

SEPTEMBER 11, 2014
SACRAMENTO, CALIFORNIA

CONTRACTORS STATE LICENSE BOARD

Legislative
Committee Meeting



**CONTRACTORS STATE LICENSE BOARD**

9821 Business Park Drive, Sacramento, California 95827
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STATE OF CALIFORNIA

Governor Edmund G. Brown Jr.

NOTICE OF LEGISLATIVE COMMITTEE MEETING

The Contractors State License Board (CSLB) will hold a Legislative Committee meeting on Thursday, September 11, 2014 at 9:00 a.m., in the following locations:

CSLB Headquarters

John C. Hall Hearing Room
9821 Business Park Drive
Sacramento, CA 95827

Teleconference Location:

134 West 168th Street
Gardena, CA 90248

All times are approximate and subject to change. Items may be taken out of order to maintain a quorum, accommodate a speaker, or for convenience. The meeting may be canceled without notice. For verification of the meeting, call (916) 255-4000 or access the Board's website at <http://www.cslb.ca.gov>. Action may be taken on any item listed on this agenda, including information-only items. Public comments will be taken on agenda items at the time the item is heard. Total time allocated for public comment may be limited. This meeting will be webcast live.

The meeting is open and the public is invited to attend. Meetings are accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by calling (916) 255-4000 or by sending a written request to the CSLB Executive Office, 9821 Business Park Drive, Sacramento, CA 95827. Providing your request at least five (5) business days prior to the meeting will help ensure availability of the requested accommodation.

Members of the Board who are not members of the Committee may attend the Committee meeting.

LEGISLATIVE COMMITTEE AGENDA

9:00 a.m.

Legislative Committee Members

Joan Hancock, Chair / Agustin Beltran / Linda Clifford / Paul Schifino / Nancy Springer

- A. Call to Order – Chair's Remarks
- B. Public Comment Session
- C. Legislative Program Update
- D. Review and Consideration of Sunset Review Report and Recommendations
- E. Adjournment

AGENDA ITEM A

Call to Order – Chair’s Remarks

Roll is called by the Committee Chair.

LEGISLATIVE COMMITTEE MEMBERS:

JOAN HANCOCK, CHAIR

AGUSTIN BELTRAN

LINDA CLIFFORD

PAUL SCHIFINO

NANCY SPRINGER

Committee Chair Joan Hancock 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

Legislative Update





CONTRACTORS STATE LICENSE BOARD

LEGISLATIVE UPDATE

2014 Legislation

| | | |
|------------|---|---|
| CA AB 26 | AUTHOR: TITLE: FISCAL COMMITTEE: URGENCY CLAUSE: INTRODUCED: LAST AMEND: DISPOSITION: LOCATION: SUMMARY: | Bonilla [D] Construction: Prevailing Wage yes no 12/03/2012 08/22/2014 To Governor To enrollment <p>Revises the definition for construction to include post-construction phases and cleanup work at the jobsite, for purposes of the requirements in existing law regarding the payment of prevailing wages on public works construction, alteration, demolition, installation, or repair work done under contract and paid in whole or in part out of public funds.</p> STATUS: 08/28/2014 |
| | | In ASSEMBLY. ASSEMBLY concurred in SENATE amendments. To enrollment. (55-22) |
| CA AB 1702 | AUTHOR: TITLE: FISCAL COMMITTEE: URGENCY CLAUSE: INTRODUCED: LAST AMEND: DISPOSITION: LOCATION: SUMMARY: | Maienschein [R] Professions and Vocations: Incarceration yes no 02/13/2014 04/23/2014 To Governor To Governor <p>Provides that an individual who has satisfied requirements needed to obtain a license while incarcerated, who applies for that license upon release from incarceration, and who is otherwise eligible for the license shall not be subject to a delay in processing or a denial of the license solely on the basis that some or all of the licensure requirements were completed while the individual was incarcerated.</p> STATUS: 08/19/2014 |
| | | *****To GOVERNOR. |
| CA AB 1705 | AUTHOR: TITLE: FISCAL COMMITTEE: URGENCY CLAUSE: INTRODUCED: LAST AMEND: DISPOSITION: LOCATION: SUMMARY: | Williams [D] Public Contracts: Payment no no 02/13/2014 08/11/2014 To Governor To Governor <p>Amends existing law that authorizes the retention proceeds withheld from any payment by an awarding entity from the original contractor, by the original contractor from any subcontractor, and by a subcontractor from any subcontractor, to exceed a specified percentage on projects that are substantially complex. Requires that the bid documents include details explaining the basis for the finding in addition to the actual retention amount.</p> |



Requires the description of unique project and why it is unique.

STATUS:

08/27/2014 *****To GOVERNOR.

CA AB 1741

AUTHOR: Frazier [D]
TITLE: Public Works: Prevailing Wage Rates: Assessments
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/14/2014
LAST AMEND: 04/07/2014
DISPOSITION: Pending
LOCATION: Assembly Appropriations Committee
SUMMARY:

Relates to the issuance by the Labor Commissioner of a civil wage and penalty assessment for violating laws regulating public works contracts, including the payment of prevailing wages. Specifies that a contractor, subcontractor, or surety may deposit the full amount of the assessment or notice with the Department of Industrial Relations in the form of cash or a bond issued by a surety company admitted to do business in the State in a form acceptable to the Department.

STATUS:

05/23/2014 In ASSEMBLY Committee on APPROPRIATIONS: Held in committee.

CA AB 1870

AUTHOR: Alejo [D]
TITLE: Public Works: Prevailing Wage: Apprenticeship Program
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/19/2014
LAST AMEND: 08/04/2014
DISPOSITION: To Governor
LOCATION: Enrolled
SUMMARY:

Relates to the prevailing wage. Amends an existing law which requires a contractor to whom a contract is awarded and who employs journeymen or apprentices to contribute to the State Apprenticeship Council the same amount that is determined is the prevailing amount of apprenticeship training contributions in the area of the public works site. Relates to the award of certain grants in cases where there are two or more approved multiemployer apprenticeship programs serving the same craft or trade.

STATUS:

08/22/2014 Enrolled.

CA AB 1918

AUTHOR: Williams [D]
TITLE: Energy: Design And Construction Standards
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/19/2014
LAST AMEND: 06/09/2014
DISPOSITION: Pending
LOCATION: Senate Appropriations Committee
SUMMARY:

Amends existing law that requires the State Energy Resources Conservation and Development Commission to prescribe building design and construction



standards and energy and water conservation design standards for new buildings. Requires the State Energy Resources Conservation and Development Commission to implement methods to simplify procedures related to compliance. Allow authorizing a program to improve compliance with State Building Standards Code requirements for heating an air conditioning equipment.

STATUS:

08/14/2014 In SENATE Committee on APPROPRIATIONS: Held in committee.

CA AB 1939

AUTHOR: Daly [D]
TITLE: Public Works: Prevailing Wages: Contractor's Costs
FISCAL COMMITTEE: no
URGENCY CLAUSE: no
INTRODUCED: 02/19/2014
ENACTED: 07/21/2014
DISPOSITION: Enacted
LOCATION: Chaptered
CHAPTER: 161

SUMMARY:

Relates to public works and the prevailing wage. Authorizes a contractor to bring an action to recover from the hiring party, that the contractor directly contracts with, any increased costs, including labor costs, penalties, and legal fees incurred as a result of any decision by the Department of Industrial Relations, the Labor and Workforce Development Agency or a court that classifies that the work covered by the project is a public work. Provides exception circumstances.

STATUS:

07/21/2014 Signed by GOVERNOR.
07/21/2014 Chaptered by Secretary of State. Chapter No. 161

CA AB 2396

AUTHOR: Bonta [D]
TITLE: Convictions: Expungement: Licenses
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/21/2014
LAST AMEND: 08/19/2014
DISPOSITION: To Governor
LOCATION: Enrolled

SUMMARY:

Prohibits a vocational or professional licensing board within the Department of Consumer Affairs from denying a license based solely on a conviction that has been dismissed pursuant to certain provisions of existing law. Requires an applicant who has a conviction that has been dismissed pursuant to the provisions of existing law to provide proof of dismissal.

STATUS:

08/29/2014 Enrolled.

CA AB 2471

AUTHOR: Frazier [D]
TITLE: Public Contracts: Change Orders
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/21/2014
LAST AMEND: 08/04/2014



DISPOSITION: Pending
LOCATION: Senate Appropriations Committee
SUMMARY:

Requires a public entity, when authorized to order changes or additions in the work in a public works contract awarded to the lowest bidder, to issue a change order promptly and not later than a specified time period. Requires if this requirement is not met, the entity to be liable to the original contractor for the completed work. Requires prejudgment interest to accrue. Provides procedural requirements for the submission of change orders by subcontractors.

STATUS:

08/04/2014 From SENATE Committee on APPROPRIATIONS with author's amendments.

08/04/2014 In SENATE. Read second time and amended. Re-referred to Committee on APPROPRIATIONS.

08/04/2014 In SENATE Committee on APPROPRIATIONS: Not heard.

CA SB 315

AUTHOR: Lieu [D]
TITLE: Contractors
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/15/2013
LAST AMEND: 07/02/2014
DISPOSITION: To Governor
LOCATION: To Governor
SUMMARY:

Provides for membership of the Joint Enforcement Strike Force on the Underground Economy. Provides that it is a misdemeanor for a person to engage in the business of, or act in the capacity of, a contractor within this state if the person is not licensed. Authorizes a person who is not licensed as a contractor to advertise for construction work or a work of improvement only under specified circumstances. Authorizes the registrar of contracts to initiate disciplinary action within a specified time period.

STATUS:

08/28/2014 *****To GOVERNOR.

CA SB 1159

AUTHOR: Lara [D]
TITLE: License Applicants: Individual Tax Identification
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/20/2014
LAST AMEND: 08/22/2014
DISPOSITION: To Governor
LOCATION: To enrollment
SUMMARY:

Requires professional and vocational licensing boards within the Department of Consumer Affairs to require an applicant to provide an individual tax identification number or social security number if the applicant is an individual. Requires the bodies to report to the Franchise Tax Board, and subjects a licensee to a penalty for failure to provide that information. Prohibits denial of licensure based on citizenship or immigration status. Requires regulatory and procedural changes to implement provisions.

STATUS:

08/29/2014 In ASSEMBLY. Read third time. Passed ASSEMBLY.
*****To SENATE for concurrence. (55-22)



08/29/2014 Re-referred to SENATE Committee on BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT.

08/29/2014 From SENATE Committee on BUSINESS, PROFESSIONS & ECON. DEVELOPMENT: Recommend concurrence in ASSEMBLY amendments. (7-1)

08/29/2014 In SENATE. SENATE concurred in ASSEMBLY amendments. To enrollment. (30-4)

CA SB 1243

AUTHOR: Lieu [D]
TITLE: Professions and Vocations
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 02/20/2014
LAST AMEND: 08/18/2014
DISPOSITION: To Governor
LOCATION: Enrolled
SUMMARY:

Relates to professions and vocations to include board meeting notification procedures, professional advertising in a telephone directory, administrative expense charges and reports, the development of an enforcement academy, the contents of the Director of Consumer Affairs report regaining complaints against licensees, professional board member training, veterinary assistant and controlled substances, common interest development managers, and the Tax Education Council.

STATUS:
08/28/2014 Enrolled.

CA SB 1467

AUTHOR: Lieu [D]
TITLE: Professions and Vocations
FISCAL COMMITTEE: yes
URGENCY CLAUSE: no
INTRODUCED: 03/25/2014
LAST AMEND: 08/18/2014
DISPOSITION: To Governor
LOCATION: To Governor
SUMMARY:

Relates to the State Board of Accountancy collection of licensee email addresses and licensure educational requirements, and licensee reporting criminal charges, the Board of Professional Engineers, Land Surveyors, and Geologists licensure examination and registered petroleum engineers. Relates to professional photocopiers as licensed notary public. Requires medical facility and public school construction plans be prepared by a licensed structural engineer.

STATUS:
08/28/2014 *****To GOVERNOR.

AGENDA ITEM D

Review of Sunset Review Report



DRAFT Recommendations for CSLB's Sunset Review Report

Recommendations previously distributed electronically to Board members and reviewed by the Executive, Licensing and Public Affairs Committees

RECOMMENDATION # 1: Amend Business and Professions Code Section 7031 Regarding Recovery of Compensation Paid to an Unlicensed Contractor

Existing Law

Business & Professions Code Section (BPC) 7031 **provides consumer protection as follows:**

1. **Under subdivision (a), in order to file suit for compensation a contractor must prove that he/she was a "...duly licensed contractor at all times during the performance of that act or contract" for which compensation is sought.**
2. **Under subdivision (b), any person who hires an unlicensed contractor can bring an action in any court of competent jurisdiction for recovery of all compensation paid to the unlicensed contractor for performance of any act or contract.**

Problem

The most salient issue is that the application of subdivision (b) by the legal profession (including the courts) is overly broad. For example, if there is a break in licensure, even for one day, attorneys representing consumers and prime contractors are using the lapse as the basis to seek recovery of all compensation paid on a project, just as though the contractor had been completely "unlicensed" for the entire term of the contract. The same "unlicensed" interpretation is being applied to cases where a contractor has maintained a valid license in a classification for which the license was issued but, during the course of construction, performed a small amount of work "out-of-class" (see Business and Professions Code Section 7117.6). Significantly, the terms "duly licensed" (as used in subdivision (a)) and "unlicensed" are not defined in the Contractors State License Law, but they are decisive terms under Section 7031. Consequently the legal profession has no clear guidelines to use when judging the license status of a contractor, and the disgorgement provisions authorized by subdivision (b) are being misinterpreted and malevolently applied for personal gain, even when there is no issue regarding the quality of work performed.

CSLB has been repeatedly approached by individual contractors and professional associations asking for relief for perceived misuse of the judiciary system whereby contractors are being sued and/or denied payment for work they felt they had done legally or because of inadvertent or short-term lapses in their licenses. Further, there is evidence of data mining being done by persons including attorneys, who obtain CSLB license information and do history searches to see if there were lapses in a license or potential work done with an

improper classification. These general contractors or attorneys then either refuse to pay or sue to get money from the contractor. The actual evidence of these problems has been difficult to obtain as the settlements typically contain non-disclosure provisions and licensees do not want the case to be made public in case they get sued by others. Most of the complaints seem to involve contractor versus contractor issues, or public agency versus contractor, or persons or groups who hire attorneys to research and recover.

In CSLB's opinion, this is a growing distortion of the marketplace. If the State of California is serious about helping business and the economy grow, and streamlining the business environment so contractors can succeed, it will have to address this problem at some time, the sooner the better. Individual consumers without the financial wherewithal to hire attorneys do not utilize this provision of law and it does not protect those consumers who typically need CSLB's help.

SB 263 (Monning, 2013)

The Contractors State License Board (CSLB) sponsored SB 263 (Monning) in 2013 to try to modify BPC 7031. Specifically, this bill would have repealed the existing section and replaced it with provisions that would still have required a contractor to be licensed at all times, but would have allowed a court to determine that a contractor had substantially complied with the licensing requirement if he or she was licensed when the contract was signed, but subsequently performed work either outside his or her classification, under a suspended license, or under an expired or inactive license. A contractor meeting those criteria could have sought payment for work performed only when he or she was properly licensed.

However, CSLB was unsuccessful in pursuing this change; the amendments to BPC 7031 were removed because the Senate Judiciary Committee staff was concerned about any change that they view as weakening the existing consumer protection provided by BPC 7031. While Committee staff realize the potential penalty of this section can be severe, they believe it is justified because it enforces how important it is for contractors to maintain their license at all times. To consider the proposed change, Committee staff requested examples of problems with the current law that would be remedied by the proposed amendments, which the industry could not document.

Why CSLB Sponsored SB 263 and Continues to Support the Concept

CSLB sponsored this bill because it would have helped accomplish two of CSLB's strategic objectives, to (1) identify ways to simplify laws in order to allow more contractors to practice/work; and (2) limit restrictions where possible in order to make it easier for applicants and licensees to comply with laws. CSLB believes this proposal, by clarifying the law, would benefit consumers, as well as aid contractors in receiving monies owed for work and services rendered while properly licensed. This change would benefit all parties by clearly stating that

contractors who are unlicensed at the time a contract is signed are not entitled to any payment for work performed under that contract. Consumers would know when they need to pay and when they do not, rather than having the standard vary on a case by case basis, depending on a court's interpretation.

Proposed Language

Repeal the existing 7031 and insert the following:

7031. (a) Except as provided in subdivision (e), a contractor shall be duly licensed at all times during the performance of any act or contract in order to bring an action to collect payment for the performance of that act or contract. This provision does not apply to contractors who are each individually licensed under this chapter but who fail to comply with Section 7029.

(b) Except as provided in subdivision (e), a person who utilizes the services of an unlicensed person who engages in the business or acts in the capacity of a contractor may recover all compensation paid to that person.

(c) If a security interest is taken to secure payment for the performance of any act or contract for which a license is required by this chapter, the security interest is unenforceable if the person performing the act or contract is not duly licensed at all times during the performance of the act or contract.

(d) If licensure or proper licensure is disputed, it is the burden of a purported licensee to provide proof of licensure by production of a verified certificate of licensure from the board.

(e) Notwithstanding subdivision (b) of Section 143, a court may determine that there has been substantial compliance with licensure requirements under this section if the person who engaged in the business or acted in the capacity of a contractor was duly licensed at the time the contract was executed, but who subsequently performed work in a classification for which the person was not licensed, under license suspension, or using an expired or inactive license. That person may pursue payment for any work that was performed on the contract while duly licensed but shall be precluded from pursuing payment for work performed on the contract while found to be working in a classification for which the person was not licensed, under license suspension, or under an expired or inactive license. A person who utilized the services of that person may recover the compensation paid to that person for work performed on the contract while found to be working in a classification for which that person was not licensed, under license suspension, or under an expired or inactive license.

RECOMMENDATION #2: Amend the Law Regarding CSLB's Arbitration Program

Overview

The Contractor's State License Board's (CSLB or Board) Arbitration Program is governed by Business and Professions (B&P) Code sections 7085 – 7085.9. The program, which is free to consumers, offers restitution for contractor projects that do not meet trade standards. It is an alternate dispute resolution process designed to resolve consumer complaints equitably and efficiently. The program is also of great potential benefit for the contractor as it can provide them with a means to resolve consumer complaints quickly and with significantly less cost.

CSLB's arbitration program consists of two parts:

1. *Mandatory arbitration* is for claims where damage does not exceed the amount of the required contractor's license bond (\$12,500). Participation for the licensee is mandatory if the Consumer/Complainant agrees to resolve the complaint through this process, if recommended by the Board.
2. *Voluntary arbitration* is for disputes above the bond requirement (\$12,500), but not exceeding \$50,000. Both the Consumer/Complainant and the Licensee/Respondent must agree to resolve the complaint through CSLB-sponsored arbitration.

Legislative History

CSLB's Arbitration Program was first established as a voluntary program in 1980 by Assembly Bill (AB) 1363 (Lockyer) as an alternative for resolving disputes between consumers and contractors. As enacted, it allowed CSLB to refer certain, qualified disputes of between \$500 and \$15,000, with the concurrence of both parties.

- In 1988, Senate Bill (SB) 905 (Ellis) increased the maximum dispute amount to \$25,000.
- In 1989, the Legislature enacted AB 967 (Bentley) to require mandatory arbitration of disputes involving material damages of \$2,500 or less.
- In 1993, AB 497 (Bentley) increased the mandatory arbitration threshold to \$5,000.
- In 1998, SB 1792 (Mountjoy) increased the monetary cap on cases that may be referred to a voluntary arbitration program to a maximum of \$50,000.
- In 2002, AB 728 (Correa) increased the threshold for mandatory arbitration to \$7,500.

- In 2006, SB 1112 (Committee on Business and Professions) increased the mandatory arbitration threshold to correspond to the amount of the contractor's license bond.

Program Effectiveness

Since its creation, CSLB’s arbitration program has been recognized for its innovation and effectiveness as a tool for consumer protection.

In 2004, the California Dispute Resolution Council honored CSLB for its commitment to alternative dispute resolution. CSLB was selected for this award due in part to its arbitration programs, as well as its on-site negotiation program, mandatory settlement conference policies, and extensive conciliation efforts.

In 2013, consumers and contractors evaluated administration of the arbitration program, and the Arbitration Mediation Conciliation Center (AMCC) with whom CSLB contracts to run the program. Here is a summary of the survey:

Arbitration Satisfaction Survey Results (1-5)

| | |
|--------------------------------------|------|
| Efficient Coordination Among Parties | 4.74 |
| Scheduling/Notice of Hearings | 4.73 |
| Case Management Overall | 4.84 |
| AMCC Professionalism | 4.83 |
| Case Manager Courtesy | 4.84 |
| Case Manager Efficiency | 4.82 |

The following are program statistics for calendar year 2013:

| | |
|---|-------------|
| Complaints Referred to Arbitration Program | 313 |
| Awards Rendered | 288 |
| Restitution Ordered for Financially Injured Persons | \$1,254,767 |
| Licenses Revoked for Failure to Comply with Arbitration Award | 45 |

Proposed Changes to Existing Law:

The law needs to be changed to address an increasing problem regarding attorney’s fees and to correct some technical issues. The attorney’s fees issue was brought to CSLB’s attention by Senator Steinberg’s office, generated by concerns expressed by one of his constituents, outlined suggested improvements to CSLB’s arbitration program. After discussing the proposed changes with Senator Steinberg’s staff, CSLB agreed to sponsor AB 993.

Attorney's Fees

For CSLB, the most significant change in AB 993 was new language added to B&P Code 7085.5 (r)(3), *"A party that submits a dispute to arbitration pursuant to this section waives any right to recover attorney's fees, or to challenge an arbitrator's award of attorney's fees, in a civil action regarding the dispute."*

In CSLB's arbitration program, the practice is and always has been to not award attorney's fee. However, CSLB has learned that increasingly when a contractor prevails in arbitration and receives a monetary award, the contractor will use that award as a basis to pursue a civil action to recover attorney's fees associated with his/her arbitration defense.

The issue came to light in a letter from a constituent of Senator Steinberg who is a consumer who participated in CSLB's arbitration program. Karen Hughes attended several board meetings to describe what her family went through. According to Ms. Hughes, she and her husband have had to pay their contractor more than \$200,000 in attorney's fees after losing an arbitration case.

This is happening more frequently and has had a negative impact on the arbitration program as CSLB staff must now warn consumers that if they do not prevail in arbitration they stand to lose a significant amount of money in attorney's fees if the contractor takes them to court. There's no doubt a consumer would be hesitant to seek restitution for \$8,000 from a contractor if they could potentially lose \$30,000 in attorney's fees.

CSLB also needs minor process changes.

Concerns Regarding Assembly Judiciary Committee Recommendations:

In the Assembly Judiciary Committee, in addition to the amendment CSLB proposed, the Committee recommended additional changes to apply provisions of the California Arbitration Act to CSLB's arbitration program.

After reviewing the changes with AMCC, CSLB has several concerns, summarized below (code section references refer to April 24, 2013 version):

7085.5 (a) The appointed arbitration association shall comply with all of the duties and requirements applicable to private arbitration companies pursuant to Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure.

7085.5 (c) A person shall not serve as an arbitrator in any arbitration in which that person has any financial or personal interest in the result of the arbitration. Prior to accepting an appointment, the prospective arbitrator shall ~~disclose any circumstances likely to prevent a prompt hearing or to create a presumption of bias. Upon receipt of that information, the board or appointed arbitration association shall immediately replace the arbitrator or communicate the information to the parties for their comments. Thereafter, the board or appointed~~

~~arbitration association shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive. comply with Sections 1281.9 and 1281.95 of the Code of Civil Procedure. An arbitrator shall be subject to disqualification pursuant to Sections 1291.91 and 1281.95 of the Code of Civil Procedure.~~

Section 1281.9 was intended for “consumer arbitrations”, which are those arbitrations that are drafted by the non-consumer, the consumer party was required to accept arbitration, and there is a pre-dispute arbitration provision in the arbitration contract. They are created out of a contract of adhesion (such as credit card companies and phone companies). In a “Consumer Arbitration”, the consumer does not have the option to accept or reject arbitration, hence the need for all of the subsequent statutes.

The CSLB arbitration is the opposite of consumer arbitration because it is the consumer that chooses arbitration, there is no pre-dispute provision in the contract, and it is governed by statute, not contractual language. Additionally, the Ethics Standards referred to in 1281.9 specifically excludes arbitration by statute; the inclusion of 1281.9 in these arbitration statutes would thereby cause a conflict in the law.

In regards to other portions of the amendments, there was concern about the removal of 7085.5 (e) (2), wherein it currently allows the arbitration association to set the date and place for the arbitrations for Mandatory Arbitrations (those arbitrations that are chosen by the Consumer with an Award amount under \$12,500). There are considerable logistical problems associated with this, as there are only so many locations and Arbitrators throughout the state. The arbitration service provider selects an Arbitrator in these matters based upon location, availability and the nature of the dispute, as well as the availability of any of the 51 locations set aside for these hearing across the state. CSLB believes that removing this provision in the statute will result in unnecessary delays to the scheduling of these matters and possible manipulation by the Responding parties or their attorneys.

Lastly, in 7085.5(u) (2), there is a change that requires the Arbitrator (rather than the registrar) to advise the parties of industry experts available. CSLB proposed retaining existing law instead, as CSLB believes this change mixes the arbitrators role as a neutral party to that of an information provider or advocate for either party, and may be construed as ex parte communication.

Additionally, at the request of the Civil Justice Association, the author agreed to amend the bill to delete the proposed change to existing law which prohibited an arbitrator from awarding performance. The current practice of the arbitration program is to only award monetary damages, CSLB expects this to continue.

Proposed Language

SECTION 1. Section 7085.5 of the Business and Professions Code is amended to read:

7085.5. Arbitrations of disputes arising out of cases filed with or by the board shall be conducted in accordance with the following rules:

(a) All "agreements to arbitrate" shall include the names, addresses, and telephone numbers of the parties to the dispute, the issue in dispute, and the amount in dollars or any other remedy **of monetary damages** sought. **Except for the release of a mechanics lien or the return of tools or materials, monetary damages are the only remedy available pursuant to this article. The arbitrator shall not order or provide for the specific performance of any project, including, but not limited to, the completion of work, repairs, or corrections.** The appropriate fee **for arbitration services** shall be paid **to the appointed arbitration association** by the board from the Contractors' License Fund.

(b) (1) The board or appointed arbitration association shall appoint an arbitrator in the following manner: immediately after the filing of the agreement to arbitrate, the board or appointed arbitration association shall submit simultaneously to each party to the dispute, an identical list of names of persons chosen from the panel. Each party to the dispute shall have seven days from the mailing date in which to cross off any names to which it objects, number the remaining names to indicate the order of preference, and return the list to the board or appointed arbitration association. If a party does not return the list within the time specified, all persons named in the list are acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the board or appointed arbitration association shall appoint an arbitrator to serve. If the parties fail to agree on any of the parties named, if acceptable arbitrators are unable to act, or if, for any other reason, the appointment cannot be made from the submitted lists, the board or appointed arbitration association shall have the power to make the appointment from among other members of the panel without the submission of any additional lists. Each dispute shall be heard and determined by one arbitrator unless the board or appointed arbitration association, in its discretion, directs that a greater number of arbitrators be appointed.

(2) In all cases in which a complaint has been referred to arbitration pursuant to subdivision (b) of Section 7085, the board or the appointed arbitration association shall have the power to appoint an arbitrator to hear the matter.

(3) The board shall adopt regulations setting minimum qualification standards for listed arbitrators based upon relevant training, experience, and performance.

(c) ~~No~~ **A** person shall not serve as an arbitrator in any arbitration in which that person has any financial or personal interest in the result of the arbitration. Prior to accepting an appointment, the prospective arbitrator shall disclose to the appointed arbitration association any circumstances likely to prevent a prompt hearing or to create a presumption of bias. Upon receipt of that information, the board or appointed arbitration association shall immediately replace the arbitrator or communicate the information to the parties for their comments. Thereafter, the board or appointed arbitration association shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

(d) The board or appointed arbitration association may appoint another arbitrator if a vacancy occurs, or if an appointed arbitrator is unable to serve in a timely manner.

(e) (1) The board or appointed arbitration association shall provide the parties with a list of the times and, dates, and locations of the hearing to be held. The parties shall notify the ~~arbitrator~~ arbitration association, within seven calendar days of the mailing of the list, of the times and dates convenient to each party. If the parties fail to respond to the arbitrator within the seven-day period, the arbitrator shall fix the time, place, and location of the hearing. An arbitrator may, at the arbitrator's sole discretion, make an inspection of the construction site which is the subject of the arbitration. The arbitrator shall notify the parties of the time and date set for the inspection. Any party who so desires may be present at the inspection.

(2) The board or appointed arbitration association shall fix the time, ~~place~~ date, and location of the hearing for all cases referred to arbitration pursuant to subdivision (b) of Section 7085. An arbitrator may, at the arbitrator's sole discretion, make an inspection of the construction site ~~which~~ that is the subject of the arbitration. The arbitrator shall notify the parties of the time and date set for the inspection. Any party who desires may be present at the inspection.

(f) ~~Any~~ **A** person having a direct interest in the arbitration is entitled to attend the hearing. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. ~~It shall be discretionary with~~ is in the discretion of the arbitrator to determine the propriety of the attendance of any other person.

(g) Hearings ~~A hearing~~ shall be adjourned by the arbitrator ~~only~~ for good cause, at the arbitrator's sole discretion.

(h) A record is not required to be taken of the proceedings. However, any party to the proceeding may have a record made at its own expense. A party making a recording of a hearing shall supply the recording to the arbitrator at the party's own expense. The parties may make appropriate notes of the

proceedings.

(i) The hearing shall be conducted by the arbitrator in any manner ~~which~~ **that** will permit full and expeditious presentation of the case by both parties. Consistent with the expedited nature of arbitration, the arbitrator shall establish the extent of, and schedule for, the production of relevant documents and other information, the identification of any witnesses to be called, and a schedule for any hearings to elicit facts solely within the knowledge of one party. The complaining party shall present its claims, proofs, and witnesses, who shall submit to questions or other examination. The defending party shall then present its defenses, proofs, and witnesses, who shall submit to questions or other examination. The arbitrator has discretion to vary this procedure, but shall afford full and equal opportunity to the parties for the presentation of any material or relevant proofs.

(j) The arbitration may proceed in the absence of any party who, after due notice, fails to be present. The arbitrator shall require the attending party to submit supporting evidence in order to make an award. An award for the attending party shall not be based solely on the fact that the other party has failed to appear at the arbitration hearing.

(k) The arbitrator shall be the sole judge of the relevancy and materiality of the evidence offered, and conformity to legal rules of evidence shall not be required.

(l) The arbitrator may receive and consider documentary evidence. Documents to be considered by the arbitrator may be submitted prior to the hearing. However, a copy shall be simultaneously transmitted to all other parties and to the ~~board or~~ appointed arbitration association for transmittal to the arbitrator or board appointed arbitrator.

(m) The arbitrator shall specifically inquire of the parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the arbitrator shall declare the hearing closed and minutes thereof shall be recorded. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as requested by the arbitrator and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the ~~hearings~~ **hearing**. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the ~~hearings~~ **hearing**.

(n) The hearing may be reopened on the arbitrator's own motion **prior to the rendering of an award**.

(o) ~~Any~~ **A** party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with, and who fails to state his or her objections to the arbitrator in writing, within ~~40~~ **3** calendar days

of close of the hearing, shall be deemed to have waived his or her right to object.

(p) (1) Except as provided in paragraph (2), any papers or process necessary or proper for the initiation or continuation of an arbitration under these rules, and for any court action in connection therewith, or for the entry of judgment on an award made thereunder, may be served upon ~~any party (A)~~ by regular a party by first-class mail addressed to that party or his or her attorney at the party's last known address, or ~~(B)~~ by personal service. Service by first-class mail is complete upon deposit in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service in a sealed addressed envelope, with postage paid.

(2) Notwithstanding paragraph (1), in all cases referred to arbitration pursuant to subdivision (b) of Section 7085 in which the contractor fails or refuses to return an executed copy of the notice to arbitrate within the time specified, any papers or process specified in paragraph (1) to be sent to the contractor, including the notice of hearing, shall be mailed by certified mail to the contractor's address of record.

(q) The award shall be made promptly by the arbitrator, ~~and unless otherwise agreed by the parties,~~ no later than 30 calendar days from the date of closing the hearing, or from the closing of a reopened hearing, or if oral hearing has been waived, from the date of transmitting the final statements and proofs to the arbitrator.

The arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The arbitrator shall notify the parties of any extension and the reason therefor.

(r) (1) The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the board's referral and the requirements of the board. The arbitrator, in his or her sole discretion, may award costs or expenses.

(2) ~~The amendments made in paragraph (1) during the 2003-04 Regular Session shall not be interpreted to prevent an arbitrator from awarding a complainant~~ An arbitrator may award all direct costs and expenses for the completion or repair of the project.

(3) A party whose dispute is submitted to arbitration pursuant to this section waives any right to recover attorney's fees in a civil action regarding the dispute.

(s) (1) The award shall become final 30 calendar days from the date the arbitration award is issued, notwithstanding the actual date either party receives the award. The arbitrator, upon written application of a party to the

arbitration, may correct the award upon the following grounds:

(1)

(A) There was an evident miscalculation of figures or an evident mistake in the description of any person, things, or property referred to in the award.

(2)

(B) There is any other clerical error in the award, not affecting the merits of the controversy.

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(2) An application for correction of the award shall be made within 10 calendar days of the date of service of the award by serving a copy of the application on the arbitrator, and all other parties to the arbitration. ~~Any A~~ party to the arbitration may make a written objection to the application for correction by serving a copy of the written objection on the arbitrator, the board, and all other parties to the arbitration, within 10 calendar days of the date of service of the application for correction.

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(3) The arbitrator shall either deny the application or correct the award within 30 calendar days of the date of service of the original award by mailing a copy of the denial or correction to all parties to the arbitration. Any appeal from the denial or correction shall be filed with a court of competent jurisdiction and a true copy thereof shall be filed with the ~~arbitrator or~~ appointed arbitration association within 30 calendar days after the award has become final. The award shall be in writing, and shall be signed by the arbitrator or a majority of them. If no ~~appeal~~ **request for correction** is filed within the 30-calendar day period, it shall become a final order of the registrar.

(t) Service of the award by certified mail shall be effective if a certified letter containing the award, or a true copy thereof, is mailed by the ~~arbitrator or~~ arbitration association to each party or to a party's attorney of record at their last known address, address of record, or by personally serving any party. ~~Service may be proved in the manner authorized in civil actions.~~ **Service by certified mail is complete upon deposit in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service in a sealed addressed envelope, with postage paid.**

(u) **(1)** The board shall pay the expenses of one expert witness appointed by the board ~~when the~~ **if both of the following apply:**

(A) The services of an expert witness are requested by either party involved in arbitration pursuant to this ~~article and the~~ **article.**

(B) The case involves workmanship issues that are itemized in the complaint and have not been repaired or replaced. ~~Parties who choose~~

(2) A party that chooses to present the findings of another expert witness as evidence shall pay for those services. Payment for expert witnesses appointed by the board shall be limited to the expert witness costs for inspection of the problem at the construction site, preparation of the expert witness' report, and expert witness fees for appearing or testifying at a hearing. All requests for payment to an expert witness shall be submitted on a form that has been approved by the registrar. All requests for payment to an expert witness shall be reviewed and approved by the board prior to payment. The registrar shall advise the parties that names of industry experts may be obtained by requesting this information from the registrar.

(v) The arbitrator shall interpret and apply these rules insofar as they relate to his or her powers and duties.

(w) The following shall apply as to court procedure and exclusion of liability:

(1) The board, the appointed arbitration association, or any arbitrator in a proceeding under these rules is not a necessary party in judicial proceedings relating to the arbitration.

(2) Parties to these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(3) The board, the appointed arbitration association, or any arbitrator is not liable to any party for any act or omission in connection with any arbitration conducted under these rules.

RECOMMENDATION #3: Review and Amend the Contractors State License Law to streamline it and make it easier to use.

When the Contractors State License Bureau, later the Contractors State License Board (CSLB) was established in 1929, would-be contractors only had to apply in order to get a license. Ten years later, in 1939, applicants were required to take an exam before getting a license. Over the years CSLB's laws and regulations have grown, and grown, and grown.

Now, 85 years later, contractors' license law and regulations, at its best, are complex; at its worst, the laws and regulations are overwhelming, unwieldy and burdensome.

It's not realistic to expect a contractor with a one-person operation to be able to navigate the myriad of laws and regulations, let alone understand them.

With the Legislature's help, CSLB hopes to begin a process of identifying, then eliminating, outdated and/or unnecessary laws and regulations. An effort would also be made to reorganize the law into a more logical format, shortening and simplifying where appropriate.

One possible change would be dividing the law into logical chapters, such as Licensing, Enforcement, Board Operations, etc.

In addition, CSLB hopes to address the requirements for consumer home improvement contracts that have also grown cumbersome. Because of its length and complexity, few contractors comply with it; even fewer consumers read it. As a result, contract law provides little consumer protection.

AGENDA ITEM E

Adjournment

