers	48,437	54,180	55,587	54,992	55,984	55,211
Total Revenue	\$69,767	\$69,430	\$82,909	\$83,945	\$82,241	\$75,499
Budget Authority	57,261	58,593	58,830	61,628	62,256	62,879
Expenditures	54,908	53,490	53,956	57,688	61,953	62,522
Loans to General Fund						
Accrued Interest, Loans to General Fund		737				
Loans Repaid From General Fund		10,000				
Fund Balance	\$14,859	\$26,677	\$28,953	\$26,257	\$20,288	\$12,976
Months in Reserve	3.3	5.9	6.0	5.1	3.9	2.5

In FY 2008/09, the Contractors License Fund (Fund) issued a loan of \$10 million to the California General Fund. In FY 2011/12, the Fund received final repayment, along with \$737,000 in interest. Based on figures calculated on June 30, 2014, CSLB had a reserve of approximately \$26,200,000, which represents approximately five months of operating expenditures.

REVENUE	FY 2010-11 Revenue	FY 2011-12 Revenue	FY 2012-13 Revenue	FY 2013-14 Revenue	% OF TOTAL REVENUE
Duplicate License/Certification Fees	117	121	104	108	0.2%
App Exam/License Fees	9,837	10,333	9,966	10218	18.9%
Renewal Fees	35,207	40,072	41,304	39876	73.1%
Delinquency Fees	2,219	2,495	2,857	3102	5.0%
Fines & Penalties	798	930	1141	1491	2.0%
Other	167	135	130	134	0.3%
Interest	92	831	85	64	0.5%
TOTALS	\$48,437	\$54,917	\$55,587	\$54,992	

EXPENDITURES	FY 2010-11		FY 2011-12		FY 2012-13		FY 2013-14	
	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E
Enforcement	16,853	12,543	17,165	12,261	17,021	12,652	18,673	11,968
Examination	1,938	1,501	1,952	1,417	1,757	1,095	1,880	1,718
Licensing	6,489	1,810	6,238	1,754	6,409	1,688	6,900	1,534
Administration *	3,294	5,587	3,337	4,595	3,484	4,933	3,599	5,443
DCA Pro Rata		5,106		5,227		4,990		6,153
Diversion (if applicable)								
TOTALS	\$28,574	\$26,547	\$28,692	\$25,254	\$28,671	\$25,358	31,052	26,816

CSLB spends approximately 55% of its budget on its enforcement program.

In January 2003, the statutory limits for nearly all application, license, and renewal fees were increased. However, with the exception of the delinquency fee (which increased from a flat \$25 to 50 percent of the variable renewal fees), the fees charged by CSLB remained at 1994 levels until July 2011. At that time, projected fund shortages compelled the Board to increase all fees to the statutory limits (with the exception of the Duplicate License/Certificate Fee). The Board indicates that there are no current plans to increase fees.

The Board's current fee structure and revenue are detailed in the tables below, and are contained in Business and Professions Code (BPC) section 7137 and the California Code of Regulations, Title 16, Division 8, Section 811.

Fee Schedule	Current Fee Amount	Statutory Limit
Original Application Fee	\$300	\$300
Initial License Fee (Active & Inactive)	\$180	\$180
Additional Class	\$75	\$75
Replacing the Qualifier	\$75	\$75
Home Improvement Salesperson (HIS) Registration	\$75	\$75
HIS Renewal	\$75	\$75

Asbestos Certification Application	\$75	\$75
Hazardous Substance Removal Application	\$75	\$75
Reactivate Inactive License	\$360	\$360
Active Renewal (2-year cycle)	\$360	\$360
Inactive Renewal (4-year cycle)	\$180	\$180
Exam Rescheduling Fee	\$60	\$60
Delinquency Fee (Active contractor renewal)	\$80	50% of the renewal fee
Delinquency Fee (Inactive contractor renewal)	\$90	50% of the renewal fee
Delinquency Fee (HIS Renewal)	\$37.50	50% of the renewal fee
Duplicate License/Certificate	\$11	\$25

Staffing Levels

In FY 2001/02, CSLB had 471 authorized positions. In the two subsequent years, CSLB lost 20 percent of its staff (88.5 authorized positions). During fiscal years 2008/09 through 2012/13, CSLB staff levels further declined due to furloughs and hiring freezes, dropping to only 354 available authorized positions for FY 2010/11. From fiscal years 2001/02 to 2014/15, new mandates and programs were implemented including: fingerprinting, Central Valley SWIFT, Subsequent Arrest Unit, and the Economic and Employment Enforcement Coalition (EEEC), for which 21 Budget Change Proposals (BCPs) and Spring Finance Letters (SFLs) were submitted by CSLB in order to reestablish lost positions. Eventually, CSLB received five approved BCPs for 54.0 authorized positions, but then in FY 2011/12 to 2012/13 lost another 33.5 positions. Ultimately, these gains and losses have resulted in CSLB reestablishing only 20.5 of the 88.5 positions lost. To date, CSLB reports that they continue to operate as lean as possible with 68 fewer authorized positions than twelve years ago, a reduction of 15%.

CSLB reports that at any given time during the fiscal year, there are about 40 vacancies that result from retirements, transfers, and promotions, which generate substantial personnel transactions. About half of CSLB's 40 vacancies are deemed by the Board as "hard-to-fill." Almost all are in the Enforcement division and consist of Enforcement Representatives (ER), Peace Officers, and Enforcement Supervisors. Specific classification requirements, extensive criminal background checks for Peace Officers, a lack of viable candidates for remote locations, and a higher cost-of-living index in some geographical locations makes these positions difficult to fill. CSLB is unable to offer a pay differential and must compete against local government agencies that pay considerably more for similar work.

Licensing

Contractor licenses are classified within three basic branches of contracting as defined in the Business and Professions (B&P) Code and in the regulations of the Board. There are two general classifications (Class "A" and Class "B" licenses) and 42 specialty classifications (Class "C" licenses) which are identified as follows:

- Class "A" General Engineering contractor; involved in construction of infrastructure and similar projects requiring specialized engineering knowledge and skill.
- Class "B" General Building contractor; involved in construction of buildings, housing, commercial, office, etc.

- Class “C” Specialty contractor; involved in specific trades, such as painters, plumbers, electricians, etc.

The following is a breakdown of the population of licensees regulated by the CSLB for the past four years:

LICENSEE POPULATION		FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
Contractor License	Active	237,024	230,438	225,217	223,266
	Out-of-State (Active)	7,135	7,020	6,896	6,914
	Out-of-Country (Active)	26	23	21	24
	Delinquent	50,558	65,190	78,658	84,171
Home Improvement Salesperson Certification	Active	8,089	8,661	9,224	9,803
	Out-of-State (Active)	148	130	194	446
	Out-of-Country (Active)	0	0	0	0
	Delinquent	884	2,595	4,275	5,341

From late 2006 to early 2007, application submissions to CSLB dropped as a result of the economic downturn in the construction industry. The Board advises that these declines now seem to be leveling off.

Although staff reductions from furloughs and the Governor’s hiring freeze order would normally increase processing times for applicants and licensees, the slowdown in construction enabled Licensing division staff to remain relatively current. CSLB has used the work slowdown to cross-train staff on other processing functions within the division so that resources can be redirected quickly, as needed, to address workload demands, e.g., rotating application staff to assist in the call center during peak demand hours.

Pursuant to California Code of Regulations section 827, CSLB is required to inform an applicant within 60 days of receipt whether the application is complete or deficient and in need of additional documentation or correction. CSLB states that it currently meets these expectations for all of its various applications. After an applicant is notified that their application is complete, they then complete a Live Scan and schedule a time to take the required examination. There are 46 examinations: 43 trade, two certification and one law and business examination. The Board does not have a hard deadline to fully approve an application; however, an application does become void if it is not acted upon in 18 months.

As shown by the table below, the average processing times for original application approvals was nearly identical for FY 2011/12 and 2012/13 (119 and 117 days, respectively). Increased workloads have somewhat extended processing time for FY 2013/14 to 132 days. Additionally, greater workloads and some staff outages extended average processing time for HIS applications between FY 2011/12 and FY 2013/14 (57 days, to 74 days, to 84 days, respectively).

TOTAL LICENSING DATA	FY 2011-12	FY 2012-13	FY 2013-14
Initial Licensing Data:			
Original Applications Received	17,730	17,114	17,989
Home Improvement Salesperson Applications Received	6,906	7,346	9,522
Total	24,636	24,460	27,511
Initial License/Initial Exam Pending Application Data:			

Pending Original Applications (total at close of FY)	44	704	8,122
Pending Home Improvement Salesperson Applications Received	3	29	4,058
Total	47	733	12,180
Pending Original Applications (outside of board control)*	n/a	n/a	n/a
Pending Home Improvement Salesperson Applications (outside of board control)*	n/a	n/a	n/a
Pending Original Applications (within the board control)*	n/a	n/a	n/a
Pending Home Improvement Salesperson applications	n/a	n/a	n/a
Initial License/Initial Exam Cycle Time Data (WEIGHTED AVERAGE):			
Average Days to Original Application Approval (All – Complete/Incomplete)	119	117	131
Average Days to Home Improvement Salesperson Application Approval (All – Complete/Incomplete)	22	64	77
Total (Averaged) Days	71	91	101
Average Days to Original Application Approval (incomplete applications)*	n/a	n/a	n/a
Average Days to Home Improvement Salesperson Application Approval (incomplete applications)*	n/a	n/a	n/a
Average Days to Original Application Approval (complete applications)*	n/a	n/a	n/a
Average Days to Home Improvement Salesperson Application Approval (complete applications)*	n/a	n/a	n/a
License Renewal Data:			
Contractor License Renewed	121,101	121,765	119,971
Home Improvement Salesperson Registration Renewed	1,507	1,673	1,777
TOTAL	122,608	123,438	118,748

As the construction industry begins to recover, and with seasonal fluctuation of applications, the Board believes that processing timelines likely will increase.

All applications for licensure include questions regarding the applicant's prior criminal history and disciplinary actions. Applicant fingerprints are submitted to the California Department of Justice (DOJ) where they are compared to DOJ and Federal Bureau of Investigation (FBI) records to ascertain whether a criminal history exists. Beginning January 1, 2005, all individuals listed as personnel of record on an original application, an application to add a classification to an existing license, an application to replace the qualifier, an application to report new officers, and an application for registration as a home improvement salesperson are required to submit fingerprints to CSLB. This means that all licensee fingerprinting conducted by CSLB has been prospective.

CSLB's Criminal Background Unit (CBU) staff review all criminal convictions to determine if the crime is *substantially* related to the duties, qualifications, or functions of a contractor, and to assess if the applicant has demonstrated sufficient rehabilitation. CBU begins processing conviction information the same day it is received by conducting a triage and clearance of those applicants with no convictions and those with minor, clearable convictions, provided the applicant was honest on the application. It is interesting to note that applicants who were dishonest on the application but who have minor, clearable convictions and who, had they been honest, would have been cleared can withdraw the false application and submit new fees and a new application on which they accurately disclose their convictions. These withdrawal offers also are processed as part of the triage. For the last few years, the timelines for pulling the conviction records for review were held at less than 30 days and usually processed in as little as one to two weeks.

Additionally, as required by law, CSLB performs a comprehensive field investigation for a minimum of 3 percent of applications to help ensure documentation accuracy of applications. Licensing division staff further evaluates Certification of Work Experience forms submitted with applications for licensure to document the required four years of journey-level work experience. Applicants may submit additional documentation when necessary to support their claimed work experience, such as paycheck stubs, tax documents, building permits, construction inspection reports, etc.

Continuing Education/Competency Requirements (CE)

CSLB does not have a continuing education (CE) or continuing competency requirement. In 2013, the Board adopted a policy opposing the establishment of any such requirement, absent an identified problem within the construction industry that CE would address and because of the significant costs of such a requirement on licensees and CSLB.

Enforcement

CSLB’s enforcement responsibilities include investigating complaints against licensed and unlicensed contractors; issuing citations and suspending or revoking licenses; seeking administrative, criminal, and civil sanctions against violators; and informing consumers, contractors, and the industry about CSLB actions.

CSLB receives complaints from members of the public, licensees and professional groups, governmental agencies, and others concerning all aspects of the construction industry. However, the majority of complaints come from owners of residential property involved in remodeling or repair work. In FY 2013/14, CSLB received 18,322 complaints. A steady reduction of incoming complaints during FY 2013/14 can be partially attributed to the economic downturn. The Intake and Mediation Center (IMC) continues to investigate illegal advertising complaints. In FY 2013/14, complaints were at a manageable level.

BPC § 7011.7 sets CSLB’s statutory mandate regarding the length of time in which to complete a complaint investigation. The statutory goal for routine investigations is six months from receipt of the complaint to completion of the investigation. For complaints that involve complex fraud issues or complex contractual arrangements the statutory goal for completing the review and investigation is one year. As shown by the table below, the Enforcement division consistently meets this mandate, averaging 70 days from receipt of a complaint to completed investigation – far less than the statutory goal.

Enforcement Statistics	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
INVESTIGATION				
All Investigations				
First Assigned	21,320	19,239	18,101	18,203
Closed (by type)	22,483	20,366	19,118	18,875
Unlicensed Activity	6,271	5,238	5,254	5,357
Competence/Negligence	4,480	4,023	3,930	4,111
Unprofessional Conduct	6,653	5,597	4,842	4,545
Personal Conduct	731	1,015	1,225	807
Fraud	371	533	553	770
Health & Safety	590	550	526	495
Other/Miscellaneous	3,387	3,410	2,788	2,790

Average days to close	68.1	72.7	76.6	76.4
Pending (close of FY)	3,891	3,901	3,762	3,893
COMPLIANCE ACTION				
ISO & TRO Issued	NDA	NDA	NDA	NDA
PC 23 Orders Requested	NDA	NDA	NDA	NDA
Other Suspension Orders	N/A	N/A	N/A	N/A
Cease & Desist/Warning Letter	2,708	2,065	2,177	1,246
CITATION AND FINE				
Citations Issued	1,671	1,582	1,968	2,203
Average Days to Complete	166.0	164.0	165.0	168.4
Amount of Fines Assessed	\$2,587,011	\$2,688,050	\$3,672,325	\$4,129,925
Reduced, Withdrawn, Dismissed	242	273	390	432
Amount Collected	\$834,709	\$966,344	\$1,165,111	\$1,519,857
CRIMINAL ACTION				
Referred for Criminal Prosecution	1,263	1,192	1,106	1,118

Legislation enacted in 2010 granted CSLB the authority to establish nine additional sworn Peace Officer (PO) positions within the Enforcement division, for a total of 12, who the Board believes possess expertise, skills, knowledge, and abilities that are vital to combat construction-related crimes. POs undergo unique training and education, support CSLB's ability to investigate construction-related elder abuse, fraud, insurance violations, and unlicensed activity. Their training extends beyond Contractors' State License Law and includes a working knowledge of California Penal Code, Labor Code, Health and Safety Code, and Vehicle Code. Additionally, their Peace Officer Standards and Training (POST) Commission academy training includes chain-of-custody issues, expert testimony, dealing with aggressive/angry/ argumentative people, and interpreting body language. POs might videotape elder abuse victims, establish the victim's mental capacity, obtain medical records (HIPPA requirements), obtain bank records through search warrant or written authorization, and complete preliminary financial audits, making it easier for district attorneys to file elder abuse charges. Further, CSLB asserts that POs typically have more credibility when testifying at pretrial hearings than their non-sworn counterparts, and can obtain expedited records from courts and the DMV Law Enforcement Counter.

According to the Board, POs work with multiple jurisdictions to perform complex investigations and joint undercover operations, often targeting revoked licensees who continue to illegally contract. When Stop Orders are issued, POs frequently follow up with local law enforcement partners, perform undercover surveillance, and, when appropriate, arrest individuals suspected of illegal activity. They often conduct site inspection and/or compliance checks with local law enforcement and agency partners, such as the California Department of Insurance (CDI) and district attorney investigators. POs participate and lead multi-jurisdictional criminal investigation task forces. When a natural disaster occurs, CSLB POs are among the first responders who, as sworn officers, can access disaster areas.

Once investigations are complete, a case may possibly be referred to CSLB's arbitration program. For eight consecutive years, the Arbitration Mediation Conciliation Center (AMCC) has administered the CSLB arbitration program. Under BPC § 7085(b), disputes over contracts worth \$12,500 or less shall be referred to CSLB's Mandatory Arbitration Program (MARB); under BPC § 7085(a), disputes over contracts worth more than \$12,500 but less than \$50,000 may be referred to CSLB's Voluntary Arbitration Program (VARB) with the concurrence of both the complainant and the contractor.

During 2013, 313 complaints were referred to the arbitration program and 288 awards were rendered, resulting in \$1,254,767 in restitution ordered for financially injured persons. Forty-five licenses were revoked for failure to comply with an arbitration award. In 2014, CSLB renewed its contract with AMCC to conduct its arbitration hearings through November 30, 2015. AMCC hears approximately 400-700 CSLB cases per year and, since the program's inception, AMCC has heard more than 6,300 CSLB arbitration proceedings and rendered individual monetary decisions of up to \$50,000. The Board's Consumer Services Representative and Enforcement Representatives refer eligible cases to AMCC and then close them (for purposes of statistical tracking). Thereafter, AMCC gathers information about the dispute, sets a hearing date, and assigns an arbitrator to hear the case at a relatively informal hearing (which is frequently conducted by the parties themselves without the assistance of counsel). CSLB may pay for the services of one expert witness to testify at the hearing; the parties may pay for additional experts to testify. Following submission of the case, the arbitrator has 30 days in which to issue his or her decision. The entire process averages 47 days.

According to the Board, during the last four years, AMCC has implemented several program improvements:

- Coordinated parties for a hearing within 10 days of receipt for a military claimant being deployed;
- Assigned Saturday arbitration dates for parties unable to participate in weekday hearings;
- Coordinated multiple party disputes among complainants, prime, and sub-contractors;
- Arranged for unique hearing sites to comply with ADA requirements;
- Implemented video conferencing protocols;
- Conducted statewide joint CSLB/arbitrator trainings; and
- Created additional handouts to parties to assist in hearing preparation.

For more serious crimes, cases can be referred to the Office of the Attorney General (AG). Once a CSLB investigator completes an investigative report recommending an accusation (the written notice of charges) in a given case, and that recommendation is approved by CSLB upper management, the file is transferred to the licensing section of the Attorney General's Office, where it is assigned to a deputy attorney general (DAG). The DAG reviews the investigative file and determines whether it is sufficient to prove a disciplinary violation. If so, the DAG prepares the accusation and returns it to Enforcement's Case Management Unit (CMU), an internal support unit that tracks and processes all of CSLB legal actions. CMU reviews the accusation and, if it is accurate, signs the accusation (or in CSLB terminology, "files" the accusation), and serves it on the respondent.

The accusation filing triggers the adjudication process governed by the Administrative Procedure Act (APA) of the Government Code, which is designed to ensure that an accused licensee is afforded procedural due process rights before his or her property right (the license) is taken from him or her. According to case law interpreting the APA, the agency is the moving party that must meet the burden

of proof regarding a disciplinary violation with evidence that is “clear and convincing to a reasonable certainty.”

When the accusation is filed, the respondent receives notices and information about his or her right to appeal. The respondent may file a notice of defense (NOD). If a NOD is filed and received by CMU, the DAG is notified and secures a hearing date from the Office of Administrative Hearings (OAH).

Thereafter, the parties may engage in limited discovery and, barring settlement, will present their respective cases at a public evidentiary hearing presided over by an ALJ from OAH. At the hearing, the AG represents CSLB and the respondent contractor may be represented by counsel of his or her choice (paid for by the respondent). Each party has the right to examine and cross-examine witnesses, present documentary evidence, and present oral argument. Following submission of the evidence, the ALJ prepares a written proposed decision, including findings of fact, conclusions of law, and recommended discipline. At CSLB’s request, the ALJ also may recommend that the licensee pay “investigative cost recovery” to reimburse the board for the investigative and enforcement costs incurred up to the first day of the evidentiary hearing. The ALJ’s ruling is a “proposed decision” that is forwarded to the CSLB Registrar who makes the final agency decision to adopt, nonadopt, or modify the decision.

Often, an accusation may result in a stipulated agreement before the hearing occurs. In these instances, the license is typically revoked, but stayed with conditions, wherein the licensee may still operate under probationary status. Revocation of the license may be disclosed to the public. The license probationary period can be from two years to five years, and is overseen by a “probation monitor” for compliance with the terms and conditions of the probation. If the terms and conditions are not being met, CMU will submit a request to the AG to re-impose revocation.

In other cases, referrals may be sent to district attorneys. Enforcement staff has continued to strengthen relationships with district attorneys and identified specific consumer protection prosecutors throughout the state with which to partner on various criminal investigations. While the majority of criminal investigations involve unlicensed contractors who have financially injured consumers and/or continued to operate illegally despite receiving administrative citations, other criminal investigations target especially egregious offenders, both licensed and unlicensed. Enforcement has identified DAs in counties across the state who, 1) specialize in elder abuse cases, 2) have special funding from the California Department of Insurance (CDI) to prosecute workers’ compensation insurance fraud cases, and 3) who prosecute complex criminal cases that involve service and repair contractors or specialty contractors that, often, operate their businesses throughout the state.

Pursuant to B&P Code section 7123, conviction of a construction-related crime or a crime substantially related to the qualifications, functions, and duties of a contractor is cause for disciplinary action against a licensee, with the conviction record itself serving as the conclusive evidence. Therefore, when a licensee faces pending criminal prosecution, or immediately following conviction of a substantially-related crime, CSLB may refer a parallel disciplinary action to revoke a license.

Underground Economy Enforcement Efforts

California’s underground economy drastically affects law-abiding businesses, consumers, and workers. The problem is particularly prevalent in the construction industry, where cheating businesses underbid law-abiding businesses by:

- Failing to obtain required licenses and building permits;
- Failing to pay payroll or other taxes;
- Failing to obtain required workers' compensation insurance;
- Failing to report worker injuries to keep insurance premiums artificially low; and
- Lying on workers' compensation insurance applications to obtain a lower rate.

CSLB estimates that on any given day, tens of thousands of licensed contractors and unlicensed operators are breaking the law and contributing to the state's underground economy.

CSLB's Statewide Investigative Fraud Team (SWIFT) investigators participate in specialized task forces that have been established to address the underground economy.

It is estimated that California loses anywhere from \$60 to \$140 billion a year from the underground economy, a significant portion of which is attributable to the construction industry. Since no one state agency has the resources or the information to tackle this enforcement problem alone, state agencies with overlapping jurisdictions in the areas of labor law enforcement have joined forces to make a concerted and consistent dent in California's underground economy. CSLB is a partner in the Labor Enforcement Task Force (LETF).

LETF, which was launched January 1, 2012, is comprised of investigators from CSLB, the Department of Industrial Relations, Employment Development Department, and Board of Equalization, in collaboration with the Insurance Commissioner and Attorney General's Office. Partners have broadened information-sharing and the use of new enforcement technology to improve the way they target businesses in the underground economy.

The Joint Enforcement Strike Force (JESF) is a coalition of California government enforcement agencies that work together and in partnership with local and federal agencies to fight the underground economy. JESF works to restore economic stability and improve working conditions and consumer and worker protection in the state. JESF goals are to:

- Eliminate unfair business competition;
- Protect workers by ensuring that they receive all compensation, benefits, and worker protections they are entitled to by law relating to their employment;
- Protect consumers by ensuring that all businesses are properly licensed and that they adhere to the state's consumer protection regulations;
- Reduce the burden on law-abiding citizens and businesses by ensuring that all businesses and individuals comply with California licensing, regulatory, and payroll tax laws; and
- Reduce the tax gap by increasing voluntary compliance with the state's payroll tax laws to maximize the state's General and Special Fund revenues.

CSLB also addresses the underground economy through receipt of Lead Referral forms. These referrals relate to active job sites, and are submitted by consumers, public agencies, other contractors, subcontractors, and employees. SWIFT investigators visit the job site and take appropriate action, which may include the issuance of a Notice to Appear, a Stop Order, an administrative citation, and/or an accusation.

Public Information and Outreach

CSLB maintains a “Board Meetings” page on its website that publicizes agenda and background materials for all Committee and full Board meetings. Agendas are posted to the website at least 10 days prior to the meeting. In addition, the Board’s website section includes archive video of all meeting webcasts. All posted meeting materials are kept online and meeting minutes are posted after approval by the Board at its next quarterly meeting and remain available online indefinitely. CSLB maintains an extensive “Newsroom” page, which includes links to all news releases, consumer alerts, industry bulletins, and licensee newsletters. The newsroom page also includes CSLB-produced videos.

Additionally, CSLB’s complaint disclosure policy is consistent with DCA’s Recommended Minimum Standards for Consumer Complaint Disclosure. CSLB posts accusation and disciplinary actions. The Board maintains a website (www.cslb.ca.gov) and a toll-free number (800.321.CSLB) for use by the public to obtain general license information regarding a contractor and license status and a list of past and pending legal actions against the licensee are also available. “Pending legal actions” are reported only when investigative staff has substantiated a complaint and legal action has been requested. “Past legal actions” include citations previously issued against a licensee and any disciplinary action in which probation, suspension, or revocation resulted. Information concerning an arbitration decision is not made public unless the licensee fails to comply with the arbitration award. Failure to comply results, first, in suspension of the license, then, if such failure continues for 90 days, revocation of the license. CSLB reports civil judgments against a contractor when suspension is pending or has occurred.

Once CSLB determines that a probable violation of law has occurred, which, if proven, would present a risk of harm to the public and for which suspension or revocation of the contractor’s license would be appropriate, the date, nature, and status of the complaint is publicly disclosed. A disclaimer stating that the complaint is, at this time, only an allegation accompanies this disclosure.

Licensee citations are disclosed to the public from date of issuance and for five years from the date of compliance.

Accusations that result in suspension or stayed revocation of the contractor’s license are disclosed from the date the accusation is filed and for seven years after the accusation has been settled and includes the terms and conditions of probation. All revocations that are not stayed are publicly disclosed indefinitely from the effective date of the revocation.

(For more detailed information regarding the responsibilities, operation, and functions of CSLB please refer to CSLB’s *Sunset Review Report, November 2014*, available on the Board’s website.)

PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

CSLB was last reviewed by the Senate Business, Professions and Economic Development (BPED) Committee four years ago. During the previous Sunset Review, the BPED made thirteen final recommendations regarding CSLB. The following are actions which CSLB took since the last Sunset Review to address these issues. For those which were not addressed and which may still be of concern to the Committee, they are addressed and more fully discussed under “Current Sunset Review Issues.”

In November 24, the Board submitted its required Sunset Review Report to the Committees. In this report, CSLB described actions that have been taken since the Board’s prior review to address the recommendations of the BPED Committee. The following are some of the more important programmatic and operational changes and enhancements which CSLB has taken and other important policy decisions or regulatory changes it has adopted, as well as some highlighted accomplishments:

Veterans Assistance – CSLB offers a Veterans Application Assistance Program for troops transitioning from military service to civilian employment. In many cases, veterans possess transferable skills that help meet minimum experience and training requirements for state contractor licensure. This program offers priority services to veteran applicants by evaluating transferable military experience and training, as well as education.

Workers’ Compensation Recertification – To prevent under-reporting employees when securing workers’ compensation insurance, CSLB implemented legislation requiring that, at the time of renewal (every two years), an active licensee with an exemption from workers’ compensation insurance either recertify the exemption or provide a current and valid Certificate of Workers’ Compensation Insurance or Certificate of Self-Insurance (AB 397, Monning, Chapter 546, Statutes of 2011).

Complaint Disclosure of Partnering Government Agencies – In September 2013, CSLB established a program to disclose on its website any disciplinary action against contractors by partner state agencies. CSLB’s website now flags such licensees and includes an advisory statement and an electronic link to the partner agency’s website. This disclosure provides an accessible means for awarding authorities and prime contractors to determine if a contractor is a responsible and/or responsive bidder for public works projects.

Staff launched the disclosure project with the Department of Industrial Relations’ Division of Labor Standards Enforcement (DLSE) and Caltrans. DLSE issues Civil Wage and Penalty Assessments (CWPAs) for Labor Code violations, and Caltrans issues Stop Notices for violations that include non-payment for labor, services, equipment, or materials used at public work projects.

Workers’ Compensation Insurance Suspension Program – In 2011, the CSLB Enforcement division’s Intake and Mediation Center (IMC) began to notify Licensing division staff when a complaint was received against a licensee who had an exemption from workers’ compensation (WC) insurance on file but acknowledged employing workers.

In such cases, the Licensing division cancels the contractor’s WC exemption and informs him/her that CSLB will suspend the license without further notice if proof of a valid workers’ compensation policy is not submitted within 30 days. The contractor may file a second exemption, but is informed that doing so will subject the exemption to verification by CSLB and partnering agencies, such as the Employment Development Department (EDD) and Division of Labor Standards Enforcement (DLSE).

Unsafe Digging Program – In July 2013, CSLB Enforcement staff met with Pacific Gas & Electric Company representatives to discuss a partnership to prevent contractors from striking gas lines and jeopardizing public safety. Almost all such strikes that were referred to CSLB resulted from contractor negligence (failing to call in advance to have the gas lines properly marked). The program involves a coordinated outreach effort and a commitment by PG&E to file complaints against contractors that fail to call the 811 Dig Alert service before excavating. In FY 2013-14, 78 complaints were filed, resulting in increased contractor education and compliance. PG&E reported no additional gas line strikes after a complaint was filed against a contractor.

Underground Economy Program – In September 2013, CSLB’s IMC implemented a program to take timely disciplinary action against contractors found during the mediation process to be participating in the underground economy. Two Enforcement Representatives (ERs) were hired to issue administrative citations for illegal contracting in the areas of workers’ compensation insurance, building permits, and illegal advertising, demonstrating CSLB’s responsiveness to illegal activity trends. In its first year, this program resulted in 30 workers’ compensation insurance citations, 27 building permit citations, and 31 citations for illegal advertising.

Mandatory Settlement Conferences – During 2013, CSLB’s Enforcement division significantly lowered the expense of Attorney General representation by utilizing mandatory settlement conferences (MSCs) to resolve appealed administrative citations without incurring the cost of a formal hearing. In 2013, 199 citations were settled through this process. With appeal hearings averaging \$5,000, MSCs saved CSLB \$995,000 in legal expenses.

Permit Compliance – To increase building permit compliance, CSLB developed a complaint form with input from building officials, industry groups, and other partner agencies. Anyone with knowledge of a construction site that lacks a building permit can use the online form to file a complaint with CSLB. The complaint process primarily is intended to be educational, since the complaints require no evidence that the work was completed. In response to a complaint, CSLB informs the contractor, via letter, about the requirement to obtain a building permit. With sufficient evidence of failure to obtain a permit, CSLB takes appropriate disciplinary action against the license.

Elder Abuse – In August 2011, CSLB placed a “65 and older” voluntary check box on the general complaint form to help protect elderly consumers. When the box is marked, CSLB staff looks for potential elder abuse. Since adding the box, about five percent of complaints received by CSLB (2,333 complaints against licensees and 499 complaints against non licensees) involved a consumer that volunteered they were aged 65 or older. From August 2011 through January 2014, the complaint information led to 107 licensee and 50 non-licensee criminal prosecution referrals to district attorney offices for violation of California Penal Code Section 368(d) (financial elder abuse).

Public Works Unit – CSLB’s Public Works Investigative Unit, established in August 2010, has developed effective partnerships with labor compliance organizations and other state agencies, including DLSE, Caltrans, and EDD. The board has since expanded the Public Works Unit from one full-time investigator to three, and developed innovative protocols, such as public disclosure of Stop Orders issued by Caltrans and final DLSE Civil Wage and Penalty Assessments. CSLB aims to add new resources and expand the program in order to investigate and file formal disciplinary action to revoke the license of contractors who cause significant financial harm to employees.

District Attorney Office Partnership for License and WC Violations – In 2011, CSLB’s Statewide Investigative Fraud Team (SWIFT) began partnering with state and local government agencies in 19 different counties, including the California Department of Insurance, building officials, and district attorney investigators, to enforce workers’ compensation insurance and license requirements during undercover sting operations and sweeps of active construction sites.

Application Instruction – In 2012, CSLB’s Public Affairs and Licensing division staff developed an instructional video about how to properly complete the CSLB license application. The online product is divided into chapters and provides a step-by-step tutorial that explains the required information for each section of the application form. The video is designed to help applicants avoid common mistakes that result in the application being rejected or returned as incomplete.

Custom Examination Software Upgraded – In July 2014, CSLB’s Sacramento Test Center successfully launched SCORE 1.5, an upgrade to its custom test development and administration software, which was created in-house by CSLB’s Information Technology division. (SCORE is the acronym for Statewide Contractors Official Regulatory Examination.) The software upgrade coincides with the implementation of touch-screen computers, a new function that candidates have welcomed. Shorter instructions allow candidates to begin their examinations sooner and the ease of the touchscreens, compared to the mouse, allows them to move through and complete the examinations more quickly. The SCORE upgrade also makes it easier to administer civil service examinations at CSLB test centers, helping to maximize state testing facilities and resources.

Consumer Education – CSLB’s Public Affairs Office continues to expand its Senior Scam Stopper program seminars, which are conducted in conjunction with legislators and provide information to senior citizens from a variety of state and local government agencies. From January 1 to September 30, 2014, CSLB conducted 69 seminars.

State Agency Recognition Award – CSLB’s Administrative division received a state award for its emphasis on buying from small businesses and disabled veteran business enterprises (SB/DVBE) in fiscal year 2012-2013. CSLB’s Business Services Unit was presented with a bronze State Agency Recognition Award (SARA). The SARA ceremony honors state departments for outstanding achievements in SB/DVBE advocacy and practices.

New Website Design and Navigation – CSLB recently launched a new website after in-house re-design and rebuilding of the site’s nearly 1,700 pages by the Public Affairs Office and Information Technology division. The new site uses the most current state design template and technology, optimized for computers, tablets, and smart phones. CSLB is among the first state agencies to adopt the new technology and template.

CURRENT SUNSET REVIEW ISSUES

The following are unresolved issues pertaining to CSLB, or those which were not previously addressed by CSLB, and other areas of concern for the Committee to consider along with background information concerning the particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. The Board and other interested parties, including the professions, have been provided with this Background Paper and can respond to the issues presented and the recommendations of staff.

BOARD ADMINISTRATION ISSUES

ISSUE # 1: (LACK OF STAFFING.) Does the Board have what it needs to do its job?

Background: The previous fiscal crisis in the state and State Budget shortfalls caused CSLB to reduce its staffing resources and operating expenses, and, thus, resulted in what the Board calls a reduced ability to regulate the construction industry in California.

Despite the Board's strategies to rotate its staff, the construction industry will begin to recover and according to the Board, processing timelines will likely increase. With a rebound in the economy, more violations may increase consumer complaints, more Californians may apply for licensure, and more unlicensed contractors will seek to take advantage of unsuspecting consumers. CSLB is concerned that it may not have the flexibility to redirect staff resources, as each unit's workload will grow with a bounce back in the industry.

The Board believes that staffing and budget reduction numbers will truly become an issue, making it limited in its capability to protect consumers.

Staff Recommendation: *CSLB should inform the Committees of the effects of possible staff constraints including current staffing levels and how vacancies are impacting the program.*

ISSUE # 2: (BreEZe.) CSLB staff states that it is working with the BreEZe project staff to prepare for the Phase 3 release. However, it is unclear how smooth the transition will be and how BreEZe will affect CLSB's current operations, namely its internal electronic database.

Background: The BreEZe Project will provide DCA boards, bureaus, and committees with a new enterprise-wide enforcement and licensing system. The implementation will happen in three phases, of which CSLB is in Phase Three. BreEZe will replace the existing outdated legacy systems and multiple "work around" systems with an integrated solution based on updated technology.

CSLB states that staff continues to work with the BreEZe project staff to prepare for Release 3 implementation. CSLB staff is participating in discussions involving functions that will directly impact CSLB operations and will participate in development of CSLB's detailed configuration requirements. To that end, CSLB's IT staff continues to help DCA by assisting other boards and bureaus with Data Validation and Acceptance Testing. CSLB provided its testing center for training DCA Release 1 staff on the BreEZe system. CSLB actively participates and provides input in BreEZe Executive Steering Committee meetings, BreEZe Change Control Board meetings, and other critical meetings pertaining to BreEZe.

While CSLB is not scheduled for active participation until preparations for release Phase Three begin, CSLB has chosen to be proactive in its efforts to support the project by contributing the aforementioned staff resources. Additionally, CSLB holds seats on the BreEZe Change Control Board and the Executive Steering Committees, which allows the Board to keep abreast of the project’s progress and to identify further opportunities to provide support.

Unlike many other Boards and Bureaus under DCA, it is important to note that CSLB has its own internal electronic database, one element of the BreEZe program. CSLB’s electronic database, IWAS (Imaging and Workflow Automation System), is used to scan, route, retrieve and print various documents used by Licensing division staff in the processing of applications. Enforcement division staff also has the ability to retrieve, and print documents for use in their analysis and processing of cases. All paper coming into the Board is scanned into IWAS and staff work off of the electronic copy.

While the Board is working closely with DCA to prepare for BreEZe’s impact, it would be helpful to more fully understand how technological efficiencies can be achieved

Staff Recommendation: *The Board should provide the Committee an update on BreEZe, including whether the original cost projections for the project can be sustained by the Board with its current revenues.*

ISSUE # 3: (PRO RATA.) CSLB has historically paid sums of money to DCA for administrative services but has many services in-house, leading to the question of whether or not the Board is paying DCA for duplicative services.

Background: Through its various divisions, DCA provides centralized administrative services to all boards and bureaus in the department. Most of these services are funded through a pro rata calculation that is based on “position counts” and charged to each board and bureau.

The chart below shows the DCA Pro Rata for the last fiscal year charged to the Board.

Pro Rata Charges		Description	FY 13/14	
			Costs	%
424.03	OIS - Pro Rata (includes BreEZE)	To support the Office of Information Services (OIS), mainly the new BreEZE system	1,497,996	24%
427.00	Indirect Distributed Admin Costs	To support DCA Proper (Administrative Services)	4,087,408	66%
427.30	DOI - Pro Rata	To support Division of Investigation (DOI)	256,042	4%
427.34	Public Affairs Office - Pro Rata	To support Public Affairs Office	151,282	2%
427.35	PCSD - Pro Rata	To support Consumer and Communications Relations	159,901	3%
			6,152,629	100%

Basically, 66% of the DCA Pro Rata charges is to support Administrative Services which consists of, but is not limited to, the Executive Office, Equal Employment Opportunity Office, Internal Audits, Legal Affairs, Legislative & Regulatory Review, Office of Professional Examination Services, SOLID Training Services, Information Security, and the Office of Administrative Services [which consists of Fiscal Operations (Budgets, Accounting, Cashiering), Business Services Office, and Office of Human

Resources]. Costs for these services are distributed to each DCA entity based on their authorized position count, including blanket.

Then, 24% is to fund IT support which is mainly the new BreEZE system (\$920K a year) that CSLB isn't a part of as yet. Costs are distributed based on service center usage to the following: BreEZe, telecom, PC Support, LAN/WAN, and Web services.

The Board should advise the Committees about the bases upon which pro rata is calculated, and how it is determined how the pro rata charged will be paid from among the one of the two funds under the Board's jurisdiction. Since the Board has its own infrastructure and many services in house (enforcement unit, HR staff, IWAS, etc.), CSLB should additionally inform the Committees of the types of services that are funded by the pro rata it pays to the DCA.

Staff Recommendation: *CSLB should advise the Committees about the bases upon which pro rata is calculated, and how it is determined how the pro rata charged will be paid from its funds under the Board's jurisdiction. Does DCA duplicate services already provided and maintained by the Board? The Board should also discuss whether it could achieve cost savings by dealing with more of its own in-house services than paying pro rata to DCA.*

ISSUE # 4: (INCONSISTENT BUDGET NUMBERS.) In comparison to the Governor's Proposed Budget for 2015/2016, CSLB's numbers do not match the Governor's projected revenue and expenditures figures.

Background: In the Governor's proposed Budget for fiscal year (FY) 2015/2016, the total revenues anticipated by CSLB for FY 2014/2015 is \$55,980,000, and for FY 2015/2016, \$55,182,000. The total expenditures anticipated for CSLB for FY 2014/2015 are \$63,192,000 and for FY 2015/2016, \$62,880,000.

Despite these numbers, CSLB's Fund Condition chart does not match these numbers. The table anticipates the FY 2014/2015 revenue \$55,984,000 and for FY 2015/2016 to be \$55,211,000. The total expenditures anticipated for FY 2014/2015 \$61,953,000 and for FY 2015/2016 to be \$62,522,000. This chart aforementioned is displayed above in the Fiscal, Fund and Fee Analysis section of the paper.

Staff Recommendation: *CSLB should inform the Committees why the figures between the Governor's Budget and CSLB's fund condition chart are not the same.*

ISSUE # 5: (HOME IMPROVEMENT CONTRACT LAW.) Despite the implementation of SB 30 in 2004, CSLB reports that the Home Improvement Contract Law remains unclear to both contractors and consumers.

Background: In CSLB's Sunset Review Report, the Board highlights that BPC §§ 7150-7168 establish requirements specific to the home improvement industry. CSLB's Enforcement Monitor, in his third report issued in 2003, recommended three broad changes to home improvement contract law:

- 1) Revise and simplify the contract's elements.
- 2) Amend BPC § 7159 to clarify the law governing HICs and ensure the most important consumer information is disclosed properly.
- 3) Resolve the current practical problems of service and repair contracts.

Legislation was enacted in 2004 (SB 30 – Figueroa, Chapter 566) that intended to implement these recommendations. The B&P committee analysis of that bill stated:

“In addition to consumer complaints that HICs are complex, unreadable, and of little help, contractors find the required disclosures in such contracts redundant and burdensome, and the legal liabilities unclear.”

Despite the implementation of this bill, the Board reports that SB 30 did not achieve the goals it was designed to accomplish. It would be helpful for the Committees to hear the Board’s thoughts on simplifying forms and notices that will help both consumers and contractors better comply with the law.

Staff Recommendation: *The Board should report to the Committees on the implementation of SB 30 (2004) and provide recommendations that simplify language while at the same time ensuring vital consumer information is disclosed properly.*

LICENSING ISSUES

ISSUE # 6: (PROOF OF LICENSURE.) CSLB has raised concerns that BPC § 7031 facilitates “unjust enrichment” to public agencies, prime contractors, and/or commercial/industrial project owners.

Background: Existing law requires that a contractor must be a “duly licensed contractor at all times” while working on a contracted project in order to receive compensation (BPC § 7031). The CSLB indicates that the courts have interpreted the provisions of BPC § 7031 to deny all compensation to contractors who are in violation of the licensing requirements even though the failure to comply occurred during a brief period during which work was performed.

CSLB claims that the application of this statute in this manner may facilitate “unjust enrichment” to public agencies, prime contractors, and/or commercial/industrial project owners, an unacceptable outcome within the spirit of the law. The Board sponsored legislation in 2013, SB 263 (Monning), seeking to modify BPC § 7031. Prior to its amendment, this bill would have provided that a contractor may pursue payment for any work on the contract while duly licensed, but preclude payment for work performed in a classification in which the contractor was not licensed, or was under license suspension, or under an expired or inactive license when the work was performed. The amendments to BPC § 7031 were removed in part because of the Senate Judiciary Committee’s concerns about weakening the existing consumer protection provided by this section.

It is also important to note that in *MW Erectors, Inc. v Niederhauser Ornamental and Metal Works Co., Inc., et al.* the California Supreme Court held, in relevant part: “The words ‘at all times’ convey the Legislature’s obvious intent to impose a stiff all-or-nothing penalty for unlicensed work by specifying that a contractor is barred from all recovery for such an ‘act or contract’ if unlicensed at any time while performing it.” (Refer *MW Erectors, Inc. v Niederhauser Ornamental and Metal Works Co., Inc., et al.*, Supreme Court of California, 30 Cal.Rptr.3d 755 (2005)]

CSLB has raised concerns that this statute represents a distortion in the marketplace and hurts business. Additionally, the Board states that neither individual consumers without the financial wherewithal to hire attorneys nor consumers who most often need CSLB's help utilize this provision of the law.

Staff Recommendation: *CSLB should discuss with the Committees the potential impact that the current approaches to BPC § 7031 has upon licensees. The CSLB should also advise the Committees of past efforts to resolve these issues and suggest possible solutions to this issue.*

ISSUE # 7: (FINGERPRINTING.) According to current law, any individual after January 1, 2005 must submit a fingerprint when applying for a license. Fingerprinting provides valuable information to the Board about past criminal convictions that may be substantially related to the contractor's classification. However, without retroactive fingerprinting, this leaves a large proportion of the existing licensees unscreened.

Background: Beginning January 1, 2005, all individuals listed as personnel of record on an original application, an application to add a classification to an existing license, an application to replace the qualifier, an application to report new officers, and an application for registration as a home improvement salesperson are required to submit fingerprints to the Board. The fingerprints are submitted to the California Department of Justice (DOJ) where they are compared to the records of the DOJ and the Federal Bureau of Investigation (FBI) to determine whether a criminal history exists.

CSLB staff in the Criminal Background Unit (CBU) review all criminal convictions to determine whether the crime is substantially related to the duties, qualifications, or functions of a contractor and to determine whether the applicant has demonstrated sufficient rehabilitation. CBU begins processing the conviction information on the same day that it is received by conducting a triage and clearance of all those applicants with no convictions and those with minor, clearable convictions, provided the applicant was honest on the application. Applicants who were not honest on the application but who have minor, clearable convictions and who, had they been honest on the application, would have been cleared are given the opportunity to withdraw the false application and submit new fees and application on which they accurately disclose their convictions. These withdrawal offers are also processed as part of the triage. CSLB indicates that for the last few years, the timelines for pulling the conviction records for review were held at less than 30 days, usually as low as one to two weeks.

For FY 2013/14, CSLB received 8,418 subsequent arrest and/or conviction notices, of which 1,282 were licensee felony arrest notices; of these, 416 complaints were opened and 249 were referred for further action, most of which resulted in legal action to suspend or revoke the license.

The number of subsequent arrest and conviction records received for licensed personnel has grown dramatically since fingerprinting was implemented in 2005. Further, only 46.9 percent of personnel associated with a license (approximately 195,000) had been fingerprinted as of February 2015. As more personnel associated with contractor licenses submit fingerprints, this workload is expected to grow significantly. Despite five CSLB BCPs that were approved since FY 2001/02, CSLB has implemented new mandates and programs, leaving the Board with 68 fewer authorized positions than in FY 2001/02.

To date, all of CSLB fingerprinting of licensees has been prospective; focusing upon new applicants or upon those who are added as personnel of record to an existing license. Up to this point, the law has

not required those persons who were issued licenses prior to the fingerprint requirement to submit fingerprint images to CSLB for criminal history background checks.

In 2009, Senator Negrete McLeod carried SB 389 to require various licensing programs under the DCA to ensure that all licensees are fingerprinted to obtain criminal history background checks, as well as notices of any future convictions. That bill would have required a number of boards, including CSLB, to obtain fingerprints from those licensees who had not previously been fingerprinted. SB 389 met serious opposition from a number of contractor associations, and ultimately failed passage in the Assembly Public Safety Committee.

At that time, based upon its experience fingerprinting new licensees and changes in personnel listed on the license, CSLB estimated that if all existing licensees were fingerprinted approximately 17% of those existing licensees would be found to have some type of criminal record that would be noted in the DOJ and FBI background check. It is likely that a number of those convictions would not be substantially related to the practice of contracting, and others would be so old they would not be relevant for current licensing purposes. However, it is still true that a number of those criminal records would involve convictions that are relevant to the activities for which the contractor holds the license. And without fingerprinting those individuals, it is unlikely that there would be any other way for the Board to be notified of those criminal convictions. Similar to Issue 5, retroactive fingerprinting would provide a preemptive and proactive approach to screen contractors practicing in our state.

Since protection of the public is the foremost priority of CSLB, it necessarily follows that it is essential for the Board to be informed of the criminal convictions of existing licensees.

Staff Recommendation: *CSLB should develop a plan and make recommendations to the Committees on an appropriate way to establish a fingerprint requirement for all existing licensees of the Board, so that the Board will receive criminal record information and subsequent arrest information from the DOJ and FBI.*

ISSUE # 8: (EVIDENCE OF FINANCIAL SOLVENCY.) Since the Board does not verify the \$2,500 requirement in capital required for licensure, it may not be accomplishing some of its goals. How will the Board require contractors to prove their financial solvency?

Background: BPC § 7067.5 requires that all applicants, and all licensees at renewal, demonstrate, as evidence of financial solvency, that his or her operating capital exceeds \$2500. This requirement is never verified and provides no consumer protection. With this elimination, the increase in the surety bond could make up for this deletion.

Staff Recommendation: *CSLB should inform the Board on how it will continue to financially protect consumers by deleting this capital elimination.*

ISSUE # 9: (SURETY BOND.) Since a consumer can make a claim against a contractor's surety bond, CSLB highlights that a bond increase of \$2,500 would provide greater consumer protection than the existing \$2,500 capital requirement.

Background: BPC § 7071.6 requires that an applicant or licensee have on file at all times proof of a \$12,500 contractor bond.

The surety bond requirement was last increased in 2007, when it was raised from \$10,000. Prior to that, in 2004, it was increased from \$7,500 to \$10,000. A bond increase of \$2,500 would provide greater consumer protection than the existing \$2,500 capital requirement since a consumer can make a claim against a contractor's surety bond.

In any case in which further financial information would assist the registrar in an investigation, the registrar may obtain such information or may require any licensee or applicant under investigation pursuant to this chapter to provide such additional financial information as the registrar may deem necessary.

The financial information required by the registrar shall be confidential and not a public record, but, where relevant, shall be admissible as evidence in any administrative hearing or judicial action or proceeding.

The registrar may destroy any financial information which has been on file for a period of at least three years.

Staff Recommendation: *CSLB should report to the Board on the necessity of this increase and how this increase would affect the number of cases referred to the arbitration process.*

ENFORCEMENT ISSUES

ISSUE # 10: (USE OF PEACE OFFICERS IN ENFORCEMENT EFFORTS.) The Director is able to designate certain CSLB enforcement staff as peace officers as part of the Board's enforcement efforts and advises the Committees that these officers take part in multi-jurisdiction investigations. Are all of the cross agency investigations these CSLB peace officers take part in necessary, appropriate and legal? Have CSLB peace officers gone too far in bringing outside agencies to CSLB efforts to enforce unlicensed activity?

Background: As outlined previously, the Board has Peace Officer (PO) positions within its enforcement division. Penal Code Section 830.3 was amended in 2010 (SB 1254, Leno, Chapter 643, Statutes of 2010) to increase the number of individuals who are eligible to be designated POs. The law provides that:

Persons employed by the Contractors State License Board designated by the Director of Consumer Affairs pursuant to Section 7011.5 of the Business and Professions Code, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 7011.5, and in Chapter 9 (commencing with Section 7000) of Division 3, of that code. The Director of Consumer Affairs may designate as peace officers not more than 12 persons who shall at the time of their designation be assigned to the special investigations unit of the board. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

CSLB states that these individuals' expertise, skills, knowledge, and abilities are, vital to combat construction-related crimes. According to CSLB, POs work with multiple jurisdictions to perform complex investigations and joint undercover operations, often targeting revoked licensees who

continue to illegally contract as well as “participate and lead multi-jurisdictional criminal investigation task forces.”

The CSLB website features press releases issued between 2010 and 2013 highlighting some of the outcomes of undercover sting operations that the Board undertakes regularly as a means of taking action against unlicensed activity. CSLB stated in press releases that the Board and its partners in law enforcement “are serious about enforcing our state’s consumer protection laws”, adding that “unlicensed, illegal activity that puts homeowners at risk and puts those who follow state laws at a competitive disadvantage will not be tolerated.”

Multiple press releases note individuals who were detained by U.S. Immigration and Customs Enforcement (ICE) during these sting operations which are designed to identify underground construction business. It appears over 40 individuals were detained by ICE as a result of the Board’s efforts. In a memo dated August 20, 2013, the CSLB Enforcement Division chief advised all CSLB staff of a DCA policy “that staff is not to invite ICE to any enforcement operations. Going forward SWIFT staff should not invite ICE agents to participate in any stings or sweeps. In addition, ICE should never be used in conjunction with any operation involving the Department of Industrial Relations.”

It is unclear why CSLB peace officers would include a federal agency focused on immigration status as part of its efforts to ensure that California consumers receive services by a licensed contractor, and it is further unclear whether the Board ever authorized this type of collaboration and what the goals of these targeted efforts are. It is troubling to think that the CSLB would somehow use its statutory mission of consumer protection and its enforcement efforts against unlicensed contracting activity to profile certain populations and alert federal agencies of supposed illegal activity that is vastly beyond the Board’s scope.

Staff Recommendation: *The Committees need to understand whether the Board was aware of and/or approved the actions of enforcement POs involved in cross agency stings involving ICE. The Board needs to advise the Committees whether ICE is still a partner organization for stings and whether Board POs ever alert ICE as to their sting efforts. The Board needs to provide any documentation in the form of memos, communication to staff and CSLB policies on how undercover operations are to be coordinated and conducted. The Committees need to evaluate whether CSLB should have the ability to designate peace officers as part of its enforcement efforts or whether consumers, the public and the Board would be better served by following the practice of almost every other DCA board that employs board-specific investigative staff who work with the DCA Division of Investigation when they are in need of, and when situations warrant, true peace officer involvement.*

ISSUE # 11: (LICENSEE IDENTIFICATION.) CSLB may share a licensee’s social security number with the Franchise Tax Board to see whether there are any outstanding tax liabilities. However, the Board is not allowed to share it with any other state agencies, agencies like EDD that may be of use in its enforcement efforts.

Background: Recently, DCA notified CSLB that the Board does not have statutory authority to share its licensees’ social security numbers (SSN) with other state agencies. However, CSLB believes that the sharing of this information is critical for the Board’s enforcement program.

Under BPC § 30, CSLB can share a licensee's application number to confirm whether there are any outstanding tax liabilities. If so, the Registrar can suspend a license for tax liabilities that are unresolved. Nevertheless, a licensee's social security number also plays an important role in enforcement purposes. The Board uses a SSN to target its enforcement actions. For instance, the Board will receive a tip that a licensee may not be fully compliant with all requirements (payroll withholding, workers' compensation, etc). Since EDD is the clearinghouse for leads, the Board then tells them that they suspect a licensee is not fully compliant. EDD reviews their records using their Automated Collection Enhancement System (ACES) database and makes a determination whether or not that person appears to be compliant, based on all the data they have on file. The database has information from the State Compensation Insurance Fund, so their review includes worker's compensation policies. They have many licensees that claim an exemption from worker's compensation, but many more that obtain only the minimum policy from State Fund and do not report their employees. For enforcement actions, through EDD, the Board has an 80% hit rate, meaning they found a significant violation on 80% of those Joint Enforcement Strike Force or Labor Enforcement Task Force activities.

CSLB states that this barrier will epiphenomenally create an increase in worker's compensation funds. If the Board is not allowed to double check worker's compensation policies through EDD, employees who are injured on the job but who are not insured by their employer can file a claim for payment from the Uninsured Employees Benefit Trust Fund (within the Division of Industrial Relations). This Fund is funded by an assessment on all worker's compensation policies sold in CA. CSLB believes that if more employers go without coverage, it could increase costs to the Fund, resulting in higher assessment on policies sold and hurting honest actors.

It would be helpful for the Board to inform the Committees as to how this restriction undermines consumer protection, cuts state revenue, and undercuts CSLB's ability to go after dishonest contractors.

Staff Recommendation: *CSLB should advise the Committees of what improvements it believes are necessary to allow the Board to achieve its goals.*

ISSUE # 12: (EMPLOYEE MISCLASSIFICATION.) Dishonest contractors misclassify employees as a means of evading taxes, which in turn cuts millions in state revenue and deprives workers of benefits. How does the Board plan on cracking down on these bad actors?

Background: Since the last Sunset Review of CSLB by the Committees, dishonest contractors are using innovative ways more than ever to evade taxes. Specifically, dishonest contracting companies will purposefully misclassify employees. In 2014, *McClatchy DC*, a national media newspaper, investigated the construction industry and the issues that face it. The investigative report reconfirms the misclassification problem in California and how it cuts millions of dollars in tax revenue needed to pay for critical social service programs. To avoid taxes, companies will label their workers as "1099", "pays own taxes", or "paid cash" in the withholding tax column of payroll documents. Treating workers as independent contractors leaves workers without workers compensation insurance and diminishes tax revenue for the state. California State Labor Commissioner Julie Su underscores that misclassification is "part of undermining our economy – illegally cutting costs and creating an unlevel playing field. Employers are trying to find other ways to classify working people to increase profit."

Moreover, misclassification can save an employer anywhere from 30% to 50% on payroll costs, the same as an employer who pays in cash. This practice allows a company to underbid for state and federal contracts and make a substantial profit. As mentioned, this situation cuts state funded social programs and denies the state its deserved revenue. *McClatchy DC* further writes that “law-abiding businesses are forced to pay higher taxes and expenses while being at a disadvantage in competing for jobs.”

To further complicate this issue, dishonest contractors will misidentify employee trades to pay lower rates and will modify hours to avoid paying workers a full week’s pay. Clearly, this issue is having epiphenomenal effects affecting government funds and jeopardizing all areas of the construction industry.

In no way does this issue attempt to suggest that all construction companies that label workers under these categories are avoiding taxes. However, these categories are the most vulnerable to misclassification and have the highest potential for abuse. While this issue is difficult to uncover, it would be beneficial for the Committees to hear how the Board is attempting to combat this conundrum.

Staff Recommendation: *CSLB should report to the Committees on how it intends to focus its efforts and enforcement activities to combat the practice of misclassification.*

ISSUE # 13: (ENFORCEMENT PRIORITIES.) Historically, the Board has focused much of its enforcement on unlicensed activities as compared to licensed activities. How does the Board balance its enforcement efforts between Licensed Contractors and Unlicensed Contractors and ensure both groups are complying with the law?

Background: Since the last Sunset Report, the Board has made great strides in improving its enforcement unit and regulating contractors. The Intake and Mediation Center (IMC) has proven to save a significant amount of money for consumers and settles close to 30% of complaints received. If IMC believes the case to be more severe or complex, the case can be referred to the Attorney General’s (AG) Office or the local district attorney. This entire process allows for the Board to take formal disciplinary actions against existing licensees (i.e., license revocations, license suspensions, and probationary licenses issued) and seeks to protect the consumers. While the numbers are lower for FY 2013-2014, this decrease number is strongly attributed to the economic slowdown.

To combat unlicensed activity, the Board developed the Statewide Investigative Fraud Team (SWIFT). This team seeks to identify and shut down unlicensed operators in the construction industry by setting up stings throughout the state. Between July 2013 to October 2014, SWIFT performed 414 sting and sweep days, which resulted in over 2000 legal actions. Specifically, 930 suspects received notice to appear citations for contracting without a license, illegal advertising, and workers compensation insurance violations. The number of convictions and arrests are unknown. The Board preemptively tackles persons who hold themselves out to be legitimate contractors. SWIFT investigators mostly use craigslist to locate suspected illegal contractors in areas. They invited suspects to the home to submit bids for jobs that sometimes include tree removal, a cement patio, an ornamental fence, painting, and tile work for floors and countertops. Nevertheless, while those who follow the Board believe that its enforcement actions are better than in the past, the Board has focused much of its attention and resources on the problems of unlicensed contracting.

At times the Board has been criticized for being too focused on unlicensed practitioners and not taking disciplinary action on its own licensees who violate the law. At this point, it seems the Board is taking a “reactive” stance when it comes to violations committed by existing licensees. In the Sunset Review Report, the Board insinuates that disciplinary action is taken after it “hears about contractors who are arrested and/or convicted through enforcement partners in local government, as well as other licensees and consumers.” Local news stations have produced several investigative reports demonstrating how some existing licensees depart from accepted trade standards (BPC § 7109) and/or abandon a contract (BPC § 7107). It is also important to note that four of the five common violations for which citations are issued relate to licensed contractors.

Clearly, this enforcement issue demonstrates an inherent tension within the Board to regulate both licensed and unlicensed contractors. Taking enforcement actions against licensed contractors who violate the law and against unlicensed contractors who disregard the licensing law requires a balancing of priorities and resources. It would be helpful for the Committees for CSLB to discuss its enforcement priorities, how it balances enforcement actions against licensed and unlicensed contractors, and what *preemptive* measures are being taken to prevent common violations.

Staff Recommendation: *CSLB should discuss with the Committees its priorities in enforcement, and how in protecting the public, it balances enforcement action against licensed contractors and unlicensed contractors. CSLB should also explain why it seems proactive on unlicensed contractors and reactive towards existing licensees.*

ISSUE # 14: (CONCERNS ABOUT UNDERGROUND INFRASTRUCTURE.) Despite the implementation of one-call centers, most contractors do not call these centers prior to excavating. How does CSLB plan on requiring contractors to call these centers beforehand?

Background: Since the natural gas pipeline explosion in San Bruno, California, there has been a heightened awareness of our state’s underground infrastructure. Gas leaks and excavation damage reports have made regular appearances in Bay Area television news programs and the pages of the San Francisco Chronicle and the San Jose Mercury News. However, gas pipeline accidents are not the only concern when excavating. Unsafe excavation near underground electric lines can injure workers, cut telecommunications fiber can knock out 911 services, and ruptured water lines can impact water quality and lead to sinkholes. Even when not injurious, damage to underground facilities, which are often located under streets, can be expensive and cause service outages.

To help mitigate the issue of hitting underground facilities, utilities organized one-call centers. Notably, California has two one-call centers—Underground Service Alert—North (USA North) and South (DigAlert)—that provide this service. Excavators are able to dial 811 and be routed to their nearest call center. The call centers will then alert the utilities with underground facilities in the area, and within 48 hours the utilities mark the location of their facilities in the proposed excavation area (usually in paint, if on pavement), aiding excavators in avoiding those buried pipes and conduits.

Despite this resource, there is no guarantee that excavators will use the call centers. To further complicate matters, there is no guarantee that utilities will even correctly mark their underground facilities and ensure safe excavation practices even if the facilities are correctly marked.

This issue has become very prevalent in the contractor's profession since the last Sunset Report. PG&E reported that in 2012 contractors and homeowners damaged PG&E facilities 1,750 times, and of those over 1,000 occurred when the excavator did not call the one-call center beforehand.

CSLB can currently take disciplinary action against licensees under BPC § 7110, which provides that willful or deliberate disregard of several specified statutes, including Article 2, commencing with section 4216 of the Government Code. Between 2011 and 2013, CSLB received 13 complaints. However, in 2014 they received 100 complaints. Clearly, this rising number of incidents demonstrates the need for CSLB to educate contractors about one call centers and excavation safety.

CSLB should inform the Committees on what the Board is doing to educate contractors on underground infrastructure.

Staff Recommendation: *The Board should report to the Committees on how it plans to educate existing and future licensees on underground infrastructure. How does CSLB plan on enforcing this and requiring contractors to call one-call centers?*

ISSUE # 15: (ARBITRATION). The practice in CSLB's arbitration program is, and always has been, to not award attorney fees. However, CSLB has learned that, increasingly, when a contractor prevails in arbitration and receives a monetary award, the contractor will use that award as a basis to pursue a civil action to recover attorney fees associated with his/her arbitration defense. This negatively affects the arbitration program, as CSLB staff now must warn consumers that if they do not prevail in arbitration, they could lose a significant amount of money in attorney fees if the contractor takes them to court. What are some recommendations that the Board believes would best mitigate this issue?

Background: The Contractors State License Board's (CSLB's) Arbitration Program is governed by BPC §§ 7085-7085.9. The program provides an alternative dispute resolution process, the purpose of which is to resolve consumer complaints equitably and efficiently.

Many disputes between consumers and contractors can be resolved efficiently and satisfactorily through arbitration. Arbitration is usually defined as an informal process in which two or more persons agree to let an impartial third person or panel make a final decision in a dispute between them. Because of the many advantages arbitration can offer, the CSLB offers arbitration for the resolution of disputes that meet certain criteria. The CSLB will pay for the hearing, the arbitrator, and the services of one board-appointed expert witness per complaint. Only contractors with clear disciplinary records can qualify for participation in arbitration. Complaints involving deceptive or fraudulent practices will continue to be investigated by the CSLB.

For a case to qualify for voluntary arbitration under BPC § 7085, each of the following apply:

- The dispute must involve damages greater than \$12,500 and less than \$50,000;
- The contractor must possess a license that was in good standing at the time of the alleged violation;
- The contractor must not have a record of prior violations;
- The contractor must not currently have a pending disciplinary action;
- The parties must not have previously agreed to private arbitration of the dispute, either in their contract or otherwise.

Depending on the type of defect, the complaint must be filed within either four or ten years after the alleged wrongful act or omission causing the dispute occurred, or within the duration of any written warranty for which breach is alleged. The four-year time period applies to disputes involving patent (obvious) defects and the ten-year time period applies to disputes involving latent (hidden) structural defects. (BPC § 7091).

"Voluntary" and "binding" are key terms used in reference to the arbitration program. Participation in the CSLB's arbitration program is voluntary for both parties. Therefore, if either party chooses not to participate, the dispute will not be arbitrated but will instead be investigated by the CSLB. However, if both parties agree to arbitration, they are agreeing to binding arbitration. In other words, both the consumer and contractor must comply with the decision of the arbitrator. In binding arbitration, parties who refuse to comply may be taken to court and have a judgment entered against them. In addition, licensed contractors who fail to comply with an award that is issued against them may have their licenses suspended or revoked.

CSLB was made aware, by Senator Darrell Steinberg's office, about difficulties in the program related to attorney's fees, which require statutory modification to remedy. The practice in CSLB's arbitration program is, and always has been, to not award attorney fees. However, CSLB has learned that, increasingly, when a contractor prevails in arbitration and receives a monetary award, the contractor will use that award as a basis to pursue a civil action to recover attorney fees associated with his/her arbitration defense. This negatively affects the arbitration program, as CSLB staff now must warn consumers that if they do not prevail in arbitration they could lose a significant amount of money in attorney fees if the contractor takes them to court.

After discussing proposed changes with Senator Steinberg's staff, CSLB agreed to sponsor AB 993 to address this issue. AB 993 was held in the Senate Judiciary Committee review. For CSLB, the most significant element of AB 993 was the addition of language to BPC § 7085.5 (r)(3):

“A party that submits a dispute to arbitration pursuant to this section waives any right to recover attorney's fees, or to challenge an arbitrator's award of attorney's fees, in a civil action regarding the dispute.”

It is important to note that CSLB outlines in the Sunset Review Report various edits to the Assembly Judiciary Committee's proposed language for BPC §§ 7085-7085.9. CSLB should report to the Committees on how the two versions compare and the reasoning behind the Board's proposed language.

Staff Recommendation: *CSLB should discuss with the Committees the potential impact that the current approaches to BPC §§ 7085-7085.9 has upon consumers. The CSLB should also advise the Committees of past efforts to resolve these issues and suggest possible solutions to this issue.*

**CONTINUED REGULATION OF THE PROFESSION BY THE
CURRENT MEMBERS OF CSLB**

ISSUE # 16: (CONTINUED REGULATION BY CSLB.) Should the licensing and regulation of contractors be continued and be regulated by the current Board membership?

Background: The health, safety and welfare of consumers are protected by a well-regulated contractor profession. CSLB has shown over the years a strong commitment to improve the Board's overall efficiency and effectiveness and has worked cooperatively with the Legislature and this Committee to bring about necessary changes. While the Board needs to review some of its enforcement practices to ensure they are appropriate, legal and warranted, CSLB should be continued with a four-year extension of its sunset date so that the Committee may review once again if the issues and recommendations in this Paper and others of the Committee have been addressed.

Staff Recommendation: *Recommend that contractors continue to be regulated by the current CSLB members in order to protect the interests of the public and be reviewed once again in four years.*