November 3, 2011
Sacramento, California

CONTRACTORS STATE LICENSE BOARD

Executive/Legislative Committee Meetings

CONTRACTORS STATE LICENSE BOARD
9821 Business Park Drive, Sacramento, California 95827
Mailing Address: P.O. Box 26000, Sacramento, CA 95826
800-321-CSLB (2752)
www.cslb.ca.gov ▪ CheckTheLicenseFirst.com

STATE OF CALIFORNIA
Governor Edmund G. Brown Jr.

NOTICE OF COMMITTEE MEETINGS

The Contractors State License Board (CSLB) will hold Committee meetings on November 3, 2011, from 11:00 a.m. to 2:00 p.m. via teleconference at the following teleconference sites:

John C. Hall Hearing Room CSLB Headquarters 9821 Business Park Drive Sacramento, CA 95827	Big Bear Lake City Hall 39707 Big Bear Blvd. Big Bear Lake, CA 92315	AAA NCNU 1900 Powell Street, 11th floor Emeryville, CA 94608

The Executive Committee will begin at 11:00 a.m., followed by the Legislative Committee.

TELECONFERENCE NOTICE (pursuant to Government Code section 11123(b)): One or more Board members may participate in this meeting via teleconference for the benefit of the Board. The public teleconference site(s) are as noticed in this agenda. The meeting is open and the public is invited to attend. If you need reasonable accommodation, as defined by the Americans with Disabilities Act, or if you have any questions regarding this meeting, contact the Registrar's Office at (916) 255-4000.

Please note that all times indicated and the order of business are approximate and subject to change. Board members who are not members of the Committee may be attending the Committee meetings.

EXECUTIVE COMMITTEE AGENDA

11:00 a.m.

Executive Committee Members
Bob Lamb, Chair/ Joan Hancock/ Paul Schifino / Lisa Miller-Strunk

A. Call to Order – Chair's Remarks
B. Public Comment Session
C. Administration and IT Update
D. Budget Update
E. Update on Current Hiring Freeze and Vacancy Rate
F. Review and Possible Recommendation Regarding the Board Member Administrative Procedure Manual
G. Update on FY 2011-12 Strategic Plan and FY 2012-13 Strategic Planning Process
H. Adjournment

LEGISLATIVE COMMITTEE AGENDA
Immediately Follows Executive Committee Meeting

Legislative Committee Members
Mark Thurman, Chair / Bob Brown / Louise Kirkbride/ Jim Miller/ Paul Schifino

A. Call to Order – Chair's Remarks
B. Public Comment Session
C. Review and Consideration of Legislative Proposals for the Upcoming Legislative Session:
   1. Amendment to Business and Professions Code Section 7011.4 – Notice to Appear Authority
   2. Amendment to Business and Professions Code Section 7011.8 – False Complaints Against Contractors
   3. Amendment to Business and Professions Code Section 7026.1 – Unlicensed Construction Consultants
   4. Amendment to Business and Professions Code Section 7026.1 – Rental Equipment Providers
   5. Amendment to Business and Professions Code Section 7076 – Events Resulting in Cancellation of a License
   6. Amendment to Business and Professions Code Section 7106.5 – Effect of Expiration or Suspension of License on Jurisdiction of Registrar
D. Adjournment

November 3, 2011
Sacramento, California

CONTRACTORS STATE LICENSE BOARD

Executive Committee

AGENDA ITEM A

Call to Order – Chair's Remarks

Roll is called by the Committee Chair.

Executive Committee Members:

Bob Lamb, Chair

Joan Hancock

Paul Schifino

Lisa Miller-Strunk

Committee Chair Bob Lamb will review the scheduled Board actions and make appropriate announcements.

AGENDA ITEM B

Public Comment Session

Members of the public may address the committee at this time.
The Committee Chair may allow public participation
during other agenda items.

AGENDA ITEM C

Administration and IT Update

CONTRACTORS STATE LICENSE BOARD

STATISTICS SUMMARY

Applications Received	2009	2010	2011
May	3,356	3,027	3,195
June	3,295	3,172	3,393
July	3,154	2,966	2,082
August	3,105	3,137	2,801
September	2,953	2,904	2,572
Total	**15,863**	**15,206**	**14,043**

Original Licenses Issued	2009	2010	2011
May	1,089	1,442	1,099
June	1,767	1,547	1,178
July	1,090	1,134	1,118
August	1,210	1,138	1,234
September	1,115	1,140	1,097
Total	**6,271**	**6,401**	**5,726**

Licenses Renewed	2009	2010	2011
May	12,384	10,171	10,344
June	10,944	10,912	8,541
July	9,287	13,287	9,291
August	9,439	10,710	11,856
September	9,957	10,816	9,863
Total	**52,011**	**55,896**	**49,895**

HIS Registrations Renewed	2009	2010	2011
May	119	53	114
June	128	184	137
July	108	132	99
August	89	110	139
September	117	113	114
Total	**561**	**592**	**603**

License Population by Status	October 2009	October 2010	October 2011
Active	249,735	241,460	236,700
Inactive	62,205	65,943	67,852
Subtotal	311,940	307,403	304,552
Other /1	387,134	406,182	422,289
Expired	333,691	349,966	363,387
Expired % of Other	86.2%	86.2%	86.1%
Grand Total	**699,074**	**713,585**	**726,841**

/1 "Other" includes the following license status categories: cancelled, cancelled due to death, expired, or revoked.

HIS Registration Population by Status	October 2009	October 2010	October 2011
Active	7,134	7,651	8,466
Other	74,144	76,744	79,492
Total	**81,278**	**84,395**	**87,958**

Complaints By Fiscal Year	2008/09	2009/10	2010/11
Received	20,939	19,876	21,320
Reopened	1,088	1,010	1,076
Closed	22,523	21,532	22,483
Pending (As of June 30)	4,567	3,958	3,891

CSLB Position Vacancies	October 2010	October 2011
Administration	3	7
Executive	1	2
Public Affairs	1	1
IT	2	4
Licensing	8	20
Enforcement	15	33
Testing	1	6
Total	**31**	**73**

ADMINISTRATIVE PROGRAM UPDATE

Personnel Update

Examinations

DIVISION	EXAM	STATUS
Enforcement	Enforcement Representative I	Continuous merge; Statewide at CSLB testing centers.
Information Technology	Assistant Information Systems Analyst	Continuous Filing; Open exam.
	Associate Information Systems Analyst	Continuous Filing; Open exam.
	Associate Government Program Analyst	Continuous Filing; Open exam; online testing.
	Program Technician II	Completed; List Date Sept 2, 2011.
Testing	Test Validation & Development Specialist II	Continuous testing.
	Staff Services Manager I	Continuous Filing; Open exam; online testing.
	Staff Services Manager II	Continuous Filing; Open exam; online testing.
	Staff Services Manager III	Continuous Filing; Open exam; online testing.

All CSLB vacancies have been advertised with the anticipation that the special fund agencies will be exempt from the hiring freeze. Certification lists that contain SROA names will not be forwarded to programs until CSLB receives notice that the freeze has been lifted; we have not yet received notification.

Positions

As of October 18, 2011, CSLB had 73 vacant positions. Between August 18, 2011 and October 18, 2011, CSLB had 2 interdepartmental transfer, 5 internal transfers, and 1 promotion.

The following table illustrates the vacancy breakdown as of October 18, 2011:

DIVISION	AUTHORIZED PY'S	VACANCIES
Administration	31	7
Enforcement	222	33
Executive/Public Affairs	12.5	3
Information Technology	21	4
Licensing	115	20
Testing	31	6
TOTALS	**432.5**	**73**

***Note**: This does not include vacant positions for which hiring commitments have been made.*

Business Services Update

Space/Leasing/Facilities:
SAN FRANCISCO – The lease has been renewed through June 30, 2018. Facility upgrades to be completed are bullet-proof glass and a new front counter.

BAKERSFIELD – Completed a site search for a new office. Three selected locations have been submitted to the Department of General Services for negotiations with the lessors.

FRESNO – Reconfiguring testing center modular furniture to be spaced more evenly, and installing a public counter with bullet-proof glass for the Enforcement Unit for better security and safety.

OXNARD – Installing two new card readers, one in the lobby door and one in the break room door. These will restrict the public from being able to enter the office. An additional door from the break room to the testing area is being installed. This will allow staff direct access from the testing center to the break room so they can provide assistance in an emergency. In addition, the testing center modular furniture is being reconfigured.

HEADQUARTERS – Installed new mill work in the front counter for additional computers that are used for the acceptance of electronic payment (credit cards).

Contracts in process:

- Shredding for Field Offices
- CHP for Standby Security
- Maintenance for Mail Slicer Machine
- Maintenance for Inserter Machine
- Printing of License Law Book

October 19, 2011, the Invitation for Bid (IFB) for Pre-Sort Services was released to the public, with a required response date of December 13, 2011. Anticipated start date of the contract is January 26, 2012. The contract will allow CSLB to meter mail at a reduced rate; thereby, earning a substantial savings in postage costs.

In addition, CSLB is working with DCA to implement the new requirements for utilizing Expert Consultants in the Testing and Enforcement divisions. Based on the new requirements, approximately 475 contracts will have to be submitted to DCA to utilize Expert Consultants. This will significantly increase workload for CSLB Contracts staff.

Fleet
CSLB is continuing to implement the fleet reduction plan, per the Governor's Executive Order, and is working with DCA to meet DGS fleet requirements. As such, CSLB is beginning to survey any vehicle with a total odometer reading of > 120,000 miles, or vehicles that have been deemed as more cost-effective to survey rather than retain, per the OFA Fleet Handbook.

Business Continuity Plan
The 2011 CSLB Business Continuity Plan was completed and submitted to DCA on September 30, 2011.

Property Inventory Control
Staff is working to complete a physical inventory of all CSLB offices. Current focus is to identify and document all equipment that includes an Information Technology (IT) component. Information is being gathered from DCA regarding policies and procedures on Inventory and Property Control and staff are working to develop an electronic physical inventory system that would support the agency requirements.

Records Management
The 2010-11 California Records Information Management (CalRIM) Report was completed and submitted to DCA. This report identifies how many records CSLB has on hand, and how many records have been destroyed, for the respective fiscal year. The information is provided annually to the Department of General Services.

To date, approximately 20,000 expired/cancelled records have been purged from the CSLB File Room, in accordance with the Records Retention Schedule.

IT PROGRAM UPDATE

Information Technology Staffing Challenges:

1. The IT division has four vacant positions:
   - Two positions were cut to comply with Governor Schwarzenegger's Executive Order S-10-01, which required state agencies to reduce the state workforce by 5%.

2. Two remaining positions have been awaiting freeze exemption approval since June 2011. A contract was submitted to augment IT staffing needs; however, that contract was not approved due to various government codes and Executive Order B-3-11, which prohibits state agencies from initiating or increasing personal services contracts to compensate for the effects of hiring restrictions (hiring freeze).

3. Two IT staff have been redirected to work on the BreEZe system requirements and provide technical management.

4. Two IT staff have been redirected to work on the California Email System (CES) Project, a legislatively mandated project (AB2404) that requires state agencies to consolidate their email to a state-hosted system.

5. Due to upcoming retirements, staff cross-training is under way.

Only the most critical projects and on-going system maintenance are being addressed as a result of these staffing challenges.

Limited Liability Company (LLC)

Senate Bill 392, chaptered in 2010, authorizes CSLB to issue a contractor license to a limited liability company under the state Business and Professions Code, commencing no later January 1, 2012. The responsible managing manager, responsible managing officer, responsible managing member, or responsible managing employee of the limited liability company can qualify for this license.

- **November 2011 Status:** IT's Programming staff completed Phase I and Phase II is under way. Information-gathering sessions are under way with Licensing staff to further refine the requirements. Some applications have been modified, new data elements/fields added, and the databases modified. IT is on target for the January 1, 2012, production date.

- **September 2011 Status:** Programming staff are testing the changes made to our system to increase action codes on the license; this is the first phase of the LLC changes. Once this has been completed, Phase II of the LLC project will begin. In August IT staff began working weekends in order to meet the January 2012 deadline.

- **June 2011 Status**: The individual working on this project unexpectedly retired in May; another individual was redirected to work on this project. In May, the new person was

cross-trained; thus, the production date is back on track and IT is coordinating with Licensing on the requirements.

- **April 2011 Status**: Continue to work on the requirements with Licensing. IT has redirected 1½ staff to work full time on this project. Upon receipt of requirements, IT will determine if additional staffing needs to be added.

- **Feb 2011 Status**: CSLB Information Technology (IT) staff began working with the Licensing division to develop the business rules to apply to the automated system. IT anticipates that these changes will take most of 2011 to complete; user testing is planned for November and December 2011, with implementation by January 2012.

CSLB Website

The Contractors State License Board (CSLB) Web Application Server for CSLB's website (www.cslb.ca.gov) has been under attack since June 2011 by malware referred to as "bots." ("Bot" is short for "robot." In computing, bots are small programs that perform automated tasks that imitate human activity.)

In the case of CSLB, these are malicious bots that are pulling up to 200,000 record requests at a time from the server; some days, multiple bots are running concurrently. This is known as Web scraping or Web data extraction. The Web Application Server cannot accommodate this high volume. (For perspective, in fiscal year 2010-11, approximately 4.5 million Instant License Check requests were performed or about 12,300/day.)

The impact ranged from extremely slow performance to the Web Application Server crashing.

Status: The issue is currently resolved; bots are being blocked or the bot terminated once the search reaches a specific number of searches.

BreEZe

BreEZe will include e-payment/online licensure, licensing and enforcement, and imaging functions as well as workflow.

DCA has signed the contract with Accenture. The vendor started in late September and is currently working with state staff to define the requirements for Phase I and develop standards for various data elements and interfaces. CSLB has two business subject matter experts (SME's) as well as two IT staff working with the BreEZe team to define requirements.

The BreEZe Change Control Board has been established; three meetings have been conducted. Chief Deputy Registrar Cindi Christenson is a member of this board. At this time, the primary function of this board is to review and approve changes to current systems that will impact BreEZe requirements and/or changes to BreEZe requirements that are not within the original scope.

There is a soft freeze on modifications to our automated system. Because changes made to our current system could impact BreEZe requirements, CSLB is required to submit Requests for Change to the BreEZe Change Control Board for approval. To date, CSLB has not had any changes that would impact the BreEZe requirements.

California Email System Mail

Executive Order S-03-10 mandates that all agencies transition to the State's shared email system (AKA: California Email System (CES) Mail Project). The departments that fall under this executive order are being moved in three waves. CSLB (Amy Cox-O'Farrell) is leading the CES Project for the Department of Consumer Affairs. CSLB and the Medical Board of California (MBC) are the only two entities in the pilot, which is schedule for October/November 2011. Upon successful completion of the pilot; the remainder of the Department of Consumer Affairs will move to CES mail in January 2013.

AGENDA ITEM D

Budget Update

CONTRACTORS STATE LICENSE BOARD

BUDGET UPDATE

❖ Fiscal Year (FY) 2011-12 CSLB Budget and Expenditures

- Through September 30, 2011, CSLB spent or encumbered $15 million, roughly 25 percent of its FY 2011-12 revised budget. The following chart provides a summary of the revised CSLB budget for FY 2011-12, along with the first quarter FY 2011-12 expenditures:

EXPENDITURE DESCRIPTION	FY 2011-12 REVISED BUDGET	SEPTEMBER 2011 EXPENSES	BALANCE	% OF BUDGET REMAINING
PERSONNEL SERVICES				
Salary & Wages (Staff)	22,614,562	4,904,987	17,709,575	78.3%
Board Members	15,900	1,200	14,700	92.5%
Temp Help	195,069	135,884	59,185	30.3%
Exam Proctor	41,168	29,624	11,544	28.0%
Overtime	6,575	18,538	-11,963	-181.9%
Staff Benefits	8,857,294	2,023,665	6,833,629	77.2%
Salary Savings	-2,081,340		-2,081,340	
TOTALS, PERSONNEL	**29,649,228**	**7,113,898**	**22,535,330**	**76.0%**
OPERATING EXPENSES AND EQUIPMENT				
Operating Expenses	21,198,198	7,019,964	14,178,234	66.9%
Exams	435,882	70,041	365,841	83.9%
Enforcement	8,279,124	842,969	7,436,155	89.8%
TOTALS, OE&E	**29,913,204**	**7,932,974**	**21,980,230**	**73.5%**
TOTALS	**59,562,432**	**15,046,872**	**44,515,560**	**74.7%**
Scheduled Reimbursements	-353,000	-52,743	-300,257	
Unscheduled Reimbursements		-33,133	33,133	
TOTALS, NET REIMBURSEMENTS	**59,209,432**	**14,960,996**	**44,248,436**	**74.7%**

❖ Revenue

- CSLB received the following revenue amounts through the end of the first quarter, FY 2011-12:

Revenue Category	Through 9/30/2011	Percent of Revenue	Change from prior year (9/30/2010)
Duplicate License/Wall Certificate Fees	$26,264	0.2%	-1.2%
New License and Application Fees	$2,292,124	14.2%	-4.8%
License and Registration Renewal Fees	$12,963,033	80.2%	0.0%
Delinquent Renewal Fees	$551,915	3.4%	-4.8%
Interest	$0	0.0%	0.0%
Penalty Assessments	$292,415	1.8%	53.7%
Misc. Revenue	$29,489	0.2%	-23.3%
Total	**$16,155,240**	**100.00%**	**-0.3%**

❖ FY 2011-12 CSLB Budget and Adjustments

- The following table includes adjustments to the FY 2011-12 CSLB budget that were authorized by the 2011 Budget Bill (Senate Bill 87, Chapter 33, Statutes of 2011) but not specifically included in the CSLB budget appropriation approved in that bill:

EXPENDITURE DESCRIPTION	FY 2011-12 PROPOSED BUDGET	BreEZe COST INC ADJ	5% COST SAVINGS ADJ	CELL PHONE REDUCTION ADJ	FY 2011-12 REVISED BUDGET
PERSONNEL SERVICES					
Salary & Wages (Staff)	22,614,562				22,614,562
Board Members	15,900				15,900
Temp Help	195,069				195,069
Exam Proctor	41,168				41,168
Overtime	6,575				6,575
Staff Benefits	8,857,294				8,857,294
Salary Savings	-2,081,340				-2,081,340
TOTALS, PERSONNEL	**29,649,228**	**0**	**0**	**0**	**29,649,228**
OPERATING EXPENSES AND EQUIPMENT					
Operating Expenses	21,436,766	122,000	-305,568	-55,000	21,198,198
Exams	435,882				435,882
Enforcement	8,279,124				8,279,124
TOTALS, OE&E	**30,151,772**	**122,000**	**-305,568**	**-55,000**	**29,913,204**
TOTAL EXPENSE	**59,801,000**	**122,000**	**-305,568**	**-55,000**	**59,562,432**
Scheduled Reimbursements	-353,000				-353,000
Unscheduled Reimbursements					
NET APPROPRIATION	**59,448,000**	**122,000**	**-305,568**	**-55,000**	**59,209,432**

Note: The budget reduction for furlough savings (July - October) has yet to be determined so is not included in this chart.

❖ FY 2012-13 Proposed Budget Change Proposal (BCP)

- The proposed FY 2012-13 CSLB BCP requesting additional resources (5.0 positions and redirected funding) for the establishment of a Subsequent Arrest and Conviction Record Analysis Unit within the Enforcement division was denied by the Department of Finance. CSLB will revisit this proposal during the FY 2013-14 budget cycle (beginning in spring 2012).

❖ Fund Condition

- Attached below is the fund condition for the Contractors' License Fund, which shows the preliminary final FY 2010-11 reserve ($15 million, approximately three months' reserve), projected reversion amounts for FY 2011-12 through FY 2013-14:

	Final FY 2010-11	Proj. FY 2011-12	Proj. FY 2012-13	Proj. FY 2013-14
Beginning Balance	$20,958	$15,157	$24,367	$22,728
Prior Year Adjustment	$671	$0	$0	$0
Adjusted Beginning Balance	**$21,629**	**$15,157**	**$24,367**	**$22,728**
Revenues and Transfers				
Revenue	$48,437	$58,003	$58,630	$58,167
Transfer from GF		$10,737		
Totals, Resources	**$70,066**	**$83,897**	**$82,997**	**$80,895**
Expenditures				
Disbursements:				
Program Expenditures (State Operations)	$54,784	$59,209	$59,901	$61,099
State Controller (State Operations)	$89	$64		
Financial Info System Charges	$36	$257		
Proposed Budget Changes				
BreEZe SPR Funding			$368	$840
BreEZe Credit Card				$750
Total Expenditures	**$54,909**	**$59,530**	**$60,269**	**$62,689**
Fund Balance				
Reserve for Economic Uncertainties	**$15,157**	**$24,367**	**$22,728**	**$18,206**
Months in Reserve	3.1	4.9	4.4	3.5

Note: Assumes 1.2% interest. All dollars in thousands.

❖ Construction Management Education Account (CMEA) FY 2011-12 Budget and Expenditures

- Through the end of the first quarter, FY 2011-12, CMEA expended $3,295 in pro rata charges. The following table provides a budget and expenditure summary for first quarter FY 2011-12:

EXPENDITURE DESCRIPTION	FY 2011-12 PROPOSED BUDGET	SEPTEMBER 2011 EXPENSES	BALANCE	% OF BUDGET REMAINING
OPERATING EXPENSES AND EQUIPMENT				
Operating Expenses	14,331	0	14,331	100.0%
Pro Rata	13,669	3,295	10,374	75.9%
TOTALS, OE&E	**28,000**	**3,295**	**24,705**	**88.2%**
GRANT AWARDS				
Grant Awards	150,000	0	150,000	100.0%
TOTALS, GRANT AWARDS	**150,000**	**0**	**150,000**	**100.0%**
TOTALS	**178,000**	**3,295**	**174,705**	**98.1%**

Note: The pro rata charges to the CMEA fund reflect "billable" costs resulting from grant disbursement beginning in FY 2009-10 (pro rata is billed on a 2-year "roll forward" basis).

❖ CMEA Fund Condition

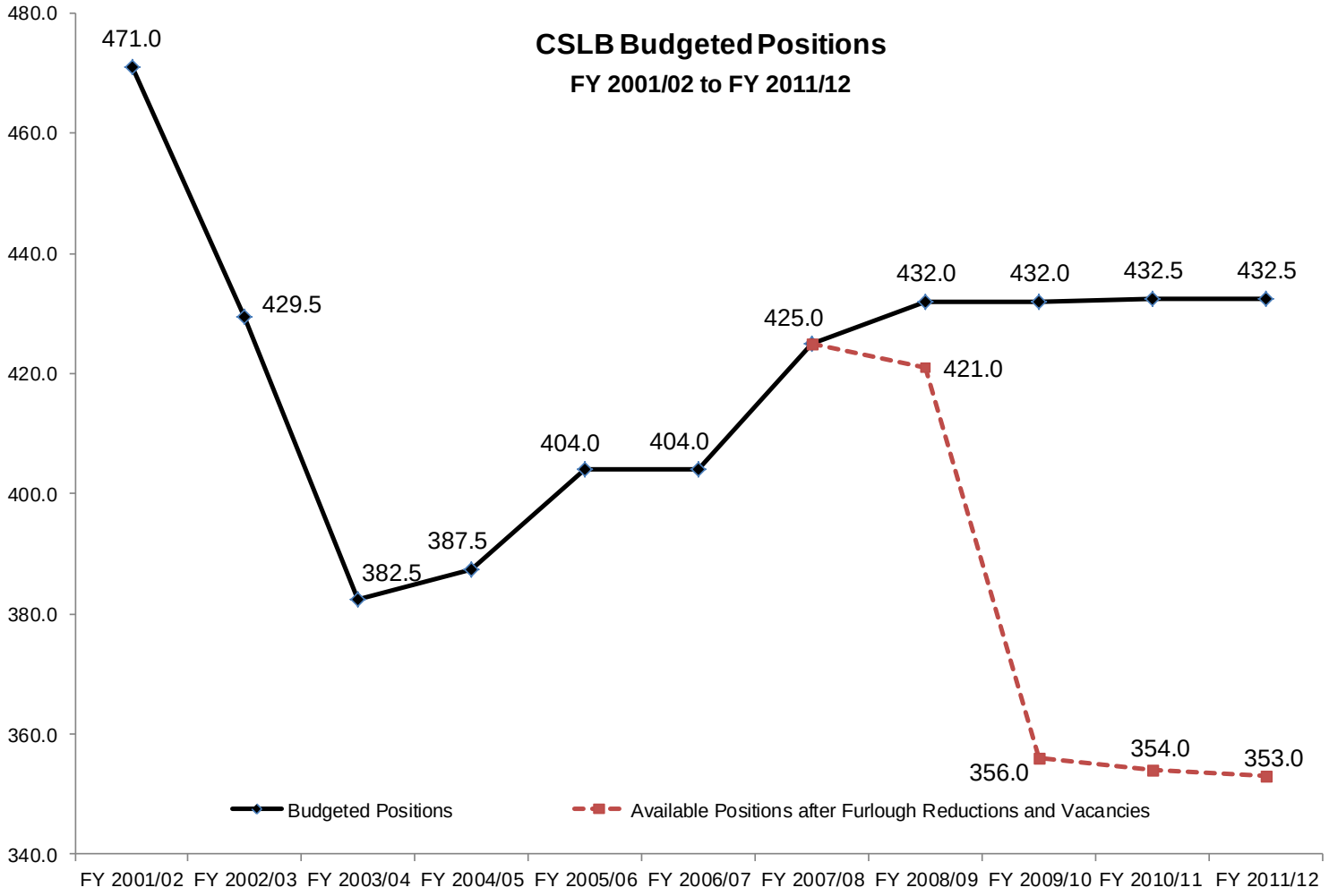
- Attached below is the CMEA fund condition, which shows the final FY 2010-11 reserve, along with projected reversion amounts for FY 2011-12 through FY 2013-14:

	Final FY 2010-11	Proj. FY 2011-12	Proj. FY 2012-13	Proj. FY 2013-14
Beginning Balance	$405	$338	$226	$112
Prior Year Adjustment	$0	$0	$0	$0
Adjusted Beginning Balance	**$405**	**$338**	**$226**	**$112**
Revenues and Transfers				
Revenue	$65	$66	$64	$63
Totals, Resources	**$470**	**$404**	**$290**	**$175**
Expenditures				
Disbursements:				
Grants	$132	$150	$150	$150
State Operations	$0	$28	$28	$28
Total Expenditures	**$132**	**$178**	**$178**	**$178**
Fund Balance				
Reserve for Economic Uncertainties	**$338**	**$226**	**$112**	**($3)**
Months in Reserve	22.8	15.2	7.6	-0.2

Note: Assumes 1.2% interest. All dollars in thousands.

AGENDA ITEM E

Update on Current Hiring Freeze and Vacancy Rate


CSLB Budgeted Positions
FY 2001/02 to FY 2011/12
480.0
460.0
440.0
420.0
400.0
380.0
360.0
340.0
471.0
429.5
382.5
387.5
404.0
404.0
425.0
432.0
432.0
432.5
432.5
421.0
356.0
354.0
353.0
Budgeted Positions
Available Positions after Furlough Reductions and Vacancies
FY 2001/02
FY 2002/03
FY 2003/04
FY 2004/05
FY 2005/06
FY 2006/07
FY 2007/08
FY 2008/09
FY 2009/10
FY 2010/11
FY 2011/12

CSLB Vacancies
(As of October 17, 2011)

POSITION NUMBER		UNIT	CLASS
EXECUTIVE			
501-1139-002*	1	Executive	OT (T)
501-1441-001	1	Executive	OA (G)
510-5601-001*	1	Public Affairs	IO I
Total	**3**		
ADMINISTRATION			
110-1139-003	1	IWAS Support	OT (T)
110-1139-004	1	IWAS Support	OT (T)
110-1441-003*	1	IWAS Support	OA (G)
110-5393-807	1	Admin-Personnel	AGPA
111-1138-005	1	Mailroom	OT (G)
111-1139-006	1	Cashiers	OT (T)
111-1151-001*	1	Admin-Support	OSS III
Total	**7**		
INFO TECHNOLOGY			
120-1373-004	1	Client Server Applications	SSS II (Tech)
120-1470-004* **(.5) psn**	1	Technical Support	AISA (SP)
120-1479-002*	1	Technical Support	AISA
120-1581-001	1	Programming Support	St. PA (Sp)
Total	**4**		
LICENSING			
216-5157-005*	1	Criminal Background	SSA
218-8800-001	1	License Classification	ER II
221-9928-008	1	License Exam App	PT II
221-9928-043	1	Exam Applications	PT II
221-9929-001	1	Exam Applications	PT III
221-9929-005	1	Exam Applications	PT III
221-9929-009	1	Exam Applications	PT III
231-9928-013* **(.5) psn**	1	Bonds/Renewals	PT II
231-9928-019	1	License Mod/WC	PT II
231-9928-025	1	License Mod/WC	PT II
231-9928-026	1	Bonds/Renewals	PT II
261-9926-001	1	Licensing Information	SPT III
261-9928-006	1	Licensing Information	PT
271-9927-001	1	Information Center	PT
271-9927-004	1	Information Center	PT
271-9927-005	1	Information Center	PT
271-9928-003	1	Information Center	PT II
271-9928-010	1	Information Center	PT II
271-9928-028*	1	Information Center	PT II
271-9928-029*	1	Information Center	PT II
Total	**20**		
ENFORCEMENT			
301-1728-001*	1	Enforcement Support	Exec Asst
301-8795-001	1	Enforcement	ER II (PO)
301-8800-002*	1	Quality Assurance	ER II
314-8634-001	1	Intake Center Sacramento	CSR
314-8634-012	1	Intake Center Sacramento	CSR
314-8634-014	1	Intake Center Sacramento	CSR
314-9928-003	1	Intake Center Sacramento	PT II
315-9925-001*	1	Intake Center Norwalk	SPT II
315-9928-002*	1	Intake Center Norwalk	PT II
315-9928-007	1	Intake Center Norwalk	PT II
331-8791-005	1	IC Sacramento	ER I
331-8791-013	1	IC Sacramento	ER I
331-8791-025	1	IC Sacramento	ER I
331-8795-001	1	IC Sacramento	ER II (PO)
333-8800-001	1	IC Norwalk	ER II
334-8791-003	1	IC San Bernardino	ER I
334-8791-012	1	IC San Bernardino	ER I
335-8800-001	1	IC Oakland	ER II
336-8800-004	1	IC Fresno	ER II
337-8791-001	1	IC San Diego	ER I
337-8791-020	1	IC San Diego	ER I
339-8791-007	1	IC Valencia	ER I
341-1139-001	1	SWIFT North	OT (T)
341-8791-009	1	SWIFT North	ER I

CSLB Vacancies
(As of October 17, 2011)

POSITION NUMBER		**UNIT**	**CLASS**
341-8791-020	1	SWIFT North	ER I
341-8791-021**	1	SWIFT North	ER I (EEEC)
341-8800-006	1	SWIFT North	ER II (EEEC)
342-1139-001	1	SWIFT South	OT (T)
342-8791-021	1	SWIFT South	ER I (EEEC)
342-8796-001	1	SWIFT South	ES I
353-1139-004	1	Disciplinary Support Services	OT (T)
353-1139-006	1	Disciplinary Support Services	OT (T)
355-8791-004	1	Enforcement Services	ER I
Total	**33**		
TESTING			
431-4801-001	1	Testing Division	SSM II
433-1139-xxx **(.5) psn**	1	Testing-Sacramento	OT (T)
433-1139-009	1	Testing-Sacramento	OT (T)
433-1139-815	1	Testing - San Diego	OT (T)
433-1379-809	1	Testing - San Diego	OA (T)
433-1471-001	1	Testing - Examination Admin	AISA (Sup)
Total	**6**		
DEPT TOTAL	**73**		

* on hold due to 5%
** approved freeze exemption

AGENDA ITEM F

Review and Possible Recommendation Regarding the Board Member Administrative Procedure Manual

Board Member Administrative

PROCEDURE MANUAL

January 2011

CONTRACTORS STATE
LICENSE BOARD

Members of the Board

Robert Lamb, *Public Member, Chair*

Paul Schifino, *Contractor Member, Vice Chair*

Joan Hancock, *Contractor Member, Secretary*

Robert Brown, *Public Member*

David Dias, *Labor Member*

Pastor Herrera Jr., *Public Member*

Matthew Kelly, *Public Member*

Louise Kirkbride, *Public Member*

Ed Lang, *Public Member*

James Miller, *Public Member*

Lisa Miller-Strunk, *Contractor Member*

John O'Rourke, *Public Member*

Bruce Rust, *Public Member*

Frank Schetter, *Contractor Member*

Mark A. Thurman, *Contractor Member*

Registrar of Contractors

Stephen P. Sands

Table of Contents

Page

Chapter 1. Introduction

Overview 1
General Rules of Conduct 1

Chapter 2. Board Meeting Procedures

Frequency of Meetings 3
Board Member Attendance at Board Meetings 3
Public Attendance at Board Meetings 3
Quorum 3
Agenda Items 4
Notice of Meetings 4
Notice of Meetings to be Posted on Internet 4
Record of Meetings 4
Tape Recording 4
Meeting Rules 4
Public Comment 5

Chapter 3. Travel & Salary Policies & Procedures

Travel Approval 6
Travel Arrangements 6
Out-of-State Travel 6
Travel Claims 6
Salary Per Diem 6

Chapter 4. Selection of Officers & Committees

Officers of the Board 8
Nomination of Officers 8
Election of Officers 8
Officer Vacancies 8

Committee Appointments 9
Attendance at Committee Meetings 9
Participation at Committee Meetings 9

Chapter 5. Board Administration & Staff

Board Administration 10
Board Budget 10
Strategic Planning 10
Legislation 10
Communication, Other Organizations & Individuals 11
Public or News Media Inquiries 11
Stationary 11
Business Cards 11
Letterhead 11
Registrar Evaluation 11
Board Staff 12

Chapter 6. Other Policies & Procedures

Board Member Ethics Training 13
Board Member Disciplinary Actions 13
Removal of Board Members 13
Resignation of Board Members 13
Conflict of Interest 14
Incompatible Activities 14
Contact with Candidates 15
Gifts from Candidates 15
Request for Records Access 15
Ex Parte Communications 15
Sexual Harassment Training 16

Abbreviations & Acronyms Glossary 17

Appendix A

DCA Incompatible Work Activities Policy and Procedure 19

CHAPTER 1. Introduction

Overview

The Contractors State License Board (CSLB) was created by the California Legislature in 1929 as the Contractors License Bureau under the Department of Professional and Vocational Standards to safeguard the public's health, safety, and welfare. Today, CSLB is one of the boards, bureaus, commissions, and committees within the Department of Consumer Affairs (DCA), part of the State and Consumer Services Agency under the aegis of the Governor. The Department is responsible for consumer protection and representation through the regulation of licensed professions and the provision of consumer services. While DCA provides administrative oversight and support services, CSLB has policy autonomy and sets its own policies and procedures, and initiates its own regulations.

The Board is comprised of 15 members. By law, nine are public members (eight non-contractors and one local building official), five are contractors, and there is one labor representative. Eleven appointments are made by the Governor. The Senate Rules Committee and the Speaker of the Assembly each appoint two public members. Board members may serve up to two full four-year terms. Board members fill non-salaried positions, but are paid $100 per day for each meeting day and are reimbursed for travel expenses.

This procedure manual is provided to Board members as a ready reference of important laws, regulations, DCA policies, and Board policies in order to guide the actions of the Board members and ensure Board effectiveness and efficiency.

General Rules of Conduct

- Board members shall not speak or act for the Board without proper authorization.
- Board members shall maintain the confidentiality of confidential documents and information.
- Board members shall commit the time to prepare for Board responsibilities.
- Board members shall recognize the equal role and responsibilities of all Board members.
- Board members shall act fairly, be nonpartisan, impartial, and unbiased in their role of protecting the public.

- Board members shall treat all applicants and licensees in a fair and impartial manner.
- Board members' actions shall serve to uphold the principle that the Board's primary mission is to protect the public.
- Board members shall not use their positions on the Board for personal, familial, or financial gain.

Chapter 2. Board Meeting Procedures

Frequency of Meetings

(B&P Code Sections 7006, 7007)

- The Board shall meet at least once each calendar quarter for the purpose of transacting such business as may properly come before it.
- Special meetings of the Board may be held at such times as the Board may provide in its bylaws.
- Four members of the Board may call a special meeting at any time.
- Eight members constitute a quorum at a Board meeting.
- Due notice of each meeting and the time and place thereof shall be given each member in the manner provided by the bylaws.

Board Member Attendance at Board Meetings

(Board Policy)

Board members shall attend each meeting of the Board. If a member is unable to attend, he or she must contact the Board Chair or the Registrar and ask to be excused from the meeting for a specific reason.

Public Attendance at Board Meetings

(Government Code Section 11120 et seq.)

Meetings are subject to all provisions of the Bagley-Keene Open Meeting Act. This act governs meetings of the state regulatory boards and meetings of committees of those boards where the committee consists of more than two members. It specifies meeting notice and agenda requirements and prohibits discussing or taking action on matters not included in the agenda.

If the agenda contains matters which are appropriate for closed session, the agenda shall cite the particular statutory section and subdivision authorizing the closed session.

Quorum

(B&P Code Section 7007)

Eight of the members of the Board constitute a quorum of the Board for the transaction of business. The concurrence of a majority of those members of the Board present and voting at a meeting duly held at which a quorum is present shall be necessary to constitute an act or decision of the Board.

Agenda Items

(Board Policy)

Any Board member may submit items for a Board meeting agenda to the Registrar 15 days prior to the meeting.

Notice of Meetings

(Government Code Section 11120 et seq.)

According to the Open Meeting Act, meeting notices (including agendas for Board meetings) shall be sent to persons on the Board's mailing list at least 10 calendar days in advance. The notice shall include a staff person's name, work address, and work telephone number who can provide further information prior to the meeting.

Notice of Meetings to be Posted on the Internet

(Government Code Section 11125 et seq.)

Notice shall be given and also made available on the Internet at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The written notice shall additionally include the address of the Internet site where notices required by this article are made available.

Record of Meetings

(Board Policy)

The minutes are a summary, not a transcript, of each Board meeting. They shall be prepared by Board staff and submitted for review by Board members before the next Board meeting. Board minutes shall be approved at the next scheduled meeting of the Board. When approved, the minutes shall serve as the official record of the meeting.

Tape Recording

(Board Policy)

The meeting may be tape-recorded if determined necessary for staff purposes. Tape recordings may be disposed of upon Board approval of the minutes.

Meeting Rules

(Board Policy)

The Board will use Robert's Rules of Order, to the extent that it does not conflict with state law (e.g., Bagley-Keene Open Meeting Act), as a guide when conducting the meetings.

Public Comment

(Board Policy)

Due to the need for the Board to maintain fairness and neutrality when performing its adjudicative function, the Board shall not receive any substantive information from a member of the public regarding matters that are currently under or subject to investigation, or involve a pending or criminal administrative action.

1. If, during a Board meeting, a person attempts to provide the Board with substantive information regarding matters that are currently under or subject to investigation or involve a pending administrative or criminal action, the person shall be advised that the Board cannot properly consider or hear such substantive information and the person shall be instructed to refrain from making such comments.
2. If, during a Board meeting, a person wishes to address the Board concerning alleged errors of procedure or protocol or staff misconduct involving matters that are currently under or subject to investigation or involve a pending administrative or criminal action, the Board will address the matter as follows:
   a. Where the allegation involves errors of procedure or protocol, the Board may designate either its Registrar or a Board employee to review whether the proper procedure or protocol was followed and to report back to the Board.
   b. Where the allegation involves significant staff misconduct, the Board may designate one of its members to review the allegation and to report back to the Board.
3. The Board may deny a person the right to address the Board and have the person removed if such person becomes disruptive at the Board meeting.

CHAPTER 3. Travel & Salary Policies & Procedures

Travel Approval

(DCA Memorandum 96-01)

Board members shall have Board Chair approval for all travel except for regularly scheduled Board and committee meetings to which the Board member is assigned.

Travel Arrangements

(Board Policy)

Board members should attempt to make their own travel arrangements and are encouraged to coordinate with the Registrar's Executive Assistant for lodging accommodations.

Out-of-State Travel

(SAM Section 700 et seq.)

For out-of-state travel, Board members will be reimbursed for actual lodging expenses, supported by vouchers, and will be reimbursed for meal and supplemental expenses. Out-of-state travel for all persons representing the state of California is controlled and must be approved by the Governor's Office.

Travel Claims

(SAM Section 700 et seq. and DCA Memorandum 96-01)

Rules governing reimbursement of travel expenses for Board members are the same as for management-level state staff. All expenses shall be claimed on the appropriate travel expense claim forms. The Registrar's Executive Assistant maintains these forms and completes them as needed. It is advisable for Board members to submit their travel expense forms immediately after returning from a trip and not later than two weeks following the trip.

In order for the expenses to be reimbursed, Board members shall follow the procedures contained in DCA Departmental Memoranda which are periodically disseminated by the Director and are provided to Board members.

Salary Per Diem

(B&P Code Section 103)

Compensation in the form of salary per diem and reimbursement of travel and other related expenses for Board members is regulated by B&P Code Section 103.

In relevant part, this section provides for the payment of salary per diem for Board members "for each day actually spent in the discharge of official duties," and provides that the Board member "shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties."

Accordingly, the following general guidelines shall be adhered to in the payment of salary per diem or reimbursement for travel:

1. No salary per diem or reimbursement for travel-related expenses shall be paid to Board members except for attendance at official Board or committee meetings, unless a substantial official service is performed by the Board member. Attendance at gatherings, events, hearings, conferences or meetings other than official Board or committee meetings in which a substantial official service is performed shall be approved in advance by the Board Chair. The Registrar shall be notified of the event and approval shall be obtained from the Board Chair prior to Board member's attendance.

2. The term "day actually spent in the discharge of official duties" shall mean such time as is expended from the commencement of a Board meeting or committee meeting to the conclusion of that meeting. Where it is necessary for a Board member to leave early from a meeting, the Board Chair shall determine if the member has provided a substantial service during the meeting and, if so, shall authorize payment of salary per diem and reimbursement for travel-related expenses.

   For Board-specified work, Board members will be compensated for actual time spent performing work authorized by the Board Chair. That work includes, but is not limited to, authorized attendance at other gatherings, events, meetings, hearings, or conferences, and NASCLA or CLEAR committee work. That work does not include preparation time for Board or committee meetings. Board members cannot claim salary per diem for time spent traveling to and from a Board or committee meeting.

Chapter 4. Selection of Officers & Committees

Officers of the Board

(B&P Code Section 7005)

The Board shall elect from its members a Chair, a Vice Chair, and a Secretary to hold office for one year or until their successors are duly elected and qualified.

Nomination of Officers

(Board Policy)

The Board Chair shall appoint a Nominations Committee prior to the last meeting of the fiscal year and shall give consideration to appointing a public and a professional member of the Board to the Committee. The Committee's charge will be to recommend a slate of officers for the following year. The Committee's recommendation will be based on the qualifications, recommendations, and interest expressed by the Board members. A survey of Board members may be conducted to obtain interest in each officer position. A Nominations Committee member is not precluded from running for an officer position. If more than one Board member is interested in an officer position, the Nominations Committee will make a recommendation to the Board and others will be included on the ballot for a runoff if they desire. The results of the Nominations Committee's findings and recommendations will be provided to the Board members. Notwithstanding the Nominations Committee's recommendations, Board members may be nominated from the floor at the meeting.

Election of Officers

(B&P Code Section 7005)

The Board shall elect the officers at the last meeting of the fiscal year. Officers shall serve a term of one year, beginning July 1 of the next fiscal year. All officers may be elected on one motion or ballot as a slate of officers unless more than one Board member is running per office. An officer may be re-elected and serve for more than one term.

Officer Vacancies

(Board Policy)

If an office becomes vacant during the year, an election shall be held at the next meeting. If the office of the Chair becomes vacant, the Vice Chair shall assume the office of the Chair. Elected officers shall then serve the remainder of the term.

Committee Appointments

(Board Policy)

The Chair shall establish committees, whether standing or special, as he or she deems necessary. The composition of the committees and the appointment of the members shall be determined by the Board Chair in consultation with the Vice Chair, Secretary, and the Registrar. When committees include the appointment of non-Board members, all impacted parties should be considered.

Attendance at Committee Meetings

(Board Policy)

If a Board member wishes to attend a committee meeting of which he or she is not a member, the Board member shall obtain permission to attend from the Board Chair and shall notify the committee chair and staff. Board members who are not members of the committee that is meeting cannot vote during the committee meeting. If there is a quorum of the Board at a committee meeting, Board members who are not members of the committee must sit in the audience and cannot participate in committee deliberations.

Participation at Committee Meetings

(Government Code Section 11122.5 et seq.)

When a majority of the members of the Board are in attendance at an open and noticed meeting of a standing committee, members of the Board who are not members of the standing committee may attend only as observers. Board members who are not members of a committee where a majority of the members of the Board are present, can not ask questions, talk, or sit with the members of the committee at the meeting table.

Chapter 5. Board Administration & Staff

Board Administration

(DCA Reference Manual)

Board members should be concerned primarily with formulating decisions on Board policies rather than decisions concerning the means for carrying out a specific course of action. It is inappropriate for Board members to become involved in the details of program delivery. Strategies for the day-to-day management of programs and staff shall be the responsibility of the Registrar.

Board Budget

(Board Policy)

The Secretary shall serve as the Board's budget liaison with staff and shall assist staff in the monitoring and reporting of the budget to the Board. Staff will conduct an annual budget briefing with the Board with the assistance of the Secretary.

The Registrar or the Registrar's designee will attend and testify at legislative budget hearings and shall communicate all budget issues to the Administration and Legislature.

Strategic Planning

(Board Policy)

The Executive Committee shall have overall responsibility for the Board's Strategic Planning Process. The Vice Chair shall serve as the Board's strategic planning liaison with staff and shall assist staff in the monitoring and reporting of the strategic plan to the Board. The Board will conduct an annual strategic planning session and may utilize a facilitator to conduct the strategic planning process.

Legislation

(Board Policy)

In the event that time constraints preclude Board action, the Board delegates to the Registrar and the Chair of the Legislative Committee the authority to take action on legislation that would change the Contractors License Law which impacts a previously established Board policy or affects the public's health, safety, or welfare. Prior to taking a position on legislation, the Registrar shall consult with the Board Chair. The Board shall be notified of such action as soon as possible.

Communication, Other Organizations & Individuals

(Board Policy)

All communication relating to any Board action or policy to any individual or organization, including but not limited to NASCLA and CLEAR, shall be made only by the Chair of the Board, his or her designee, or the Registrar. Any Board member who is contacted by any of the above should immediately inform the Board Chair or Registrar of the contact. All correspondence shall be issued on the Board's standard letterhead and will be created and disseminated by the Registrar's office.

Public or News Media Inquiries

(Board Policy)

All technical, licensing, or disciplinary inquiries to a CSLB Board or committee member from applicants, licensees, or members of the public should be referred to the Registrar. Contact of a Board or committee member by a member of the news media should be referred to the Chief of Public Affairs.

Stationary

(Board Policy)

- **Business Cards**
  Business cards will be provided to each Board member with the Board's name, address, telephone and fax number, and website. A Board member's business address, telephone and fax number, and e-mail address may be listed on the card at the member's request.

- **Letterhead**
  Only correspondence that is transmitted directly by the CSLB office may be printed or written on CSLB letterhead stationary. Any correspondence from a Board or committee member requiring the use of CSLB stationary or the CSLB logo should be transmitted to the CSLB office for finalization and distribution.

Registrar Evaluation

(Board Policy)

Board members shall evaluate the performance of the Registrar of Contractors on an annual basis.

Board Staff

(DCA Reference Manual)

Employees of the Board, with the exception of the Registrar, are civil service employees. Their employment, pay, benefits, discipline, termination, and conditions of employment are governed by a myriad of civil service laws and regulations and often by collective bargaining labor agreements. Because of this complexity, it is most appropriate that the Board delegate all authority and responsibility for management of the civil service staff to the Registrar. Board members shall not intervene or become involved in specific day-to-day personnel transactions.

Chapter 6. Other Policies & Procedures

Board Member Ethics Training

(AB 2179)

With the passage of AB 2179 (1998 Chapter 364), state appointees and employees in exempt positions are required to receive an ethics orientation within the first six months of their appointment and every two years thereafter. To comply with that directive, Board or committee members may take the interactive course provided by the Office of the Attorney General, which can be found at http//:ag.ca.gov/ethics.

Board Member Disciplinary Actions

(Board Policy)

A member may be censured by the Board if, after a hearing before the Board, the Board determines that the member has acted in an inappropriate manner.

The Chair of the Board shall sit as chair of the hearing unless the censure involves the Chair's own actions, in which case the Vice Chair of the Board shall sit as hearing Chair. In accordance with the Public Meetings Act, the censure hearing shall be conducted in open session.

Removal of Board Members

(B&P Code Sections 7005)

The Governor has the power to remove from office at any time any member of any board appointed by him or her for continued neglect of duties required by law or for incompetence or unprofessional or dishonorable conduct. The Governor may also remove from office a Board member who directly or indirectly discloses examination questions to an applicant for examination for licensure.

Resignation of Board Members

(Government Code Section 1750)

In the event that it becomes necessary for a Board member to resign, a letter shall be sent to the appropriate appointing authority (Governor, Senate Rules Committee, or Speaker of the Assembly) with the effective date of the resignation. Written notification is required by state law. A copy of this letter shall also be sent to the director of the Department, the Board Chair, and the Registrar.

Conflict of Interest

(Government Code Section 87100)

No Board member may make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest. Any Board member who has a financial interest shall disqualify him or herself from making or attempting to use his or her official position to influence the decision. Any Board member who feels he or she is entering into a situation where there is a potential for a conflict of interest should immediately consult the Registrar or the Board's legal counsel.

Incompatible Activities

(DCA Policy)

Following is a summary of the employment, activities, or enterprises which might result in or create the appearance of being inconsistent, incompatible, or in conflict with the duties of state officers:

- Using the prestige or influence of a state office or employment for the officer's or employee's private gain or advantage, or the private gain or advantage of another.
- Using state time, facilities, equipment, or supplies for the officer's or employee's private gain or advantage, or the private gain or advantage of another.
- Using confidential information acquired by the virtue of state employment for the officer's or employee's private gain or advantage or advantage of another.
- Receiving or accepting money, or any other consideration, from anyone other than the state for the performance of an act which the officer or employee would be required or expected to render in the regular course or hours of his or her state employment or as a part of his or her duties as a state officer or employee.
- Performance of an act other than in his or her capacity as a state officer or employee knowing that such an act may later be subject, directly or indirectly, to the control, inspection, review, audit, or enforcement by such officer or employee of the agency by which he or she is employed. (This would not preclude an "industry" member of CSLB from performing normal functions of his or her occupation.)
- Receiving or accepting, directly or indirectly, any gift, including money, any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is seeking to do business of any kind with the state or whose activities are regulated or controlled in any way by the state, under circumstances from which it

reasonably could be inferred that the gift was intended to influence him or her in his or her official duties or was intended as a reward for any official action on his or her part.

The aforementioned limitations do not attempt to specify every possible limitation on employee activity that might be determined and prescribed under the authority of Section 19990 of the Government code. DCA's Incompatible Work Activities Policy and Procedure OHR 10-01 is included in Appendix A.

Contact with Candidates

(Board Policy)

Board members shall not intervene on behalf of a candidate for licensure for any reason. They should forward all contacts or inquiries to the Registrar or Board staff.

Gifts from Candidates

(Board Policy)

Gifts of any kind to Board members or staff from candidates for licensure with the Board shall not be permitted.

Request for Records Access

(Board Policy)

No Board member may access the file of a licensee or candidate without the Registrar's knowledge and approval of the conditions of access. Records or copies of records shall not be removed from CSLB's office.

Ex Parte Communications

(Government Code Section 11430.10 et seq.)

The Government Code contains provisions prohibiting ex parte communications. An "ex parte" communication is a communication to the decision-maker made by one party to an enforcement action without participation by the other party. While there are specified exceptions to the general prohibition, the key provision is found in subdivision (a) of section 11430.10, which states:

> "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and an opportunity for all parties to participate in the communication."

Board members are prohibited from an ex parte communication with Board enforcement staff while a proceeding is pending.

Occasionally, an applicant who is being formally denied licensure, or a licensee against whom disciplinary action is being taken, will attempt to directly contact Board members.

If the communication is written, the person should read only far enough to determine the nature of the communication. Once he or she realizes it is from a person against whom an action is pending, they should reseal the documents and send them to the Chief of Enforcement.

If a Board member receives a telephone call from an applicant or licensee against whom an action is pending, he or she should immediately tell the person they cannot speak to them about the matter. If the person insists on discussing the case, he or she should be told that the Board member will be required to recuse him or herself from any participation in the matter. Therefore, continued discussion is of no benefit to the applicant or licensee.

If a Board member believes that he or she has received an unlawful ex parte communication, he or she should contact the agency's assigned Legal Office attorney.

Sexual Harassment Training

(Government Code Section 12950.1)

Board members are required to undergo sexual harassment training and education once every two years. Staff will coordinate the training with the Department of Consumer Affairs.

Abbreviations & Acronyms

ALJ	Administrative Law Judge
ACD	Automated Call Distribution system
ADR	Alternate Dispute Resolution
AG	Office of the Attorney General
AGENCY	State and Consumer Services Agency
AMCC	Arbitration Mediation Conciliation Center
APA	Administrative Procedure Act
APP	Application for license or Home Improvement Salesperson registration
App Fee	Application Fee Number
ASB	Asbestos Certification
B&P	Business and Professions Code
BCP	Budget Change Proposal
BQI	Bond of Qualifying Individual
Cal/OSHA	DIR Division of Occupational Safety & Health
CAT	Computer Assisted Testing
CB	Contractor's Bond
CCCP	California Code of Civil Procedure
CCR	California Code of Regulations
Cite	Citation
CLC	*California Licensed Contractor* newsletter
CLEAR	Council on Licensure Enforcement and Regulations
CP/CORP	Corporation
CSLB	Contractors State License Board
CSR	Consumer Services Representatives
DAG	Deputy Attorney General
DB	Disciplinary Bond
DBA	Doing Business As
DCA	Department of Consumer Affairs
DIR	Department of Industrial Relations
DLSE	Department of Labor Standards Enforcement
DOI	Department of Insurance
DOL	Department of Labor
DOSH	DIR Division of Occupational Safety & Health (also referred to as Cal/OSHA)
EDD	Employment Development Department
EEEC	Economic and Employment Enforcement Coalition
EO	Executive Officer / Registrar of Contractors

ER	Enforcement Representative
ES	Enforcement Supervisor
FSR	Feasibility Study Report
FTA	Failure to Appear
FTB	Franchise Tax Board
HAZ	Hazardous Substances Removal Certification
HIS	Home Improvement Salesperson
IC	Investigative Center
IE	Industry Expert
IEP	Industry Expert Program
IMC	Intake and Mediation Center
IT	Information Technology
IVR	Interactive Voice Response system
JV	Joint Venture
LEG	State Legislature, legislative
MARB	Mandatory Arbitration Program
MOU	Memoranda(um) of Understanding
MSC	Mandatory Settlement Conference
NASCLA	National Association of State Contractors Licensing Agencies
NTA	Notice to Appear
OA	Occupational Analysis
OSN	On-Site Negotiation Program
PAO	Public Affairs Office
PD	Proposed Decision
PT	Partnership
QPT	Qualifying Partner
RFP	Request for Proposal
RME	Responsible Managing Employee
RMO	Responsible Managing Officer
SAM	State Administrative Manual
SCIF	State Compensation Insurance Fund
SME	Subject Matter Expert
SOI	Statement of Issues
SSN	Social Security Number
SWIFT	Statewide Investigative Fraud Team
TVDS	Test Validation and Development Specialist
VARB	Voluntary Arbitration Program
Chair	Where the term "Chair" is used in this manual, it will be assumed to include "his or her designee

APPENDIX A

DCA Incompatible Work Activities Policy and Procedure

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • ARNOLD SCHWARZENEGGER, GOVERNOR

DEPARTMENTAL POLICY

TITLE	INCOMPATIBLE WORK ACTIVITIES		
POLICY OWNER	LEGAL AFFAIRS AND OFFICE OF HUMAN RESOURCES		
POLICY NUMBER	OHR 10-01	SUPERSEDES	ADM 99-02
ISSUE DATE	April 8, 2010	EFFECTIVE	IMMEDIATELY
DISTRIBUTE TO	ALL EMPLOYEES		
ORIGINAL APPROVED BY	Brian Stiger, Director Department of Consumer Affairs		
PAGE	1 of 9	ATTACHMENT	

POLICY

It is the policy of the Department of Consumer Affairs (DCA) to promote and adhere to all policy directives and all laws, rules, and regulations concerning Incompatible Work Activities.

APPLICABILITY

This policy applies to all employees, governmental officials, contractors, consultants, and temporary staff of DCA, and any of its divisions, bureaus, boards, programs, and other constituent agencies. Within this policy, the generic acronym "DCA" applies to all of these entities.

PURPOSE

The purpose of this policy is to outline the State laws set forth in the standards of conduct with which State civil service officers and employees are expected to comply. All of the employees of the DCA have a responsibility to their employer, their fellow employees, and the people of California to conduct themselves in an ethical manner so as not to bring discredit to themselves or the State and the department.

AUTHORITY

- Government Code Section 19990
- Executive Order 66-2, "Standards of Ethical Conduct"
- Penal Code Section 502
- DPA Rule 599.859

PROVISIONS

Responsibility of Employees

Employees of the DCA have a responsibility to their employer, their fellow employees, and the people of California to conduct themselves in an ethical manner so as not to bring discredit to themselves or the State and the department.

The policy in this statement must be observed by each employee of the DCA in order to avoid activities which are clearly inconsistent, incompatible, or in conflict with his [or her] official duties. Employees must review this policy with a view toward their particular job duties and responsibilities.

This policy specifically relates to incompatible activities and does not include all provisions of law or regulations with which employees must comply.

If an employee is uncertain as to whether certain activity, employment, or enterprise is in violation of this policy, the employee should immediately consult with his [or her] supervisor who will indicate in writing whether the activity, employment or enterprise is prohibited.

State Law Prescribed Standards of Conduct

Civil Service Employees: To protect the integrity of the California State Civil Service, State law sets forth standards of conduct with which State civil service officers and employees are expected to comply. Although Government Code Section 19990 is not applicable to those persons exempt from the civil service system, they are also subject to standards of ethical conduct, discussed below. Section 19990 of the Government Code requires that:

A state officer or employee shall not engage in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his [or her] duties as a state officer or employee.

Each appointing power shall determine, subject to approval of the Department of Personnel Administration (DPA), those activities which, for employees under its jurisdiction, are inconsistent, incompatible or in conflict with their duties as State officers or employees. Activities and enterprises deemed to fall in these categories shall include, but not be limited to, all the following:

Using Prestige or Influence and Examples

(a) **Using the prestige or influence of the State or the appointing authority** for the officer's or employee's private gain or advantage or the private gain of another.

Examples of such activities include:

(1) Soliciting business from persons licensed by the employee's agency (Board or Bureau) under the guise that the licensee may receive special benefits from the employee's agency.

2

(2) Soliciting money from a licensee or from other departmental employees for the employee's private gain.

(3) Providing or using the names and/or addresses of licensees, vendors, or other entities subject to regulation by the Department for mailing lists or solicitation unless authorized to do so as part of the employee's duties.

(4) Using the badge, uniform, or identification card of a State position for private gain or advantage.

Use of State Time, Facilities, etc., and Examples

(b) **Using State time, facilities, equipment, or supplies** for private gain or advantage.

Examples of such activities include:

(1) Using State vehicles or credit cards for personal gain; using State letterhead stationery for private correspondence; using State office supplies, State postage stamping facilities, State copy machines, or computer equipment and software for home or personal business.

(2) Selling products such as cosmetics, jewelry, stationery plastics, etc., at times other than regularly scheduled breaks and lunch periods, or to other employees when they are not on such breaks.

Using Confidential Information and Examples

(c) **Using, or having access to, confidential information** available by virtue of State employment for private gain or advantage or providing confidential information to persons to whom issuance has not been authorized.

Examples of such activities include:

(1) Disclosing confidential investigative reports or confidential examination materials or information.

(2) Providing or using, unless authorized to do so by the department or by someone to whom that responsibility has been delegated, licensee social security numbers, birth dates, gender, and/or complaint activity reports.

(3) Requesting, acquiring, examining, or disseminating confidential or employee personnel records or personal information maintained by the Department unless authorized in the assignment of related duties.

(4) Willfully misusing, misplacing or destroying confidential information, including but not limited to, the disclosure of passwords or permitting access to computer information systems, programs or other data to unauthorized personnel.

3

Accepting Money or Other Consideration and Examples

(d) **Receiving or accepting money, or any other consideration,** from anyone other than the State for the performance of his [or her] duties as a State officer or employee.

Examples of such activities include:

(1) Requesting or accepting money, or other consideration, from applicants or licensees for the priority processing of license applications.

(2) Charging a fee for helping an applicant complete documents for licensure.

Performance of an Activity and Examples

(e) **Performance of an activity, in other than his [or her] capacity as a State officer or employee,** which is subject directly or indirectly, to the control, inspection, review, audit, or enforcement by the officer or employee.

Each board should evaluate its own mission and job classifications to determine what activities are covered by this category. Specific applications may vary by board or bureau. The following examples are provided for guideline purposes only:

(1) Engaging in a personal medical practice or activity, which is regulated by the employee's licensing board, when the employee's duties are to review, inspect, audit, or enforce the regulated activity.

(2) Engaging in a nursing practice or activity, which is regulated by the employee's licensing board, when the employee's duties are to review, inspect, audit, or enforce the regulated activity.

(3) Engaging in a construction business or activity, which is regulated by the employee's licensing board, when the employee's duties are to review, inspect, audit, or enforce the regulated activity.

(4) Engaging in an automobile related business or activity which, is regulated by the employee's bureau, when the employee's duties are to review, inspect, audit, or enforce the regulated activity.

(5) Engaging in a private legal practice where the employee represents clients in any matter or venture subject to the regulation of an agency in DCA, or represents any licentiate in any enforcement matter before an agency in the Department.

Exception: to Prohibition in paragraph (e)

A board, bureau, commission, or other employment unit in the DCA may determine that it is in the interests of the agency to allow specified employees to engage in activities, which would otherwise be prohibited under the above guidelines. Examples may include allowing employees holding professional or vocational licenses to engage in the licensed business or profession in order to maintain current skills.

4

Any agency deciding to allow such employment or activities shall develop criteria to evaluate whether requests to engage in such employment or activities will be approved. The criteria must include, but need not be limited to: the time-base of the employee, the benefit to the organization of the employment or activity, a policy to avoid an actual conflict of interest or the appearance of a conflict of interest, and periodic review of the employment or activity.

Any employee currently engaged in, or desiring to engage in, such employment or activities shall submit a written request to his [or her] supervisor, describing the type and scope of outside employment or activity. The supervisor shall review the request and make a recommendation to approve or disapprove the request, based on the criteria developed by the agency. The request and recommendation shall be submitted through the supervisorial chain to the program manager, division chief or executive officer, or designee who will make the determination. The approving officer may review the matter with the DCA's Legal Office and request legal review and a legal opinion regarding the proposed activity. The decision of the approving officer shall be in writing with reasons set forth for the decision.

Gratuities, other things of value

(f) **Receiving or accepting, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or other thing of value** from anyone who is doing or seeking to do business of any kind with the officer's or employee's appointing authority, or whose activities are regulated or controlled by the appointing authority under circumstances from which it could reasonably be substantiated that the gift was intended to influence the officer or employee in his [or her] official duties, or was intended as a reward for any official action performed by the officer or employee.

Although this section does not preclude acceptance of gifts, it clearly establishes that if the intent of the giver is to influence future, or reward past, official actions, the gift cannot be accepted. Since determining intent may be difficult, the following guidelines are provided:

(1) Does the value of the gift, in itself, suggest an intent other than routine hospitality or gratuity? It may be useful to apply the Fair Political Practices laws ***as a general guide****. These laws require certain employees (****only those who meet specific "Designated Employee" criteria****) to report gifts worth more than $50 and also specify that gifts totaling more than $300 during any twelve-month period from any one source establish a financial interest between the source and the recipient. Thus, it follows that gifts approaching these value limits could raise questions under Government Code Section 19990. In addition, gifts considerably below these limits can also be inappropriate if they raise concern under* *<u>any</u>* *of the following standards:*

(2) Do the circumstances surrounding the gift suggest an improper intent? For example, a gift given on the eve of an important decision involving the donor is of much greater concern than a routine holiday gift or an invitation to an annual

5

reception. Gifts directly or indirectly identified as a reward for specific past decisions or actions usually raise questions of improper relationships.

(3) Is the gift characteristic of the gratuities, hospitalities, or other items typically received from organizations and/or individuals, similar to the donor? The key here is to not accept a gift from one party, which could be viewed as an attempt to gain an advantage over others who have a similar relationship with the recipient.

(4) How strongly does the form of the gift suggest that it is a routine part of an on-going business relationship as opposed to something more? For example, occasional business lunches or the receipt of mementos bearing the name or insignia of the donor raise fewer questions than gifts of cash, merchandise, extraneous travel or entertainment that have value beyond the business relationship.

Not Devoting Full Time Efforts to State Office

(g) Subject to any other laws, rules, or regulations as pertained thereto, **not devoting his [or her] full time, attention, and efforts to his or her State office or employment** during his or her hours of duty as a State officer or employee.

An example of such activity would be conducting a private business during employee's regular hours of duty.

Exempt Appointees/Employees

Appointees/Employees exempt from Civil Service: Pursuant to Executive Order 66-2, please be advised that there exists a code of ethical standards, which is applicable to gubernatorial appointees, not including judicial or county board of supervisor employees. This code of ethical standards is to be followed in addition to any and all other statutes and executive orders (i.e. the Fair Political Practices Act) which might affect questions of conflict of interest, incompatibility or ethics relating to gubernatorial appointees.

Applicable portions of the Executive Order are set out below. You are requested to carefully read these sections and to comply with both their letter and spirit.

Standards of Ethical Conduct for Exempt appointees/employees

"Standards of Ethical Conduct"

"No employment, activity, or enterprise shall be engaged in by any officer or employee of the Executive Department of the State which might result in, or create the appearance of resulting in any of the following:

(1) Using the prestige or influence of a State office or employment for the officer's or employee's private gain or advantage, or the private gain or advantage of another.

6

(2) **Using State time, facilities, equipment, or supplies** for the officer's or employee's private gain or advantage, or the private gains or advantage of another.

(3) **Using confidential information** acquired by virtue of State employment for the officer's or employee's private gain or advantage, or the private gain or advantage of another.

(4) **Receiving or accepting money or any other consideration** from anyone other than the State for the performance of an act which the officer or employee would be required or expected to render in the regular course or hours of his [or her] State employment or as a part of his [or her] duties as a State officer or employee.

(5) **Performance of an act in other than his [or her] capacity as a State officer or employee** knowing that such an act may later be subject, directly or indirectly, to the control, inspection, review, audit or enforcement by such officer or employee or the agency by which he or she is employed. [This, of course, would not preclude an "industry" member of a board or commission from performing the normal functions of his or her occupation.]

(6) **Receiving or accepting, directly or indirectly, any gift**, including money, any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or is seeking to do business of any kind with the State or whose activities are regulated or controlled in any way by the State, under circumstances from which it reasonably could be inferred that the gift was intended to influence him [or her] in his [or her] official duties or was intended as a reward for any official action on his [or her] part." (Emphasis added.)

Other Acts that maybe Incompatible

The aforementioned limitations do not attempt to specify every possible limitation on employee activity that might be determined and prescribed under the authority of Section 19990 of the Government Code. If later experience shows a need for additions to, deletions from, or clarification of the aforementioned limitations, the DCA will request the approval of the Department of Personnel Administration (DPA) in making changes it determines necessary. Upon such approval, the listing will be amended. Nothing in this statement or listing should be construed by any employee as the sole provisions of law and administrative rules, which should be observed by each State officer, and employee of this department.

Procedures for Determining Incompatible Work Activity

This procedure applies to all requests to engage in outside employment or activity other than a request for an exemption from the prohibitions contained in Government Code Section 19990(e), which procedure is set forth above.

Any officer or employee who is engaging, or intends to engage, in outside employment or an activity or enterprise which may be in conflict with the provisions of this policy shall submit a written request for review of the matter to his [or her] immediate supervisor.

The written request from the employee shall include the following information:

(1) The name of the officer or employee.
(2) The name of the board, unit or office by which the person is employed.
(3) The classification of the officer or employee.
(4) The collective bargaining unit representing the officer or employee, if applicable.
(5) The officer's or employee's duty statement, along with a statement describing the extent to which the employee's duties pertain to any confidential information that would come under his [or her] direct review.
(6) A detailed description of the specific activity in which the officer or employee intends to engage.

The immediate supervisor shall review the request and discuss it with the administrative head of the board, office or unit, as applicable. The administrative head may review the matter with the DCA's Legal Office and request a legal opinion on whether the proposed activity is prohibited by the DCA's Incompatible Work Activity Statement. If the supervisor approves the employee's request, then, upon written approval of the employee's first line supervisor, the employee may continue to, or proceed to, engage in the activity or business. If the supervisor denies the employee's request, a written statement detailing the reason(s) for the denial will be provided to the employee.

Represented employees may appeal a denial in accordance with the terms of the employee's collective bargaining agreement. Non-represented employees may appeal under DPA Rule 599.859 to the Director. In all cases, the Director's decision shall be final.

State Attorney and Administrative Law Judges; Service on Governmental Bodies

Service on a local appointed or elected governmental board, commission, committee, or other body or as a local elected official by an attorney employed by the state in a nonelected position or by an administrative law judge, as defined in Section 11475.10, shall not, by itself, be deemed to be inconsistent, incompatible, in conflict with, or inimical to, the duties of the attorney or administrative law judge as a state officer or employee and shall not result in the automatic vacation of either office.

Nothing in this section shall be construed to prohibit an administrative law judge, as defined in Section 11475.10, or an attorney employed by the state in a nonelected position from serving on any other appointed or elected governmental board, commission, committee, or other body, consistent with all applicable conflict-of-interest statutes and regulations and judicial canons of ethics.

Violation of Policy

Failure to follow any of the provisions of this policy is cause for discipline, which may include termination of employment.

In addition, any tampering, interference, damage, or unauthorized access to computer data or computer systems may constitute a criminal violation of Penal Code Section 502.

Revision of Policy

Determination of the need for revisions to this policy is the responsibility of the Legal Affairs Division and the Office of Human Resources (916) 574-8300.

Specific questions regarding the status or maintenance of this policy should be directed to the Division of Legislative and Policy Review at (916) 574-7800.

Security Agreement and Language Attachment

Incompatible Work Activity Security Agreement is attached.

RECOMMENDED IMPLEMENTATION STRATEGY

This policy is distributed to all new employees in the new employee packets or transfer packets.

The department may wish to implement this policy on an annual basis and distribute to all employees to ensure everyone has read and signed the "Incompatible Work Activity Security Agreement."

My signature on this acknowledgement for does not modify my employment relationship with DCA as set forth in the most current Memorandum of Understanding (MOU) appropriate to my employee bargaining unit.

_____
(Printed Name)

_____ _____
(Signature) ***(Date)***

_____
(Board/Bureau/Committee/Commission/Program/Division/Office)

Original: ***Office of Human Resources (Official Personnel File)***
Copies: ***Employee, Supervisor***

10

CONTRACTORS STATE LICENSE BOARD

P.O. Box 26000
Sacramento, CA 95826-0026

9821 Business Park Drive
Sacramento, CA 95827
800.321.CSLB (2752)

www.cslb.ca.gov
CheckTheLicenseFirst.com

AGENDA ITEM G

Update on FY 2011-12 Strategic Plan and FY 2012-13 Strategic Planning Process

CURRENT OBJECTIVES

The Board has identified the following objectives to help meet its goals:

OBJECTIVES	LEAD RESPONSIBILITY	TARGET DATE
1. Reorganize Enforcement division	Enforcement Committee	3rd quarter 2011
2. Establish Expanded Media Outreach Plan	Public Affairs Committee	3rd quarter 2011
3. Develop plan to explore licensure for solar/ alternative energy contractors	Licensing and Enforcement	4th quarter 2011
4. Create new flagship consumer education publication	Public Affairs Committee	4th quarter 2011
5. Create a training curriculum for new hires that includes basic enforcement procedures, a mentoring program, and specialized training.	Staff	4th quarter 2011
6. Coordinate with state and local agencies to establish baseline measurements of the underground economy and the effectiveness of enforcement strategies.	Staff	4th quarter 2011
7. Implement online licensure tool for credit card payment	Staff	1st quarter 2012
8. Develop legislator relationship plan	Legislative Committee	1st quarter 2012
9. Implement workers' compensation insurance recertification process for contractors exempt from WC coverage	Licensing Committee	1st quarter 2012
10. Create new flagship applicant/licensee education publication	Public Affairs Committee	1st quarter 2012
11. Produce new education video to assist license applicants	Staff	1st quarter 2012
12. Review and revise all MOUs for relevancy, information sharing, and effectiveness	Staff	1st quarter 2012
13. Recruit and hire nine (9) Peace Officer ERs in designated ICs.	Staff	2nd quarter 2012
14. Staff a Subsequent Arrest Unit through the BCP process	Staff	3rd quarter 2012
15. Update Enforcement staff classification system	Staff	3rd quarter 2012
16. Implement online license exam scheduling tool	Staff	4th quarter 2013

AGENDA ITEM H

Adjournment

November 3, 2011
Sacramento, California

CONTRACTORS STATE LICENSE BOARD

Legislative Committee

AGENDA ITEM A

Call to Order – Chair's Remarks

Roll is called by the Committee Chair.

Legislative Committee Members:

Mark Thurman, Chair

Bob Brown

Louise Kirkbride

Jim Miller

Paul Schifino

Committee Chair Mark Thurman will review the scheduled Board actions and make appropriate announcements.

AGENDA ITEM B

Public Comment Session

Members of the public may address the committee at this time.
The Committee Chair may allow public participation
during other agenda items.

AGENDA ITEM C

Review and Consideration of Legislative Proposals for the Upcoming Legislative Session

AGENDA ITEM C-1

Amendment to Business and Professions Code Section 7011.4 – Notice to Appear Authority

CONTRACTORS STATE LICENSE BOARD
LEGISLATIVE PROPOSAL FORM

SUBJECT:

Modification to Business and Profession Code - Section 7011.4

BACKGROUND:

In 1989, a separate unit, Statewide Investigative Fraud Team (SWIFT), was established to proactively address unlicensed contracting activity and pursue criminal sanctions with local prosecutors. Section 7011.4 provides authority for SWIFT Enforcement Representatives (ER) to refer investigations to local prosecutors for misdemeanor violations of law by issuing Notice to Appear (NTA) citations.

PROBLEM/SUMMARY:

1) January 1, 2011, CSLB received authority to issue Stop Orders to construction employers that fail to secure workers' compensation insurance for employees. In addition to issuing a Stop Order, violators are subject to administrative or criminal sanctions for the underlying workers' compensation insurance violations.

   The majority of the 15,000 consumers complaints received each year by CSLB have evidence of a workers' compensation violation; however, IC investigators rarely make referrals to local prosecutors because they lack authority to issue a Notice to Appear in criminal court for the misdemeanor violation.

2) CSLB receives approximately 3,000 consumer complaints each year against unlicensed contractors. Consumer complaints are investigated at a CSLB Investigative Center (IC), staffed by approximately 70 ERs, rather than the approximate 22 ERs assigned to SWIFT. IC investigators lack authority to issue NTAs and disposition the majority of complaints to an administrative citation, rather than a referral to a local prosecutor for the misdemeanor violation.

For the aforementioned reasons, a modification to Business and Professions Code section 7011.4 is needed to provide authority to CSLB investigators assigned to ICs that have completed Penal Code 832 (Basic Peace Officer Standards Training) to work effectively with local local prosecutors by issuing NTAs to unlicensed and uninsured contractors.

COMMENTS:
With the growing population and difficult economic times, there are many complaints filed against unlicensed and illegal contractors, many of whom do not have workers' compensation (WC) insurance for employees. CSLB's Enforcement division has Statewide Investigative Fraud Teams that perform proactive investigations, and conduct undercover sting and sweep operations. However, many complaints received against unlicensed contractors and uninsured contractors are received through the Investigation Centers (ICs). In addition, it is a demonstrated fact that 60% of licensees have filed for exemptions from WC insurance. Contractors who fail to carry WC for employees are considered to be part of the underground economy, and they pose a threat to consumers, legitimate licensees, businesses, and employees.

Pursuant to Business and Professions (B&P) Code section 7125.4 and Labor Code section 3700.5, it is a misdemeanor in the State of California to employ workers without having WC insurance. Further, it is a felony to underreport employees in order to lower WC insurance premium costs. In July 2010, the Fraud Assessment Commission gave the California Department of Insurance (CDI) a $30 million grant to prosecute WC fraud. CDI, in turn, has partner with CSLB to target unlicensed and illegal contractors who are in violation of WC laws and pose a threat to consumers, legitimate businesses, and employees. On January 1, 2011, CSLB was granted the ability to issue Stop Orders to licensed and unlicensed contractors that have employees and do not have WC insurance.

There is a changing need within CSLB Enforcement, and this is an opportunity to refer more criminal complaints to prosecutors through Notices to Appear (NTAs). In addition, with the growing need and new focus on WC violations, Enforcement would be enhanced by allowing IC investigators to issue NTAs and Stop Orders so that they can partner with CDI and the Premium Insurance Fraud Task Force to combat unlicensed and uninsured practice. By allowing IC investigators the ability to issue NTAs and Stop Orders, enforcement of Contractors' License Law will be enhanced, thus protecting those who live, work and do business in California.

PROPOSED CHANGE (Include the Related Sections of Law)

7011.**4**.(a) Notwithstanding Section **7011**, there is in the Contractors' State License Board, an enforcement division which shall rigorously enforce this chapter prohibiting all forms of unlicensed activity.

In the text of 7011.4 Business and Professions Code, replace "a separate enforcement unit" with "an enforcement division."

PROPOSED LANGUAGE:

Section 7011.4 should read as follows:

(a) Notwithstanding Section 7011, there is in the Contractors' State License Board, ~~a separate enforcement unit~~ *an enforcement division* which shall rigorously enforce this chapter prohibiting all forms of unlicensed activity.

(b) Persons employed as enforcement representatives in this ~~unit~~ *division* and designated by the Director of Consumer Affairs, *after completing P.C. 832 or equivalent*, are not peace officers and are not entitled to safety member retirement benefits. They do not have the power of arrest. However, they may issue a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code.

AGENDA ITEM C-2

Amendment to Business and Professions Code Section 7011.8 – False Complaints Against Contractors

CONTRACTORS STATE LICENSE BOARD
LEGISLATIVE PROPOSAL FORM

SUBJECT: False Complaints Against Contractors

BACKGROUND: Business & Professions Code section 7011.8 provides that a person who files a false complaint with the Contractors State License Board (CSLB) is guilty of an infraction, and further provides that CSLB may notify the appropriate district or city attorney that a false report has been filed. Since enacted in 1992, a violation of section 7011.8 has never been pursued.

PROBLEM/SUMMARY: A violation of B&P section 7011.8 is an infraction. Prosecutors file criminal complaints for misdemeanor and felony violations, not for infractions, and there is no authority for CSLB staff to issue a "parking ticket" style citation for a violation of B&P section 7011.8.

PROPOSED CHANGE (Include the Related Sections of Law): Amend section 7011.8 to instead provide the CSLB Registrar with the authority to take administrative action.

PROPOSED LANGUAGE: Replace "an infraction punishable by a fine not to exceed one thousand dollars ($1,000)" with "the registrar may issue a citation to a person subject to licensure by this chapter."

COMMENTS:
Prosecutors file misdemeanor and felony charges. They do not file criminal charges for infractions; rather, infractions are typically issued by police for traffic or other minor violations.

CSLB is aware of only one occasion in the 18 years that section 7011.8 has been on the books where a referral was made to a district attorney (DA). It involved a deranged contractor who filed a complaint against an industry expert for issuing a report that was used for filing an accusation for poor workmanship (in addition to the administrative case, CSLB also made a referral to the DA against the same contractor for Penal Code Ssction 484b). CSLB was advised by the DA at the time of the referral that criminal filings for infractions are not handled by prosecutors.

10/24/2011

AGENDA ITEM C-3

Amendment to Business and Professions Code Section 7026.1 – Unlicensed Construction Consultants

CSLB

CONTRACTORS STATE LICENSE BOARD
LEGISLATIVE PROPOSAL FORM

SUBJECT: Jurisdiction over construction managers.

BACKGROUND: CSLB's April 24, 2008 *Precedential Decision No. 1* establishes that someone acting in the capacity of a swimming pool consultant is a contractor.

The March 27, 2009, Appellate Court decision *The Fifth Day v. Bolotin* found that someone acting in the capacity of a construction manager is not required to be licensed as a contractor.

PROBLEM/SUMMARY: The *Fifth Day v. Bolotin* decision undermines CSLB's Precedential Decision.

Recently, an unlicensed contractor facing criminal prosecution for violating B&P Code section 7028 claimed to have been a project coordinator and asserted exemption from licensure, citing *The Fifth Day v. Bolotin* decision. Although the unlicensed contractor was not overseeing a contract between the project owner and a general contractor as in the *Fifth Day v. Bolotin* case, the defense strategy was nonetheless of concern to the prosecutor and ultimately resulted in a plea bargain dismissing the 7028 charge.

PROPOSED CHANGE (Include the Related Sections of Law): Amend 7026.1 to specify that the term "contractor" includes any person not employed by a licensed contractor who acts as a construction manager, project manager or project coordinator.

PROPOSED LANGUAGE: SEE (f)
7026.1. The term "contractor" includes all of the following:
(a) Any person not exempt under Section 7053 who maintains or services air-conditioning, heating, or refrigeration equipment that is a fixed part of the structure to which it is attached.
(b) Any person, consultant to an owner-builder, firm, association, organization, partnership, business trust, corporation, or company, who or that undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct any building or home improvement project, or part thereof.
(c) A temporary labor service agency that, as the employer, provides employees for the performance of work covered by this chapter. The provisions of this subdivision shall not apply if there is a properly licensed contractor who exercises supervision in accordance with Section 7068.1 and who is directly responsible for the final results of the work. Nothing in this subdivision shall require a qualifying individual, as provided in Section 7068, to be present during the supervision of work covered by this chapter. A contractor requesting the services of a temporary labor service agency shall provide his or her license number to that temporary labor service agency.
(d) Any person not otherwise exempt by this chapter, who performs

tree removal, tree pruning, stump removal, or engages in tree or limb cabling or guying. The term contractor does not include a person performing the activities of a nurseryperson who in the normal course of routine work performs incidental pruning of trees, or guying of planted trees and their limbs. The term contractor does not include a gardener who in the normal course of routine work performs incidental pruning of trees measuring less than 15 feet in height after planting.

(e) Any person engaged in the business of drilling, digging, boring, or otherwise constructing, deepening, repairing, re-perforating, or abandoning any water well, cathodic protection well, or monitoring well.

(f) Any person that meets any of the following criteria relating to residential home improvement as defined by Section 7151: Provides a cost analysis or a bid for a residential construction project, arranges for and sets up work schedules for subcontractors and maintains oversight of the project.

AGENDA ITEM C-4

Amendment to Business and Professions Code Section 7026.1 – Rental Equipment Providers

CONTRACTORS STATE LICENSE BOARD
LEGISLATIVE PROPOSAL FORM

SUBJECT: Rental Equipment Providers – Business & Professions Code (B&P) section 7026.1

BACKGROUND:

The B&P Code defines the term "contractor."

PROBLEM/SUMMARY:

It has become commonplace for contractors, licensed and unlicensed, to attempt to circumvent Contractors' License Law (CLL) and Public Contract Code (PCC) requirements by asserting they are not subject to licensure as contractors because they are "Renters of Operated Equipment." Examples include businesses that provide backhoes, tractors, paving and grading equipment, with a full crew to operate the equipment and perform incidental work, i.e., smoothing concrete with hand trowels and raking out asphalt on roads. Public protection is compromised in public works and residential construction as follows:

Public Works
PCC Sections 4100-4114 are known as the Subletting and Subcontracting Fair Practices Act (the Act), and it is intended to ensure fair competition between prime and subcontractors who bid public works projects. The Act requires a listing of all subcontractors who perform more than 1/2 of 1% of the prime contract amount.

Awarding agencies are unable to identify the lowest "responsible" bid when the prime contractor fails to list subcontractors. The prime contractor benefits by not listing the subcontractor because the subcontractor may have prior Labor Law violations and/or they want to shop for lower bids after the contract is awarded, commonly referred to as "bid shopping." *Bid shopping* is a practice by which contractors, both before and after their bids are submitted, attempt to obtain prices from potential subcontractors and material suppliers that are lower than the contractors' original estimates on which their bids are based, or after a contract is awarded, seek to induce subcontractors to reduce the subcontract price included in the bid.

The practice of bid shopping is a threat to legitimate licensees, awarding authorities and, ultimately, taxpayers, as these projects are typically funded by federal, state, and local tax dollars. Moreover, by not listing the subcontractors, it becomes confusing for the awarding authority and/or labor compliance personnel to keep track of employees working on the project to ensure that prevailing wages are paid.

Further, PCC section 4101specifically addresses “bid shopping,” and states the following:

> **4101.** The Legislature finds that the practices of bid shopping and bid peddling in connection with the construction, alteration, and repair of public improvements often result in poor quality of material and workmanship to the detriment of the public, deprive the public of the full benefits of fair competition among prime contractors and subcontractors, and lead to insolvencies, loss of wages to employees, and other evils.

Residential Construction

Licensed and unlicensed contractors seek to avoid CLL requirements by claiming to be acting in the capacity of a “Renter of Operated Equipment” and not a contractor. They seek this exemption, so they will not have to comply with licensure and workers’ compensation insurance requirements, or comply with home improvement contract restrictions that limit payments and provide other consumer protections.

Summary

This change in the law is to protect legitimate licensees who bid on public works projects, awarding authorities, employees, consumers, and, ultimately, taxpayers.

Regarding significance and number of offenders, it may be beneficial to request review and comment from Caltrans Public Works Manager Angela Shell.

PROPOSED CHANGE (Include the Related Sections of Law)

Amend 7026.1 to include a subsection (f) to define licensing requirements for businesses that provide equipment and operators for works of improvement.

PROPOSED LANGUAGE:

(f) Owners of operated equipment that provide equipment and an operator, and/or employees that work in conjunction with the equipment, for work covered by this chapter.

AGENDA ITEM C-5

Amendment to Business and Professions Code Section 7076 – Events Resulting in Cancellation of a License

CONTRACTORS STATE LICENSE BOARD
LEGISLATIVE PROPOSAL FORM

SUBJECT: Events Resulting in Cancellation of License; Continuation of License – Business & Professions (B&P) Code section 7076.

BACKGROUND:
This section details the cancellation of a license upon the death of the license or disassociation of a partnership. This section was added in 1995 (SB 1061, Chapter 467) and amended in 2010 (SB 392, Chapter 698). SB 1061 repealed the existing B&P Code section 7076 and replaced it with the current language.

PROBLEM/SUMMARY:
In subdivision (e) of B&P Code section 7076, in the second paragraph, fourth sentence it refers to request for continuance. It should make reference to the document being received within 90 days of the **disassociation**, as opposed to "within 90 days after the **death**." (d) refers to death of a partner and (**e) refers to disassociation** of a partner.

This language has been in place since the current section was added and it appears that this is just a typo that was not noted when the section was added.

PROPOSED CHANGE (Include the Related Sections of Law)
In B&P Code section 7076 (e), replace "death" with "disassociation," as specified below.

PROPOSED LANGUAGE:
(e) The general partner or partners shall notify the registrar in writing within 90 days of the disassociation of a limited partner. Failure to notify the registrar of the disassociation, within 90 days, shall cause the disassociation to be effective the date the written notification is received at the board's headquarters office. Failure to notify the registrar within 90 days of the disassociation is grounds for disciplinary action.

The disassociation of a limited partner will not affect the partnership license unless the partnership license has only one limited partner. In this case, the license will be canceled upon the disassociation of the limited partner unless a new limited partner is added to the license within 90 days of the disassociation. If the license is canceled, the remaining general partner or partners may request a continuance of the license to complete projects contracted for or in progress prior to the date of disassociation for a reasonable amount of time to be determined by rules of the board. The request for a continuance must be made in writing and received at the board's headquarters office within 90 days after the ~~death~~ *disassociation*. The remaining general partner or partners must apply for and obtain a new license to undertake new work and to continue contracting after the continuance expires.

10/24/2011

AGENDA ITEM C-6

Amendment to Business and Professions Code Section 7106.5 – Effect of Expiration or Suspension of License on Jurisdiction of Registrar

CSLB

CONTRACTORS STATE LICENSE BOARD
LEGISLATIVE PROPOSAL FORM

SUBJECT: Accusations Against Revoked Licenses – Business & Professions (B&P) Code section 7106.5

PROBLEM/SUMMARY: Section7106.5 grants the Registrar authority to proceed with investigation of a complaint even though the license has been expired, cancelled, forfeited, or suspended by operation of law, or voluntarily surrendered. However, the statute does not provide for pursuing an accusation to revoke the license when the license has already been revoked by operation of law.

Revoking a license by operation of law occurs when a licensee fails to comply with a citation or arbitration award. The license is revoked for a minimum of one year. To reinstate the license, the licensee must make restitution or comply with the order of correction, pay civil penalties, and post a minimum disciplinary bond in the amount of $15,000.00. Often, the amount of restitution is minimal and the civil penalties cannot exceed $5,000.00.

By not having the clear authority to file an accusation when the license is revoked by operation of law, an individual could evade/avoid discipline because the facts of the grounds for the accusation were never established. For example, if the licensee may not re-apply for licensure for five years after the revocation for non-compliance, the witnesses and evidence of the aforementioned case would not be fresh or the witness may not be located.

By adding the statute change, the Board could proceed with the accusation hearing, and put the discipline and facts of the case on record, which would require the licensee to comply with the Order of the Registrar prior to getting the license re-issued.

The proposed change would protect the public by establishing a financial injury relative to the case, which would allow the consumer to file against the bond. The public would also be more protected when, and if, the licensee re-applied because the egregious act would result in the requirement of a higher disciplinary bond amount, which currently can be imposed up to $125,000.00.

In addition, the consumer of the complaint would be entitled to restitution before the license is re-issued.

PROPOSED CHANGE (Include the Related Sections of Law)

Change the first sentence of the statute to include the language “or revocation”

PROPOSED LANGUAGE:

The expiration, cancellation, forfeiture, ~~or~~ suspension, ***or revocation*** of a license by operation of law…

Details:
The question of when we might have needed the proposed authority occurs when a licensee has been revoked by operation of law as opposed to being revoked by a disciplinary action through an accusation. Being revoked by operation of law occurs when a licensee fails to comply with a minor action such as failing to comply with an arbitration award or a citation. The revocation is for a period of one year and the licensee can reapply for their license by complying with the award or citation and by posting the minimum disciplinary bond (DB), which currently is in the amount of $15,000.00. The DB must be in place for two years.

Revocation by accusation occurs when a licensee has committed egregious acts in violation of the Contractors' License Laws, or has a history of complaints and or disciplinary actions. An accusation is a disciplinary action where the Board is seeking revocation through the Office of the Attorney General in accordance with the Government Code, as stated in the Administrative Procedures Act. If the Order results in revocation, there may be a probationary period, cost recovery, restitution, continuing education, and a period of up to five years before the respondent can reapply for licensure. In addition, the DB posting is required, which currently can range from the minimum of $15,000.00 up to $125,000.00 for a period of two to five years. These terms and conditions are ordered in proportion to the egregiousness of the acts and injury incurred.

Because the Board has the authority to investigate complaints for four years from the date of the act or omission (B&P Code section 7091), a contractor who is revoked by operation of law may have committed violations of Contractors' License Law that were egregious on another project prior to being revoked by operation of law. The investigation of the complaint alleging egregious acts resulting in a large financial injury warranting an accusation may be precluded from being prosecuted before an administrative law judge.

In this scenario, if a significant period of time passed before the revoked licensee reapplied for licensure, the Board may not be able to pursue the accusation where there was a significant injury due to circumstances where the witness may no longer be available.

The Board could use this authority to establish the violations and financial injury though the hearing process as stated in the Administrative Procedures Act. The decision and order would be on record and available to the public. The injured party could use the Order to aid on their behalf in civil litigation.

Other Information:
There is an argument that once a license is revoked, it can't be revoked again. This proposal is only for the purpose of filing an accusation against a license that has been revoked by operation of law. As stated above, there is a clear difference between the two processes of revocation. If the statute is amended, it will provide better protection to consumers and a clearer authority. There have been instances in the past where the Board has proceeded with an accusation where a license has been revoked by operation of law and the Administrative Law Judges have ruled both ways, some upholding our request for revocation, while others have failed to rule because the license is revoked. This proposal would clarify any confusion.

AGENDA ITEM D

Adjournment