

Date of Hearing: June 21, 2016

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Rudy Salas, Chair

SB 465(Hill) – As Amended June 8, 2016

SENATE VOTE: 40-0 [vote not reflective of this bill version]

SUBJECT: Building construction: contractors: discipline: reporting: building standards

SUMMARY: Requires the Contractors State Licensing Board (CSLB), by January 1, 2018, to enter into an interagency agreement with the Division of Occupational Safety and Health (DOSH) and other state or local agencies, as necessary, to ensure that specified disciplinary information relating to a licensed contractor is timely reported to the board; requires a licensee, within 90 days, to report to the Registrar of the CSLB in writing the occurrence of any conviction of any felony or conviction of any crime that is substantially related to the qualifications, functions, and duties of a licensed contractor; requires the California Building Standards Commission (Commission) to convene a specified working group to investigate existing building standards associated with the construction, inspection, and maintenance, as specified, and recommend any statutory changes or changes to the California Building Standards Code (CBSC); and, requires the CSLB to report to the Legislature the results of a study to determine if the CSLB's ability to protect the public would be enhanced by regulations requiring licensees to report judgments, arbitration awards against them, or settlement payments of claims for construction defects they have made in excess of a certain amount to be determined by the board, as provided.

EXISTING LAW:

- 1) Provides for the licensure and regulation of more than 300,000 contractors under the Contractors' State License Law by the CSLB within the Department of Consumer Affairs (DCA). The CSLB is under the direction of the registrar of contractors (Registrar). (Business and Professions Code (BPC) Section 7000 *et seq.*)
- 2) Requires licensees to notify the Registrar in writing of any unsatisfied final judgment imposed on the licensee, and authorizes the Registrar to automatically suspend the license on the date the Registrar is informed of an unsatisfied final judgment if the licensee failed to notify the Registrar in writing within 90 days of that judgment, as specified. (BPC Section 7071.17(b))
- 3) Provides that a conviction of a crime, substantially related to the qualifications, functions and duties of a contractor, constitutes a cause for disciplinary action, and that the record of the conviction shall be conclusive evidence thereof. (BPC Section 7123)
- 4) Provides that a plea or verdict of guilty, or a conviction following a plea of nolo contendere, is deemed to be a conviction, and that the CSLB may order a license to be suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, as specified. (BPC Section 7124)
- 5) Requires the Registrar to make available to the public the date, nature, and status of all complaints on file against a licensee that do either of the following:

- a) Have been referred for accusation; or,
 - b) Have been referred for investigation, after a determination by CSLB enforcement staff, that a probable violation has occurred, and have been reviewed by a supervisor, and involve allegations that if proven would present a risk of harm to the public and would be appropriate for suspension or revocation of the contractor's license or criminal prosecution. (BPC Section 7124.6 (a))
- 6) Requires the CSLB to create a disclaimer that shall accompany the disclosure stating that it is an allegation and any other information the CSLB determines would be relevant to a person evaluating the complaint. (BPC Section 7124.6 (b))
 - 7) Provides that a complaint resolved in favor of the contractor shall not be subject to disclosure. (BPC Section 7124.6(c))
 - 8) Requires the Registrar to make available to the public the date, nature, and disposition of all legal actions, subject to the following:
 - a) Limits the disclosure of legal actions for citations from the date of issuance for five years after the date of compliance if no additional disciplinary actions have been taken against the licensee during that period;
 - b) Limits the disclosure of accusations that result in suspension, stayed suspension, or stayed revocation of the contractor's license from the date accusation is filed for seven years if no additional disciplinary actions have been taken against the licensee during that period; and,
 - c) All revocations that are not stayed shall be disclosed indefinitely from the effective date of the revocation. (BPC Section 7124.6(e))

THIS BILL:

- 1) Requires the CSLB, by January 1, 2018, to enter into an interagency agreement with the DOSH to ensure that specified disciplinary information relating to a licensed contractor is timely reported to the CSLB; requires the CSLB to enter into an interagency agreement with any other state or local agency the CSLB deems to be in possession of information relevant to its priority to protect the public.
- 2) Requires a licensee to report to the Registrar in writing within 90 days after the licensee obtains knowledge of the occurrence of any of the of the following events:
 - a) Conviction of any felony; or,
 - b) Conviction of any crime that is substantially related to the qualifications, functions, and duties of a licensed contractor.
- 3) Specifies that failure of the licensee to report to the Registrar the events in paragraph 2) above is grounds for disciplinary action.
- 4) Requires the Commission to convene a specified working group to investigate existing building standards associated with the construction, inspection, and maintenance of exterior

elevated elements; and, requires the working group to report to the Commission any findings and possible recommendations for statutory changes or changes to the CBSC. By January 1, 2018, the bill would also require the working group to provide that report to the Senate Committee on Business, Professions, and Economic Development (BPED).

- 5) Requires the working group to include, but not be limited to representatives from the Department of Housing and Community Development, the Division of the State Architect-Structural Safety, the Office of the State Fire Marshal, local building officials and plan checkers, structural engineers, apartment owners and managers, building industry, wood, steel and concrete industries, and any other interested parties.
- 6) Requires the working group to review related documents and reports, including, but not limited to, forensic reports related to exterior elevated element failures in California, reports and studies used in the development of national and state building codes, and any other material deemed relevant to determine if any changes need to be made to the construction specifications or inspection requirements, excluding routine inspections that occur after project completion, contained within the CBSC.
- 7) Requires the working group to submit any changes to the CBSC that are needed as soon as possible in order to protect the public to the Commission for consideration as soon as possible.
- 8) Requires the board, by January 1, 2018, to report to the Legislature the results of a study to determine if the boards' ability to protect the public would be enhanced by regulations requiring licensees to report judgments, arbitration awards against them, or settlement payments of claims for construction defects they have made in excess of a certain amount to be determined by the board, as provided. The bill would require the board to consult with licensees, insurers, consumers, and other interested parties during the development of the study.
- 9) Requires the state to reimburse local agencies and school districts for certain costs mandated by the state and establish procedures for making that reimbursement.

FISCAL EFFECT: Unknown. This bill has been keyed fiscal by the Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author, this bill is needed to amend state law because, "Currently, state law does not require contractors to report defect settlement cases to the CSLB. Such disclosure requirements are routine for such professionals as doctors, architects, and engineers. This bill would empower the CSLB, like other boards, to be made aware of licensee behavior for which they may need to take swift action to promote public health and safety. The bill additionally increases transparency so that consumers have the tools necessary to make an informed decision about the quality of the contractor they hire."

Background. According to the author, this bill increases transparency so that consumers have the tools necessary to make an informed decision about the quality of the contractor they hire. The bill also establishes greater accountability for contractors by ensuring the public has critical disciplinary information about licensees. As an example of this need for transparency, the author notes the tragic Berkeley, California balcony collapse, which killed six people. According to the

San Francisco Chronicle, the company responsible for that project reportedly paid out \$26.5 million in construction defect settlements in just three years, yet the CSLB, the state agency tasked with protecting consumers from possibly lethal construction, remained ignorant of such settlements. This is because licensees are not required by law to report the result of incidents that are not handled directly by the CSLB, to the Registrar. As a result, information that can be used to help consumers protect themselves from possible fraud or misrepresentation is not known.

Complaint Investigation Process. The Registrar of the CSLB is required to make available to the public civil action settlements, binding arbitration awards, and administrative actions that are required to be reported to the CSLB if the CSLB refers those settlements or arbitration awards for investigation after staff determines, and a supervisor has reviewed, that a probable violation has occurred and involves allegations that, if proven, would present a risk of harm to the public and would be appropriate for suspension or revocation of the licensee, or criminal prosecution.

Similar to other regulatory entities, in order to determine whether a complaint is appropriate for investigation, the CSLB reviews information on a case-by-case basis, looking at such factors as the severity of the allegations, and whether a licensee has a history of complaints or discipline. Complaints involving a threat to the public's health and safety, and cases where consumers have suffered a significant financial injury are given the highest priority. As a result, only those settlements or arbitration awards that are investigated, and would subject a licensee to suspension, revocation, or criminal prosecution, not merely just a citation, would be made available to the public, which is the type of information that is already disclosed. In addition, licensees are already required to report unsatisfied final judgments to the CSLB, and are required to disclose convictions when applying for licensure. For licensees that have already been fingerprinted by the CSLB, the CSLB will receive notifications from the Department of Justice when that licensee is the subject to additional criminal action; however, not all licensees have submitted their fingerprints to the CSLB.

California Building Standards Commission. The California Building Standards Commission (Commission) is responsible for developing building standards for state owned buildings, including University and State College buildings, and for developing green building standards for most buildings except for housing, public schools, and hospitals. The Commission publishes the CBSC in Title 24 of the California Code of Regulations every three years and its supplements, such as the California Green Building Standards Code, in intervening years.

According to the author, on April 19, 2016, the Commission formally voted to assemble an ad hoc committee to examine the facts of the Berkeley balcony collapse and determine whether the CBSC needs to be updated. In July of 2015, the Berkeley City Council sent a letter to the Commission urging the Commission to revise CBSC to require steel reinforcements on all new balcony designs, after experts determined dry rot was the cause of the balcony collapse. This bill will require the CSLB to conduct a study to determine if the CSLB's ability to protect the public would be enhanced by greater regulations.

Similar Reporting Requirements Exist for Other Professions. Architects, and the companies that insure them, are required to report to the California Architects Board, any civil action judgment, settlement, arbitration award, or administrative action resulting in a judgment, settlement, or arbitration award against the licensee in any action alleging fraud, deceit, negligence, incompetence, or recklessness by the licensee in the practice of architecture if the amount or

value of the judgment, settlement, or arbitration award is five thousand dollars (\$5,000) or greater. The report is made within 30 days of payment of all or any portion of the action. This also applies if a party to the civil action, settlement, arbitration award, or administrative action is or was a sole proprietorship, partnership, firm, corporation, or state or local governmental agency in which a licensee is or was an owner, partner, member, officer, or employee and is or was a licensee in responsible control of that portion of the project that was the subject of the civil judgment, settlement, arbitration award, or administrative action. The licensee will not be found to have violated a confidential settlement agreement or other confidential agreement by providing a report to the CSLB.

Similar reporting requirements exist for other licensed professionals, including engineers (BPC Section 6770), land surveyors (BPC Section 8776), medical professionals (BPC Section 801), and accountants (BPC Section 5063).

Prior Related Legislation. SB 467 (Hill), Chapter 656, Statutes of 2015, among other things, extends the sunset date for the CSLB until January 1, 2020, repeals a requirement relating to evidence of financial solvency, and increases the amount for a licensee to be bonded from \$12,500 to \$15,000, as specified.

AB 2570 (Hill), Chapter 561, Statutes of 2012, prohibited licensees of any board, bureau or program under the DCA from including a “regulatory gag clause” in civil settlement agreements.

SB 679 (Berryhill), Chapter 471, Statutes of 2013, revised the monetary threshold for a licensed engineer or land surveyor to report a civil action settlement or administrative action to the Board for Professional Engineers, Land Surveyors, and Geologists (BPELSG) from “\$50,000 or greater” to “greater than \$50,000,” and requires a licensed engineer or land surveyor to report any civil action judgment or binding arbitration award or administrative action of \$25,000 or greater.

SB 1549 (Figueroa), Chapter 691, Statutes of 2004, required licensed engineers and land surveyors to report to the BPESLG a felony conviction or a civil judgment, settlement, arbitration award, or administrative action award of \$50,000 or more, occurring on or after July 1, 2006, if funds are appropriated for that purpose, as specified, and required a court rendering the judgment or conviction and a local agency, if self-insured, to report to the board.

ARGUMENTS IN SUPPORT:

The California Newspapers Publishers Association writes in support, “By requiring contractors to report this information, [this bill] will improve oversight of these operations and assist the public in identifying repeat offenders, or the existence of unsafe and unsettling patterns and practices in the industry.”

The Center for Public Interest Law writes in support, “Whereas in every other example, the requirements for self-reporting are set by fiat, in statute, by the Legislature, the author has amended SB 465 to empower the expert CSLB to simply to review the issue and offer its nonbinding observations...”

The City of Berkeley, Office of the Mayor, writes in support, “[This bill] would provide transparency for the community when dealing with contractors and will provide additional

information that might prevent future tragedies like the one that happened in our community on June 16, 2015.”

The Conference of California Bar Associations (CCBA) writes in support, “For far too long, contractors, builders and their lawyers, in cooperation with plaintiffs and their lawyers, have been able to keep the facts about substandard, dangerous and toxic conditions secret from public view by agreeing to settlements in public litigation that keep the facts of the case secret. [This bill] would take a small but crucial step towards increased public protection by laying the groundwork for prohibiting these dangerous secrets relating to builders and contractors from being hidden from the [CSLB].”

ARGUMENTS IN OPPOSITION:

A coalition of associations* are Opposed-Unless-Amended stating, “While we believe that [this bill’s] requirements in Section 3 to investigate and pursue changes to the building code, are likely to protect consumers and we support these provisions, we don’t believe the provisions of Section 2 of the bill will have the same effect. The requirements in the bill that CSLB gather information on construction defect case results will not provide the Board with leads that have any significant chance of identifying bad actors. Instead, it will only result in a waste of staff time and resources.”

POLICY ISSUES:

Some of the information to be collected in the CSLB’s study may be confidential. Although the CSLB has access to this information, some information may not be appropriate to share with the public in the final report to the Legislature. For example, complaints referred to arbitration are not subject to disclosure pursuant to BPC Section 7085.9. The author should amend the bill to explicitly preserve confidentiality of that information.

AMENDMENTS:

To address the confidentiality concern raised above, the author should amend the bill to specify that any information or data collected by the CSLB is to remain confidential to the fullest extent of the law.

REGISTERED SUPPORT:

California Newspapers Publishers Association
Center for Public Interest Law
City of Berkeley, Office of the Mayor
Conference of California Bar Associations (CCBA)

REGISTERED OPPOSITION:

California Building Industry Association (CBIA)*
California Chapters of the National Electrical Contractors Association (NECA)*
California Legislative Conference of the Plumbing, Heating and Piping Industry (CLC)*
Northern California Allied Trades (NCAT)*
Southern California Contractors Association (SCCA)*
United Contractors (UC)*

Wall And Ceiling Alliance (WACA)*
Associated General Contractors of California*
CalSMACNA*
Construction Employers Association (CEA)*

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